AIA® Document A102™ – 2007

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 [redacted] day of [redacted] in the year [redacted]
(In words, indicate day, month and year.)

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

[redacted]
1101 30th Street, NW, Suite 400
Washington, DC 20007
Telephone Number: 202-333-8931
Fax Number: 202-833-1031

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

[redacted]

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

[redacted]

Complete renovation of [redacted] units in a single four story building.

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

[redacted]

The Owner and Contractor agree as follows.

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

This document is not intended for use in competitive bidding.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents 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.

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 RELATIONSHIP OF THE PARTIES

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

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ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

The date of commencement shall be ten (10) days after all of the following have been received:

a. Owner has issued in writing and Contractor has acknowledged receipt of a Notice To Proceed.
b. All permits and approvals are issued by local, state, and federal authorities.
c. Owner has provided evidence satisfactory to the Contractor's surety that sufficient financing is in place with all funds available during construction for payment to the Contractor.

If, prior to commencement of the Work, the Owner requires time to file mortgages mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

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

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than [redacted] days from the date of commencement, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Pending a commencement of not later than [redacted]

Portion of Work	Substantial Completion date
Unit Completion [redacted]	[redacted]

, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time, or for bonus payments for early completion of the Work.)

a. The time in which the Contractor agrees to complete the work is of the essence of the Contract and failure to substantially complete the Portions of Work as described in Article 4.3, will entitle Owner to liquidated damages. The Owner will deduct and retain out of monies, which will be due to the Contractor under this contract, as liquidated damages for each calendar day (including Sundays and legal holidays) of unexcused delay beyond the time specified for Substantial Completion of the entire project, as properly adjusted for delays beyond the Contractor's control for the sum of two hundred fifty dollars ($250.00) per unit not substantially complete for each calendar day.
b. The sum shall not be considered as a penalty but as a sum mutually agreed upon as the unascertained damages suffered by the Owner because of delay in completion of the work.
c. The provision for liquidated damages as set out in Paragraph (a) of Article 4.3 shall be the sole exclusive remedies available to the owner in the event of delay in completion of the work within the time specified. Applicable articles of the General Conditions shall continue to apply in the event of neglect or other default.
d. Request for extension of time due to strikes, lack of materials or any other causes over which the Contractor has no control will be made by written application to the Architect, who will approve or deny such request within thirty (30) days of receipt. The Contract Time assumes free and unimpeded access to the Work, so the work can progress in a sequential manner, per Exhibit "F", the construction schedule, normal weather conditions, supply lead times and ample time to coordinate subcontractors and all utility work necessary for completion of the project based on industry standards for the jurisdiction in which the project is located. Contractor assumes all inspection lead times will not exceed 48 hours from telephonic request. It is also agreed that the plans and specifications are assumed to meet all local and state building codes. Either party may appeal the recommendation of the Architect under the procedures set forth in Article 15 of the A201-2007 incorporated herein by reference. Any request for an extension of time is to be made within thirty (30) days after the occurrence of conditions that in the opinion of the Contractor warrants an

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extension. With the extension request, the contractor shall set out the reasons on which the extension request is based and shall make available proof for all delays beyond the Contractor's control including a revised schedule showing the impact of affected trades on the project. Contractor shall be entitled to an extension of time for excusable delays beyond its control and/or for excusable delays beyond Contractor's control that are concurrent with any unexcused Contractor caused delays. Architect shall approve or deny such request within thirty (30) days of receipt.
c. Substantial Completion shall be determined by the Architect and is understood to be the day upon which the Owner has beneficial use and occupancy of the building and its systems and the only remaining work items are minor corrections of a typical "punch list" nature. The Owner shall obtain without delay any and all occupancy permits and local approvals as required. The Contractor is responsible to call for and coordinate all necessary inspections including occupancy but excludes all costs and processing of final Certificates of Occupancy. The Work of the Contractor within each unit shall be 100% complete within three (3) days of Substantial Completion and receipt of Architect's final punch list for the specified unit. The Work of the Contractor shall be 100% complete, i.e. all punch list work done and the Contractor no longer positioned at the job site within thirty (30) days of Substantial Completion and issuance of Architect's final punch list.

ARTICLE 5 CONTRACT SUM

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

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

is a fixed amount [redacted] (overhead and profit) which shall be paid monthly in the same proportion as the work completed each month, as certified by the Architect.

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

1. For increases add:
   2% Overhead
   4% Profit
   1% Bond

In no event shall the total reimbursement of the cost of performance and payment bonds exceed the actual cost of such bonds as incurred by the Contractor.
2. For decreases: No change to Contractor's Fee.

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

10% Overhead and 10% Profit on Subcontractor Change Orders up to five thousand dollars and zero cents ($5,000.00)

10% Overhead and 5% Profit on Subcontractor Change Orders over five thousand dollars and zero cents ($5,000.00)

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed ninety percent (~~%~~ 90 %) of the standard rate paid at the place of the Project.

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

Unit pricing for all items listed in Section 012200 of the Specifications shall be provided within thirty (30) days of Notice to Proceed.

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

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed [redacted] subject to additions and deductions by Change Order as

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provided in the Contract Documents. Such 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.
(Insert specific provisions if the Contractor is to participate in any savings.)

If the cost of the work as defined in Article 7 plus the Contractor's fee provided for in Article 5.1.1 is less than the Guaranteed Maximum Price provided, the Contractor shall be entitled to fifty percent (50%) of the savings of the adjusted contract amount as additional fee. Any unused portion of any allowance as defined in Article 5.2.3 shall not be used in the calculation of savings.

§ 5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

N/A

§ 5.2.3 Allowances included in the Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

§ 5.2.4 Assumptions, if any, on which the Guaranteed Maximum Price is based:

See attached Exhibit "D", Contractor's Clarifications and Exclusions

§ 5.2.5 ~~To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.~~

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 and 5.1.2 of this Agreement.

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

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.1.2 Where any cost is subject to the Owner's prior approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this Agreement.

§ 7.2 LABOR COSTS

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the 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 with the Owner's prior approval~~ site, including but not limited to One Project Executive and One Project Manager while working on this project.

(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 15, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

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

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

§ 7.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, ~~with the Owner's prior approval~~ vendor.

§ 7.3 SUBCONTRACT COSTS

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

§ 7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

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

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

§ 7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

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

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§ 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~~ site, whether rented from the Contractor or others, and costs of transportation, installation, minor ~~repairs,~~ repairs and replacements, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval. (Rental charges on Contractor owned equipment shall be no greater than 90% of market rates.)

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

§ 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. Any materials stored offsite shall be located in a bonded warehouse, shall be properly tagged and identified, and may be inspected at the storage site by Owner's lenders. Additionally, any materials stored offsite shall be incorporated into the Project within sixty (60) days of purchase.

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

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

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

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 7.6.6 ~~Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.~~ Data processing costs related to the Work. Data processing costs for computers and related equipment and maintenance in the field, including the cost to integrate with the home office network.

§ 7.6.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.

§ 7.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.9 Subject to the Owner's prior approval, 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.

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

§ 7.7 OTHER COSTS AND EMERGENCIES

§ 7.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 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 Section 10.4 of AIA Document A201 – 2007.

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

§ 7.8 RELATED PARTY TRANSACTIONS

§ 7.8.1 For purposes of Section 7.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

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

ARTICLE 8 COSTS NOT TO BE REIMBURSED

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

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

.3 Overhead and general expenses, except as may be expressly included in Article 7;

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

.5 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure of 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 to fulfill a specific responsibility of the Contract;

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

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

.8 Expenses incurred in fulfilling indemnity obligations, costs resulting from vandalism to equipment or stolen equipment, and costs of licenses to conduct business.

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 them 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.

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§ 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 by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

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

§ 10.3 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 prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, 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, below.

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. Upon receipt of: (a) Final Contract Value, (b) all executed and/or resolved Change Orders, and (c) executed Certificate of Substantial Completion, the Contractor shall hire an independent certified public accountant mutually agreeable to both parties to perform a thorough cost certification of all expenditures for the work of this Contract at the office of the Contractor. A draft copy of this cost certification will be made available to the Owner when it has been completed, approximately thirty (30) days after Substantial Completion. The cost certification will be done on a line by line basis and any savings will be calculated upon the aggregate difference between the guaranteed maximum price and certified contract sum. Contractor understands that the project is funded in part by LIHTC and must therefore provide the Cost Certification in a format that is consistent with the needs of the Owner's Lender and Investors.

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

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

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

Application for Payment and site inspection shall be on or about the 25th day of the month, such meeting to be scheduled at a time mutually convenient for the Owner, Contractor, Architect, Lender, and Investors.

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the on or about the twenty-fifth (25th) day of a month, the Owner shall make payment of the certified amount to the Contractor not later

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than the twentieth (20th) day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ~~(~~ thirty (30) days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 12.1.4 ~~With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor, less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.~~

The Contractor's statement sworn to if required, shall be in the form of AIA Document G702, reflecting the portion of the contract sum properly allocated to labor, materials, and equipment incorporated in the work and the portion of the contract sum properly allocated to materials and equipment suitably stored and insured at the site or at some other location agreed upon in writing by the parties up to the twenty-fifth (25th) day of the month on which the Application For Payment is submitted, less the aggregate of previous payments in each case.

The Contractor's submission of an Application for Payment shall be made on a day of the month agreed to by the parties, and will thereafter be the same day each month. All Applications for Payment must be complete and include lien waivers from the previous month's requisition before they may be construed to trigger a payment date. The Owner's time period within which to provide payment shall not begin until the Architect provides certification to pay to the Owner. The Architect's certification shall come in the form of a signature on the Contractor's Application for Payment. Owner will submit a request for payment of each Application for Payment, approved by the Architect and notorized, no later than three (3) business days after receipt thereof. Upon transmission of Application for Payment to the Lender(s) the Owner will provide a copy of the transmittal to the Contractor.

Retention – Retention shall be 10% of the first 50% of the contract amount including change order adjustments, general requirements, contractor overhead and profit. Upon achievement of 50% completion, no additional retainage shall be held except for change order adjustments. Upon Substantial Completion one half (1/2) of the retainage shall be released. Upon delivery and acceptance of all close-out documents and post certification the remaining balance shall be released no later than 60 days after the delivery of all closeout documentation.

§ 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 the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 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 for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 12.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- **.1** Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201–2007;
- **.2** Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

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.3 Add the Contractor's Fee, less retainage of percent ~~(%). The~~ as specified in Section 12.1.4 ( ). The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.4 Subtract retainage of percent (%) as specified in Section 12.1.4 ( ) from that portion of the Work that the Contractor self-performs;

.5 Subtract the aggregate of previous payments made by the Owner;

.6 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 12.1.8 The Owner and the Contractor shall agree upon a (1) mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

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

§ 12.2 FINAL PAYMENT

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

.1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;

.2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

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

.4 and the following items have been provided:

a. final lien waivers from contractor and its subcontractors
b. warranties
c. operating manuals
d. as built drawings
e. list of subcontractors providing warranties with contact information
f. consent of surety
g. certificate of occupancy.

§ 12.2.2 The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section 12.2.2 supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

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§ 12.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor ~~shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201–2007. 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.~~ may proceed with resolution of that issue pursuant to Article 15 of A201–2007 Edition, as amended by the Parties.

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

Final payment shall be made after all punch list items have been completed and approved by the Architect or the Owner, and all elements of the Contractor's work have been completed, including the Final Building Inspection. The Contractor will assist the Owner in securing the Certificate of Occupancy, if requested.

§ 12.2.5 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 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 the Contractor has participated in savings as provided in Section 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to the Agreement, to serve as Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 13.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:
(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, 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.)

[X] Arbitration pursuant to Section 15.4 of AIA Document A201–2007

[ ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 ~~Subject to the provisions of Section 14.2 below, the~~ The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

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~~§ 14.2 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2007, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201–2007 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; and~~

~~.3 Subtract the aggregate of previous payments made by the Owner.~~

~~§ 14.3 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.~~

§ 14.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007; ~~in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA~~ Document A201–2007, except that the term "profit" shall be understood to mean the ~~Contractor's Fee as described in Sections 5.1.1 and Section 6.1 of this Agreement.~~ A201–2007.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.2 Payments due and unpaid under the Contract shall ~~bear interest from the date payment is due~~ begin to bear interest seven (7) days after the date payment is due as specified in Article 12 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.)

~~%~~ The interest rate shall be at an annual rate of ten percent (10%). The intent of this clause is to encourage prompt payment and not a means to defer payment.

§ 15.3 The Owner's representative:
(Name, address and other ~~information)~~ information.)

[redacted]
NHT
1101 30th Street, NW, Suite 400
Washington, DC 20007
[redacted]
Fax Number: 202-833-1031
[redacted]

Alternate:
[redacted]

§ 15.4 The Contractor's representative:

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(Name, address and other information/information)

[redacted]

[redacted]

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

§ **15.6** Other provisions:

15.6.1 – The cost of the Project Executive and Project Manager stationed at the home office is included in the Contractor's General Conditions. The time allocated within our cost shall be approximately [redacted] of the management team member's time.
15.6.2 – Owner and Lender agree to make all payments, in accordance with Article 5, directly to the Contractor by wire transfer from the Lender.
15.6.3 – Contractor shall provide three (3) sets of as-built drawings at final closing.
15.6.4 – Attorney's fees. If any arbitration, litigation, or other dispute resolution proceeding is commenced for the interpretation, enforcement, termination, or cancellation or rescission of this Agreement, or for damages for the breach thereof, then, in addition to any or all other relief awarded in such proceeding, the prevailing party shall be entitled to an award against the other party for an amount equal to the reasonable attorney's fees and other costs incurred in connection with such proceeding.
15.6.5 – Contractor's warranty period shall commence upon Substantial Completion for each building and will expire one (1) year from such date. All standard manufacturer warranties will remain as stated.
15.6.6 – Contractor shall provide final construction schedule thirty (30) days after execution of this agreement and it shall be incorporated as Exhibit "G" but shall not increase time frames as described in Exhibit "F".
15.6.7 – Contractor excludes Builder's Risk Insurance.
15.6.8 – It is understood that the Contract includes Davis Bacon Wage Scale requirements.
15.6.9 – Contractor includes 100% Payment and Performance Bonds.
15.6.10 – Contractor agrees to meet DHCD Section 3 requirements.
15.6.11 – Contractor shall be provided, free of charge, twelve (12) copies of Drawings and three (3) copies of Project Manuals.
15.6.12 – Contractor shall be provided, free of charge, with CAD files as may be required by subcontractors in order to facilitate the coordination and review of shop drawings. Contractor and subcontractor shall sign a standard release as may be required by the Architect.
15.6.13 – Lien waiver from the previous month's requisition shall be submitted by the Contractor with each requisition.
15.6.14 – The Contractor shall comply with the Owner's and/or the Borrower's obligation to do the following:

a. Pursue the District's goal, to the extent consistent with District and Federal Law, in compliance with Mayor's Order 83-265.
b. Notify all prospective contractors, subcontractors and commercial tenants and lessees, if any, prior to execution of any contractual agreements, that they are expected to implement Mayor's Order 83-265 in their own employment practices.

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c. The Borrower and Contractor shall also comply with the requirements of D.C. Law 2-155 Section 5 (D.C. Code Section 32-1431) which requires registration of an apprenticeship program with the District of Columbia's Apprenticeship Council.

d. The Borrower and Contractor shall enter into an Employment Agreement with the District of Columbia's Department of Employment Services (DOES)

e. The Contractor agrees to subcontract work to Certified Business Enterprises (CBE). The Goal for CBE participation is Forty percent (40%) of the cost of the subcontracted work for this job. All CBE's shall be qualified and have sufficient personnel and supervision and their price for the work shall be equal to or less than the budget for the scope of work being subcontracted.

15.6.15 – In the event of any inconsistency in these Contract Documents, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence to the documents in the following order:

1.) This Agreement – AIA A102-2007
2.) Exhibit "D" – Contractor's Clarifications and Exclusions
3.) Exhibit "C" – Farnel Builders, Inc. Supplementary General Conditions
4.) The General Conditions – AIA A201-2007
5.) Exhibit "B" – Drawings and Exhibit "A" – Specifications according to the most stringent, as determined by the Architect.

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 16.1.1 The Agreement is this executed AIA Document A102–2007, Standard Form of Agreement Between Owner and Contractor.

§ 16.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 16.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Exhibit "C"	[redacted]		

§ 16.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)
See Exhibit "A" - Specifications

Section	Title	Date	Pages

§ 16.1.5 The Drawings:
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)
See Exhibit "B" - List of Drawings

Number	Title	Date

§ 16.1.6 The Addenda, if any:

Number	Date	Pages
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]

Init.

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

§ 16.1.7 Additional documents, if any, forming part of the Contract Documents:

~~.1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:~~

.2 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Exhibit "D" – Contractor's Clarifications and Exclusions
Exhibit "E" – Contractor's Application For Payment and Schedule of Values – AIA G702/703
Exhibit "F" – Construction Schedule
Exhibit "G" – Final Construction Schedule
Exhibit "H" – Davis Bacon Wage Scale

ARTICLE 17 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of insurance or bond	Limit of liability or bond amount ($0.00)($ 0.00)
Certificate of Insurance	Attached
100% Payment and Performance Bonds	[redacted]

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

[redacted]

OWNER *(Signature)*

[redacted]

(Printed name and title)

[redacted]

CONTRACTOR *(Signature)*

[redacted]

(Printed name and title)

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