# COST OF THE WORK PLUS A FEE WITH

**A GUARANTEED MAXIMUM PRICE AGREEMENT**

THIS AGREEMENT (this “**Agreement**”) is made, effective as of the \_\_\_\_\_\_\_day of

, 2022, by and between Owner Name (herein referred to as “**Owner**”), whose mailing address is Address, and Contractor Name (herein referred to as “**Contractor**”), whose mailing address is Address for the construction of Community Name located within County, State (herein referred to as the “**Project**” and as further defined in Section 1.8 of the *Contract for Construction General Conditions*).

**WITNESSETH:**

In consideration of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

**ARTICLE 1**

**DEFINITIONS; THE CONTRACT DOCUMENTS**

* 1. Definitions. The capitalized terms used herein shall have the meanings set forth in the *Contract for Construction General Conditions* (the “**General Conditions**”) unless a specific definition therefor is provided herein. Unless otherwise specified, references herein to numbered articles and paragraphs are to those in this Agreement.
  2. Contract Documents. The Contract Documents (herein so called) consist of this Agreement, the General Conditions of the Contract for Construction (General, Supplementary and other Conditions), the Drawings (to be provided electronically and formatted in CAD), the Specifications, all Addenda (except the portions thereof relating to any of the bidding process), all Change Orders approved in writing, all Modifications, and all other documents enumerated on the attached List of Contract Documents (Composite Exhibit “A”, Attachment 1) or as part of Composite Exhibit “D” and are by this reference made a part hereof. Such documents form this Agreement, and all are as fully a part thereof as if attached to this Agreement or repeated herein. In performing the Work, Contractor will utilize all standard forms enumerated on the attached List of Contract Documents, as appropriate, and any other standard forms implemented by Owner after the date of this Agreement. This Agreement represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either oral or written. If anything in any of the other Contract Documents, other than a Modification, is inconsistent with this Agreement or the General Conditions, this Agreement, and the General Conditions (in such order) shall govern to the extent of the inconsistency. This Agreement may only be amended by a written document executed by authorized representatives of both Owner and Contractor.
  3. Statutory Notices. The statutory notices for §§ 558 and 713.015, Florida Statutes, are found on the signature page.

**ARTICLE 2**

**STATEMENT OF THE WORK**

* 1. Work. The totality of the obligations imposed upon Contractor by this Article 2 and by all other provisions of the Contract Documents, or reasonably inferred therefrom, as well as the structures and related amenities and facilities to be built and the labor to be performed, is herein referred to as the “**Work**”. Contractor shall perform all Work required by and in accordance with the Contract Documents to construct [include project description: community name, project address, and description] as set forth in the Contract Documents, and shall provide all other labor, materials, equipment and services reasonably inferable from the Contract Documents as necessary to fulfill Contractor’s obligations (the “**Project**”). Contractor shall provide and pay for all materials, tools, equipment, labor, overtime and expedited material delivery and professional and nonprofessional services, and shall perform all other acts and supply all other things necessary for the proper and complete installation of the Work. The Work is more fully defined in Composite Exhibit “A”, and the various attachments to Composite Exhibit “A”, and is subject to the *Clarifications and Qualifications*, as approved by Owner and set forth in Attachment 2 of Composite Exhibit “A”.
     1. Alternates. Included on Attachment 3 of Composite Exhibit “A” are contract alternates (collectively, the “**Alternates**”), any and/or all of which Owner may select at its sole option. Contractor understands that in the event Owner exercises its sole option to choose any or all of the Alternates, Owner shall authorize Contractor to proceed with such optional work by written Change Order (defined in Paragraph 1.1.4 of the *General Conditions*) to this Agreement and thereby adjust the Guaranteed Maximum Price (as defined in Article 6 below) accordingly. Alternates added to the Guaranteed Maximum Price and the Work will be priced as shown on Attachment 3 of Composite Exhibit “A” for each Alternate item. Any Alternate can be added to the cost at Owner’s sole option. Contractor shall create and update for Owner an Alternate Log with the monthly pay application which will indicate the date which Owner shall notify Contractor in writing of any selection of an Alternate item in sufficient time so as to not adversely impact the critical path of the applicable Progress Schedule. Alternates added after the dates listed in Contractor’s Alternate Log may result in a time extension or increased costs. The price for each Alternate set forth on Attachment 3 of Composite Exhibit “A” shall include all aspects of the Work necessary to furnish, install and complete the Alternate item in its entirety including Contractor’s markup for profit, overhead, general conditions, insurance and bond calculated in accordance with the terms and conditions of Article 6 of this Agreement. If Owner elects an Alternate, a Change Order will be issued in the amount of the Alternate.
     2. Allowances. Included on Attachment 4 of Composite Exhibit “A” are contract allowances (collectively, the “**Allowances**”) which are included in the Guaranteed Maximum Price (defined in Paragraph 6.1 below) (“**GMP**”). Any Allowance item may be removed from the Guaranteed Maximum Price and the Work and either deleted altogether or provided by Owner directly or indirectly through another contractor, at Owner's sole option and the GMP shall be reduced as provided herein. All Allowances listed on Attachment 4 to Composite Exhibit “A” are budgets for the Work necessary to furnish and complete the Allowance item including Subcontractor’s insurance, but shall not contain additional Contractor’s markup for profit, insurance, bond, overhead, and general conditions, it being understood that Contractor’s markup, overhead, profit, insurance, bond and general conditions are included within the GMP. In the event an Allowance item is deleted in whole or in part, a written Change Order shall be executed by the parties to that effect deleting the price set forth on Attachment 4, in which event, the GMP shall be reduced by the amount attributable to the Allowance item, plus all costs associated with Contractor’s markup for profit (fee), bond, and insurance. Changes in the Cost of the Work shall be calculated in accordance with Article 6. If any Work listed on Attachment 4 as an Allowance results in a completed cost less than the Allowance budget, the remaining unused portion of the Allowance shall be handled as a deductive Change Order, thereby reducing the GMP by the unused portion, and if any Work listed in Attachment 4 as an Allowance results in a completed cost in excess of the Allowance amount, a Change Order shall be issued for the excess, thereby increasing the GMP by the excess cost. Contractor acknowledges that Allowance items are often aesthetic in nature and may require an approval process before final decisions can be made. Therefore, Contractor agrees to work with Owner in a cooperative fashion throughout this process and shall provide, perhaps repeatedly, Owner with actual costs of Allowance items with sufficient time to permit Owner to finalize such Allowance items without impacting the Progress Schedule. Owner shall notify Contractor as to when it may commence Allowance work. Contractor shall create an Allowance Log and provide it to Owner. Owner shall have the absolute right but not the obligation to rely upon Contractor’s Allowance Log with respect to Owner decisions but are not bound thereby. Contractor’s Allowance Log will indicate the date at which Contractor requires a decision from Owner on when to proceed with an Allowance item within sufficient time so as to not adversely impact the critical path of the controlling Progress Schedule. Contractor further agrees to again notify Owner in writing at least ten (10) calendar days immediately prior to commencing any Allowance work.
  2. Milestone Schedule. Included within the Work and attached hereto as Attachment 5 to Composite Exhibit “A” is the approved Milestone Schedule (herein so called), as agreed to between Contractor and Owner for purposes of establishing critical milestone dates, including, without limitation, the dates of “turnover” of apartments (see Section 1.12 of the *General Conditions*) (“**Turnover Date(s)**”) or specifically defined portions of the Work to Owner, Substantial Completion and Final Completion of the Project as defined herein. The Milestone Schedule reflects completion of certain components of the Project by certain Milestone Dates as agreed upon by Owner and Contractor. Time is of the essence for each Milestone Date and should Contractor fail to meet the Milestone Dates set forth on the approved Milestone Schedule, it shall constitute a material breach of this Agreement.
  3. Progress Schedule and As-Built. In accordance with the requirements of Article 8 of the *General Conditions*, Contractor shall also provide and maintain the Progress Schedule (as defined in Article 8 of the *General Conditions*) to be prepared and finalized by Contractor’s scheduler and delivered to Owner in print and electronic formats compatible with Owner’s computers and computer software. The initial Progress Schedule is attached as Exhibit “G”.
     1. Within twenty-one (21) calendar days following Owner’s Notice to Proceed, Contractor shall provide to Owner and Architect/Engineer a proposed updated Progress Schedule. This baseline Progress Schedule shall be provided to Owner in both hard copy and electronic format with all logic, fragnets and related information identified and capable of being reviewed and displayed, and shall be preserved without modification as a reference for comparison with respect to all subsequent updated Progress Schedules and for the purpose of monitoring Contractor’s compliance with the provisions of the Contract Documents. This Progress Schedule shall be updated every thirty (30) calendar days by Contractor’s scheduler to reflect the actual status of the Work, including delays or impacts to the Milestone Dates, including, without limitation, “Turnover Dates”, Substantial Completion of the Project and Final Completion of the Project, delivery dates of major material and equipment, shop drawing submittals, review and selection of materials by Owner, and the projected completion dates of all major trades and activities. Updates and revisions to the Project Schedule and any interim approvals of the Project Schedule by Owner shall not serve to modify any Milestone Dates required by the Contract Documents, which may only be modified by a written Change Order signed by both parties. Contractor’s scheduler shall attend regularly held Project meetings on a weekly basis to facilitate the preparation of these updated schedules. In addition to the updated Progress Schedule, Contractor’s scheduler shall also generate and update every thirty (30) days a separate as-built schedule so as to further demonstrate to Owner the actual progress of the Work. Failure to produce schedules satisfactory to Owner shall be deemed a material breach of the contract and are sufficient grounds, standing alone, to withhold approval and payment on Contractor’s Applications for Payment and/or Termination. Owner shall have the absolute right but not the obligation to rely upon Contractor’s schedules for Owner decisions but are not bound thereby. The costs to prepare the Progress Schedule, updates thereof and the updated as-builts are a reimbursable cost under Article 7 and included within the GMP. All schedules and updates are to be provided in print and electronic formats compatible with Owner’s computers and computer software. Within Contractor’s initial Project Schedule, Contractor has taken into account the climatic conditions in the locality of the Project site.
     2. Schedule Review. Each monthly Progress Schedule update shall be accompanied by a narrative recap of the month’s activities with appropriate reference to Contractor’s daily logs or other records for purposes of reflecting actual or projected delays. Contractor shall notify Owner with reasonable promptness and as otherwise required in the Contract Documents if and when any delaying event takes place and shall meet with Owner and Architect/Engineer to discuss the delaying event and to identify and propose responses and alternatives which will reduce or eliminate the impact of the delaying event, and if requested, a Recovery Schedule as defined in Section 1.13 of the *General Conditions*.
     3. Owner’s receipt, review, approval or comment with respect to the Progress Schedule or any updates or revisions thereto prepared by or for Contractor and/or furnished to Owner does not constitute any representation, warranty or acceptance by Owner of the reasonableness of the schedule, or its logic, nor of any specific sequencing, phasing or scheduling of the individual aspects of the Work, and does not constitute a representation by Owner that the Work can be performed within the time or in the manner set forth in any such schedule. Owner shall have the absolute right but not the obligation to rely upon Contractor’s schedules for Owner decisions but are not bound thereby.
  4. Submittal Schedule. Contractor, promptly after being awarded the contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect/Engineer’s approval. The Architect/Engineer’s approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with Contractor’s Milestone Schedule, and (2) allow the Architect/Engineer reasonable time to review submittals. If Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.
  5. Extraordinary Measures. In the event Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, Owner shall have the right to order Contractor to take corrective measures necessary to expedite the progress of construction, including (a) working additional shifts or overtime, (b) supplying additional manpower, equipment and facilities, and (c) other similar measures (collectively, “**Extraordinary Measures**”). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. Owner’s right to require Extraordinary Measures is solely for the purpose of ensuring Contractor’s compliance with the Milestone Schedule. Contractor shall not be entitled to an adjustment of the Contract Sum in connection with Extraordinary Measures required by Owner under or pursuant to this Paragraph 2.5, unless such Extraordinary Measures are ordered by Owner as a result of a delay for which Contractor is entitled to an extension of the Contract Time under Paragraph 5.6. Owner may exercise the rights furnished Owner under or pursuant to this Paragraph 2.5 as frequently as Owner deems necessary to ensure that Contractor’s performance of the Work will comply with any Milestone Dates or completion deadlines set forth in the Contract Documents.
  6. Adherence to Schedules; Use of Float Time. In performing any critical path method (CPM) analysis relating to the Work, float or slack time (“**Float**”) associated with one chain of activities is defined as the amount of time between earliest start date and latest start date or between earliest finish date and latest finish date for such activities, as described in the approved Milestone Schedule for the Work, including any revisions or updates to the schedule. Unless otherwise provided by approved Change Order, the original Milestone Schedule under Paragraph 2.2 and the original Progress Schedule under Paragraph 2.3 apply to and govern the Work. In case of any conflicts or ambiguities between the Milestone Schedule and Progress Schedule, the Milestone Schedule shall control. The Project owns the Float, which means Float is not for the exclusive use of any of the parties and it serves whoever needs it first, as long as it is used in good faith. Contractor shall not seek, nor be entitled to, any extension in the Contract Time (defined in Paragraph 5.2) or recovery of compensation for a Delay (defined below in Paragraph 5.6) including, but not limited to any early completion date until then-available “float” available before the occurrence of such delays is used or consumed and performance or completion of the Work extends beyond the corresponding Contract Time. Nor shall Contractor seek or be entitled to an extension of Contract Time or recovery of compensation for any Delay that does not affect the critical path of construction as identified on the Progress Schedule; this does not preclude Contractor’s ability to recover a non- compensable time extension for concurrent delays that affect the critical path. Notwithstanding the foregoing, in the event a temporary suspension is declared by Owner under Section 8.4 of the *General Conditions*, Contractor shall be entitled to an adjustment of the GMP and Contract Time as set forth in Section 8.4 of the *General Conditions*.
  7. Schedule of Values. Contractor shall provide to Owner a detailed Schedule of Values breaking down each type or portion of the Work into subcontract, labor, material, and equipment. Contractor shall prepare said Schedule of Values in such a form and supported by such data or documentation to substantiate its accuracy as Owner may require. The initial approved Schedule of Values is attached hereto as Exhibit “B” (the “**Schedule of Values**”) and will be used as a cap against progress payments made to Contractor for actual costs incurred. Contractor may not reallocate the line items within the Schedule of Values without disclosing and accounting for all changes to Owner and obtaining Owner’s written approval, which approval shall not be unreasonably withheld, provided under no circumstances shall Contractor reallocate line items within the Schedule of Values to General Conditions, Contractor’s Bond, or insurance, if applicable. The Schedule of Values shall be updated each month by Contractor to reflect all approved Change Orders and Directives which may have been issued by Owner during the subject invoicing period. Any update to the Schedule of Values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by Owner or the Architect. The most recent Schedule of Values approved by Owner shall be used as a basis for reviewing Contractor’s Applications for Payment.

**ARTICLE 3**

**OWNER’S REPRESENTATIVE**

* 1. Owner’s Representatives (herein so called) for the Project shall be Owner’s Rep Name [include contact information], provided, however, that Owner may, without liability to Contractor, designate different persons or organizations to act as its representatives and so advise Contractor in writing, at which time the persons or organizations so designated shall each be an **“Owner’s Representative”** for purposes of this Agreement. Moreover, an Owner’s Representative may designate in writing a person or persons to whom some of Owner’s Representative’s duties may be delegated. Such duties may include, without limitation, reviewing progress schedules, responding to, or coordinating responses to requests for information and such other duties which may be delegated at Owner’s sole discretion.
  2. Owner may also retain other persons or entities to act as consultants to Owner and to assist Owner, as and when authorized, in the evaluation and observation of certain aspects of the Work but is not obligated to do so and Contractor shall maintain appropriate communication and coordinate its activities with Owner’s consultants, as necessary to facilitate the full, timely and proper performance of Contractor’s obligations under the Contract Documents and the completion of all Work within the Contract Time. Owner, Owner’s consultants, and Architect/Engineer are under no obligation to inspect the Work or to discover defects or deficiencies in the Work and the failure to discover any defects, deficiencies or other problems in the Work by Owner, Owner’s consultants, or Architect/Engineer, shall not constitute a waiver or acceptance of any such defect, deficiency or other problem or affect or reduce Contractor’s responsibilities to perform the Work in conformance with the terms of the Contract Documents. Owner will endeavor to disclose known defects or deficiencies in the Work, but no delay or failure of Owner to disclose any such known defects of deficiencies shall constitute a waiver or acceptance of any such defect, deficiency or other problem or affect or reduce Contractor’s responsibilities to perform the Work in conformance with the terms of the Contract Documents. Contractor acknowledges that neither the Architect/Engineer nor any other consultant to Owner has authority to authorize any increase in the GMP or Contract Sum, any adjustment to the Contract Time, or any additional compensation or payment to Contractor.

**ARTICLE 4**

**THE ARCHITECT/ENGINEER**

4.1 The Architect/Engineer for the Project shall be [Architect/Engineer Name], whose address is [Architect/Engineer’s Address] (the “**Architect/Engineer**”).

# ARTICLE 5

**TIME OF COMMENCEMENT AND COMPLETION**

* 1. Notice to Proceed. The issuance of a Notice to Proceed by Owner shall be reflected in the Milestone Schedule. The Notice to Proceed shall not be issued prior to completing the following: full execution of this Agreement; Owner’s receipt of permits necessary for Contractor to commence the Work; and Contractor record the Notice of Commencement. The “**Commencement Date**” of the Work shall be the date set forth in the Notice to Proceed issued by Owner.
  2. Contract Time/Substantial Completion. The Work, as defined in the Contract Documents, shall be substantially completed, as defined herein, in accordance with the timeframes set forth on the Milestone Schedule. Contractor shall commence the Work within three (3) business days of the Commencement Date as defined in Section 8.1.1 of the *General Conditions*, and shall substantially complete the same in strict accordance with the scope of the Work and Milestone Schedule set forth on Composite Exhibit “A” attached hereto and by this reference made a part hereof (such period of time is herein referred to as the “**Contract Time**”). “**Substantial Completion**” shall mean the stage in the progress of the Work when the Work, or designated portion thereof (for example, the “Turnover Date(s)” as defined at Section 1.12 of the *General Conditions*), is sufficiently complete in accordance with the Contract Documents so that the following events have been satisfied: (i) Owner reasonably determines that Owner (and its tenants with respect to those portions of the Work intended to be occupied by tenants) can occupy or utilize the applicable portion of the Work for its intended use, (ii) Owner reasonably determines that the applicable portion of the Work has been completed in a good, workmanlike and high quality manner and in accordance with the final, approved Drawings and Specifications, (iii) all systems included in the applicable portion of the Work are fully operational as designed and specified, (iv) all final finishes required by the Contract Documents for the applicable portion of the Work are in place and all punch list work for the applicable portion of the Work to be occupied or utilized is complete, or, if Owner agrees, the applicable punch list items are de minimis in number and scope, and the completion or correction thereof shall not interfere in any material respect with the beneficial use and occupancy of the applicable portion of the Work as intended, (v) Owner can lawfully occupy or utilize the Work for its intended use under a Certificate of Occupancy issued by the governmental agency or authority having jurisdiction over the Project, and (vi) the Architect/Engineer has delivered to Owner a certificate, in the form of AIA Form G704, certifying that the applicable portion of the Work (except for punch list items that are, in the aggregate, de minimis in number and scope) has been completed in accordance with the Contract Documents, the final, approved Drawings and Specifications, and all Applicable Laws (including, without limitation, any restrictive covenants of record affecting the Project). Time is of the essence as to the completion by Contractor of each and every element of the Work and its other obligations required by the Contract Documents.

5.3 Substantial Completion Deadline. Subject to adjustments of the Contract Time as provided in the Contract Documents, Contractor shall achieve Substantial Completion of the entire Work not later than [TBD] calendar days from the Commencement Date of the Work (the **“Substantial Completion Deadline”** for the entire Work). 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, Contractor shall achieve Substantial Completion of such portions by the following dates

* 1. :

|  |  |
| --- | --- |
| **Portion of Work** | **Substantial Completion Date** |
| TBD | TBD |

(the applicable dates above being the “Substantial Completion Deadline” for each designated portion of the Work). If Contractor fails to achieve Substantial Completion as provided in this Paragraph 5.3, liquidated damages, if any, shall be charge as set forth below in Paragraph 5.4.

* 1. Liquidated Damages and Time is of the Essence. Contractor agrees that the Contract Time contractually allocated to achieve each of the Milestone Dates, including, without limitation, “Turnover Date(s)”, Substantial Completion and Final Completion, as defined at Section 1.14 of the *General Conditions* (each a “**Completion Date**”), taking into account all factors and the inherent delays, variables and parameters of the Project that are or should be known to Contractor is sufficient. Contractor further acknowledges and agrees that the time for completion of the Work and each Milestone in the Milestone Schedule is of the essence and is an essential element of this Agreement, and that Contractor’s failure to achieve any Milestone by the applicable Milestone Date, including the Final Completion date, would constitute, in each instance, a material breach of this Agreement. Contractor further understands that Owner intends to take early occupancy of apartments or certain specifically defined portions of the Work, reflected as Turnover Dates on the approved Milestone Schedule made a part of this Agreement. Contractor shall pay to Owner, not as a penalty, but as liquidated damages, the amounts set forth below for each calendar day that Contractor fails to achieve Substantial Completion for a Milestone on or before the applicable Milestone Date set forth on the Milestone Schedule. The parties hereto have discussed and hereby acknowledge and agree that Owner will suffer damages if the entire Work or any portion thereof fails to meet Substantial Completion Deadlines for such Work, but that actual damages would be difficult or impossible to ascertain and therefore the amounts set forth below are reasonable estimates of the damages for such breach or failure, and further that the liquidated damages clause set forth herein is fully enforceable under all Applicable Laws and shall accrue, upon Contractor’s failure to achieve Substantial Completion of the Work for any or all of the Milestones on or before the applicable Milestone Dates, without notice of default, and that all accrued amounts may be withheld or off-set by Owner against any amounts then or thereafter due to Contractor. The parties agree that no such liquidated damages will be charged to Contractor until the thirty-first (31st) day after the applicable Milestone Date as stipulated in Exhibit “A” – Attachment #5 Milestone Dates.

Portions of Work:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_: \_\_\_\_\_\_\_\_\_ dollars ($\_\_\_\_\_\_\_\_) per day.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_: \_\_\_\_\_\_\_\_\_ dollars ($\_\_\_\_\_\_\_\_) per day.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_: \_\_\_\_\_\_\_\_\_ dollars ($\_\_\_\_\_\_\_\_) per day.

Entirety of the Work: \_\_\_\_\_\_\_\_\_\_\_ dollars ($\_\_\_\_\_\_\_\_) per day.

* + 1. The parties agree that for purposes of calculating and assessing liquidated damages in accordance with the Milestone Dates, including, without limitation, “Turnover Date(s)”, Substantial Completion and Final Completion, the date the Work in the Milestone Schedule shall be considered complete so as to stop the accrual of liquidated damages for any particular Milestone shall be the date the Work tied to the particular Milestone is substantially complete in accordance with the Contract Documents, as determined by Owner, so that Owner may, if it so elects, occupy and use (and permit its tenants to occupy and use) the Milestone related Work in its entirety for the purpose for which intended. The parties agree that under no circumstances shall partial beneficial occupancy by Owner or any tenants of any portion of the Project stop the accrual of liquidated damages as to the remainder of the Work reflected on the Milestone Schedule until the Milestone related Work has been completed in its entirety, including all punch lists related thereto. Regardless of any provision in any performance or payment bond provided in connection with the Project, the Surety (as defined in the *General Conditions*) and Contractor shall be jointly and severally liable for the payment of any liquidated damages accruing in favor of Owner under this Paragraph 5.4 or any other provision of the Contract Documents.
    2. Owner may deduct liquidated damages prescribed in this paragraph from any unpaid amounts then or thereafter due Contractor under this Agreement and any liquidated damages not so deducted shall be payable to Owner by Contractor upon demand by Owner plus interest from the date of demand at the rate specified in Paragraph 18.3 of this Agreement. It is further mutually understood and agreed that Owner’s assessment of liquidated damages for delays is intended to compensate Owner solely for Contractor’s failure to complete the Work (or portion thereof) in the Contract Time (or by the applicable Substantial Completion Deadline) and shall not release Contractor from liability from any other breach of Contract Document requirements. If the liquidated damages set forth herein are deemed unenforceable for any reason, Owner instead shall be entitled to recover those actual delay damages that it sustained as a result of Contractor’s failure to achieve Substantial Completion of the Work (or portion thereof) by the applicable Substantial Completion Deadline. Owner’s right to liquidated damages hereunder is self-executing and no prior notice or claim by Owner is required as a condition precedent to Owner’s right to offset liquidated damages from amounts otherwise due Contractor or to otherwise pursue recovery of liquidated damages. If Contractor disputes any liquidated damages to which Owner asserts it is entitled, Contractor may make a Claim in accordance with the terms of the General Conditions of the Contract for Construction.
  1. Punch List. When Contractor considers that the Work, or a portion thereof which Owner agrees to accept separately, is substantially complete, Contractor shall prepare and submit to Owner and Architect/Engineer a comprehensive list of items to be completed or corrected prior to Final Payment.
  2. Delay. Upon the occurrence of any Delay (defined below) in the performance of the Work, Contractor’s sole and exclusive remedy under the Contract Documents and Applicable Law shall be governed by this Paragraph 5.6. Subject to the provisions of this Paragraph 5.6, Paragraph 2.6, and Attachment 2 of the Composite Exhibit A, in the event Contractor is delayed in the progress of the critical path of the Work, through no fault of Contractor or its Subcontractors or Sub-subcontractors, by any of the following events, then Contractor may be entitled to an extension of Contract Time: (i) acts or omissions of Owner, Owner’s Representative, the Architect/Engineer, a separate contractor employed by Owner, or of an employee of any of them (excluding those acts or omissions taken in the exercise of rights under the Contract Documents); (ii) changes ordered in the Work; (iii) concealed or unknown physical conditions encountered at the site (subject to Section 2.1.7 of the *General Conditions*); (iv) labor disputes not directed at Contractor, a Subcontractor, a Sub- subcontractor, or anyone for whom Contractor is responsible; (v) unavoidable casualties; or (vi) other causes beyond Contractor’s control that Owner and Contractor agree justify delay. Contractor hereby acknowledges and agrees that in no event shall Contractor be entitled to increased costs or compensation as a result of any delay, inefficiency, disruption, hindrance, acceleration or other impediment (each being a “**Delay**”) and only to the extent that the Contract Time for achieving Final Completion of the entire Work is extended by more than thirty (30) days due to Delays, which shall have been caused solely by acts constituting active interference by Owner, Owner’s Representative, Architect/Engineer, Lender (as defined in Section 16.2.3 of the *General Conditions*) or any employee or agent of any of them, or by any separate contractor retained by Owner (“**Owner Responsible Parties**” for purposes of this Article 5 only), with Contractor’s performance of the Work, provided Contractor gives written notice to Owner specifying and where and to the extent that such acts continue for more than five (5) calendar days after Owner’s receipt of such written notice from Contractor (“**Compensable Owner Delays**”). Owner’s exercise of any of its rights under the Contract Documents, including, but not limited to, making changes in the Work, regardless of the extent or number of such changes, or Owner’s invoking any of its remedies for suspension of the Work, including, but not limited to, Owner’s declaring a temporary suspension of Work under Section 8.4 of the *General Conditions* (which shall be governed by Paragraph 5.7 below and Section 8.4 of the *General Conditions*), or Owner’s requiring correction or re-execution of any defective or non-conforming Work, shall not under any circumstance be deemed to constitute acts or omissions or interference, active or otherwise, with Contractor's performance of the Work. Contractor acknowledges and agrees that: (1) no adjustments to the Contract Time shall be made unless events described in this Paragraph 5.6 shall have the effect of actually delaying completion of components of the Work on the critical path indicated in the Progress Schedule; (2) adjustments to the Contract Time will be permitted in connection with any such delay only to the extent such delay (a) is not caused, or could not have been avoided, by Contractor and (b) could not be limited or avoided by Contractor’s timely notice to Owner of the delay or reasonable likelihood that the delay will occur; (3) any extension in the Progress Schedule or Contract Time shall be net of any then-available contingency or “float” time included in the Progress Schedule; (4) Contractor shall not be entitled to any extension of the Contract Time on account of any labor action directed at Contractor or any Subcontractor, Sub-subcontractor, supplier or other party for whom Contractor is responsible; and (5) Contractor shall not be entitled to any extension in the Contract Time for delays in receiving required licenses, permits, inspections or approvals that are the responsibility of Contractor or any Subcontractor, Sub-subcontractor, supplier or other party for whom Contractor is responsible. Contractor shall not be entitled to additional compensation or an increase in the GMP due to a concurrent delay or any delay that does not impact the critical path associated with Final Completion of the entire Work.
  3. If and to the extent the Contract Time for achieving Final Completion of the entire Work is extended due to Compensable Owner Delays or temporary suspensions of the Work by Owner as set forth in Section 8.4 of the *General Conditions*, the Guaranteed Maximum Price shall be increased by the reasonable and verified additional Cost of the Work (as defined in Article 7 of this Agreement) incurred by Contractor to the extent directly and solely related to extensions of the Contract Time for achieving Final Completion of the entire Work on account of any such Compensable Owner Delays or temporary suspensions of the Work by Owner (including Contractor’s actual, reasonable, and verified additional out of pocket Cost of the Work for General Conditions Items, which shall not exceed the amount of $TBD per calendar day, to the extent provided for in Article 7 of this Agreement), plus TBD% of those costs, to the extent provided for in Article 7 of this Agreement. This compensation shall be Contractor’s sole and exclusive remedy and compensation under this Agreement (other than an extension of the Contract Time as may be permitted under Paragraph 5.6) and any other Contract Document and under Applicable Law for any alleged or actual Delay or temporary suspension of the Work by Owner, and Contractor hereby waives any claim or cause of action for lost opportunity costs, home office overhead, loss of productivity, disruption, impact damages, indirect or consequential damages. The parties hereto hereby further acknowledge and agree that actual damages or any other remuneration or compensation would be difficult or impossible to ascertain and that amount set forth above is a reasonable estimate of Contractor’s damages.
     1. In no case shall Delays of any duration caused by persons or events outside the control of Owner or Owner Responsible Parties, such as but not limited to, acts of building officials, weather, acts of God, fire, shortage of materials, labor disputes, and transportation delays, regardless of cause, be the basis for an increase of costs or compensation to Contractor, and Contractor’s sole remedy for such Delays is limited to an extension of time, if otherwise warranted in accordance with the Contract Documents.
     2. Any claim for an extension of Contract Time or an increase in the Guaranteed Maximum Price shall be made in strict accordance with Paragraph 5.6 of this Agreement and Article 13 of the *General Conditions*. Contractor’s failure to strictly comply at all times with the notice and claim provisions including the timing thereof shall deprive Contractor of its right to claim an extension of Contract Time and/or any increase in the Guaranteed Maximum Price or any damages or additional costs incurred by Contractor resulting from a Delay. The giving of such notice, however, shall not of itself establish the validity of the cause of Delay or of the extension of time for completion.
  4. Work Prior to Execution of Agreement. No Work shall be performed by Contractor prior to the execution of this Agreement and the effective date of insurance required to be furnished under this Agreement.

**ARTICLE 6**

**BASIS OF PAYMENT**

* 1. The sum of the Cost of the Work and Contractor’s Fee is guaranteed by Contractor not to exceed [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] ($TBD), subject to additions and deductions by Change Order, as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the “**Guaranteed Maximum Price**” or GMP. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by Contractor without reimbursement by Owner.
  2. Owner shall pay Contractor the Contract Sum in current funds for Contractor’s performance of the Contract. The “**Contract Sum**” shall mean the Cost of the Work, as defined in Article 7, plus Contractor’s Fee. Contractor’s Fee shall consist of an amount equal to [\_\_\_\_\_\_\_\_\_\_\_\_\_] (TBD%) of the Cost of the Work. Any increase in the Guaranteed Maximum Price, by approved Change Order, shall include an increase of [\_\_\_\_\_\_\_\_\_\_\_\_] (TBD%) of the net increase in the Cost of the Work attributable to the Change Order for Contractor’s Fee, plus the amount of any additional premiums payable with respect to the bond and insurance as reasonably demonstrated to Owner’s satisfaction, with all such fees and costs permitted hereunder in connection with a Change Order to be reflected in their entirety on the approved Change Order. Any decrease in the Guaranteed Maximum Price, by approved Change Order, shall include a decrease of [\_\_\_\_\_\_\_\_\_] (TBD%) for Contractor’s Fee, plus a decrease in the amount of the reduction of premiums payable on bonds and insurance. Nothing in this Paragraph 6.2 shall preclude Contractor from obtaining an increase in the General Conditions Compensation Amount in accordance with Article 7 of this Agreement, with the exception that any costs associated with the project management or supervisory personnel’s time either supervising or otherwise dealing with Change Orders and Work associated therewith shall be excluded unless additional personnel are required and mutually agreed to in writing by Owner and Contractor.
  3. In the event the Cost of the Work plus the stipulated Contractor’s Fee is less than the Guaranteed Maximum Price, Owner shall only be required to pay the lesser amount. In no event shall Contractor receive payment for actual costs incurred greater than the aggregate percent complete figure multiplied by the GMP, less retainage, as reflected in the agreed-upon Schedule of Values (Exhibit “B”), nor shall Contractor overdraw for any portion of the Work with the intent to refund excess funds to Owner at the end of the Project. The sum total of all draws upon Final Completion should reflect the actual Project costs incurred by Contractor together with Contractor’s Fee. Owner intends to audit each Application for Payment (defined in Section 9.1.2 of the *General Conditions*) on a monthly basis, but reserves its right to audit at any time within the time frame set forth in Paragraphs 11.1 and 13.6 of this Agreement and Section 12.6 of the *General Conditions*. It is understood and agreed that this is a GMP contract and that there is no line item cost guaranty, but in no event shall Contractor draw more than one hundred percent (100%) of any line item within the Schedule of Values (subject to retention as required in this Agreement) as may be increased by available Contingency. Contractor will reimburse Owner any savings identified through any audit provided under Paragraphs 11.1 and 13.6 of this Agreement or Section 12.6 of the *General Conditions*, or otherwise, even if said savings are first realized or identified after Final Completion or Final Payment. Notwithstanding any rates or assessments that may be set or fixed herein, such are for purposes of billing only and all costs are subject to audit, except for those categories of costs accepted by Owner herein as a lump sum or stated rate including but not limited to Stated Labor Rates (as defined below), Insurance Costs, and Bond Costs, if applicable. Only the actual, substantiated Cost of the Work as determined by a final audit shall be payable to Contractor. There shall be no hidden fees or profit.
     1. The first TBD and 00/100 Dollars ($TBD) of Qualified Guaranteed Maximum Price Savings shall be paid to Contractor as part of Final Payment hereunder. The next TBD and 00/100 Dollars ($TBD) of Qualified Guaranteed Maximum Price Savings shall be paid to Owner as part of Final Payment hereunder. Any Cost Savings after the TBD Dollars ($TBD) of Guaranteed Maximum Price Savings shall be shared TBD percent (TBD%) to Owner and TBD percent (TBD%) to Contractor. Any Cost Savings payable to Owner shall be credited against and reduce the Contract Sum on Contractor’s Final Payment Requisition. The Cost Savings payable to Contractor in accordance with this Agreement shall be paid to Contractor as part of Final Payment hereunder. Any Qualified Guaranteed Maximum Price Savings payable to Contractor shall be paid with the final payment to Contractor following Final Completion of the Work. As used in this Paragraph 6.3, the following terms shall mean as follows:

6.3.1.1 The term “**Qualified Guaranteed Maximum Price Savings**” shall mean, as of the date of Final Completion of the Work, the amount, if any, by which the Qualified Guaranteed Maximum Price exceeds the sum of (i) the actual Cost of the Work plus (ii) the actual Contractor’s Fee.

6.3.1.2 The term “**Qualified Guaranteed Maximum Price**” means: (i) the final Guaranteed Maximum Price (following any adjustment pursuant to any provision in the Contract Documents); minus (ii) any unused allowance amounts (it being agreed that 100% of unused allowance amounts shall accrue to the benefit of Owner); minus (iii) any increase in the Guaranteed Maximum Price which is attributable to any reason other than an Owner Discretionary Scope Change.

6.3.1.3 The term “**Owner Discretionary Scope Change**” means a change in the Work directed by Owner in writing after the date of this Agreement which (i) is not reasonably inferable from the design intent reflected by the Drawings and Specifications listed in Composite Exhibit D, (ii) constitutes a material change in the quantity, quality, programmatic requirements or other substantial deviation from the design intent reflected by the Drawings and Specifications listed in Composite Exhibit D, (iii) is not dictated by legal requirements or agreements with municipal officials enacted or applicable at the time this Agreement is executed, (iv) is not adopted in order to serve good design or construction practice or to satisfy any governmental official applicable at the time this Agreement is executed, (v) is not required to correct any errors or omissions in the Drawings or Specifications, and (vi) is not made to serve some other non-discretionary purpose as agreed upon by the Parties.

* 1. Intentionally Deleted.
  2. Retention. Owner shall retain the following amounts from payments made pursuant to each properly submitted Application for Payment:
     1. Until the total Cost of the Work completed is at least fifty percent (50%) of the Guaranteed Maximum Price, as reflected in Applications for Payment certified by the Architect/Engineer and approved by Owner, ten percent (10%) of the total amount payable pursuant to the approved Application for Payment;
     2. When the Work completed totals at least fifty percent (50%) of the Guaranteed Maximum Price, as reflected in Applications for Payment certified by the Architect/Engineer and approved by Owner, retainage withheld on Applications for Payment submitted thereafter may be reduced from ten percent (10%) to five percent (5%), provided that the Work continues progressing satisfactorily and there is no specific cause for retaining a larger sum. The reduction of retention shall not affect or negate Owner’s right to withhold sums from Contractor as set forth elsewhere in the Contract Documents;
     3. Owner may elect to reinstate retention of ten percent (10%) of the Work completed if at any time Contractor fails to make satisfactory progress. Satisfactory progress is identified as conforming to the approved Milestone Schedule. Neither the reduction of retainage nor Owner’s election not to reinstate retention of ten percent (10%) shall be construed as an express or implied approval of the progression of the Work;
     4. Amounts retained by Contractor from payments due to product suppliers and subcontractors (expressed as a percentage) shall not exceed that being retained by Owner and is subject to Owner’s audit rights as reflected in the Contract Documents;
     5. No interest shall be due or payable on any amounts retained by Owner under the Contract Documents;
     6. Notwithstanding the foregoing, retainage on amounts that relate to materials and equipment suitably stored off the site with Owner’s prior approval shall initially be twenty percent (20%). When such materials and equipment are delivered and suitably stored at the site, one half (1/2) of such retainage shall be released.
  3. Advance Payments. Except with Owner’s prior written approval, Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

**ARTICLE 7**

**COSTS TO BE REIMBURSED**

* 1. The term “**Cost of the Work**” shall mean costs actually, reasonably and necessarily incurred by Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard, customary or going rate paid at the place of the Project, except with prior written consent of Owner. The Cost of the Work shall include only the items set forth in this Article 7.
  2. Labor Costs.
     1. Wages of construction workers directly employed by Contractor to perform the construction of the Work at the site or, with Owner’s written agreement, at off-site workshops, provided, however, that such wages shall not exceed the standard, customary or going wage rates in the place of the Project.
     2. Stated Labor Wages (but not profit sharing) of Contractor’s supervisory and administrative personnel listed by name and title on Attachment 7 to Composite Exhibit “A” when providing services to the Project whether stationed at the site or otherwise.
     3. Wages and salaries (but not bonuses, profit sharing or incentive compensation) of Contractor’s supervisory or administrative personnel engaged with Owner’s written approval, 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 verifiable time required for the Work.
     4. Costs paid or incurred by 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 Paragraphs 7.2.1 through 7.2.3 and shall not include bonuses, profit sharing or incentive compensation. Notwithstanding the foregoing or anything else in the Contract Documents to the contrary, the aggregate reimbursable labor costs for Contractor’s personnel included within the Cost of the Work shall the stated wage or salary rates specified in Attachment 7 to Composite Exhibit “A” (which includes all labor burden) (the “**Stated Rates**”). As used in the Contract Documents, the term “labor burden” shall mean only the items listed in Attachment 7 to Composite Exhibit “A”.
     5. Any Change Order executed pursuant to Paragraph 2.1.2 of this Agreement shall not include or in any way entitle Contractor to receive any General Conditions, which relate to the project management or supervisory personnel’s time either supervising or otherwise dealing with the Allowance item.
  3. Subcontract Costs.

Payments made by Contractor to Subcontractors in accordance with the requirements of the subcontracts, subject to Owner’s prior written approval of the subcontract amounts and terms.

* 1. Costs of Materials and Equipment Incorporated in The Completed Construction.
     1. Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
     2. Costs of materials described in the preceding Paragraph 7.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and spoilage. At Owner’s option, unused excess materials, if any, shall be properly stored at the Project site and become Owner’s property at the completion of the Work or, at Owner’s option, shall be sold by Contractor; amounts realized, if any, from such sales minus any costs incurred by Contractor shall be credited to Owner as a deduction from the Cost of the Work.
  2. Costs of Other Materials and Equipment, Temporary Facilities and Related Items.
     1. Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities (including office space secured solely for and during the progress of the Work, as long as Owner approves of lease in advance), machinery, equipment, and hand tools not customarily owned by construction workers, which are provided by Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) on such items if not fully consumed, whether sold to others or retained by Contractor. Cost for items not fully consumed by Contractor shall mean fair market value.
     2. Reasonable rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, which are provided by Contractor at the site not to exceed one hundred percent (100%) of the standard rental rates, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Equipment rentals, and the rates and quantities thereof, shall be subject to Owner’s prior written approval. Total rental costs for any item shall not exceed the purchase price of the applicable temporary facilities, machinery, equipment or hand tools or comparable item.
     3. Costs of removal of debris from the site.
     4. Costs of facsimile transmissions, telegrams, long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.
     5. That portion of the reasonable travel and subsistence expenses of Contractor’s personnel incurred while traveling in discharge of duties connected with the Work.
  3. Miscellaneous Costs.
     1. Stated rates for premiums for that portion of insurance and bonds required by Owner that can be directly attributable to the Project. Self-insurance for either full or partial amounts of the coverages required by Owner, but only with Owner’s prior written approval.
     2. Sales, use, or similar taxes imposed by a governmental authority which are related to the Work and for which Contractor is liable.
     3. Fees and assessments for the permits, licenses, and inspections for which Contractor is required by the Contract Documents to procure and pay. (The fees and assessments for the building permit shall not be a Cost of the Work and Owner shall pay for such fees and assessments outside of the Contract Sum.)
     4. Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded under the *General Conditions* and which do not fall within the scope of Paragraph 7.7.3.
     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 requirements by the Contract Documents; payments made in accordance with legal judgments against Contractor resulting from such suits or claims and payments of settlements made with Owner’s prior written consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of Contractor’s Fee or of the GMP; provided, further, that if Contractor has reason to believe (or should have reason to believe) that the required design, process or product is an infringement of a copyright or patent, Contractor shall be responsible for such loss, unless such information is promptly furnished to the Architect/Engineer and Owner in writing before the Work commences.
     6. Intentionally omitted.
     7. Costs to prepare the Progress Schedule (including all updates thereof) and updated as-builts as provided in Paragraph 2.3 of this Agreement.
     8. The Guaranteed Maximum Price shall include a construction contingency which Contractor shall obtain from Contractor’s buy-out of subcontractor work. The construction contingency is for use solely by Contractor, and all uses of the construction contingency shall be subject to Owner’s approval which shall not be unreasonably withheld. The contingency may be used to pay for buyout overages, fill scope gaps between trades, pay Contractor’s share of losses within Builder’s Risk insurance deductibles that are not caused by Contractor or any of its direct or lower tier subcontractors, or otherwise reimburse costs incurred to complete any scope unless Contractor has defaulted and terminated any particular subcontractor performing such scope. The contingency may not be used for costs of General Conditions Items (except to the extent specified in the next sentence), bonds or insurance (including any General Contractor wrap insurance program or insurance program) except for costs to extend durations of such bonds or insurance not otherwise paid by Owner. Upon Final Completion, any remaining unspent contingency may be used to reimburse Contractor for (i) reasonable and verified overruns in the reimbursable Cost of the Work for General Conditions Items incurred by Contractor in excess of the General Conditions Compensation Amount, and (ii) reasonable and verified additional Cost of the Work including General Conditions costs incurred by Contractor due to permitted extensions of the Contract Time for reasons other than Compensable Delays. Unspent contingency shall be included in the calculation of savings in accordance with the provisions of Paragraph 6.3.1. If at any time after Final Completion it is determined that the General Conditions Compensation Amount paid to Contractor exceeds the actual costs incurred by Contractor for General Conditions Items, such excess shall be reimbursed by Contractor, and upon such reimbursement the excess shall be treated as unspent contingency and included in the calculation of savings in accordance with the provisions of Paragraph 6.3.1.
     9. Contractor, with the participation of Owner as provided in the Contract Documents, shall select Subcontractors and suppliers who shall provide labor, equipment and materials related to completion of the Work. As this “buyout” process is completed, the Schedule of Values shall be revised, and the actual costs associated with the line items in the Schedule of Values shall be incorporated into such Schedule of Values. Any net savings between the estimated costs as reflected in the original Schedule of Values and the actual Subcontractor and supplier award amounts resulting from the buyout process shall be allocated to the contingency.
  4. Other Costs and Emergencies.
     1. Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by Owner.
     2. Direct costs due to emergencies in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, to the extent not caused by Contractor or any party for whom Contractor is responsible.
     3. Cost of repairs to damaged Work but only to the extent that the GMP is not increased and as long as: (1) funds are available through contingency; (2) the cost of such repairs is not otherwise recoverable by Contractor from others; and (3) the cost of such repairs are covered or compensated by applicable insurance proceeds unless applicable insurance is not available because Contractor failed to procure required insurance pursuant to the requirements of the Contract Documents. Contractor agrees to pursue or seek reimbursement through insurance proceeds before seeking Owner’s approval to use Contingency, which shall not be unreasonably withheld.
  5. Related Party Transactions.
     1. For purposes of this Paragraph 7.8, the term “**Related Party**” shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with Contractor; any entity in which any stockholder in, or management employee of, Contractor owns any interest in excess of ten percent (10%) in the aggregate; or any person or entity which has the right to control the business or affairs of Contractor. The term “related party” includes any member of the immediate family of any person identified above.
     2. If any of the costs to be reimbursed arise from a transaction between Contractor and a Related Party, Contractor shall notify Owner of the specific nature of the contemplated transaction, including the identity of the Related Party and the anticipated cost to be incurred, and a representation that the cost does not exceed the standard, customary or going rate for such cost in the place of the Project, if obtained from an unrelated party (or if such cost does exceed such standard, customary or going rate, then a statement of the difference), before any such transaction is consummated or cost incurred. If Owner, after such notification(s), authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and Contractor shall procure the Work, equipment, goods or service from the related party, as a Subcontractor. If Owner fails to authorize the transaction, Contractor shall procure the Work, equipment, goods or service from some person or entity other than a related party.
  6. Other Cost of the Work Provisions.
     1. A detailed budget allocating the General Conditions Amount among the General Conditions Items is attached as part of Exhibit “H”. Contractor represents and warrants to Owner that the General Conditions Amount and the General Conditions Items listed in Exhibit “H” accurately reflect the items and resources that Contractor has planned and committed to devote to the Project.
     2. The Cost of the Work for any machinery or equipment rented or leased in connection with the Work shall not exceed the fair market value of such machinery or equipment at the time of its commitment to the Work less the salvage value following completion of the Work. The Cost of the Work for any machinery or equipment purchased in connection with the Work shall be limited to the lesser of (1) the fair market value of such machinery or equipment at the time placed in service for the Project less salvage value following completion of the Work (unless turned over to Owner as provided below) or (2) the rental charges that would have been included within the Cost of the Work for such machinery or equipment had the machinery or equipment been rented rather than purchased. Equipment purchased and charged to the Project as a reimbursable cost shall become the property of Owner or, at Owner’s election, shall be sold by Contractor and the amounts realized by such sales shall be paid to Owner or credited to Owner as a deduction from the Cost of the Work. All costs incurred for normal wear and tear of equipment and machinery shall be reimbursed at actual cost and shall include only routine and preventative maintenance, minor repairs, and other incidental costs (but not major repairs and overhauls). Contractor shall maintain daily equipment usage time reports for equipment owned by Contractor (or any affiliate of Contractor) noting the hours and activity for which the equipment was used, standby time, idle time, etc., and such equipment usage reports will be used to determine whether hourly, daily, weekly, or monthly rates shall apply (the rates used for billing purposes will be those most economical to Owner based on the circumstances of actual usage). Contractor shall maintain an inventory of any machinery or equipment purchased in connection with the Work and charged as a Cost of the Work. Following completion of the Work and as a condition precedent to final payment, Contractor shall submit to Owner a final accounting in which (a) all such items are listed, (b) for each item, the amount charged as a Cost of the Work is indicated, and (c) the final disposition of each such item (i.e., retained by Contractor, sold, or turned over to Owner) is indicated.

**ARTICLE 8**

**COSTS NOT TO BE REIMBURSED**

* 1. The Cost of the Work shall not include:

8.1.1 Salaries and other compensation of Contractor’s personnel stationed at Contractor’s principal office or offices other than the site office, except as specifically provided in Paragraphs 7.2.2 and 7.2.3, or identified as part of the Stated Labor Rates set forth in the General Conditions Costs Breakdown. Prior to commencement of the Work, Contractor shall submit to Owner a list of all of Contractor’s personnel to be stationed at its site office, together with their respective Stated Labor Rates. This list is in addition to the list referenced in Paragraph 7.2.2. Contractor shall submit revised lists as personnel changes occur, indicating thereon the effective date of any such changes. The Cost of the Work shall not include costs for any of Contractor’s personnel who are not or have not been listed pursuant to this Paragraph 8.1 or Paragraph 7.2.2, nor the costs for any personnel who are or have been listed for time periods but which costs were or have been incurred before or after the effective date(s) that those personnel were listed.

8.1.2 Expenses of Contractor’s principal office and offices other than the site office, except for construction management software, networking hardware, and other relevant software that is used in connection with the administration of the Project as set forth in the General Conditions Costs Breakdown.

8.1.3 Overhead and general expenses, except as may be expressly included in

Article 7.

8.1.4 Contractor’s capital expenses, including interest on Contractor’s capital employed for the Work.

8.1.5 Rental costs of machinery and equipment, except as specifically provided

herein.

8.1.6 Except as provided in Paragraphs 7.7.3, costs due to the fault, negligence or failure of Contractor, Subcontractors, Sub-subcontractors, 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, including but not limited to costs for the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work

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

8.1.8 Costs other than costs included in executed Change Orders approved by Owner which would cause the GMP to be exceeded.

8.1.9 Costs of attorneys’ fees or related legal expenses of any nature.

8.1.10 Costs of any gift to or entertainment of Owner’s, Contractor’s or any Subcontractor’s employees and costs of any bonuses, profit sharing or incentive compensation to any such employees.

8.1.11 Moving and relocation costs incurred by Contractor in relocating personnel for the purposes of staffing the Project or for relocating personnel from the Project.

8.1.12 Costs incurred after Contractor’s application for final payment.

8.1.13 Costs of labor and materials for Work related to completing punch list items more than sixty (60) days after Substantial Completion of the Work or designated portion thereof, as the case may be.

8.1.14 Costs of performing warranty work under the Agreement, other than that already included within each Subcontractor’s price.

8.1.15 Costs of training Contractor’s personnel.

8.1.16 Rental costs of machinery and equipment which are paid or payable to Contractor or a related party, except as approved by Owner in writing or set forth in Exhibit H.

8.1.17 Labor, material, and equipment costs or any other costs incurred which should be back charged to any Subcontractor, any Sub-Subcontractor, any direct or lower tier supplier, or any other party for whom Contractor is responsible.

8.1.18 Costs or losses resulting from lost, damaged by misuse or stolen tools and

equipment.

8.1.19 Costs of bonding or securing liens or defending claims filed by any Subcontractor, any Sub-Subcontractor, any direct or lower tier supplier or any other party for whom any of such parties or Contractor is responsible arising from nonpayment, unless such nonpayment is the result of Owner’s unexcused or wrongful failure to pay Contractor undisputed amounts as and when due under the Contract Documents.

8.1.20 Costs of self-insured losses (*e.g.*, losses within the deductible limits maintained by Contractor or any Subcontractor or Sub-Subcontractor), costs covered by any insurance carried by Contractor or any Subcontractor or Sub-Subcontractor, costs which would have been covered by the insurance required to be carried by Contractor or any Subcontractor or Sub-Subcontractor under the Contract Documents, and costs which would have been covered by insurance but for failure of Contractor or any Subcontractor or Sub-Subcontractor to properly submit, process or give notice of the occurrence or claim.

8.1.21 Costs of remedying Subcontractor defaults or any other related expenses unless otherwise subject to a back charge or deduct or in the alternative, funds generated from Contractor’s Contingency as set forth in Paragraph 7.7.3 above.

8.1.22 Costs incurred or paid for recruiting employees (whether to third party recruiters or to employees).

8.1.23 Severance or similar payments on account of terminated employees.

8.1.24 Costs of overtime premium expense if the necessity to work overtime to keep to schedule is the fault of Contractor, any Subcontractor, any Sub-Subcontractor, any direct or lower tier supplier, or any other party for whom Contractor is responsible.

8.1.25 Additional costs of commuting to or from the Project site or charges for vehicles used by supervisory or administrative personnel not otherwise set forth in the Stated Labor Rates.

**ARTICLE 9**

**DISCOUNTS, REBATES AND REFUNDS**

* 1. Cash discounts obtained on payments made by Contractor for this Project shall accrue to Owner. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment for this Project shall accrue to Owner, and Contractor shall make provisions so that they can be secured.
  2. Amounts which accrue to Owner in accordance with the provisions of Paragraph 9.1 shall be credited to Owner at the time that they mature or are otherwise realized by Contractor, as a deduction from the Cost of the Work.
  3. As earned solely on this project, insurance policy discounts, rebates, refunds or dividends, and a proportion of any volume rebates earned with purchase of material charged to this Project, shall accrue to Owner and be credited to Owner as a deduction from the Cost of the Work, and Contractor shall make provisions so that they can be obtained.

**ARTICLE 10**

**SUBCONTRACTS AND OTHER AGREEMENTS**

* 1. Those portions of the Work that Contractor does not customarily perform with Contractor’s own personnel shall be performed under subcontracts or by other appropriate agreements with Contractor. Contractor may self-perform Work only with the prior written approval of Owner and subject to the provisions of this Paragraph 10.1. All portions of the Work including, but not limited to, Contractor’s own labor costs, all trade Work, all Work that Contractor wishes to perform with Contractor’s own forces or through a related party, and all equipment to be rented or purchased, shall be competitively bid. Contractor shall obtain responsive bids for each component of the Work from at least three (3) competent and licensed bidders acceptable to Owner with local experience of similar scope and magnitude. Contractor shall furnish those bids to Owner for review and approval. Those bids shall indicate both the proposed price/cost, and the proposed scope/portion of the Work included therein. Owner will then determine which bids will be accepted, with the advice of Contractor and the Architect/Engineer, if requested. Upon Owner’s request, Contractor shall solicit additional bids. Owner may designate specific persons or entities from whom Contractor shall or shall not obtain bids; however, Contractor shall not be required to contract with anyone to whom Contractor has reasonable objection. Owner’s approval or selection of a bid or Subcontractor or Sub-subcontractor shall in no way make Owner liable or responsible for the actions or omissions of the bidder or Subcontractor or Sub-subcontractor.
  2. Subcontracts or other agreements shall conform to the payment provisions of this Agreement and shall not be awarded on the basis of cost plus a fee without the prior consent of Owner.
  3. If a Guaranteed Maximum Price has been established and a specific competent bidder among those whose bids are delivered by Contractor (1) is recommended to Owner by Contractor; (2) is qualified to perform that portion of the Work in accordance with all requirements of the Contract Documents (including, without limitation, insurance and bonding requirements); and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but Owner requires that another bid be accepted, then Contractor may require that a Change Order be issued to adjust the GMP by the difference between the bid of the person or entity recommended to Owner by Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by Owner. Any such request to adjust the Guaranteed Maximum Price by Contractor must be made in writing prior to award of the applicable subcontract.
  4. Contractor shall be vigilant and proactive in resolving any issues caused by deficient and/or untimely performance by any Subcontractor with which Contractor has contracted. Contractor’s failure to resolve such issues by properly supervising, coordinating and, if necessary, supplementing the Work of underperforming Subcontractors shall be deemed a material breach of this Agreement by Contractor.
  5. Contractor shall provide a true and accurate copy of each and every fully executed subcontract to Owner, along with all change orders thereto. Except as set forth in Paragraphs 12.4.4 and 12.5 of this Agreement, Contractor shall not impose and hold back a greater percentage of retainage on its Subcontractors than Owner imposes and withholds on Contractor, unless previously approved in writing by Owner, which approval shall not be unreasonably withheld.

**ARTICLE 11**

**ACCOUNTING RECORDS**

* 1. 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 Agreement and to substantiate all costs. The accounting and control systems shall be satisfactory to Owner. Upon reasonable notice, Owner and Owner’s accountants and auditors shall be afforded access to, and shall be permitted to audit and copy, in accessible, readable electronic and hard document format, Contractor’s records, accounts, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, subcontract and purchase order proposals, vouchers, memoranda and other data relating to this Agreement, and Contractor shall preserve these for a period of four years after final payment, or for such longer period as may be required by law, provided, however, that if Contractor receives notification of a dispute or the commencement of litigation regarding the Project within the four-year period, Contractor shall continue to maintain all such records until the resolution of such dispute or litigation. All records maintained by Contractor shall be maintained in accordance with generally accepted accounting principles, consistently applied.
  2. All costs are subject to audit except for those costs provided as a stated rate or lump sum and previously agreed upon by Owner and Contractor. It is hereby acknowledged and agreed that all costs, regardless of type, including, but not limited to taxes and every other reimbursable cost under Article 7 are subject to audit by Owner’s accountants and auditors, and only reimbursable, actual costs, if substantiated by Contractor and below the GMP, are payable to Contractor. Only costs as substantiated by Contractor and verified by Owner’s audit, will be paid. Owner’s audit rights hereunder shall be applicable to all Subcontractors and Owner’s audit rights under this Agreement shall be included in each and every Subcontract.
  3. In addition to any other remedy available to Owner, and by no means a limitation thereof, if any inspection or audit by Owner of Contractor’s accounting records maintained pursuant to this Article 11 reveals an overcharge, Contractor shall fully reimburse Owner upon demand for said overcharge. In the event Owner determines that the overcharge was not the result of an arithmetic error, Contractor shall pay Owner upon demand costs incurred for such Audit upon presentment of invoices establishing expenses. Owner may deduct such reimbursement against any amounts owed to Contractor.

**ARTICLE 12**

**APPLICATIONS FOR PAYMENT**

* 1. Contractor shall, on the twenty-fifth (25th) day of each calendar month (herein referred to as the “**Payment Application Date**”), deliver to Owner an Application for Payment, which has already been approved by Architect/Engineer, in accordance with the provisions of Article 9 of the *General Conditions*. The Application for Payment shall be notarized, if required, and supported by all data substantiating Contractor’s right to payment that Owner or Architect/Engineer or Owner’s Lender require. All Applications for Payment shall be sent to:

Address

and should reference the Project name.

* 1. With each Application for Payment, Contractor shall submit petty cash accounts, invoices, subcontractor payment applications, receipts, partial or final waivers and releases of liens, as appropriate, and any other evidence required by Owner to demonstrate that cash disbursements already made by Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by Contractor; less (2) that portion of those payments attributable to Contractor’s Fee; plus (3) for the period covered by the present Application for Payment; plus (4) retainage applicable to prior progress payments. Owner reserves the right to reject payment to the extent a subcontractor’s pay application fails to provide a detailed breakout of the costs submitted to the satisfaction of Owner so that Owner can determine whether the subcontractor’s pay application is properly allocated over the subcontractor’s entire scope of work.
  2. Applications for Payment shall show the percentage of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage 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 which has actually been incurred by Contractor on account of that portion of the Work for which Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the GMP allocated to that portion of the Work in the Schedule of Values.
  3. Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

12.4.1 take the Cost of the Work, as defined in Article 7 including, actually incurred by Contractor through the date of Contractor’s progress payment application;

12.4.2 add the actual cost of materials and equipment not yet incorporated into the Work, but delivered and suitably stored at the site (if approved in advance by Owner) for subsequent incorporation in the Work, actually incurred by Contractor through the date of Contractor’s progress payment application;

12.4.3 add the pro-rata portion of Contractor’s Fee attributable to the Cost of the Work under Paragraph 12.4.1;

12.4.4 subtract retainage calculated as ten percent (10%) of the Contract Sum for the first fifty percent (50%) of the Guaranteed Maximum Price, and five percent (5%) for that portion of the Contract Sum exceeding fifty percent (50%) of the Guaranteed Maximum Price, as more specifically set forth in Paragraph 6.5 of this Agreement;

12.4.5 subtract the aggregate of previous payments made by Owner;

12.4.6 subtract the shortfall, if any, indicated by Contractor in the documentation required to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by Owner’s accountants in such documentation;

12.4.7 subtract amounts, if any, for which Owner has withheld payment pursuant to the Contract Documents; and

12.4.8 subtract any amounts in excess of the aggregate percent complete figure multiplied by the GMP, less retainage, as reflected in the agreed-upon Schedule of Values as set forth in Paragraph 6.3 of this Agreement.

* 1. Subject to Paragraph 6.5 and its subparts above, payments to Subcontractors shall be subject to retainage of ten percent (10%) unless previously approved in writing by Owner. Owner shall have the option, but not the obligation, to reduce the retainage requirements of this Agreement or with respect to any specific Subcontractors or release any portion of the retainage prior to the date specified in the Contract Documents. Any exercise of this option, however, shall not be a waiver of (i) any of Owner’s rights to retainage in connection with other payments to Contractor hereunder or (ii) any other right or remedy that Owner has under the Contract Documents, in law or in equity. Any such reduction shall be without prejudice to, and with the express reservation of, Owner's rights and remedies, as set forth in the Contract Documents or established pursuant to Applicable Law, to withhold from and/or set-off against any future payments otherwise due to Contractor and/or any Subcontractor such amounts as are appropriate to protect Owner from damages caused by delayed, defective, deficient or nonconforming Work or any other act, omission, negligence, breach of contract or breach of warranty, and Owner's reduction does not constitute an acceptance of the Work or a waiver or release by Owner of any claims or rights belonging to Owner with respect to the Work or the requirements of the Contract Documents. To the extent Owner reduces any portion of the retention held under this Agreement prior to Substantial Completion, the reduction of such retainage shall be conditioned on Contractor or applicable Subcontractor remaining responsible to return to the Project and correct any defective or deficient Work that is subsequently discovered (and is required to be remedied) in connection with the performance of the Work by other Subcontractors, and Owner retains the right to reinstate the initial retention in the event that the requirements of the Contract Documents are no longer being met. Any early reduction of retention shall also be subject to approval and funding in each instance by the Lender.
  2. Except with Owner’s prior approval, Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.
  3. Contractor shall pay each Subcontractor, materialman or supplier, within seven (7) days of the receipt of payment from Owner (time being of the essence), out of the amount paid to Contractor pursuant to Contractor’s Application for Payment, the full amount itemized in such Application for Payment as intended for work performed by such Subcontractor, materialman or supplier, and until such payment is made all amounts paid by Owner to Contractor on behalf of the applicable Subcontractor, materialman or supplier shall be held by Contractor solely for the benefit of Owner, as the primary purpose of this restriction is to protect Owner from liens and claims from direct and lower tier Subcontractors, materialmen and suppliers arising from nonpayment. The restriction imposed upon such amounts by this Paragraph 12.7 shall be deemed to have been released only upon Contractor’s proper disbursement of such amounts to the applicable Subcontractor, materialman or supplier as provided in this Paragraph 12.7. Contractor shall, by appropriate agreement with each Subcontractor, material man or supplier, require them to make payments to Sub- subcontractors in similar manner. Applications for Payment shall not include requests for payment of amounts Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason, except with respect to items that Contractor intends to back charge to another Subcontractor. In such case, Contractor shall provide prior written notice to Owner of Contractor’s intent to withhold such funds and back charge the applicable Subcontractor(s), and obtain Owner’s approval thereof, which shall not be unreasonably withheld. Nothing in this Paragraph 12.7 is intended to create (i) any fiduciary duties running from Contractor to any Subcontractor, material man or supplier or (ii) any duty to perform trust accounting for any Subcontractor, material man or supplier.

**ARTICLE 13**

**PROGRESS PAYMENTS, RETAINAGE AND**

**FINAL PAYMENT OF THE CONTRACT SUM**

* 1. Progress Payments/Retainage. Based on Contractor’s Applications for Payment received by Owner not later than the twenty-fifth (25th) day of the Month, Certificates for Payment issued by the Architect/Engineer, and the approval of the Application for Payment issued by Owner pursuant to Article 9 of the *General Conditions* and the other documents specified in this Agreement, Owner shall make monthly payments to Contractor on account of the Contract Sum. Such undisputed monthly payments shall be made on or before the twenty-fifth (25th) day of the following calendar month assuming and conditioned upon Owner having received Contractor’s Application for Payment, in proper form, to substantiate the amount owed and such other documentation as Owner may require pursuant to the Contract Documents, the Architect/Engineer having issued a Certificate for Payment, and Owner having approved Contractor's Application for Payment. Owner shall have no obligation to the extent Owner has withheld approval thereof or Architect/Engineer has withheld a Certificate for Payment as permitted under Paragraph 9.3.1 of the *General Conditions* or if Contractor has not submitted to Owner with its Application for Payment all documentation required. Each monthly payment shall be calculated in accordance with Articles 6 and 12 of this Agreement, and shall be for the time period through the Payment Application Date, as indicated in Owner’s approval of an Application for Payment, after deducting any sums withheld by Owner pursuant to the Contract Documents and the aggregate of all previous payments to Contractor on account of the Contract Sum. Retainage and withholdings shall be governed by Paragraph 6.5 of this Agreement and Sections 9.3.1, 9.3.2 and 9.4.2 of the *General Conditions*, respectively. If Contractor is late in submitting its Application for Payment, Owner will endeavor to process payment thereof within twenty-one (21) days of Owner’s approval of the late Application for Payment.
  2. If Owner has a Lender for the Project, Owner’s obligation to make any payment due hereunder to Contractor, whether progress or final payment, shall be subject to the express condition precedent that Owner’s Lender has approved Contractor’s Application for Payment and has disbursed construction loan proceeds to or for the benefit of Owner on account of Contractor’s Application for Payment.
  3. Final Payment. Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by Owner to Contractor within sixty (60) days after issuance of a final Certificate for Payment by the Architect/Engineer and approval by Owner of the final Application for Payment, less such retainages as Owner shall determine are necessary for all incomplete Work and unsettled claims not to exceed 200% of the value of remaining work or unsettled claims required to protect Owner’s interests or are required under Chapter 713 of the Florida Statutes; provided, however, that final payment shall in no event be due unless and until Contractor has complied with all provisions of the Contract Documents, including those contained in Sections 9.3.1, 9.3.2 and 9.4.2 of the *General Conditions* and has submitted to Architect/Engineer a final accounting of the Cost of the Work and same shall have been reviewed by Owner’s accountants as provided by Paragraph 13.4 of this Agreement.
  4. The amount of the Final Payment shall be calculated as follows:

13.4.1 take the sum of the Cost of the Work substantiated by Contractor’s final accounting and Contractor’s Fee (including withheld retainage, if any), but not more than the GMP;

13.4.2 subtract amounts, if any, for which the Architect/Engineer and/or Owner withholds, in whole or in part, in a final Certificate for Payment or for which Owner withholds payment as provided in the Contract Documents; and

13.4.3 subtract the aggregate of previous payments by Owner.

* 1. If the aggregate of previous payments made by Owner exceeds the total amount due Contractor, Contractor shall reimburse the difference to Owner within thirty (30) days of such determination.
  2. Owner’s accountants and/or auditors will review, audit, and report in writing on Contractor’s final accounting within thirty (30) calendar days after delivery of the final accounting to Owner by Contractor. Based upon such Cost of the Work as Owner’s accountants and/or auditors report to be substantiated by Contractor’s final accounting, and provided the other conditions of Paragraph 13.3 of this Agreement have been met, the Architect/Engineer will, within seven (7) business days after receipt of the written report of Owner’s accountants and/or auditors, either issue to Owner a final Certificate for Payment with a copy to Contractor, or notify Contractor and Owner in writing of the Architect/Engineer’s reasons for withholding a Certificate. If there are no outstanding issues between Owner and Contractor, then Owner will submit a final certificate of payment to Lender within seven (7) business days.

**ARTICLE 14**

**CONTRACTOR’S REPRESENTATIONS,**

**WARRANTIES AND COVENANTS**

* 1. Contractor hereby represents and warrants to Owner, as an inducement to Owner to execute this Agreement, which representations and warranties shall survive the termination of this Agreement and the Final Completion of the Work, that:
     1. it is authorized to do business in the State of Florida;
     2. it and its Subcontractors and Sub-Subcontractors are duly licensed in the State of Florida to observe and perform the terms, covenants, conditions and other provisions on its part to be observed or performed hereunder and will maintain during the prosecution of the Work all requisite licenses, permits, and approvals (and provide a copy of such licenses, permits, and approvals to Owner upon its request);
     3. it is experienced and skilled in the construction and work of the size, complexity and type described in or required by the Contract Documents and will perform the Work with the care, skill, and diligence of such a contractor;
     4. all equipment and materials incorporated into the Work shall be new (except if otherwise allowed by the Specifications), and the equipment, the materials and the Work shall be of high quality, free from faults and defects and shall strictly conform to the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized by Owner, may be considered defective. If required by Owner or Architect/Engineer, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment;
     5. it has by careful examination satisfied itself as to: (i) the nature, location and character of the Job Site, as defined in Section 1.7 of the *General Conditions*, including without limitation the surface and disclosed or ascertainable (from a reasonably thorough visual inspection) subsurface conditions of the land and soil, all structures, improvements and obstructions, both natural and man-made, all utilities near, thereon and thereunder, the surface and disclosed or ascertainable (from a reasonably thorough visual inspection) subsurface water conditions of the Job Site and the surrounding area and, to the extent pertinent to the Work, all other conditions; (ii) the nature, location and character of the general area in which the Job Site is located, including without limitation its climatic conditions, the availability and cost of labor and the availability and cost of materials, tools and equipment; (iii) the quality and quantity of all materials, supplies, tools, equipment, labor and professional services necessary to complete the Work in the manner required by the Contract Documents; (iv) the customary practices, procedures and protocols of any government agency having jurisdiction over the Work; and (v) all other matters or things which could reasonably affect the performance of the Work as required by the Contract Documents. Contractor has carefully examined all Contract Documents and visited the Job Site, is familiar with the local conditions under which the Work is to be performed and has correlated observations with the requirements of the Contract Documents. Contractor represents that if it becomes aware of any such discrepancies, omissions, ambiguities, or conflicts between the Contract Documents and the Job Site, it will promptly notify Owner and Architect/Engineer thereof as provided in Section 5.1.2 of the *General Conditions*. Further, that Contractor has determined that the Project can be constructed within the Contract Time without resort to extraordinary or unusual construction means, methods and techniques and that Contractor is not aware of any facts that make any information Owner or Architect/Engineer has furnished to Contractor misleading or inaccurate in any material respect which would have a material adverse effect on the Guaranteed Maximum Price or Contract Time. Contractor agrees that it shall not be entitled to any adjustments in the Guaranteed Maximum Price or Contract Time as a consequence of matters discovered during performance of the Work that should reasonably have been discovered by Contractor through the due diligence review required hereunder;
     6. it has thoroughly and recently inspected, based on a thorough visual inspection, the Project site and nearby areas and is completely familiar therewith. Other than as may be specified in the Contract Documents, Owner makes no representations nor warranties as to soil or subsurface conditions, or as to any other conditions specified in Paragraph 14.1 (d) above or encountered at, in, on or near the Job Site, and any information supplied by Owner to Contractor in this regard is for information only and the accuracy thereof is not guaranteed, and Contractor has not relied thereon;
     7. it will comply, and shall require all of its subcontractors to comply, with all Applicable Laws. Contractor shall at all times observe and comply with all such existing and future laws, ordinances and regulations, including, but not limited to, the Fair Housing Act Amendments and the Americans with Disabilities Act, and shall hold harmless, defend and indemnify Owner and Owner Responsible Parties against the violation of any such law, ordinance, regulations, order or decree, whether by Contractor or by Contractor’s employees except that, unless otherwise provided in the Contract Documents, it is not Contractor’s responsibility to ascertain that the design aspects of the Contract Documents are in accordance with Applicable Laws;
     8. it will fully, faithfully and promptly provide and comply with all warranties provided for anywhere in the Contract Documents and as required by law, including, but not limited to, those required under Chapter 718 of the Florida Statutes, if it is or ever becomes applicable to the Work;
     9. it is able to furnish the tools, materials, supplies, equipment and labor required to complete the Work in accordance with the Contract Documents and satisfy its obligations under the Contract Documents;
     10. no materials containing asbestos or lead-based paint have been or will be specified or incorporated into the Project;
     11. that it has made or, prior to engaging the applicable Subcontractor(s), will make reasonable inquiry to confirm that its Subcontractors are financially solvent and possessed of sufficient working capital to complete the Work and perform all of their obligations under their respective subcontracts; and
     12. it is financially solvent, able to pay its debts as they mature and possesses sufficient working capital to perform its obligations hereunder.
  2. Contractor covenants with Owner that it shall: (i) furnish its best skill and judgment and cooperate with Owner in furthering the interests of Owner; (ii) furnish efficient business administration and superintendence and an adequate supply of workmen, equipment, tools and materials at all times; and (iii) perform the Work with high standards and workmanship and in the most expeditious and economical manner consistent with the best interests of Owner.
  3. In performing its obligations hereunder, Contractor shall be deemed an independent contractor and not an agent or employee of Owner.
  4. Indemnity Obligations. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless Owner, Owner’s partners or members, the wholly-owned affiliates of Owner and Owner’s partners, members, owners, shareholders, Owner’s Lender and investors and their managers, members, owners, shareholders, officers, directors, agents or employees, and successors and assigns of each of them (hereafter, the “**Owner Indemnitees**”) from and against any and all claims, demands, suits, liens, causes of action, penalties, fines, liabilities, judgments, costs, damages, damage or destruction to tangible property, injuries or deaths of persons (including Contractor’s, Subcontractor’s and Sub-Subcontractor’s employees), attorneys’ fees, and losses and expenses of any nature or kind (hereafter, the “Indemnified Claim”) to the extent arising out of or resulting from Contractor’s performance of, or failure to perform, the Work or Contractor’s obligations under the Contract Documents and for any act, omission or default of Contractor or any of its Subcontractors, Sub-subcontractors, materialmen, or agents of any tier or their respective employees, regardless of whether the Indemnified Claim is caused in part by any act, omission or default of Owner Indemnitees. Contractor shall also indemnify, defend and hold Owner Indemnitees harmless from and against any assertion of claims for mechanics’ or construction liens or similar liens by any party that provided labor or materials for the Project except to the extent any such claims are the result of Owner’s or any of Owner Indemnitees’ wrongful withholding of payment due under the Contract Documents. Contractor’s defense and indemnity obligations under this Paragraph 14.4 shall also specifically include, without limitation, all fines, penalties, damages, liabilities, costs, expenses (including, without limitation, reasonable attorneys’ fees), and punitive damages arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code or requirement of a public authority that bears upon the performance of the Work by Contractor, a Subcontractor, or any person or entity for whom either is responsible, (ii) means, methods, procedures, techniques or sequences of execution or performance of the Work, or (iii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by Contractor, a Subcontractor, or any person or entity for whom either is responsible. The terms and conditions of this Paragraph 14.4 and its subparts shall survive the termination of this Agreement, the completion of the Project and the final payment to Contractor.
     1. General Exclusions. The indemnity provisions applicable to this Agreement do not and shall not require Contractor to indemnify or hold harmless any Owner Indemnitee for an Owner Indemnitee’s own negligence or wrongful acts or omissions. An Indemnified Claim shall not include claims of, or damages resulting from, the gross negligence, or willful, wanton or intentional misconduct of Owner Indemnitees or their sole negligence, or for statutory violations or punitive damages except and to the extent that the statutory violations or punitive damages are caused by or result from the acts or omissions of Contractor or any of its Subcontractors, Sub-subcontractors, materialmen, or agents of any tier or their respective employees. Contractor’s obligation to indemnify herein, however, shall not be negated or abrogated or diminished by the fact that an Owner Indemnitee may have contributed to the liability or damages or claim by their acts, omissions, conduct or negligence.
     2. Notwithstanding the above, should a court of competent jurisdiction construe this Article 14 to require Contractor to indemnify Owner Indemnitees for their own negligence or fault, the following limitation shall apply: Contractor’s liability under its defense and indemnification obligations as set forth herein is limited to the greater of, on a per occurrence basis (a) the contract value of this GMP Agreement, as amended by fully executed Change Orders or (b) the amount of all deductibles and self-insured retentions applicable to Contractor’s insurance policy or policies applicable to such Indemnified Claim(s) plus the amount of insurance proceeds paid or payable under Contractor’s insurance policy or policies applicable to such Indemnified Claims. This monetary limitation is hereby deemed and made a part of the project specifications or bid documents, if any. Contractor and Owner expressly agree that the foregoing monetary limit bears a reasonable commercial relationship to the Agreement and is incorporated by this reference into the Project specifications and bid documents, if any. Contractor’s indemnification obligations under the Contract, including those in this Paragraph 14.4.2, shall be deemed to fully comply with Sections 725.06, Florida Statutes, to the extent applicable, including any amendments thereto, in all respects. To the greatest extent permitted by Applicable Laws, Contractor waives for itself and its insurers any and all claims that the indemnification obligations under the Agreement violate Applicable Laws.
     3. Insurance. Contractor shall procure and maintain such insurance as is necessary to fully underwrite Contractor’s defense and indemnity obligations set forth herein. Nothing in this Paragraph 14.4 or its subparts shall be construed to limit or reduce Contractor’s obligations to provide insurance required by this Agreement and the General Conditions or to affect the rights of any party as a Named Insured or an Additional Insured under such insurance.
     4. Compliance with Laws. The parties hereby acknowledge and agree that to the extent Section 725.06, Florida Statutes, is applicable to any indemnity provisions contained in the Contract Documents, that all terms and conditions of Section 725.06 have occurred, been fulfilled or waived and that the indemnity provisions herein contained are fully enforceable as written and the parties will not contend or argue otherwise in any mediation, arbitration, litigation or legal proceeding.
     5. Defense. Contractor’s obligations to defend Owner Indemnitees shall be independent of and in addition to Contractor’s indemnity obligations and shall apply to the fullest extent permitted by law. The duty arises immediately upon receipt by Contractor of the tender of any Indemnified Claim from an Owner Indemnitees. With respect to any matter to which Contractor’s defense obligations apply, Owner Indemnitees shall have the right to control, at Contractor’s expense, the defense if Owner Indemnitees determine that the defense being provided by Contractor is inadequate, ill advised, in conflict with the best interests of Owner or is not being pursued with sufficient diligence, and direct Contractor to substitute existing counsel for counsel that is reasonably acceptable to Owner Indemnitees and Contractor. Should Contractor breach its defense and indemnity obligations, Owner may, and without relieving Contractor of its indemnity obligations, assume any defense obligation and try or settle such claim, and Contractor: (1) shall reimburse Owner for all costs and expenses incurred or paid by any Owner Indemnitee in such defense, settlement, trial or arbitration, and (2) pay any judgment or award obtained against Owner Indemnitees or any of them. This provision is separate and distinct from, and in addition to, any other provision, paragraph, or section in the Contract Documents, including any provision, paragraph or section concerning indemnification and procurement of insurance
     6. Consideration. Contractor acknowledges and agrees that there is good and valuable consideration for the foregoing terms and obligations and that without Contractor undertaking such terms and obligations, Owner would not enter into this Agreement.

**ARTICLE 15**

**TERMINATION**

15.1 Termination of this Agreement by Owner, with or without cause, and by Contractor is provided for in Article 15 of the *General Conditions*. In the event termination by either party is invoked, in no event shall Contractor be entitled to receive more than reimbursement for allowable costs incurred under Article 7, as of the date of termination (less any payments theretofore made to Contractor by Owner on account thereof), plus Contractor’s earned fee as calculated in accordance with Article 12 of this Agreement (less any payments theretofore made to Contractor by Owner on account thereof).

**ARTICLE 16**

**DISPUTE RESOLUTION**

* 1. **THIS AGREEMENT SHALL BE INTERPRETED UNDER, AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF FLORIDA (WITHOUT GIVING EFFECT TO FLORIDA’S PRINCIPLES OF CONFLICTS OF LAW).** Owner and Contractor agree, as a condition precedent to further dispute resolution proceedings, to attempt to resolve any disputes between them by negotiations between duly authorized representatives of Contractor and Owner. If the representatives of Contractor and Owner are unable to resolve the dispute within twenty (20) days after submission to them, the dispute shall be submitted to mediation. Unless the parties otherwise agree in writing, the mediator shall be a resident of the State of Florida. In the event the parties are unable to resolve their dispute(s) in mediation, then the parties agree to submit the dispute to a non-jury trial in a court of competent jurisdiction in the county where the Project is located; all other venues being waived. The prevailing party in any such legal proceeding shall be entitled to recover its reasonable attorneys’ fees and costs, including those incurred in the mandatory mediation phase.
  2. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. The parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in the place where the Project is located unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.
  3. Each party and counsel for each party has reviewed and negotiated this Agreement and the General Conditions and accordingly the rule of construction to the effect that any ambiguities in a document are to be resolved against the drafting party shall not be employed in the interpretation of either this Agreement or the General Conditions.

**ARTICLE 17**

**NOTICE**

17.1 Any notice required or permitted to be delivered hereunder must be in writing and shall be given by certified or registered mail, or by overnight courier and shall be deemed to be received (a) if given by certified or registered mail, three (3) days after deposit in the United States mail, postage prepaid, certified mail, return receipt requested, (b) if given by hand delivery, when such notice is received by the party to whom it is addressed, or (c) if given by an overnight courier or delivery service, when deposited with such courier. Notices shall be sent to Contractor, Owner or the Architect/Engineer the following address until such time as all other parties below have received written notice of a party’s new address:

**ARTICLE 18**

**MISCELLANEOUS**

18.1 Independent Contractor. Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with Owner to cooperate with the Architect/Engineer and exercise Contractor’s skill and judgment in furthering the interests of 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 manner consistent with Owner’s interests. Notwithstanding anything to the contrary in the Contract Documents, Contractor is fully responsible to Owner for all duties of Contractor under the Contract Documents, including the construction means, methods, techniques, sequences and procedures in performing the Work, for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement despite Contractor’s delegation of the responsibility therefor to any of its Subcontractors. In addition, if the Work required under the Contract Documents requires Contractor to subcontract with any party to provide any professional services constituting the practice of architecture, design, or engineering, Contractor shall be directly responsible to Owner for any portion of the Work so required. Contractor is an independent contractor, and not an agent or employee, of Owner. Nothing herein shall be construed to make Contractor the agent, servant, or employee of Owner or create any partnership, joint venture, or other association. For the avoidance of doubt, nothing herein shall modify Contractor’s obligation to Owner’s Lender as provided in any consent form required by Lender.

18.2 Waiver. The failure of a party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance. In the Contract for Construction, the singular shall include the plural, the plural the singular, and the use of any gender shall include all genders. Except as otherwise expressly provided, whenever the word “include”, “includes” or “including” is used in this Agreement or the General Conditions of the Contract for Construction, it shall be deemed to be followed by the words “without limitation.”

18.3 Interest. Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located

18.4 Execution. This Agreement may be signed in counterparts, each of which when executed and delivered shall be deemed to be an original and all of which, taken together, shall be deemed to be one and the same instrument. For purposes of execution and delivery of this Agreement, a document signed and transmitted by: (i) emailed PDF scan, or (ii) by electronic signature using DocuSign or other similar technology, shall be treated as an original document. The signature of either party on an emailed PDF scanned version of this Agreement or a copy of this Agreement signed by electronic signature using DocuSign or other similar technology shall be considered as an original signature and the document transmitted shall be considered to have the same binding legal effect as if it were originally signed. At the request of either party, any PDF scanned document or document signed using DocuSign or other similar technology shall be re-executed by both parties in original form. Neither party may raise the use of emailed PDF scan or DocuSign or other similar technology or the fact that any signature was transmitted by email as a defense to the enforcement of this Agreement.

Owner: Contractor:

The Collier Companies

c/o Gerard van der Laan,

President of Construction

220 N. Main Street

Gainesville, FL 32608

with a courtesy email to: with a courtesy email to:

[gerard.vanderlaan@colliercompanies.com](mailto:gerard.vanderlaan@colliercompanies.com)

With a copy of substantive notices to:

The Collier Companies

c/o Ryan Finnegan

220 N. Main Street

Gainesville, FL 32608

Notwithstanding the foregoing, approvals required to be in writing may be given by email correspondence provided a record of receipt is obtained and retained.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

OWNER: CONTRACTOR:

By: By:

Its: Its:

Date: Date:

Tax I.D. No.:

State License No.:

**REQUIRED STATUTORY NOTICES NEXT PAGE**

Required Statutory Notices:

**§ 558, Florida Statutes:**

**PURSUANT TO FLORIDA STATUTES CHAPTER 558.005(1) AND 558.005(6), OWNER AND CONTRACTOR HEREBY AGREE TO OPT OUT OF THE REQUIREMENTS OF CHAPTER 558, FLORIDA STATUTES, AND THEREFORE SAID CHAPTER DOES NOT APPLY TO ANY CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE PROJECT OR THE WORK.**

**§ 713.015, Florida Statutes:**

**ACCORDING TO FLORIDA’S CONSTRUCTION LIEN LAW (SECTIONS 713.001-713.37, FLORIDA STATUTES), THOSE WHO WORK ON YOUR PROPERTY OR PROVIDE MATERIALS AND SERVICES AND ARE NOT PAID IN FULL HAVE A RIGHT TO ENFORCE THEIR CLAIM FOR PAYMENT AGAINST YOUR PROPERTY. THIS CLAIM IS KNOWN AS A CONSTRUCTION LIEN. IF YOUR CONTRACTOR OR A SUBCONTRACTOR FAILS TO PAY SUBCONTRACTORS, SUB- SUBCONTRACTORS, OR MATERIAL SUPPLIERS, THOSE PEOPLE WHO ARE OWED MONEY MAY LOOK TO YOUR PROPERTY FOR PAYMENT, EVEN IF YOU HAVE ALREADY PAID YOUR CONTRACTOR IN FULL. IF YOU FAIL TO PAY YOUR CONTRACTOR, YOUR CONTRACTOR MAY ALSO HAVE A LIEN ON YOUR PROPERTY. THIS MEANS IF A LIEN IS FILED YOUR PROPERTY COULD BE SOLD AGAINST YOUR WILL TO PAY FOR LABOR, MATERIALS, OR OTHER SERVICES THAT YOUR CONTRACTOR OR A SUBCONTRACTOR MAY HAVE FAILED TO PAY. TO PROTECT YOURSELF, YOU SHOULD STIPULATE IN THIS AGREEMENT THAT BEFORE ANY PAYMENT IS MADE, YOUR CONTRACTOR IS REQUIRED TO PROVIDE YOU WITH A WRITTEN RELEASE OF LIEN FROM ANY PERSON OR COMPANY THAT HAS PROVIDED TO YOU A “NOTICE TO OWNER.” FLORIDA’S CONSTRUCTION LIEN LAW IS COMPLEX, AND IT IS RECOMMENDED THAT YOU CONSULT AN ATTORNEY.**