

P r o j e c t M a n u a l

Munjoy Commons Apartments

Renovation of Shailer and Emerson Buildings
Portland, Maine

August 28, 2009

BOOK 1 – BIDDING AND CONTRACT DOCUMENTS MANUAL

Issued: **Bidding and Permitting**



Development Team

Avesta Munjoy Commons, LP
c/o Avesta Housing
307 Cumberland Avenue
Portland, ME 04101

Owner _____

Phone: 207.553.7777 Fax: 207.553.7776

MaineHousing
353 Water Street
Augusta ME 04330-4633

Financer _____

Phone: 207.626.4600 Fax: 207.626.4679

CWS Architects
434 Cumberland Avenue
Portland ME 04101-2325

Architect _____

Phone: 207.774.4441 Fax: 207.774.4016

Landscape Architect

Mitchell & Associates
70 Center Street
Portland, ME 04101
Phone: 207.774.4016
Fax: 207.874.2460

Structural Engineer

Becker Structural Engineers
75 York Street
Portland, Maine 04101
Phone: 207.879.1838
Fax: 207.879.1822

Mechanical and Electrical Engineer

Bennett Engineering
P.O. Box 297
Freeport ME 04032
Phone: 207.865.9475
Fax: 207.865.1800

Allied/Cook Construction
PO Box 1396
Portland, ME 04104

Construction Manager _____

Phone: 207.772.2888 Fax: 207.885.5135

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ISSUED FOR: BIDDING AND PERMITTING

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Division 0
Bidding Documents

NOTICE OF SOLICITATION OF SUBCONTRACTOR BIDS

August 28, 2009

TO: BUILDING TRADE SUBCONTRACTORS
RE: MUNJOY COMMONS APARTMENTS

MaineHousing and **Avesta Munjoy Commons, L.P.** announce the commencement of the solicitation of subcontractor bids for the construction of the above referenced project and has authorized **Allied/Cook Construction** to act as Construction Manager (CM). **Munjoy Commons Apartments** is a 39 unit renovation of two existing buildings (Shailer & Emerson Buildings) in Portland, Maine. Subcontractors interested in submitting a bid shall contact the Allied/Cook Construction and refer to additional bidding instructions as may be provided by Allied/Cook Construction at the following address:

Allied/Cook Construction
PO Box 1396 Portland, ME 04104
Phone: (207) 772-2888, Fax: (207) 885-5135

Attention: George Liming

PROJECT SCOPE: The work for this project generally consists of the wholesale renovation of 39 units in two existing buildings (Shailer & Emerson Buildings) with a comprehensive work scope identified in the plans and specifications.

Please note the following:

- The Construction Manager is directed to solicit a minimum of three (3) or more bids for each trade and to prepare a summary of bids for review, selection and approval by Owner, Architect and vested interests.
- Subcontractors bids shall be based the Contract Documents dated **August 28, 2009** as may be amended prior to the bid date by addenda issued by the Architect.
- For subcontractors interested in visiting the site prior to bidding, a non-mandatory pre-bid site walk will be held at **Tuesday, September 15, 2009 at 10:00am** on the site.
- Subcontractor bids are due at the South Portland office of Allied/Cook Construction no later than **Tuesday, September 22, 2009, 2:00 pm**, prevailing time.
- This notice to solicit subcontractor bids by the Construction Manager is not to be construed as an offer which can be accepted by submitting a bid. Avesta Munjoy Commons, L.P. reserves the right to reject any and all bids, with or without cause, to negotiate with any person both before and after bids are submitted, to modify its specifications at any time, to accept any bid regardless of price and regardless of whether a bid complies with the terms of the bid request or instructions contained in this letter or in the instructions to bidders in the project manual, to disclose the bids and other information concerning bids to any person at any time to use bid information submitted to it for any purpose.
- In addition to the subcontractor bids, bids for alternates and unit prices may be required to be included with your bid. Refer to Basic Requirements (Section 01001) for additional information.
- The bidding process will be administrated under the AIA A133 2009 (Standard Form of Agreement between Owner and Construction Manager as Constructor). The Construction Manager and all subcontractors shall consider this in their bids. For the sake of clarity, all references to either the Construction Manager (CM) or Contractor shall be the same. Refer to the Contract Documents for additional information.
- Refer to Instructions to Construction Manager and Bidding Subcontractors for additional information.

INSTRUCTIONS TO CONSTRUCTION MANAGER (CM)
AND BIDDING SUB-CONTRACTORS

1. RECEIPT AND OPENINGS OF BIDS

- A. Subcontractor bids for construction of the **Munjoy Commons Apartments** will be received by:

Allied/Cook Construction
PO Box 1396 Portland, ME 04104
Phone: (207) 772-2888, Fax: (207) 885-5135

Attention: George Liming

until **Tuesday, September 22, 2009**, 2:00 pm, prevailing time at which time they will be reviewed and compiled by the construction manager.

2. PREPARATION OF CONSTRUCTION MANAGER AND SUBCONTRACTOR PROPOSALS

- A. Subcontractors interested in submitting a bid shall contact Allied/Cook Construction (the Construction Manager) and refer to additional bidding instructions provided by Allied/Cook Construction.
- B. In reviewing bids, the Construction Manager has been authorized to secure subcontractor information that may include, but not limited to, such items as previous relative experience, work load and availability, crew size, references, stipulated insurances, and/or financial capacity to complete the work, etc. This information will be reviewed by the CM, Owner, Architect and other vested interests to qualify submitted bids. The owner reserves the right to accept or reject any or all bids. The owner reserves the right to accept or reject any or all bids, regardless of price and regardless of whether a bid complies with the terms of the bid request or instructions. The notice of solicitation for bids shall not be construed as an offer that can be accepted by submission of a bid.
- C. Upon receipt of subcontractor bids, the Construction Manager will provide to the Owner, Architect and other vested interests a summary of subcontractor bids for review and, following said review and selection, enter into an AIA A133 - 2009 (Standard Form of Agreement between Owner and Construction Manager as Constructor) with **Avesta Munjoy Commons, LP**. Selected subcontractors will be bound to the terms of Construction Documents via the Construction Manager's standard subcontractor agreement (available from the CM upon request).

3. BID DOCUMENTS

- A. Full and complete sets of drawings and specifications, in a combination of paper and/or electronic (PDF) format will be available from and distributed by Allied/Cook Construction. A log of plan holders will be maintained by Allied/Cook Construction, upon distribution of all plans and specifications. Bidders will be notified by the Construction Manager of all future communications, including addenda, which will be distributed by Allied/Cook Construction. It is the subcontractors' responsibility to coordinate inclusion on the plan holder log.

4. ADDENDA AND INTERPRETATION

- A. No interpretation of the meaning of the plans, specifications, or other contract documents will be made orally to any bidder. Each request for information or interpretation is suggested to be in writing on an attached RFI Form and sent to Allied/Cook Construction, who will in turn

forward appropriate RFIs to the Architect for interpretation. Responses will be provided by the Architect to the CM in the form of either a) an RFI response if for clarification only, or b) an Addendum if the response results in a change of scope. Requests should be made in writing, via FAX or EMAIL to:

Allied/Cook Construction
PO Box 1396 Portland, ME 04104
Phone: (207) 772-2888, Fax: (207) 885-5135

Attention: George Liming
Email: gliming@alliedcook.com

and to be given consideration must be received at least three (3) business days prior to the date fixed for the opening bids. Any and all responses that change the scope of work will be in the form of written addenda to the plans and specifications prepared by the Architect which, if issued, will be made available to all registered bidders on the plan holder log by means of a NOTICE by the Construction Manager no later than two (2) days prior to the date fixed for submission of bids. Failure of any bidder to receive any such addenda or interpretation shall not relieve any bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the contract documents. It is the responsibility of the bidder to verify extent of all Addenda from the Construction Manager.

This instructions or the notice to solicit subcontractor bids by the Construction Manager is not to be construed as an offer which can be accepted by submitting a bid. Avesta Munjoy Commons, L.P. reserves the right to reject any and all bids, with or without cause, to negotiate with any person both before and after bids are submitted, to modify its specifications at any time, to accept any bid regardless of price and regardless of whether a bid complies with the terms of the bid request or instructions contained in this letter or in the instructions to bidders in the project manual, to disclose the bids and other information concerning bids to any person at any time to use bid information submitted to it for any purpose.

5. CONSTRUCTION BONDS

- A. Construction Manager: 100% Performance Bond and Payment Bond

6. DAYS AND HOURS OF WORK

- A. The CM shall coordinate with the Owner and the local municipality regarding the hours of work and shall make such arrangements with his employees as not to conflict with the Wage and House Laws of the State and the United States of America. Be it further understood that, if in the opinion of the Owner and Architect, the work is not progressing fast enough to insure completion by the date set, the Contractor will be required to work such additional shifts and overtime as, in the opinion of the Owner and the Architect, is necessary to complete the work on the required date without extra cost to the Owner.

7. OBLIGATION OF BIDDERS

- A. At the time of submitting subcontractor bids, each bidder will be presumed to have inspected the site and to have read and to be thoroughly familiar with the Plans, Specifications and Contract Documents (including all addenda). The failure or omission of any bidder to receive or examine any form, instrument, or documents shall in no way relieve any bidder from any obligation in respect to his bid. The bidder also is assumed to have reviewed the various installation requirements.

8. TIME OF COMPLETION

- A. The Construction Manager shall prosecute the work continuously until completion. The rate of progress shall be at least that shown on the Schedule of Progress which shall not be less than that indicated below.
- B. Schedule for Construction: To be provided to bidding subcontractors by the Construction Manager.

9. LIQUIDATED DAMAGES

- A. **Avesta Munjoy Housing, LP** anticipates a construction start date between **October 1, 2009** and **November 23, 2009** and a substantial completion date no later than (16) sixteen months (two (2) eight-month constructions phases, one (1) phase for each building) following issuance of a notice to proceed. Liquidated Damages of \$750 per day will be charged if construction is not complete by the contractually stipulated completion date. Winter conditions should be assumed based on this construction schedule and bidding subcontractors should coordinate this schedule with the Construction Manager.

10. SPECIAL CONSIDERATIONS

- B. **Davis Bacon Wage Reporting** – The construction of this project **WILL** be governed by federal Davis-Bacon wage determinations.
- D. **Avesta Munjoy Housing, LP** is **NOT** a tax exempt organization. All bids shall include applicable sales tax.
- E. **Builders' Risk Insurance** – The Construction Manager shall include the cost of Builders' Risk insurance in the Guaranteed Maximum Price and itemize this cost on the Schedule of Values for consideration of value by the owner. The owner reserves the right to purchase Builder's Risk insurance in place of that carried by the general contractor and reduce the contract sum accordingly.
- F. **Selective Demolition** – The scope of work includes selective demolition (See Specification Division 02 41 16) of the existing building components, removal of existing structural elements as required and termination of existing utilities servicing the structure as may be required by the municipality and/or utility company. The existing structures will be available for inspection during the pre-bid site walk. It is the responsibility of bidding subcontractors to review existing conditions prior to bidding. Bidding subcontractor shall provide permanent utility terminations as may be required by the municipality and the requirements of the governing utility.
- G. **Requests for Substitution** - The owner will NOT entertain REQUESTS FOR SUBSTITUTIONS in the initial bid process. Should additional cost savings and value engineering be required after bids are received, the owner may solicit Requests for Substitutions with the apparent low bidder with the intent of arriving at an acceptable contract sum and execution of a construction contract.
- I. **Geotechnical Report** – Refer to Division 0, Section 00 30 00 INFORMATION AVAILABLE TO BIDDERS for a report of subsurface investigations and recommendations. The Construction Manager and bidding sub-contractors shall provide systems, materials and scope as recommended in said report. Where deviations exist that require clarification, direct questions to the Construction Manager who will forward questions requiring interpretation to the Architect.

- J. **Avesta Munjoy Housing, LP** intends to enter into a construction management contract with the construction manager. The Construction Manager will be required to submit monthly itemized Transaction Reports, in lieu of submitting monthly itemized paper invoices, so as to support Construction Manager's monthly requisitions with the understanding that all monthly invoices be maintained by the Construction Manager and be made available in whole or in part upon request. For each of the two (2) phases of the project, the construction contract will include a retainage equal to 10% of the construction contract cost and may be reduced at the owner's discretion when the amount of retainage equals 5% of the phase's contract value, including any subsequent change orders. The retainage will be reduced to 0% upon the completion of each phase as determined by the owner and architect.

...END OF SECTION

Bidding Sub-Contractor Request for Information Form

Munjoy Commons Apartments

Renovation of Shailer and Emerson Buildings, Portland, Maine

Each request for information or interpretation is suggested to be in writing on an attached RFI Form and sent to Allied/Cook Construction, who will in turn forward appropriate FRIs to the Architect for interpretation. Responses will be provided by the Architect to the CM in the form of either a) an RFI response if for clarification only, or b) an Addendum if the response results in a change of scope. Requests should be made in writing, via FAX or EMAIL to:

Allied/Cook Construction
PO Box 1396 Portland, ME 04104
Phone: (207) 772-2888

Attention: George Liming
Email: gliming@alliedcook.com
Fax: (207) 885-5135

Organization Requesting Information: _____ (Name)

_____ (Fax/Email)

Topic: _____ **Date:** _____

Request for Information:

Response:

Responses that change the Scope of Work will be via Addenda as noted in the Instructions to CM and Bidding Subcontractors.



AIA® Document A312™ – 1984

Performance Bond

CONTRACTOR (*Name and Address*):

SURETY (*Name and Principal Place of Business*):

OWNER (*Name and Address*):

CONSTRUCTION CONTRACT

Date:

Amount:

Description (*Name and Location*):

BOND

Date (*Not earlier than Construction Contract Date*):

Amount:

Modifications to this Bond: None See Last Page

CONTRACTOR AS PRINCIPAL

Company: _____ (*Corporate Seal*)

SURETY

Company: _____ (*Corporate Seal*)

Signature:
Name and
Title:

(*Any additional signatures appear on the last page*)

Signature:
Name and
Title:

(*FOR INFORMATION ONLY - Name, Address and Telephone*)

AGENT or BROKER:

OWNER'S REPRESENTATIVE

(*Architect, Engineer or other party*):

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

Any singular reference to Contract, Surety, Owner or other party shall be considered plural where applicable.

§ 1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Section 3.1.

§ 3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

§ 3.1 The Owner has notified the Contractor and the Surety at its address described in Section 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

§ 3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Section 3.1; and

§ 3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

§ 4 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

§ 4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

§ 4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

§ 4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

§ 5 If the Surety does not proceed as provided in Section 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Section 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

§ 6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

§ 6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 4; and

§ 6.3 Liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

§ 8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

§ 11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 12 DEFINITIONS

§ 12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

§ 12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

§ 12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

§ 13 MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

SURETY

Company: (Corporate Seal)

Signature: _____
Name and Title:
Address:

Signature: _____
Name and Title:
Address:

Payment Bond

CONTRACTOR (Name and Address):

SURETY (Name and Principal Place of Business):

OWNER (Name and Address):

CONSTRUCTION CONTRACT

Date:

Amount:

Description (Name and Location):

BOND

Date (Not earlier than Construction Contract Date):

Amount:

Modifications to this Bond:

None

See Last Page

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

SURETY

Company: (Corporate Seal)

Signature: _____

Name and Title:

(Any additional signatures appear on the last page)

Signature: _____

Name and Title:

(FOR INFORMATION ONLY - Name, Address and Telephone)

AGENT or BROKER:

OWNER'S REPRESENTATIVE (Architect, Engineer or other party):

§ 1 The Contractor and the Surety, jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 With respect to the Owner, this obligation shall be null and void if the Contractor:

§ 2.1 Promptly makes payment, directly or indirectly, for all sums due Claimants, and

§ 2.2 Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Section 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

§ 3 With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

§ 4 The Surety shall have no obligation to Claimants under this Bond until:

§ 4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Section 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

§ 4.2 Claimants who do not have a direct contract with the Contractor:

- .1** Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and
- .2** Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and
- .3** Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Section 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

§ 5 If a notice required by Section 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

§ 6 When the Claimant has satisfied the conditions of Section 4, the Surety shall promptly and at the Surety's expense take the following actions:

§ 6.1 Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

§ 6.2 Pay or arrange for payment of any undisputed amounts.

§ 7 The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 8 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 9 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Section 4.1 or Section 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 15 DEFINITIONS

§ 15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

§ 15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

§ 16 MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____ (Corporate Seal)

SURETY

Company: _____ (Corporate Seal)

Signature: _____
Name and Title: _____
Address: _____

Signature: _____
Name and Title: _____
Address: _____



AIA® Document A701™ – 1997

Instructions to Bidders

for the following PROJECT:
(Name and location or address):

THE OWNER:
(Name and address):

THE ARCHITECT:
(Name and address):

TABLE OF ARTICLES

- 1 DEFINITIONS
- 2 BIDDER'S REPRESENTATIONS
- 3 BIDDING DOCUMENTS
- 4 BIDDING PROCEDURES
- 5 CONSIDERATION OF BIDS
- 6 POST-BID INFORMATION
- 7 PERFORMANCE BOND AND PAYMENT BOND
- 8 FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

ARTICLE 1 DEFINITIONS

§ 1.1 Bidding Documents include the Bidding Requirements and the proposed Contract Documents. The Bidding Requirements consist of the Advertisement or Invitation to Bid, Instructions to Bidders, Supplementary Instructions to Bidders, the bid form, and other sample bidding and contract forms. The proposed Contract Documents consist of the form of Agreement between the Owner and Contractor, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications and all Addenda issued prior to execution of the Contract.

§ 1.2 Definitions set forth in the General Conditions of the Contract for Construction, AIA Document A201, or in other Contract Documents are applicable to the Bidding Documents.

§ 1.3 Addenda are written or graphic instruments issued by the Architect prior to the execution of the Contract which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections.

§ 1.4 A Bid is a complete and properly executed proposal to do the Work for the sums stipulated therein, submitted in accordance with the Bidding Documents.

§ 1.5 The Base Bid is the sum stated in the Bid for which the Bidder offers to perform the Work described in the Bidding Documents as the base, to which Work may be added or from which Work may be deleted for sums stated in Alternate Bids.

§ 1.6 An Alternate Bid (or Alternate) is an amount stated in the Bid to be added to or deducted from the amount of the Base Bid if the corresponding change in the Work, as described in the Bidding Documents, is accepted.

§ 1.7 A Unit Price is an amount stated in the Bid as a price per unit of measurement for materials, equipment or services or a portion of the Work as described in the Bidding Documents.

§ 1.8 A Bidder is a person or entity who submits a Bid and who meets the requirements set forth in the Bidding Documents.

§ 1.9 A Sub-bidder is a person or entity who submits a bid to a Bidder for materials, equipment or labor for a portion of the Work.

ARTICLE 2 BIDDER'S REPRESENTATIONS

§ 2.1 The Bidder by making a Bid represents that:

§ 2.1.1 The Bidder has read and understands the Bidding Documents or Contract Documents, to the extent that such documentation relates to the Work for which the Bid is submitted, and for other portions of the Project, if any, being bid concurrently or presently under construction.

§ 2.1.2 The Bid is made in compliance with the Bidding Documents.

§ 2.1.3 The Bidder has visited the site, become familiar with local conditions under which the Work is to be performed and has correlated the Bidder's personal observations with the requirements of the proposed Contract Documents.

§ 2.1.4 The Bid is based upon the materials, equipment and systems required by the Bidding Documents without exception.

ARTICLE 3 BIDDING DOCUMENTS

§ 3.1 COPIES

§ 3.1.1 Bidders may obtain complete sets of the Bidding Documents from the issuing office designated in the Advertisement or Invitation to Bid in the number and for the deposit sum, if any, stated therein. The deposit will be refunded to Bidders who submit a bona fide Bid and return the Bidding Documents in good condition within ten days after receipt of Bids. The cost of replacement of missing or damaged documents will be deducted from the deposit. A Bidder receiving a Contract award may retain the Bidding Documents and the Bidder's deposit will be refunded.

§ 3.1.2 Bidding Documents will not be issued directly to Sub-bidders unless specifically offered in the Advertisement or Invitation to Bid, or in supplementary instructions to bidders.

§ 3.1.3 Bidders shall use complete sets of Bidding Documents in preparing Bids; neither the Owner nor Architect assumes responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.

§ 3.1.4 The Owner and Architect may make copies of the Bidding Documents available on the above terms for the purpose of obtaining Bids on the Work. No license or grant of use is conferred by issuance of copies of the Bidding Documents.

§ 3.2 INTERPRETATION OR CORRECTION OF BIDDING DOCUMENTS

§ 3.2.1 The Bidder shall carefully study and compare the Bidding Documents with each other, and with other work being bid concurrently or presently under construction to the extent that it relates to the Work for which the Bid is submitted, shall examine the site and local conditions, and shall at once report to the Architect errors, inconsistencies or ambiguities discovered.

§ 3.2.2 Bidders and Sub-bidders requiring clarification or interpretation of the Bidding Documents shall make a written request which shall reach the Architect at least seven days prior to the date for receipt of Bids.

§ 3.2.3 Interpretations, corrections and changes of the Bidding Documents will be made by Addendum. Interpretations, corrections and changes of the Bidding Documents made in any other manner will not be binding, and Bidders shall not rely upon them.

§ 3.3 SUBSTITUTIONS

§ 3.3.1 The materials, products and equipment described in the Bidding Documents establish a standard of required function, dimension, appearance and quality to be met by any proposed substitution.

§ 3.3.2 No substitution will be considered prior to receipt of Bids unless written request for approval has been received by the Architect at least ten days prior to the date for receipt of Bids. Such requests shall include the name of the material or equipment for which it is to be substituted and a complete description of the proposed substitution including drawings, performance and test data, and other information necessary for an evaluation. A statement setting forth changes in other materials, equipment or other portions of the Work, including changes in the work of other contracts that incorporation of the proposed substitution would require, shall be included. The burden of proof of the merit of the proposed substitution is upon the proposer. The Architect's decision of approval or disapproval of a proposed substitution shall be final.

§ 3.3.3 If the Architect approves a proposed substitution prior to receipt of Bids, such approval will be set forth in an Addendum. Bidders shall not rely upon approvals made in any other manner.

§ 3.3.4 No substitutions will be considered after the Contract award unless specifically provided for in the Contract Documents.

§ 3.4 ADDENDA

§ 3.4.1 Addenda will be transmitted to all who are known by the issuing office to have received a complete set of Bidding Documents.

§ 3.4.2 Copies of Addenda will be made available for inspection wherever Bidding Documents are on file for that purpose.

§ 3.4.3 Addenda will be issued no later than four days prior to the date for receipt of Bids except an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.

§ 3.4.4 Each Bidder shall ascertain prior to submitting a Bid that the Bidder has received all Addenda issued, and the Bidder shall acknowledge their receipt in the Bid.

ARTICLE 4 BIDDING PROCEDURES

§ 4.1 PREPARATION OF BIDS

§ 4.1.1 Bids shall be submitted on the forms included with the Bidding Documents.

§ 4.1.2 All blanks on the bid form shall be legibly executed in a non-erasable medium.

§ 4.1.3 Sums shall be expressed in both words and figures. In case of discrepancy, the amount written in words shall govern.

§ 4.1.4 Interlineations, alterations and erasures must be initialed by the signer of the Bid.

§ 4.1.5 All requested Alternates shall be bid. If no change in the Base Bid is required, enter "No Change."

§ 4.1.6 Where two or more Bids for designated portions of the Work have been requested, the Bidder may, without forfeiture of the bid security, state the Bidder's refusal to accept award of less than the combination of Bids stipulated by the Bidder. The Bidder shall make no additional stipulations on the bid form nor qualify the Bid in any other manner.

§ 4.1.7 Each copy of the Bid shall state the legal name of the Bidder and the nature of legal form of the Bidder. The Bidder shall provide evidence of legal authority to perform within the jurisdiction of the Work. Each copy shall be signed by the person or persons legally authorized to bind the Bidder to a contract. A Bid by a corporation shall further give the state of incorporation and have the corporate seal affixed. A Bid submitted by an agent shall have a current power of attorney attached certifying the agent's authority to bind the Bidder.

§ 4.2 BID SECURITY

§ 4.2.1 Each Bid shall be accompanied by a bid security in the form and amount required if so stipulated in the Instructions to Bidders. The Bidder pledges to enter into a Contract with the Owner on the terms stated in the Bid and will, if required, furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Should the Bidder refuse to enter into such Contract or fail to furnish such bonds if required, the amount of the bid security shall be forfeited to the Owner as liquidated damages, not as a penalty. The amount of the bid security shall not be forfeited to the Owner in the event the Owner fails to comply with Section 6.2.

§ 4.2.2 If a surety bond is required, it shall be written on AIA Document A310, Bid Bond, unless otherwise provided in the Bidding Documents, and the attorney-in-fact who executes the bond on behalf of the surety shall affix to the bond a certified and current copy of the power of attorney.

§ 4.2.3 The Owner will have the right to retain the bid security of Bidders to whom an award is being considered until either (a) the Contract has been executed and bonds, if required, have been furnished, or (b) the specified time has elapsed so that Bids may be withdrawn or (c) all Bids have been rejected.

§ 4.3 SUBMISSION OF BIDS

§ 4.3.1 All copies of the Bid, the bid security, if any, and any other documents required to be submitted with the Bid shall be enclosed in a sealed opaque envelope. The envelope shall be addressed to the party receiving the Bids and shall be identified with the Project name, the Bidder's name and address and, if applicable, the designated portion of the Work for which the Bid is submitted. If the Bid is sent by mail, the sealed envelope shall be enclosed in a separate mailing envelope with the notation "SEALED BID ENCLOSED" on the face thereof.

§ 4.3.2 Bids shall be deposited at the designated location prior to the time and date for receipt of Bids. Bids received after the time and date for receipt of Bids will be returned unopened.

§ 4.3.3 The Bidder shall assume full responsibility for timely delivery at the location designated for receipt of Bids.

§ 4.3.4 Oral, telephonic, telegraphic, facsimile or other electronically transmitted bids will not be considered.

§ 4.4 MODIFICATION OR WITHDRAWAL OF BID

§ 4.4.1 A Bid may not be modified, withdrawn or canceled by the Bidder during the stipulated time period following the time and date designated for the receipt of Bids, and each Bidder so agrees in submitting a Bid.

§ 4.4.2 Prior to the time and date designated for receipt of Bids, a Bid submitted may be modified or withdrawn by notice to the party receiving Bids at the place designated for receipt of Bids. Such notice shall be in writing over the signature of the Bidder. Written confirmation over the signature of the Bidder shall be received, and date- and time-stamped by the receiving party on or before the date and time set for receipt of Bids. A change shall be so worded as not to reveal the amount of the original Bid.

§ 4.4.3 Withdrawn Bids may be resubmitted up to the date and time designated for the receipt of Bids provided that they are then fully in conformance with these Instructions to Bidders.

§ 4.4.4 Bid security, if required, shall be in an amount sufficient for the Bid as resubmitted.

ARTICLE 5 CONSIDERATION OF BIDS

§ 5.1 OPENING OF BIDS

At the discretion of the Owner, if stipulated in the Advertisement or Invitation to Bid, the properly identified Bids received on time will be publicly opened and will be read aloud. An abstract of the Bids may be made available to Bidders.

§ 5.2 REJECTION OF BIDS

The Owner shall have the right to reject any or all Bids. A Bid not accompanied by a required bid security or by other data required by the Bidding Documents, or a Bid which is in any way incomplete or irregular is subject to rejection.

§ 5.3 ACCEPTANCE OF BID (AWARD)

§ 5.3.1 It is the intent of the Owner to award a Contract to the lowest qualified Bidder provided the Bid has been submitted in accordance with the requirements of the Bidding Documents and does not exceed the funds available. The Owner shall have the right to waive informalities and irregularities in a Bid received and to accept the Bid which, in the Owner's judgment, is in the Owner's own best interests.

§ 5.3.2 The Owner shall have the right to accept Alternates in any order or combination, unless otherwise specifically provided in the Bidding Documents, and to determine the low Bidder on the basis of the sum of the Base Bid and Alternates accepted.

ARTICLE 6 POST-BID INFORMATION

§ 6.1 CONTRACTOR'S QUALIFICATION STATEMENT

Bidders to whom award of a Contract is under consideration shall submit to the Architect, upon request, a properly executed AIA Document A305, Contractor's Qualification Statement, unless such a Statement has been previously required and submitted as a prerequisite to the issuance of Bidding Documents.

§ 6.2 OWNER'S FINANCIAL CAPABILITY

The Owner shall, at the request of the Bidder to whom award of a Contract is under consideration and no later than seven days prior to the expiration of the time for withdrawal of Bids, furnish to the Bidder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Unless such reasonable evidence is furnished, the Bidder will not be required to execute the Agreement between the Owner and Contractor.

§ 6.3 SUBMITTALS

§ 6.3.1 The Bidder shall, as soon as practicable or as stipulated in the Bidding Documents, after notification of selection for the award of a Contract, furnish to the Owner through the Architect in writing:

- .1 a designation of the Work to be performed with the Bidder's own forces;
- .2 names of the manufacturers, products, and the suppliers of principal items or systems of materials and equipment proposed for the Work; and
- .3 names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for the principal portions of the Work.

§ 6.3.2 The Bidder will be required to establish to the satisfaction of the Architect and Owner the reliability and responsibility of the persons or entities proposed to furnish and perform the Work described in the Bidding Documents.

§ 6.3.3 Prior to the execution of the Contract, the Architect will notify the Bidder in writing if either the Owner or Architect, after due investigation, has reasonable objection to a person or entity proposed by the Bidder. If the Owner or Architect has reasonable objection to a proposed person or entity, the Bidder may, at the Bidder's option, (1) withdraw the Bid or (2) submit an acceptable substitute person or entity with an adjustment in the Base Bid or Alternate Bid to cover the difference in cost occasioned by such substitution. The Owner may accept the adjusted bid price or disqualify the Bidder. In the event of either withdrawal or disqualification, bid security will not be forfeited.

§ 6.3.4 Persons and entities proposed by the Bidder and to whom the Owner and Architect have made no reasonable objection must be used on the Work for which they were proposed and shall not be changed except with the written consent of the Owner and Architect.

ARTICLE 7 PERFORMANCE BOND AND PAYMENT BOND

§ 7.1 BOND REQUIREMENTS

§ 7.1.1 If stipulated in the Bidding Documents, the Bidder shall furnish bonds covering the faithful performance of the Contract and payment of all obligations arising thereunder. Bonds may be secured through the Bidder's usual sources.

§ 7.1.2 If the furnishing of such bonds is stipulated in the Bidding Documents, the cost shall be included in the Bid. If the furnishing of such bonds is required after receipt of bids and before execution of the Contract, the cost of such bonds shall be added to the Bid in determining the Contract Sum.

§ 7.1.3 If the Owner requires that bonds be secured from other than the Bidder's usual sources, changes in cost will be adjusted as provided in the Contract Documents.

§ 7.2 TIME OF DELIVERY AND FORM OF BONDS

§ 7.2.1 The Bidder shall deliver the required bonds to the Owner not later than three days following the date of execution of the Contract. If the Work is to be commenced prior thereto in response to a letter of intent, the Bidder shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished and delivered in accordance with this Section 7.2.1.

§ 7.2.2 Unless otherwise provided, the bonds shall be written on AIA Document A312, Performance Bond and Payment Bond. Both bonds shall be written in the amount of the Contract Sum.

§ 7.2.3 The bonds shall be dated on or after the date of the Contract.

§ 7.2.4 The Bidder shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

ARTICLE 8 FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR

Unless otherwise required in the Bidding Documents, the Agreement for the Work will be written on AIA Document A101, Standard Form of Agreement Between Owner and Contractor Where the Basis of Payment Is a Stipulated Sum.

ALLIED/COOK CONSTRUCTION

Managers • Builders
Building Excellence Since 1958

INSTRUCTIONS TO BIDDERS

MUNJOY COMMONS

Renovations of 39 Apartment Units

SHAILER Building on North Street
EMERSON Building on Emerson Street
Portland, Maine

This project consists of the complete renovation of two existing 4-story buildings on Munjoy Hill in Portland. The buildings are both former schools that were converted into apartments in the 1980's. The project will be conducted in 2 stages with Shailer being Phase 1 and Emerson being Phase 2. Phase 1 of the project will begin in the fall of 2009 and will take approximately 8 months. Phase 2 will commence immediately upon the completion of Phase 1. The buildings will be vacant while the work is being performed.

The hope is to award both phases to the same subcontractor in each trade. However we reserve the right to select one subcontractor for Phase 1 and another subcontractor for Phase 2. In either case the Owner will make no payments for Phase 2 stored material or performed work until the start of Phase 2.

At this time we are asking for firm proposals from subcontractors and suppliers in all trades. The work is described in plans and specifications dated August 28, 2009 by CWS Architects and their various consultants.

THIS PROJECT IS NOT TAX EXEMPT. Please include Maine State sales tax in your proposal. Davis Bacon wage rates and Maine Housing On-the-Job Training guidelines are required on this project.

A CD containing the bid documents will be available for pick up at Allied/Cook's office in Scarborough after **12:00 NOON on Monday, August 31, 2009.**
Contact Erin Ball at (207) 772-2888 or eball@alliedcook.com.

AN INSPECTION OF THE EXISTING BUILDINGS IS SCHEDULED FOR **TUESDAY, SEPTEMBER 15 AT 10:00 AM** STARTING AT THE SHAILER BUILDING ON NORTH STREET. From there we will proceed to Emerson Street.

BID DATE: TUESDAY; SEPTEMBER 22, 2009 by 2:00 PM

Send your proposal to George Liming by FAX [885-5135](tel:885-5135) or email gliming@alliedcook.com
Thank you for your interest in this project.

OFFICE
8 US Route 1
Scarborough, ME 04074



207-772-2888 • FAX 207-885-5135
www.alliedcookconstruction.com



MAILING
P.O. Box 1396
Portland, ME 04104

BID FORM

To: Allied/Cook Construction Co.
P.O. Box 1396
Portland, ME 04104
Attention: George L. Liming

For: **Specification section(s):** _____

Project: **MUNJOY COMMONS**
SHAILER and EMERSON Buildings
North Street and Emerson Street
Portland, Maine

Architect: CWS Architects
Portland, Maine

Bids are due on **TUESDAY, SEPTEMBER 22, 2009 by 2:00PM** at the office of Allied/Cook Construction, attention George Liming. Bids may be faxed (207-885-5135) or e-mailed to gliming@alliedcook.com.

The undersigned, as bidder, declares that he has carefully examined the scope of work, specifications and drawings and agrees that if his proposal is accepted he will enter into a contract with Allied/Cook Construction to provide the necessary equipment, materials and labor required to complete the work in the manner set forth in the documents and within the schedule allowed for the lump sum of:

SHAILER (only)

(\$ _____)

EMERSON (only)

(\$ _____)

COMBINED (both buildings)

(\$ _____)

BIDDER: _____

Performance & Payment Bond (if required)

Shailer ADD \$ _____
Emerson ADD \$ _____

Unit Price - Refinish Hardwood Floors \$ _____ per SF

Alternate No. 1 Delete Solar Pre-heat System

Shailer DEDUCT \$ _____
Emerson DEDUCT \$ _____

Alternate No 2 Delete DDC System

Shailer DEDUCT \$ _____
Emerson DEDUCT \$ _____

Alternate No. 3 Replace Vinyl Plank with Carpet

Shailer DEDUCT \$ _____
Emerson DEDUCT \$ _____

Alternate No. 4 Add Blown-in Cellulose Insulation

Shailer ADD \$ _____
Emerson ADD \$ _____

With this bid the bidder acknowledges receipt of the following addenda:

No. _____ Dated: _____

No. _____ Dated: _____

No. _____ Dated: _____

No. _____ Dated: _____

BIDDER: _____

Awarding the Contract:

The trade contractor agrees to hold his bid price for a period of SIXTY (60) days after the date of receipt of bids by the Construction Manager.

The Construction Manager reserves the right to reject any and all bids in the event that the bids are over budget or a bid does not meet the requirements of this proposal or for whatever reason the Owner does not go forward with the project.

Bid submitted by:

Company name: _____

Address: _____

Telephone: _____ Fax: _____

Signed: _____

Print name: _____

Title: _____

Date: _____

Note: If the bidder is a corporation, indicate State of incorporation under signature and affix corporate seal. If partnership, give full names and residence of all partners. If an individual, give resident address if different from business address.

Part I
Division 0

Contract Documents



AIA® Document A133™ – 2009

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

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

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

and the Construction Manager:
(Name, legal status and address)

for the following Project:
(Name and address or location)

Munjoy Commons

The Architect:
(Name, legal status and address)

The Owner's Designated Representative:
(Name, address and other information)

The Construction Manager's Designated Representative:
(Name, address and other information)

ADDITIONS AND DELETIONS:

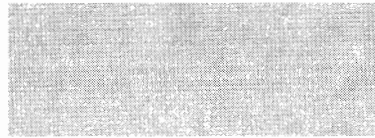
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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

The Architect's Designated Representative:
(Name, address and other information)

The Owner and Construction Manager agree as follows.



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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

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

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and

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Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggest alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the

establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

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

§ 2.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

1. A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
2. A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
3. A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
4. The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
5. A date by which the Owner must accept the Guaranteed Maximum Price.

§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following

acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems sustainability and site requirements.

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.4.1 The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B103™-2007, Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

Init.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

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

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

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

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed () of the standard rate paid at the place of the Project.

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

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.
(Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The

Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

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

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

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

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

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

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

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

§ 6.3 Subcontract Costs

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

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

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

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

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

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

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

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

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

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

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

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

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

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

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

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

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

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

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

§ 6.7 Other Costs and Emergencies

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

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201-2007.

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

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

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

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

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

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

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

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

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than () days after the Architect receives the Application for Payment. *(Federal, state or local laws may require payment within a certain period of time.)*

Init.

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

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

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

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of (). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of () from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

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

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made

exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

§ 7.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

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

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007.

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

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

Init.

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager’s Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- Arbitration pursuant to Section 15.4 of AIA Document A201–2007
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

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

§ 11.5 Other provisions:

ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .5 Other documents:
(List other documents, if any, forming part of the Agreement.)

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

OWNER *(Signature)*

CONSTRUCTION MANAGER *(Signature)*

(Printed name and title)

(Printed name and title)



AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Munjoy Commons

THE OWNER:

(Name and address)

THE ARCHITECT:

(Name and address)

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or

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the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

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§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other

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facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume

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the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the 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.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

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§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be

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required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

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§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may

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be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that

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the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

.4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

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ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

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§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

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- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect,

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stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the

Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction

of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or

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otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the

Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

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§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may 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.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;

- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

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§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. 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 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 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.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an

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additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.



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User Notes:

Additions and Deletions Report for AIA® Document A201™ – 2007

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:20:15 on 06/17/2009.

PAGE 1

Munjoy Commons

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Ben Walter, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:20:15 on 06/17/2009 under Order No. 1000362789_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007 - General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

SUPPLEMENTAL GENERAL CONDITIONS

GENERAL CONDITIONS:

- A. The "General Conditions of the Contract for Construction". Document A-201, Sixteenth Edition, dated 2007, as issued by the American Institute of Architects, 1735 New York Avenue, N.W., Washington, D.C. 20006; form the General Conditions for this Contract whether bound herein or not. The term "Contractor" as used herein shall have the same meaning as the term "Construction Manager" as used in the Standard Form of Agreement Between Owner and Construction Manager, AIA Document A-121 CMc, between the parties hereto.
- B. The provisions of the foregoing document shall apply to the work of this Contract, except as modified or supplemented hereinafter in the Supplemental Conditions. Where General Conditions Paragraphs or Subparagraphs are modified in part by the Supplemental Conditions, the portions of same which have not been modified shall remain in effect. In the event of discrepancy between the General and Supplemental Conditions, the Supplemental Conditions shall prevail.

ARTICLE 1 - GENERAL PROVISIONS:

- A. Paragraph 1.1 Basic Definitions: Add the following to Subparagraph 1.1.9:
 - .1 In the event of conflict or discrepancies among the Contract Documents, the Documents shall be construed according to the following priorities.

a.	Highest Priority	Modifications
b.	Third Priority	Agreement
c.	Fourth Priority	Addenda - later date to take precedence
d.	Sixth Priority	Supplemental General Conditions
e.	Seventh Priority	General Conditions
f.	Eighth Priority	Special requirements of financing agency published in the Project Manual
g.	Ninth Priority	Division 1 of the Specifications
h.	Tenth Priority	Drawings and Div. 2-16 of the Specifications
 - .2 In the event of conflicts or discrepancies between the Drawings and Divisions 2-16 of the Specifications or within either document not clarified by Addendum, the Architect will determine which takes precedence in accordance with Section 4.2.11.
 - .3 The Contract Documents executed in accordance with Section 1.5.1 shall prevail in case of an inconsistency with subsequent versions made through manipulatable electronic operations involving computers.
- B. Paragraph 1.1 Basic Definitions: Add the following to Subparagraph 1.1.10:

Except for the special agreements in Paragraph 3.18, nothing contained in the Contract Documents shall be construed to create any contractual relationship of any kind between the Architect and the Contractor.

ARTICLE 2 - OWNER - No modifications.

ARTICLE 3 - CONTRACTOR:

Munjoy Commons Apartments
Renovation of Shailer and Emerson Schools

- A. Change Subparagraph number 3.18.2 to read "3.18.3".
- B. Add the following Subparagraph:
- 3.18.2 Contractor shall indemnify, defend and hold harmless the Owner from all loss, costs and damages incurred by the Owner as a result of the filing of any mechanics liens relating to the Work, except to the extent such lien relates solely to Owner's failure to make a timely progress payment under the Agreement.
- C. Add the following Subparagraphs:
- 3.2.5 The Contractor shall give the Architect timely notice of any additional design drawings, specifications, or instructions required to define the work in greater detail, in order to permit the proper progress of the work.
- 3.2.6 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for the Architect to evaluate and respond to the Contractor's requests for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.
- 3.2.6 Any necessary changes shall be ordered as provided in Article 7.
- D. Paragraph 3.4 Labor and Materials: Add the following Sections and clauses:
- 3.4.4 Not later than 15 days from the Contract date, the Contractor shall provide a list showing the name of the manufacturer proposed to be used for each of the major products to be used in the work and, where applicable, the name of the installing Subcontractor.
- 3.4.4 The Architect shall reply in writing within seven (7) days to the Contractor stating whether the Owner or the Architect, after due investigation, has reasonable objection to any such proposal. If adequate data on any proposed manufacturer or installer is not available, the Architect may state that action will be deferred until the Contractor provides further data. Failure to object to a manufacturer shall not constitute a waiver of any of the requirements of the Contract Documents, and all products furnished by the listed manufacturer must conform to such requirements.
- .1 After the contract has been executed, the Owner and the Architect will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in the Contract Documents, Section 01001 Basic Requirements.
- .2 By making requests for substitutions based on Clause 3.4.4.1 above, Contractor:
- a. represents that he has personally investigated the proposed substitute products and determined that it is equal or superior in all respects to that specified;
- b. represents that he will provide the same warranty for the substitution that he would for that specified;
- c. certifies that the cost data presented is complete and includes all related costs under this Contract but excludes costs under separate contracts, and excludes the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- d. will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

.3 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect to evaluate the Contractor's proposed substitutions and to make agreed upon changes in the Drawings and Specifications made necessary by the Owner's acceptance of such substitutions.

E. Paragraph 3.9 Superintendent:

Add the following clauses to the end of Section 3.9.1:

.1 The Contractor shall assign one construction superintendent to the project and maintain the same person as superintendent, excepting acts beyond the contractor's control, throughout the duration of the Contract.

.2 The Contractor shall not make any changes in project superintendent personnel without prior written approval from the Owner.

3.9.2 The superintendent or assistant to the superintendent shall also perform as a coordinator for mechanical and electrical work. The coordinator shall be knowledgeable in mechanical and electrical systems and capable of reading, interpreting and coordinating Drawings, Specifications, and shop drawings pertaining to such systems. The coordinator shall assist the Subcontractors in arranging space conditions to eliminate interference between the mechanical and electrical systems and other Work and shall supervise the preparation of coordination drawings documenting the spatial arrangements for such systems within restricted spaces. The coordinator shall assist in planning and expediting the proper sequences of delivery of mechanical and electrical equipment to the site.

F. Paragraph 3.12 Shop Drawings, Product Data and Samples

Add the following clauses to the end of Section 3.12:

3.12.11 The Architect's review of Contractor's submittals will be limited to examination of an initial submittal and up to one (1) resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of such additional submittals.

ARTICLE 4 - ADMINISTRATION OF THE CONTRACT:

A. Paragraph 4.2 Architect's Administration of the Contract

Add the following clauses to Section 4.2.1

4.2.2.1 The Contractor shall reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by the fault, neglect, or request of the Contractor.

ARTICLE 5 - SUBCONTRACTORS

A. Change the following phrase before the words "the Contractor shall require..." in first line of Paragraph 5.3.4 to read "By appropriate written agreement, the Contractor shall require...."

ARTICLE 6 - CONSTRUCTION BY OWNER - No modifications.

ARTICLE 7 - CHANGES IN THE WORK:

A. Delete the words "a reasonable allowance for overhead and profit" wherever they occur in Article 7 and substitute "an allowance for overhead and profit in accordance with the schedule set forth in subparagraph 7.1.4.

B. Add the following subparagraphs and clauses:

7.1.4 The allowance for overhead and profit combined, included in the total cost to the Owner, shall be based on the following:

.1 For the combination of the Contractor and all subcontractors, for any Work : 15 percent of the cost.

.2 Cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.6.

.3 In order to facilitate checking for quotations of extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over \$500.00 be approved without such itemization.

7.1.4.2 In order to facilitate checking for quotations of extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over \$1,000.00 be approved without such itemization.

C. Modify the following clause as indicated:

7.2.1 ... and signed by the Owner, Contractor, Architect, and Financing Agent stating their agreement ...

ARTICLE 8 - TIME:

A. Paragraph 8.3 Delays and Extensions of Time:

8.3.1 Delete the words "labor disputes" from line three.

ARTICLE 9 - PAYMENTS AND COMPLETION

A. Additional Paragraph: Insert additional Paragraphs in their proper locations as follows:

Paragraph 9.8 Substantial Completion: Add the following to the end of Subparagraph 9.8.1:

and only minor items, which can be corrected or completed without substantial interference with the Owner's use of the Work, remain to be corrected or completed, and a Certificate of Occupancy has been issued by the local code enforcement agency having jurisdiction for the project location.

B. Paragraph 9.10.2: Insert a new item (6) as follows:
"(6) Delivery of As-Built Drawings"

ARTICLE 10 – PROTECTION OF PERSONS AND PROPERTY

A. Paragraph 10.2 Safety of Persons and Property

Add the following clauses to Section 10.2.4:

10.2.4.1 When use or storage of explosives, or other hazardous materials, substances or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall give the Owner reasonable advance notice.

10.2.4.2 If the Contract Documents require the Contractor to handle materials or substances that under certain circumstances may be designated as hazardous, the Contractor shall handle such materials in an appropriate manner.

- B. Paragraph 10.4 Add the following at the end of the paragraph: "and contractor has properly handled such materials."

ARTICLE 11 - INSURANCE AND BONDS:

- A. Paragraph 11.1 Contractor's Liability Insurance:

11.1.1.1 Delete the semicolon at the end of Section 11.1.1.1 and add:

"including private entities performing Work at the site and exempt from the coverage on account of number of employees of occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for duration of the Project."

11.1.1.2 Delete the semicolon at the end of Section 11.1.1.2 and add:

"or persons or entities excluded by statute from the requirements of Section 11.1.1.1 but required by the Contract Documents to provide the insurance required by that section;

- B. Add the following lines and clauses to the end of Section 11.1.2:

11.1.2 "...The insurance required by Section 11.1.1 shall be written for not less than the following, or greater if required by law and all such policies shall include the Owner as an additional named insured."

.1 Worker's Compensation:

(a) State: Statutory

(b) Applicable Federal Statutory

.2 Employers Liability \$500,000

.3 Comprehensive General Liability (including Premises-Operations; Independent Contractors' Protective; Products and Completed Operations; Contractual Liability, Personal Injury, and Broad Form Property Damage (including coverage for XCU Hazards Liability) shall be as follows:

(a) Bodily Injury:

\$5,000,000 Each Occurrence
\$5,000,000 Annual Aggregate

(b) Property Damage:

\$2,000,000 Each Occurrence
\$2,000,000 Annual Aggregate

.4 Contractual Liability (including indemnification provisions):

(a) shall include coverage sufficient to meet the obligations in AIA Document A201-2007 under Section 3.18.

.5 Products and Completed Operations:

(a) \$5,000,000 Aggregate

- (b) shall be maintained for a minimum period of at least 1 year after either 90 days following Substantial Completion, or final payment, whichever is earlier.
 - .6 Personal Injury, with Employment Exclusion deleted:
 - (a) \$5,000,000 Annual Aggregate
 - .7 Comprehensive Automobile Liability for both owned vehicles and non-owned and hired vehicles:
 - (a) Bodily Injury:
 - \$5,000,000 Each Person
 - \$5,000,000 Each Occurrence
 - (b) Property Damage:
 - \$2,000,000 Each Occurrence
 - .8 Aircraft Liability (owned and non-owned) when applicable: (Owner to approve limits proposed by Contractor.)
 - .9 Watercraft Liability (owned and non-owned) when applicable: (Owner to approve limits proposed by Contractor.)
 - .10 All subcontractors shall carry policies with \$1,000,000.00 insurance coverage for their work on this project.
- C. Add the following clause to Section 11.1.3:
- .1 The Contractor shall furnish three (3) copies each of Certificates of Insurance herein required with one copy for Architect's use, which shall specifically set forth evidence of all coverage required herein. The form of the Certificate shall be ACORD form 25-s, completed and supplemented in accordance with AIA G-715 - 1991. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits.
- D. Paragraph 11.3 Property Insurance.
- 11.3.1.4 Delete Section 11.4.1.4 and add the following:
- 11.3.1.4 The Contractor shall at the Contractor's own expense provide insurance coverage for materials stored off site after written approval of the Owner of the value established in the approval, and also for portions of the Work in transit until such materials are permanently attached to the Work.
- Add the following clause to Section 11.3.1:
- 11.3.1.6 The insurance required by Section 11.4 is not intended to cover machinery, tools or equipment owned or rented by the Contractor that are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment, which shall be subject to the provisions of Section 11.4.7.
- E. Paragraph 11.4 Performance Bond and Payment Bond
- 11.4.1 Delete Section 11.5.1 and substitute the following:
- 11.4.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Contractor's usual source

and the cost thereof shall be included in the Contract Sum. The amount of each bond shall be equal to 100% of the Contract Sum.

11.4.1.1 The Contractor shall deliver the required bonds to the Owner not later than three (3) days following the date the Agreement is entered into, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.

11.4.1.2 The Contractor shall require the attorney in fact who executes the required bonds of behalf of the surety to affix thereto a certified and current copy of the power of attorney.

ARTICLE 13 - MISCELLANEOUS PROVISIONS:

A. Paragraph 13.2 Successors and Assigns:

13.2.1: Add the following at the end of the second sentence: “; provided, however, that consent to an assignment by Owner will not be unreasonably withheld by Contractor.”

B. Add the following Paragraph 13.8 to Article 13:

13.8 EQUAL OPPORTUNITY

13.8.1 The Contractor shall maintain polices of employment as follows:

13.8.1.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex , national origin or sexual orientation. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, national origin or sexual orientation. Such action shall include, but not be limited to, the following employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the polices of non-discrimination.

13.8.1.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex , national origin or sexual orientation.

ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT:

A. Paragraph 14.2 Termination By The Owner For Cause:

14.2.1.1 Delete the words “persistently or repeatedly”

14.2.1.3 Delete the word “repeatedly”

ARTICLE 15 – CLAIMS AND DISPUTES - No modifications.

ARTICLE 16 - OTHER CONDITIONS OF THE CONTRACT:

16.1 The Contractor acknowledges that nothing in the performance of the Services of the Architect in connection with this project implies any undertaking for the benefit of, or which may be enforced by the Contractor, its subcontractors or suppliers, or the surety of any of them, and that the obligations of the Architect run solely to the benefit of the Owner.

16.2 Typographical errors shall not be grounds for additional payments.

- 16.3 The Architect is not responsible for the survey, identification, or removal of any hazardous materials, including asbestos, on the project.
- 16.4 The Contractor is not responsible for the survey, identification, or removal of any hazardous materials, including asbestos, on the project unless otherwise specified.
- 16.5 In the event the Contractor encounters material reasonably believed to be asbestos or other hazardous materials which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner and the Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or other hazardous materials and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or other hazardous materials, or when it has been rendered harmless, by written agreement of the Owner and Contractor. The Owner shall be responsible for contracting the removal of asbestos or other hazardous materials.
- 16.6 The Contractor shall not be required to perform without consent any Work relating to asbestos or other hazardous materials.
- 16.7 Access to Records
- 16.7.1 It is also agreed that the following Access to Records provision applies if Section 952 of the Omnibus Reconciliation Act of 1980 is found to apply to this contractual relationship. Until the expiration of four years after the furnishing of the services provided under this Contract, the Contractor will make available to the Secretary, U.S. Comptroller General, and their representatives, this Contract and all books, and documents and records necessary to certify the nature and extent of the costs for those services. If the Contractor carries out the duties of the Contract through a subcontract worth \$10,000.00 or more over twelve month period with a related organization, the subperiod will also contain the access clause to permit access by the Secretary, Comptroller General, and their representative to the related organization's books and records.

...END OF SUPPLEMENTAL GENERAL CONDITIONS



AIA®

Document G701™ – 2001

Change Order

PROJECT (*Name and address*):
Munjoy Commons

CHANGE ORDER NUMBER:
DATE:

OWNER:

ARCHITECT:

TO CONTRACTOR (*Name and address*):

ARCHITECT'S PROJECT NUMBER:
CONTRACT DATE:
CONTRACT FOR: General Construction

CONTRACTOR:

FIELD:

OTHER:

THE CONTRACT IS CHANGED AS FOLLOWS:

(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)

The original Contract Sum was

\$ _____

The net change by previously authorized Change Orders

\$ _____

The Contract Sum prior to this Change Order was

\$ _____

The Contract Sum will be increased by this Change Order in the amount of

\$ _____

The new Contract Sum including this Change Order will be

\$ _____

The Contract Time will be increased by Zero (0) days.

The date of Substantial Completion as of the date of this Change Order therefore is

NOTE: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

ARCHITECT (*Firm name*)

CONTRACTOR (*Firm name*)

OWNER (*Firm name*)

ADDRESS

ADDRESS

ADDRESS

BY (*Signature*)

BY (*Signature*)

BY (*Signature*)

(Typed name)

(Typed name)

(Typed name)

DATE

DATE

DATE

AIA[®] Document G702[™] - 1992

Application and Certificate for Payment

TO OWNER: PROJECT: _____

FROM CONTRACTOR: VIA ARCHITECT: _____

CONTRACTOR: _____

APPLICATION NO: _____

PERIOD TO: _____

CONTRACT FOR: General Construction

CONTRACT DATE: _____ / _____ / _____

PROJECT NOS: _____ / _____ / _____

Distribution to:

OWNER: ARCHITECT:

CONTRACTOR: FIELD:

OTHER:

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$ _____
2. Net change by Change Orders \$ _____
3. CONTRACT SUM TO DATE (Line 1 ± 2) \$ _____
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$ _____

5. RETAINAGE:

- a. _____ % of Completed Work (Column D + E on G703) \$ _____
- b. _____ % of Stored Material (Column F on G703) \$ _____

Total Retainage (Lines 5a + 5b or Total in Column I of G703) \$ _____

6. TOTAL EARNED LESS RETAINAGE \$ _____
(Line 4 Less Line 5 Total)

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT \$ _____
(Line 6 from prior Certificate)

8. CURRENT PAYMENT DUE \$ _____

9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6) \$ _____

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$ _____	\$ _____
Total approved this Month	\$ _____	\$ _____
TOTALS	\$ _____	\$ _____
NET CHANGES by Change Order	\$ _____	\$ _____

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR:

By: _____ Date: _____

State of: _____

County of: _____

Subscribed and sworn to before me this _____ day of _____

Notary Public:

My Commission expires: _____

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ _____

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

ARCHITECT:

By: _____ Date: _____

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

AIA[®] Document G703[™] - 1992

Continuation Sheet

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed certification is attached.
 In tabulations below, amounts are stated to the nearest dollar.
 Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO:

APPLICATION DATE:

PERIOD TO:

ARCHITECT'S PROJECT NO:

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D WORK COMPLETED		E THIS PERIOD	F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H BALANCE TO FINISH (C - G)	I RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
		\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	0.00 %	\$ 0.00
	GRAND TOTAL	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00	0.00 %	\$ 0.00

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User Notes:

(3738444141)



CONSTRUCTION SERVICES

CONTRACT REQUIREMENTS

1. The contract should reference the scope of work or plans, specs and addenda by the most recent revision date.
2. Contracts for large projects should contain a detailed schedule of values and unit prices.
3. The contract should specify a specific completion date or number of calendar days to complete the project.
4. The contract should specify amount and terms of liquidated damages and/or early completion bonus. The completion bonus should indicate a “cap amount” and should also indicate how the bonus is to be funded.
5. CM Contracts should contain Contractor/Owner shared savings clause.
6. The contract should specify that the owner will retain a percentage of the billed amount until the project is complete. The preferred retainage language is: “Retainage shall be 10% and may be reduced, at the owner’s discretion, when the amount of retainage equals 5% of the contract value (including change orders).”
7. A MaineHousing Construction Analyst must sign all change order proposals and change orders before they are a valid amendment to the contract.
8. The Contractor shall provide a list of Subcontractors with subcontracts in excess of \$2,000.00 and Material Suppliers/Vendors with purchases in exceeding \$10,000.00.

Contractor Standards
for
MaineHousing-Financed Multi-Family Housing

PROJECT: Munjoy Commons Apartments

LOCATION: Portland, Maine

The following standards apply for this project:

1. Prevailing Wage Rates
2. Employee Classification
3. Workers Compensation
4. Group Healthcare Coverage (60% Level)



Maine State Housing Authority
353 Water Street
Augusta, Maine 04330-4633

General

Maine State Housing Authority (*MaineHousing*) has adopted the Contractor Standards for MaineHousing-Financed Multi-Family Housing (*MaineHousing Contractor Standards*). In general, these standards apply to projects financed under MaineHousing multifamily programs. The Contractor Standards applicable to a particular project are dependent on the requirements of the specific MaineHousing financing program.

This document summarizes the Contractor Standards for this project. A complete description of the Standards can be found in the *Contractor Standards Compliance Guide*. This guide can be downloaded from the MaineHousing web site at the link shown below.

<http://www.mainehousing.org/HOUSINGDEVContractorStandards.aspx>

The Contractor Standards applicable for this project include the following components of the MaineHousing Contractor Standards.

1. Prevailing Wage Rates
2. Proper Classification of Employees
3. Workers' Compensation Insurance
4. Group Healthcare Coverage

The contractors (including general contractors, construction managers, subcontractors, tier subcontractors, independent contractors and sole proprietors) are responsible for ensuring compliance with the MaineHousing Contractor Standards throughout the duration of the project. Contractors are independently responsible for complying with the MaineHousing Contractor Standards. The contractors shall cooperate with MaineHousing, its agents and employees, in monitoring and facilitating compliance with the MaineHousing Contractor Standards during the construction of the project.

The Contractor Standards Compliance Officer (CSCO) represents MaineHousing. The primary role of the CSCO is to monitor and facilitate compliance with the MaineHousing Contractor Standards. The CSCO will investigate potential violations and complaints and facilitate their resolution. The CSCO will cooperate fully with government agencies in resolving any issues concerning MaineHousing's contractor standards, either during the contract term or after construction.

Summary of Contractor Responsibilities During Construction

Prevailing Wage Rates

This project is subject to following wage rate schedule developed by the State of Maine, Department of Labor - Bureau of Labor Standards.

**2008 Fair Minimum Wages Rates
Building 2 Sagadahoc County
(other than 1 or 2 family homes)**

The wage rate schedule is presented at the end of this section.

(Note: On MaineHousing projects only the minimum wage portion of the Maine DOL rate schedule applies. The “Minimum Benefit” and the “Total” columns shown on the wage rate schedule on the Maine DOL web site do not apply. The wage rate schedule shown in this specification has been modified to include only the “Minimum Wage” column.)

Contractor responsibilities during construction regarding the Prevailing Wage Rate standard are summarized below.

- Payrolls or other acceptable documentation showing compliance with the prevailing wage rates shall be submitted by all contractors (general contractor, subcontractors and tier subcontractors) who have employees working at the site. Payrolls are not required for salaried administration and management personnel.
- The payrolls can be in any format but must show as a minimum the employee, classification, hourly wage, regular hours and overtime hours. The payrolls do not need to be certified.
- Each contractor is responsible for his own payroll submittals. The general contractor is not responsible for subcontractor or tier subcontractor payroll submittals.
- Payrolls shall be submitted within one month after work begins at the site. Payrolls can be submitted weekly, bimonthly or monthly.
- Contractors shall cooperate with the CSCO during scheduled and unscheduled site inspections and on-site interviews with workers.
- Contractors shall participate in the investigation of violations and complaints relating to prevailing wage rates.

Proper Classification of Employees

Contractor responsibilities during construction regarding the Proper Classification of Employees standard are summarized below.

- Contractors who hire independent contractors (IC's) shall submit a list of all IC's working at the site.
- Contractors who have applied to the State of Maine Workers Compensation Board for a predetermination of IC status shall submit a copy of the application. Copies of predetermination of IC status or waivers received from other agencies shall also be submitted.
- Contractors shall cooperate with the CSCO during unscheduled site inspections and on-site interviews with IC's.

Workers' Compensation Insurance

Contractor responsibilities during construction regarding the Workers' Compensation Insurance standard are summarized below.

- The general contractor shall submit copies of the certificates of coverage or other proof of workers' compensation insurance for all contractors working at the site.
- Contractors who are excluded from having workers compensation insurance shall submit the reason for their exclusion.

- Contractors shall cooperate fully if referred by the CSCO to the Workers' Compensation Board for information or assistance.

Group Healthcare Coverage

Contractor responsibilities during construction regarding the Group Healthcare Coverage standard are summarized below.

- The GC (or the Owner) should provide the CSCO with the list of contractors that pledged enrollment in an eligible group health insurance plan.
- All contractors enrolled in the group health coverage plan should submit documentation showing the terms of coverage for employees and dependents and the period the coverage will remain in effect.
- Contractors on the project not enrolled in the group healthcare coverage plan shall submit documentation showing the terms of coverage for employees and dependents.

Contractor Standards Compliance Officer

All submittals shall be sent to the CSCO. Questions relating to the MaineHousing Contractor Standards can be directed to the CSCO. The contact information is presented below.

Maine Housing
353 Water Street
Augusta, Maine 04330-4633

Dan Brennan
DBrennan@MaineHousing.org
(207) 626-4625
eFax (207) 624-5768



NOTICE TO ALL EMPLOYEES

Title of Project: **Munjoy Commons Apartments**

Location of Project: **Portland, Maine**

State prevailing wage rates apply to this project. The minimum wage rates established for this project are listed below. Workers are entitled to these wages.

Any suspected violations in wage rates can be reported to the following MaineHousing Contractor Standards Compliance Officer (CSCO):

Name of CSCO: Dan Brennan

Address: Maine Housing
 353 Water Street
 Augusta, Maine 04330-4633

Phone: (207) 626-4625

E-mail: DBrennan@MaineHousing.org

Fax: (207) 624-5768

MAINE STATE HOUSING AUTHORITY

EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION PLAN FOR MULTI-FAMILY HOUSING FINANCE PROGRAMS

Introduction

This document is the affirmative action plan for Maine State Housing Authority (*MaineHousing*) programs which make financing available for the acquisition, rehabilitation and construction of affordable multi-family housing in Maine. This plan identifies the equal opportunity and affirmative action policies and goals for the applicants, developers, project owners, contractors, subcontractors and other persons or entities that benefit from MaineHousing's programs. This plan includes affirmative outreach and recruitment procedures designed to provide equal access for women, minorities and persons with disabilities to the economic benefits of MaineHousing's programs.

This plan is established pursuant to the following applicable Federal and State equal employment opportunity and affirmative action laws: Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086 and 12107 and 40 C.F.R. Part 60 (*Equal Employment Opportunity Programs*), Section 3 of the Housing and Urban Development Act of 1968 (24 C.F.R. Part 135), Executive Order 11625, as amended by Executive Order 12007 (*Minority Business Enterprises*), Executive Order 12432, Executive Order 12138, as amended by Executive Order 12608 (*Women's Business Enterprise*), the Maine Human Rights Act (5 M.R.S.A. Chapter 337, Subchapter III), Section 3 of the Housing and Urban Development Act of 1968 ("Section 3") and the Code of Fair Practices and Affirmative Action (5 M.R.S.A. Chapter 65), and regulations promulgated pursuant thereto).

Equal Opportunity Policy

MaineHousing does not discriminate in any manner against any employee, applicant for employment or contractor or in engaging the services of any contractor on the basis of race, color, religion, national origin, ancestry, age, sex, sexual orientation, or physical or mental disability. Employment activities in which MaineHousing does not discriminate include, without limitation, employment, upgrading, promotions, demotions, transfers, recruitment or recruitment advertising, disciplinary action, layoffs, terminations, rates of pay, benefits or other forms of compensation and selection for training.

As an equal opportunity employer, MaineHousing requires all applicants, developers, project owners, contractors (including construction managers), subcontractors and agents of MaineHousing and all other persons and entities that benefit from MaineHousing's programs to provide equal opportunity in employment and contracting and comply with all State and Federal statutes, regulations and directives governing equal opportunity.

Contract Requirements

All contracts and subcontracts entered into by MaineHousing, applicants, developers, project owners, agents, contractors (including construction managers) and subcontractors in connection with MaineHousing's programs shall contain the following provisions.

"During the performance of this contract, the contractor agrees as follows:

- a. The contractor will not discriminate in any manner against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age, sex, sexual orientation, or physical or mental disability. Such action shall include, without limitation, employment, upgrading, promotions, demotions, transfers, recruitment or recruitment advertising, layoffs or terminations, rates of pay or other forms of compensation and selection for training.
- b. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex, sexual orientation, or physical or mental disability.
- c. The contractor will send to each labor union or representative of the workers with which the contractor has a collective bargaining agreement or other contract or understanding whereby the contractor is furnished with labor for the performance of this contract, a notice advising such labor union or workers' representative of the contractor's obligations under this section and shall post copies of the notice in conspicuous places available to employees and to applicants for employment.
- d. The contractor will cause the foregoing provisions to be inserted in all contracts for any work covered by this Agreement so that such provisions will be binding upon each agent or subcontractor."

Affirmative Action Goal

It is MaineHousing's goal to foster the development of a well-qualified diverse workforce in all segments and at all levels of the industries that benefit from MaineHousing's programs. In particular, there is a manifest imbalance in the construction industry's employee profile. Traditionally, there have been few, if any, women, minorities and persons with disabilities employed in the segment of the construction industry that rehabilitates and constructs MaineHousing-financed multi-family housing.

Initially, MaineHousing's goal is to achieve the minimum level of participation by women and minorities in the housing construction industry required by Federal law. At least 6.9% of all hours worked by employees of a contractor or subcontractor during the prior calendar year must be worked by women. In addition, at least 0.5% of all hours worked by employees of a contractor or subcontractor during the prior calendar year must be worked by other minorities.

In furtherance of this goal, MaineHousing is establishing the following procedures to actively recruit women, minorities and persons with disabilities in the housing construction industry.

On-the-Job Training Requirement

All construction contracts between a project owner and a contractor (including a construction manager) for the construction or rehabilitation of multi-family housing funded by MaineHousing in an amount equal to \$1,000,000 shall provide for on-the-job training in a skilled trade or technical area for women and minorities in accordance with this plan.

Contractors or subcontractors shall provide a minimum of 700 hours of on-the-job training (OJT) for each \$1,000,000 increment of the total construction contract. For example, if the construction contract amount is \$3,500,000, the contractor and/or subcontractor(s) must provide at least 2100 hours of the on-the-job training to persons who are women or minorities. The OJT hours may be performed in connection with a MaineHousing-funded multi-family housing project or other construction project, provided that the project is located in the State of Maine. The general contractor (or construction manager) and MaineHousing, including any consultant retained by MaineHousing to monitor OJT and the construction analyst assigned to the MaineHousing-funded project, will collectively determine how the requisite OJT hours will be performed. The general contractor and MaineHousing, including the consultant and the construction analyst, will enter into a written agreement which describes the plan for satisfying the requisite OJT hours to be performed.

A person receiving on-the-job training shall be paid wages equal to 75% of the wage rate for the trade in which the person is receiving the training as established annually by the Maine Department of Labor pursuant to the *State Minimum Wage Rates on State Construction Projects*, 26 MRSA § 1304 et seq. and associated regulations. An amount equal to Five and No/100 Dollars (\$5.00) per hour of the wages paid to the person receiving on-the-job training must be included as an allowance in the project development budget. The owner will pay this allowance as a reimbursement to the contractor or subcontractor providing the on-the-job training upon notice from MaineHousing's OJT Compliance Monitor that the contractor or subcontractor satisfied its on-the-job training obligations. The owner shall not release the allowance to reimburse the contractor or subcontractor until it receives such notice.

A contractor (including construction managers and subcontractors) will be exempt from the above OJT requirement if the percentage of all hours worked by its employees during the prior calendar year is 6.9% for women and 0.5% for minorities.

Outreach Efforts to Women and Minority-Owned Businesses

Certain federal equal access and affirmative action laws require recipients of federal funding to provide job training, employment and contracting opportunities to women- and minority-owned businesses to the greatest extent possible. Accordingly, all developers, applicants and contractors shall solicit construction (including construction management) and other bids from women and minority-owned businesses involved in the construction of multi-family housing in Maine.

MaineHousing will require all developers and applicants to provide evidence of their outreach efforts prior to issuing a financing commitment under MaineHousing's programs.

Outreach Efforts to Women and Minorities

All applicants, developers, contractors and subcontractors shall post all employment opportunities within their businesses or organizations with Maine Career Centers and Women Unlimited or any successor organization designated by MaineHousing. MaineHousing will require all developers and applicants to provide evidence of their outreach efforts prior to issuing a financing commitment under MaineHousing's programs.

Section 3 - Outreach Efforts to Low Income Persons

Section 3 requires recipients of federal funding to provide job training, employment and contracting opportunities to Section 3 residents and Section 3 businesses to the greatest extent possible. Section 3 residents are residents of public or federally-assisted housing and persons with low income (defined as persons with income at or below 80% of area median income as determined by HUD). A Section 3 business is a business in which 51% or more of the business is owned by persons with low income or a business that employs a substantial number of persons with low income, i.e. at least 30% of its full-time, permanent employees are persons with low income. Ideally, the Section 3 residents should be from the area in which the multi-family housing is being constructed. In accordance with the goals of Section 3, at least 10% of the contracts for building trades and at least 3% of all other contracts associated with the construction or rehabilitation of a multi-family housing project should be directed to Section 3 businesses.

MaineHousing will require all developers and applicants to provide evidence of their outreach efforts prior to issuing a financing commitment under MaineHousing's programs.

Bid Requirements

All bid packages for the construction and rehabilitation of multi-family housing financed by MaineHousing must set forth the above requirements. MaineHousing is flexible with respect to how the on-the-job training requirements are set forth in the bid package. Contractors (including construction managers) shall consult with the MaineHousing construction analyst assigned to the project to determine whether to include the general requirements or specify how the OJT training requirements will be satisfied in the bid package.

MaineHousing

Multifamily Housing Projects On-the-Job Training Program Guidelines for the Developer/Owner

The Developer or Owner of a MaineHousing financed multifamily housing project is responsible for assisting in the implementation of the MaineHousing On-the-Job Training program and the achievement of *Hourly Training Goals for Women and Minorities* set forth in the bid contract. This requirement is outlined in **MaineHousing's Affirmative Action Plan** which can be found at:

<http://www.mainehousing.org/Documents/QAP/2007QAPProgramAffirmativeActionPlan.pdf>

The Role of the Developer/Owner

- To communicate the training commitment of the project to the General Contractor engaged in the project.
- To facilitate the Wage Support Fund. This fund will supplement investment in training with a five dollar an hour payment to Subcontractors participating in the OJT Program. OJT Training hours will be verified by the MaineHousing OJT Program Manager. At the completion of 700 hours, a report of job training results will be generated to the Developer/Owner, the Project Construction Analyst and the MaineHousing Loan Officer. Wage support reimbursement funds will be released by the MaineHousing Loan Officer to the Subcontractor following the receipt of an invoice. Only hours worked on the MaineHousing financed multifamily housing project will be approved for reimbursement.

(Important note: For all multifamily housing projects which applied to MaineHousing between December 2, 2005 and November 1, 2007, the wage support fund is not required, but highly encouraged. For all multifamily housing projects which applied on November 1, 2007 and after, the wage support fund is required.

- To approve an OJT training plan created by the General Contractor,
- Subcontractors and the MaineHousing OJT Program Manager.

Project Training Plan

The Developer/Owner shall request that the General Contractor survey subcontractors engaged in the project to identify those with entry level job positions available. The OJT Program Manager will arrange a meeting the General Contractor and Subcontractors to create a project training plan. Early identification of the skill craft position (carpenter, painter, plumber, etc.) allows time to recruit the best candidates for training.

Entry level recruitment is essential to the future of the building industry.

- Building construction has a graying workforce and very few young people are entering construction as a career. New sources of recruitment and new faces have to be found.
- On-the-Job Training is a proven model that quickly integrates people into learning the construction skills necessary for earning a secure financial future.
- A bridge to community resources is built as recruitment channels are created for contractors.
- Diversity is an added value to any workplace.

MaineHousing On-the-Job Training adds the important values of construction skills training, income opportunity, and diversity to a construction project.

On-the-Job Training Program Procedures

Training Hour quantities are formulated by adding a value of 700 training hours for every \$1, 000,000.00 dollars of the total construction cost for the project. For example, a 2100 hour training obligation would require three individual enrollments.

Each individual training registration will be in a Skilled Craft. The trainee and supervisor will receive an outline of skill sets to be covered throughout a *700 hour program*. All work hours will be applied as training hours.

Training is accomplished in the course of working and as the stages of a project progress. Direct trainers are requested to provide 3 to 5 hours a week in specific skill building. Payroll records will be submitted to the On-the-Job Program Manager to document work hours.

The General Contractor must survey all Subcontractors to determine a current job listing by skill for the project. They will then outline an OJT Plan for the project identifying which trades and Subcontractors will be recruiting trainees. The OJT Program Manager will schedule a pre-construction meeting to assist in the development of a training plan for the project. This OJT Plan must be submitted to the Developer/Owner and the OJT Program Manager for review and approval.

State of Maine CareerCenters will assist in recruiting qualified women and minorities for construction. Recruiters are notified of job openings and have been advised of construction specific interview techniques. They can link with other job training programs that offer recent graduates, some with wage support dollars available. State of Maine CareerCenters are statewide and offer free services to the employer. Training status is important to individuals new to construction. Training increases recruitment and retention. Recruiting motivated individuals and providing goals is the most important part of the OJT Program.

Contractors interview and select the trainee. The trainee is subject to all company policies and expected to fulfill every duty within the job description. Trainee wages will reflect the current state wage rate or Davis-Bacon, whichever applies to the project. Contractors provide wage statements to verify hours worked on the project.

A trainee may be enrolled in an upgraded training category three times. For example, a carpenter's helper may move up to Carpenter I, and Carpenter II.

Trainees may work off the project site. Training hours will be applied to the project hourly goals by using payroll records. *Only hours worked at the project site will be reimbursed by the Wage Support Fund.*

The On-the-Job Training Program Manager will conduct monthly interviews. Supervisors will be contacted in advance to locate OJT trainees and their supervisors. Skill increases and job performance will be documented.

MaineHousing

On-the-Job Training Program Manager

MaineHousing provides the services of an On-the-Job Training Program Manager.

All MaineHousing financed projects carry the same standards and goals. This is a state-wide program contributing to construction recruitment in many communities. Each project brings Affordable Housing and Job/Training opportunities to the local community. This program is modeled on the nationally recognized Maine Department of Transportation OJT Program. This program is responsible for training many hundreds of women and minorities in truck driving and equipment operation, improving the economic well being of Maine since 1988. The involvement of the Developer/Owner on MaineHousing financed multifamily affordable housing projects will open the door to skills training for women and minorities in the building trades.

The MaineHousing On-the-Job Training Program Manager works to provide community awareness of the project and the training opportunities available. Recruitment channels are established in the area of a project. Contractors are assisted with non-traditional recruitment. Field support assists both trainee and trainer in recognizing skill building and developing effective communication. The OJT Program Manager documents training and the project hourly goal achievement. OJT progress updates will be provided to the Developer/Owner and the General Contractor.

On-the-Job Training (OJT) Program Manager Role:

- Survey contractors and subcontractors for recruitment needs.
- Provide recruitment resources and community links.
- Approve enrollments into the program; Track training hours toward the project goal.
- Notify the contractor in advance of a site visit/interview. Interviews will be conducted monthly with the trainee and the direct supervisor.
- Provide field support.
- Measure skill building and document OJT hours and completions.
- Distribute an OJT Manual. Specific Craft training outlines are included.
- Provide progress reports.

MaineHousing OJT Program Manager

Maureen M. Murray

NOTES:

An Eligible Health Insurance Plan is a plan that either (a) provides coverage for employees and the contractor pays at least 60% of the premium for employee coverage or, in the alternative, (b) provides family coverage for employees and the contractor pays at least 50% of the premium for employee coverage plus some portion of the premium for the family coverage.

At the time of bidding and upon submitting a formal proposal to perform the construction work, the bidder shall include this form, filled out to the best of the bidder's ability, understanding that not all materials vendors and/or subcontractors may be fully known at the time of bid. In the case of an unknown resource, please indicate "UNKNOWN" in the Contractor/Subcontractor/Vendor column along with its assigned value in the form and suggest to the best of the bidders ability if the work will be performed by a contractor or the materials will be provided by a supplier that has an Eligible Health Insurance Plan.

Once the developer selects the winning bids, the developer shall forward the details of all bids received, including without limitation, the Group Healthcare Coverage Proposal forms submitted by all bidders, to MaineHousing. MaineHousing will review the bids to determine whether the developer satisfied its obligation or, if not, made a good faith effort to comply.

If compliance is being provided by the % of contract value method (total value of the construction work that is being provided by contractor or construction manager, subcontractors, and vendors that have an Eligible Health Insurance Plan, divided by the total bid for the work expressed as a percent), it may be possible to demonstrate compliance (i.e. meet the minimum requirement) without selecting all proposed project team members.

In the case where compliance is being provided by the % of the number of construction team members (contractor or construction manager, subcontractors, vendors) who provide an Eligible Health Insurance Plan, divided by the total number of construction team members, compliance can only be properly demonstrated by disclosing all entities that will be providing goods and/or services throughout the duration of the project. For the purposes of identifying entities who will be providing a meaningful contribution to the cost of the work, a value of the goods and/or services provided shall be in excess of \$5,000. Any difference between the total costs and the sum of the costs of the team members shall be considered negligible and not be used to evaluate compliance.



FINAL CERTIFICATE AND LIEN RELEASE
for
CONTRACTORS / SUBCONTRACTORS / VENDORS

Any material supplier or subcontractor who supplied material or labor with a value greater than or equal to \$2,000 must complete this form.

PROJECT _____ Contract/Subcontract Date: _____
 ADDRESS _____ Contract/Subcontract Amt: \$ _____
 _____ Contract/Subcontract for (trade) _____

1. The undersigned certifies that there is due and payable under the above contract a final payment of \$_____.
2. The undersigned certifies that all work required under this contract has been performed in accordance with the terms of the contract and was completed on _____, 20__.
3. The undersigned certifies that, except as set forth above, there are no unpaid claims for materials, supplies or equipment and no claims of laborers or mechanics for unpaid wages arising out of the performance of the contract.
4. The undersigned releases any and all claims, other than for the final payment set forth above, arising under or by virtue of the contract and agrees to indemnify the Maine State Housing Authority and the owner against any such claims.
5. The undersigned has attached to this certificate all manufacturers' and suppliers' written guarantees and warranties covering materials and equipment furnished under the contract.

Contractor: _____ Date: _____
 Signature: _____

State of Maine
 County of _____, ss. Date: _____

Personally appeared the above-named _____ and gave oath to the foregoing.

Before me,

 Name
 Notary Public of Maine/Attorney-at-Law
 My Commission Expires: _____



Incomplete Work Escrow

Project name/address: _____

Owner/Developer: _____

MH project number: _____

Contractor: _____

Architect: _____

CA: _____

The following items represent project features that have been determined to be incomplete as the result of:

- Seasonal limitations. Extraordinary circumstances w/MSHA concurrence Other

The value of all incomplete items as determined by the project team, with concurrence by Maine Housing, shall be multiplied by a factor of 150% to establish the total amount to be subject to escrow in accordance with MaineHousing policy.

#	Description	\$ Value	x 150%	Notes:
1				
2				
3				
4				
Sub Total:				

The amount of \$ _____ shall be withheld by MaineHousing till such time that work has been completed and determined acceptable by the Owner and representative of MaineHousing. Work shall be completed by: _____
 Upon satisfactory completion of the items listed above, the Authority will prepare a release of funds being withheld against those work items. At no time shall an aggregate amount exceeding 50% of the total escrow amount be released prior to completion of all escrow items.

Contractor *Date* *Owner* *Date* *Architect* *Date* *MaineHousing CA* *Date*

Request for Concurrence *for MaineHousing use only*

As the result of an inspection on _____, Construction Services finds:

- All work is complete/satisfactory
 Outstanding work remains as follows... _____

 Completion date exceeded
 Extend to: _____ No extension... MH/Owner to complete

Construction Analyst *Date* *Construction Services Manager* *Date*

To: Development Assistant
RE: Request for check **Date:** _____
CC: AM, LO
 In accordance with CS findings/recommendations, please prepare check in the amount of \$ _____ made payable to:
 1st _____

 2nd _____

Request for Concurrence *for MaineHousing use only*

As the result of an inspection on _____, Construction Services finds:

- All work is complete/satisfactory
 Outstanding work remains as follows... _____

 Completion date exceeded
 Extend to: _____ No extension... MH/Owner to complete

Construction Analyst *Date* *Construction Services Manager* *Date*

To: Development Assistant
RE: Request for check **Date:** _____
CC: AM, LO
 In accordance with CS findings/recommendations, please prepare check in the amount of \$ _____ made payable to:
 1st _____

 2nd _____

INCOMPLETE WORK ESCROW POLICY

Following represents the complete policy for the handling of incomplete work escrow and expressly supersedes any and all instructions to Authority personnel.

1. *MaineHousing* will establish the content, completion date and appropriate retainage for the incomplete work escrow at the time of the final inspection in consultation with the contractor and architect, and in accordance with policy herein.
2. Eligible escrow items shall be limited to seasonal items, and back-ordered items (if proof of ordering is provided at the final inspection), unless the Authority determines that extraordinary circumstances warrant inclusion of other, non-safety related items.
3. 150% times the actual escrow amount shall be held in escrow by *MaineHousing* to cover any and all escrow items.
4. All escrow work shall be completed in full within 60 days from date of agreement, unless a longer period is agreed upon initially for seasonal or back-ordered items. No more than two (2) 15-day extensions shall be allowed beyond the initial completion date.
5. The Owner shall notify *MaineHousing* in writing when all items of an escrow section are complete and ready for inspection. No inspections shall be made until said notification has been received. *MaineHousing* shall schedule an inspection within 5 working days after receipt of notice from the owner.
6. Any MaineHousing inspection which determines the necessity for a re-inspection due to an action, omission, or deficiency caused by the development team, *may* result in charges billable to the Developer to cover the costs of labor and expense to MaineHousing for the re-inspection. The rate of charge shall be **\$25.00** per man-hour for on-site time, **\$15.00** per man-hour for travel time from MaineHousing's office to site and return. A maximum charge per re-inspection shall not exceed **\$200.00**.
7. Upon acceptance of all items in an escrow section *MaineHousing* will prepare a release of those funds being withheld against those work items. **AT NO TIME SHALL AN AGGREGATE AMOUNT EXCEEDING 50% OF THE TOTAL ESCROW AMOUNT BE RELEASED PRIOR TO COMPLETION OF ALL ESCROW ITEMS.**
8. Upon the forfeiture of escrow monies to *MaineHousing*, *MaineHousing* shall proceed to have all incomplete work escrow items completed by a contractor, determined in the sole discretion of *MaineHousing* to be capable of completing said escrow items. Any escrow funds remaining, if any, after completing said escrow items shall be returned to the Developer.
9. **WAIVERS TO THE ABOVE POLICY MAY ONLY BE APPROVED BY MAINEHOUSING'S EXECUTIVE DIRECTOR.**



OWNER/AGENCY CERTIFICATE OF COMPLETION

Owner(s): _____

Property Address: _____

MaineHousing	Number of Units
Project No. _____	_____

The undersigned Owner(s) certifies as follows:

1. The loan funds I have received from the Maine State Housing Authority to undertake property improvements have now been appropriately spent.
2. The improvements for which I used the money have been completed to my satisfaction and are the same improvements listed in Exhibit "A" of the Rehab Escrow or as listed in the Technical Services Document Sign Off, except as amended with the prior written consent of the Maine State Housing Authority.
3. The attached List of Tenants and Income is complete and accurate as of this date. (List all units, if vacant so note)

The undersigned Owner(s) swears under penalty of law that he/she/they have read and understood this Certificate and that to the best of his/her/their knowledge and belief it is true.

OWNER:

By: _____ Date: _____

Name:

By: _____ Date: _____

Name:

APPROVAL BY Maine State Housing Authority:

By: _____ Date: _____

MAINE STATE HOUSING AUTHORITY USE ONLY

Final Escrow Draw occurred on: _____ Remaining Escrow Funds _____
(Date)

Recommended Initial Annual Inspection _____ Remaining Funds to: _____
(Mo. / Yr.)

CC: Legal; Asset Management); Development Manager

Project:
Address:
Project No.

**CONSTRUCTION SERVICES
FINAL COMPLETION CHECKLIST**

1	*	Date	Architect	Certificate of Substantial Completion (AIA document normally prepared by architect)
2	*		Arch/Owner	Architects Certificate of Punch list Completion (MSHA Document or letter from Design Professional)
3	*		Contractor	Elevator License (if applicable)
4	*		Contractor	Fire Alarm system Test Report and Sign-off by System Manufacturer's Rep
5	*		Contractor	Sprinkler Test Report/Sign-off by qualified installer and SFMO permit signed-off by "RMS"
6	*		Contractor	Certificate of Occupancy from local municipality
7	**		Contractor	Electrical Permit Sign-off by state or local electrical inspector
8	**		Contractor	Plumbing Permit Sign-off by state or local plumbing inspector
9	*		Architect	Certificate of Completion of Design Professional (MSHA Document)
10	*		All	Incomplete Work Escrow in the Amount of: \$
11	*		Contractor	Requisition for all items not identified on Incomplete Work Escrow list (item #10)
12	*		Contractor	Lien Releases (typically using MSHA's Contractors Final Certificate and Release Form)
13	*		Contractor	O & M manuals (deliver to Owner) <i>as applicable</i>
14	*		Contractor	Warranty information to Owner (e.g. Roofing, Boilers.) <i>as applicable</i>
15	*		Contractor	As-built drawings (deliver to Owner, copy to MSHA)
16	*		Owner	As-built survey with MSHA Certification (may be waived if work did not increase building footprint)
17	*		Contractor	State Fire Marshal Inspection and Plan of Correction (if required)
18	*		Owner	Owner/Agency Certificate of Completion (MSHA Doc.)
19	NR		Contractor	Evidence of satisfactory Lead Based Paint Clearance testing (not required for new construction)
20	*		Contractor	Consent of Surety to release of final payment
21	*		Contractor	Blower Door Test
22	*		Owner	Commissioning Report
23	*		Owner	Green Std #10 Educational Materials (approved by Asset Management Division, MaineHousing)

* Required NR Not Required ** Required unless covered under local Certificate of Occupancy

Construction Services has received and reviewed the documents outlined above and find them suitable to satisfy closeout/completion requirements per Construction Services requirements:

/Construction Analyst :	Date:
Don McGilvery/Construction Services Manager :	Date:

Project Name: _____

Insurance Provided:

- | | |
|---|---|
| <input type="checkbox"/> Builder's Risk | <input type="checkbox"/> Umbrella Liability |
| <input type="checkbox"/> Commercial General Liability | <input type="checkbox"/> Automobile Liability |
| <input type="checkbox"/> Worker's Compensation/Employer's Liability | <input type="checkbox"/> Pollution Liability |
| <input type="checkbox"/> Professional Errors and Omissions | |

Note:

If MaineHousing is only providing the permanent financing, all insurances policies must include "*Maine State Housing Authority, its successors and assigns*" with a mailing address of 353 Water Street, Augusta, Maine, 04330, or such other address as MaineHousing may designate from time to time, as a "Certificate Holder."

If MaineHousing is providing any construction financing (either directly or through a participation in the construction loan), all builder's risk, property, boiler and machinery coverage and flood insurance (as applicable) shall include "*Maine State Housing Authority, its successors and assigns*" with a mailing address of 353 Water Street, Augusta, Maine, 04330, or such other address as MaineHousing may designate from time to time, as "Mortgagee" and "Loss Payee," and all general liability and umbrella liability insurance policies shall include "*Maine State Housing Authority, its successors and assigns*" with a mailing address of 353 Water Street, Augusta, Maine, 04330, or such other address as MaineHousing may designate from time to time, as an "Additional Insured." The additional insured endorsement shall state "*Maine State Housing Authority, its successors and assigns*" is an additional insured for both ongoing and completed operations and should provide the same coverage as ISO CG 20 10 (11-85 version). Endorsements with coverage no less broad than ISO CG 20 206 (07-04 version) with ISO CG 20 37 (07-04) shall also be provided.

Please note that by checking "yes" indicating MaineHousing is an Additional Insured on an insurance policy, you are certifying that the above requirements for the additional insured endorsements are satisfied. If any of these requirements are not satisfied, please describe the deficiencies in the "Explanations" block.

Project Name: _____

Builder's Risk Checklist

Insurance Company:			
Licensed to do Business in Maine?	If not licensed, approved by Maine Superintendent of Insurance?	Currently Rated "A VIII" or better by AM Best?	AM Best Rating
Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Insured Interests			
Name of Insured:			
Name(s) of Additional Insured and Interests:			

Insurance Policy Number:	Explanation (if response is no)	
Coverage in effect	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Effective date of coverage	/ /	
Policy inception date	/ /	
Policy expiration date	/ /	
Full year premium paid	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Deductible	\$	
MaineHousing named as Mortgagee and Loss Payee (see note on page 2)	Yes <input type="checkbox"/> No <input type="checkbox"/>	
MaineHousing named as Certificate Holder (see note on page 2)	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Provides at least 30 days notice of cancellation, assignment, non-renewal, or modification, and 10 days notice for non-payment of premium	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Total coverage is 100% of Completed Value as defined above	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Loss recoveries valued at Completed Value w/out deduction for depreciation	Yes <input type="checkbox"/> No <input type="checkbox"/>	
If construction involves rehabilitation of existing structures, then structures/salvageable components insured for replacement cost	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Policy covers scaffolding	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Policy covers testing	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Coverage no less broad than ISO Form CP 10 30	Yes <input type="checkbox"/> No <input type="checkbox"/>	
If not ISO Form CP 10 30, specify form		
Policy includes a co-insurance provision.	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Co-insurance provision coverage includes an Agreed Value Endorsement	Yes <input type="checkbox"/> No <input type="checkbox"/>	
All subrogation rights against MaineHousing waived	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Additional Coverage/Endorsements:	<input type="checkbox"/> Earthquake @ 100% @ Completed Value (as defined above) <input type="checkbox"/> Delay of Opening @ 100% of expected gross annual rents <input type="checkbox"/> Flood coverage = Standard Flood Ins. Program max. coverage <input type="checkbox"/> Soft Cost Endorsement <input type="checkbox"/> Permission to Occupy Endorsement	
Provides for conversion to property insurance as project is completed	Yes <input type="checkbox"/> No <input type="checkbox"/>	

Project Name: _____

<input type="checkbox"/> Owner
<input type="checkbox"/> Contractor

Commercial General Liability Checklist

Insurance Company:			
Licensed to do Business in Maine?	If not licensed, approved by Maine Superintendent of Insurance?	Currently Rated "A VIII" or better by AM Best?	AM Best Rating
Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Insured Interests			
Name of Insured:			
Name(s) of Additional Insured and Interests:			
Insurance Policy Number:		Explanations (if response is no)	
Coverage in effect	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Effective date of coverage	/ /		
Policy inception date	/ /		
Policy expiration date	/ /		
Full year premium paid	Yes <input type="checkbox"/> No <input type="checkbox"/>		
MaineHousing named as Additional Insured (see note on page 2)	Yes <input type="checkbox"/> No <input type="checkbox"/>		
MaineHousing named as Certificate Holder (see note on page 2)	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Provides at least 30 days notice of cancellation, assignment, non-renewal or modification, and 10 days notice for non-payment of premium	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Coverage is provided on an occurrence basis form	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Coverage no less broad than ISO Form CG 00 01	Yes <input type="checkbox"/> No <input type="checkbox"/>		
If not ISO Form CG 00 01, specify form			
Check all Applicable Exclusions	<input type="checkbox"/> War <input type="checkbox"/> Abuse <input type="checkbox"/> Molestation <input type="checkbox"/> Fungus <input type="checkbox"/> Asbestos	<input type="checkbox"/> Nuclear Energy <input type="checkbox"/> Terrorism <input type="checkbox"/> Employment Practices <input type="checkbox"/> Others (Name):	
Minimum Coverage Amount <ul style="list-style-type: none"> • \$2,000,000 General Aggregate • \$2,000,000 Products and Completed Operations Aggregate • \$1,000,000 Personal and Advertising Injury • \$1,000,000 Each Occurrence 	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Limits apply on a "per location" or "per project" basis	Yes <input type="checkbox"/> No <input type="checkbox"/>		

Project Name: _____

<input type="checkbox"/> Owner
<input type="checkbox"/> Contractor

Worker's Compensation/
Employer's Liability Insurance

Insurance Company:			
Licensed to do Business in Maine?	If not licensed, approved by Maine Superintendent of Insurance?	Currently Rated "A VIII" or better by AM Best?	AM Best Rating
Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Insured Interests			
Name of Insured:			
Name(s) of Additional Insured and Interests:			
Insurance Policy Number:			Explanations (if response is no)
Coverage in effect	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Effective date of coverage	/ /		
Policy inception date	/ /		
Policy expiration date	/ /		
Full year premium paid	Yes <input type="checkbox"/> No <input type="checkbox"/>		
MaineHousing named as Certificate Holder (see note on page 2)	Yes <input type="checkbox"/> No <input type="checkbox"/>		
MaineHousing named as Additional Insured (see note on page 2)	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Provides at least 30 days notice of cancellation, assignment, non-renewal or modification, and 10 days notice for non-payment of premium	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Provides minimum coverage required under the Maine Workers' Compensation Act	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Minimum Coverage Amount:			
<ul style="list-style-type: none"> • \$500,000 Bodily injury by accident (Each Accident) • \$500,000 Bodily injury by disease (Each Employee) • \$500,000 Bodily injury by disease (Policy Limit) 	Yes <input type="checkbox"/> No <input type="checkbox"/>		

Project Name: _____

Automobile Liability Insurance Checklist

Insurance Company:			
Licensed to do Business in Maine?	If not licensed, approved by Maine Superintendent of Insurance?	Currently Rated "A VIII" or better by AM Best?	AM Best Rating
Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Insured Interests			
Name of Insured:			
Name(s) of Additional Insured and Interests:			
Insurance Policy Number		Explanations (if response is no)	
Coverage in effect	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Effective date of coverage	/ /		
Policy inception date	/ /		
Policy expiration date	/ /		
Full year premium paid	Yes <input type="checkbox"/> No <input type="checkbox"/>		
MaineHousing named as Certificate Holder (see note on page 2)	Yes <input type="checkbox"/> No <input type="checkbox"/>		
MaineHousing named as Additional Insured (see note on page 2)	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Provides at least 30 days notice of cancellation, assignment, non-renewal or modification, and 10 days notice for non-payment of premium	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Provides coverage for owned, hired, and non-owned vehicles	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Minimum coverage amount is \$1,000,000 per accident	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Policy written on ISO form CA 00 01 or equivalent.	Yes <input type="checkbox"/> No <input type="checkbox"/>		
If not ISO form CA 00 01, specify form			

Project Name: _____

Owner
 Contractor

Umbrella Liability Insurance Checklist

Insurance Company:			
Licensed to do Business in Maine?	If not licensed, approved by Maine Superintendent of Insurance?	Currently Rated "A VIII" or better by AM Best?	AM Best Rating
Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Insured Interests			
Name of Insured:			
Name(s) of Additional Insured and Interests:			

Insurance Policy Number:		Explanations (if response is no)
Coverage in effect	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Effective date of coverage	/ /	
Policy inception date	/ /	
Policy expiration date	/ /	
Full year premium paid	Yes <input type="checkbox"/> No <input type="checkbox"/>	
MaineHousing named as Additional Insured (see note on page 2)	Yes <input type="checkbox"/> No <input type="checkbox"/>	
MaineHousing named as Certificate Holder (see note on page 2)	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Provides at least 30 days notice of cancellation, assignment, non-renewal or modification, and 10 days notice for non-payment of premium	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Coverage is no less broad than existing general, automobile, and employer's liability coverage	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Coverage is provided on an occurrence basis form	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Minimum Coverage Amount <ul style="list-style-type: none"> • \$1,000,000 for structures with up to 3 floors • \$3,000,000-\$10,000,000 for structures with 4 or more floors 	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Please specify coverage amount if structure is 4 or more floors	\$	

Project Name: _____

Architect
 Engineer

Professional Errors and Omissions Insurance Checklist

Insurance Company:			
Licensed to do Business in Maine?	If not licensed, approved by Maine Superintendent of Insurance?	Currently Rated "A VIII" or better by AM Best?	AM Best Rating
Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Insured Interests			
Name of Insured:			
Name(s) of Additional Insured and Interests:			
Insurance Policy Number:			Explanations (if response is no)
Coverage in effect	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Effective date of coverage	/ /		
Policy inception date	/ /		
Policy expiration date	/ /		
Full year premium paid	Yes <input type="checkbox"/> No <input type="checkbox"/>		
MaineHousing named as Certificate Holder (see note on page 2)	Yes <input type="checkbox"/> No <input type="checkbox"/>		
MaineHousing named as Additional Insured (see note on page 2)	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Provides at least 30 days notice of cancellation, assignment, non-renewal or modification, and 10 days notice for non-payment of premium	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Coverage is provided on a claims made basis	Yes <input type="checkbox"/> No <input type="checkbox"/>		
The retroactive date of coverage predates the actual work being performed	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Coverage remains in effect for 3 years after work is performed.	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Minimum Coverage Amount <ul style="list-style-type: none"> • \$1,000,000 Each Occurrence • \$1,000,000 Aggregate 	Yes <input type="checkbox"/> No <input type="checkbox"/>		

Project Name: _____

Pollution Liability Insurance – Environmental Remediation Contractor

Insurance Company:			
Licensed to do Business in Maine?	If not licensed, approved by Maine Superintendent of Insurance?	Currently Rated "A VIII" or better by AM Best?	AM Best Rating
Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	
Insured Interests			
Name of Insured:			
Name(s) of Additional Insured and Interests:			
Insurance Policy Number:			Explanations (if response is no)
Coverage in effect	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Effective date of coverage	/ /		
Policy inception date	/ /		
Policy expiration date	/ /		
Full year premium paid	Yes <input type="checkbox"/> No <input type="checkbox"/>		
MaineHousing named as Certificate Holder (see note on page 2)	Yes <input type="checkbox"/> No <input type="checkbox"/>		
MaineHousing named as Additional Insured (see note on page 2)	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Provides at least 30 days notice of cancellation, assignment, non-renewal or modification, and 10 days notice for non-payment of premium	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Coverage is provided on a claims made basis	Yes <input type="checkbox"/> No <input type="checkbox"/>		
The retroactive date of coverage predates the actual work being performed	Yes <input type="checkbox"/> No <input type="checkbox"/>		
The policy covers cleanup, property damage, and bodily injury	Yes <input type="checkbox"/> No <input type="checkbox"/>		
Minimum Coverage Amount: • \$1,000,000 Each Accident/Aggregate	Yes <input type="checkbox"/> No <input type="checkbox"/>		

MAINEHOUSING SURVEY REQUIREMENTS
for
CONSTRUCTION LOAN CLOSINGS AND PERMANENT LOAN CLOSINGS

General Requirements

The developer must submit to MaineHousing, at least 30 days before closing, an ALTA/ACSM Land Title Survey using current standards, including the *2005 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys* as adopted by ALTA and NSPS effective January 1, 2006, including the items from *Table A Optional Survey Responsibilities and Specifications* ("Table A") noted below, and the *Accuracy Standards for ALTA/ACSM Land Title Surveys*. The survey must be performed by a professional land surveyor registered in Maine.

The survey must contain, on its face, the certification appearing below, addressed to Maine State Housing Authority, the title insurance company insuring MaineHousing's mortgage, and any other appropriate parties. The certification must be signed by the surveyor and bear the current date and the surveyor's seal and registration number. The survey must show the date of completion of the survey as well as all revision dates.

Additional Requirements

In addition to the General Requirements noted above, the survey must include the following information:

1. Scale must be not less than 40 feet to the inch, with the plat or map not less than 11" x 17" in size.
2. A metes and bounds description that clearly and accurately follows the survey.
3. The street address of the property, conforming to the municipality's records, on the face of the survey.
4. Item 1 of Table A (monuments).
5. Item 2 of Table A (vicinity map).
6. Item 3 of Table A (flood zone designation).
7. Item 4 of Table A (gross land area).
8. Item 6 of Table A (setback, height and floor area restrictions of zoning ordinance).
9. Item 7(a) and (b)(1) of Table A (building exterior dimensions and square footage of building footprint).
10. Item 9 of Table A (parking areas).
11. Item 10 of Table A (access to public ways).
12. Item 11(a) and (b) of Table A (locations of utilities, including locations in streets to points of entry into all buildings). **The precise location of all utilities, including existing utilities and utilities installed during construction and utilities located aboveground and underground, must be shown on the as-built survey. All at-**

grade or aboveground appurtenances related to the various utilities (including but not limited to sanitary sewer, storm sewer, domestic water, fire service, electric power, gas, telephone, television, and internet service) shall be field located and shown on the as-built survey. The locations of all below-grade structures (including but not limited to pipes, ducts, conduits, lines, cables, and connections) shall be shown on the as-built survey and shall be based on as-built drawings provided by the owner of the project, or in the absence of accurate as-built drawings, information provided by Dig Safe or a similar service. The documentation used to identify the below-grade structures shall be referenced on the as-built survey.

13. Density requirements of zoning ordinance and the source of the information.

Required Certification

The following certification must appear in the form shown below:

This is to certify to Maine State Housing Authority, [name of title insurance company], and [names of other parties], and the successors and assigns of each, that this map or plat and the survey on which it is based were made in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by ALTA and NSPS in 2005, effective January 1, 2006, and includes items 1, 2, 3, 4, 6, 7(a) and (b)(1), 9, 10, and 11(a) and (b) of Table A thereof. Pursuant to the Accuracy Standards as adopted by ALTA and NSPS and in effect on the date of this certification, the undersigned further certifies that in my professional opinion as a land surveyor registered in the State of Maine, the Relative Positional Accuracy of the survey does not exceed the Allowable Relative Positional Accuracy for Measurements Controlling Land Boundaries on ALTA/ACSM Land Title Surveys. The undersigned additionally certifies that (a) this survey correctly shows all matters of record (and to the extent they can be located, their location and dimensions) of which I have been advised affecting the subject property according to the legal description of such matters (with instrument, book and page number indicated); (b) except as shown on this survey, no part of the subject property is located in a 100-year floodplain, as shown on Flood Insurance Rate Map No. _____ dated _____; (c) to the best of my knowledge, this survey shows the relation and distance of all buildings, sidewalks and other improvements to easements and setback lines; (d) to the best of my knowledge, except as shown on this survey, the subject property does not serve any adjoining land for drainage, utilities, ingress or egress; (e) all utilities serving the subject property shown on the survey, including electric, gas, water, sanitary sewer and storm sewer, connect to lines located in public roadways, without crossing the property of others, as shown on the survey, except [if none, so state]; and (f) except as set forth below, there are no (i) encroachments upon the subject property by improvements on adjacent property, (ii) encroachments on easements or on adjacent property, streets, or alleys by any improvements on the subject property, (iii) party walls, (iv) conflicts or protrusions, or (v) encroachments onto setback or building restriction lines. The exceptions to the statements in part (f) are as follows: _____ [if none, so state].

**MAINE STATE HOUSING AUTHORITY
INSURANCE REQUIREMENTS FOR
MULTI-FAMILY AND SUPPORTIVE HOUSING**

The following insurance requirements apply to all multi-family residential rental projects and supportive housing projects that are or will be financed by Maine State Housing Authority.

The requirements contained herein are the minimum requirements of MaineHousing and are for the sole benefit of MaineHousing as lender. MaineHousing is in no way representing or warranting that the minimum coverage required herein is adequate. The Developer is solely responsible for providing and determining the adequacy of insurance coverage for the Developer and the project.

Maine Housing reserves the right, at any time, to modify the insurance requirements, including without limitation, requiring additional insurance coverage of such types and in such amounts and form as MaineHousing determines is necessary or in MaineHousing's best interest, as conditions warrant.

COMPLIANCE CHECKLIST

A MaineHousing Insurance Compliance Checklist(s), in form and substance prescribed by MaineHousing, must be completed by the insurance agent(s) providing insurance coverage for a project. The completed MaineHousing Insurance Checklist(s) must be submitted to MaineHousing for review prior to any loan closing.

GENERAL

All required insurance coverage shall:

- Be in form acceptable to MaineHousing;
- Be provided at the sole cost and expense of the developer, including without limitation, any deductible or self-insured retention, and coverage shall apply for the benefit of MaineHousing as if no such deductible or self-insured retention applies;
- Be in effect prior to the policy inception date and prior to the commencement of any activities covered by such insurance and shall remain valid and in effect during the term of the financing, except any insurance coverage during the course of construction of projects shall remain valid and in effect during the term of the construction contract and any extended warranty period or such longer period as set forth below;

- Be issued by an insurer licensed to do business in the State of Maine, or if not so licensed, approved by the Maine Superintendent of Insurance, and currently rated “A VIII” or better by AM Best;
- Provide at least 30 days written notice to MaineHousing prior to the effective date of any assignment, cancellation, non-renewal or modification, except for non-payment of premium in which case at least 10 days written notice to MaineHousing prior to the effective date of cancellation or non-renewal shall be provided; and
- During construction without any MaineHousing financing (either directly or through a participation in the construction loan), include “*Maine State Housing Authority, its successors and assigns*” with a mailing address of 353 Water Street, Augusta, Maine, 04330, or such other address as MaineHousing may designate from time to time as “Certificate Holder”; and
- During the term of any MaineHousing financing (either directly or through a participation in the construction loan), include “*Maine State Housing Authority, its successors and assigns*” with a mailing address of 353 Water Street, Augusta, Maine, 04330, or such other address as MaineHousing may designate from time to time, as “Mortgagee” and “Loss Payee” on all builder’s risk coverage, property coverage, boiler and machinery coverage and flood coverage (as applicable) and as “Additional Insured” on all general liability and umbrella liability coverage. The additional insured endorsement shall state “*Maine State Housing Authority, its successors and assigns*, is an additional insured for both ongoing and completed operations and should provide the same coverage as ISO CG 20 10 (11-85 version). Endorsements with coverage no less broad than ISO CG 20 26 (07-04 version) with ISO CG 20 37 (07-04 version) shall also be provided.

Developers shall submit certificates of insurance evidencing in-force coverage to MaineHousing for review and approval and evidence of payment of premiums for all required insurance coverage prior to loan closing. Developers shall submit renewal certificates to MaineHousing for review and approval at least 15 days prior to the expiration of the existing coverage. Each certificate of insurance shall be accompanied by a checklist in form prescribed by MaineHousing analyzing whether the insurance coverage evidenced by the certificate complies with these requirements. The checklist shall be completed and signed by the insurance agent issuing the certificate of insurance.

MaineHousing may, at any time, request a copy, certified copy or original of the policy and any endorsements for any or all of the required insurance coverage. Upon request, a developer shall promptly deliver all requested insurance policies and endorsements to MaineHousing in the form requested.

MaineHousing’s acceptance of any certificate or policy of insurance does not ensure compliance with the requirements set forth herein or waive any right of MaineHousing to determine that the coverage does not comply with the requirements.

REQUIREMENTS DURING CONSTRUCTION

The following insurance shall be obtained and maintained during the construction of the project or such longer period as set forth below.

A. Builder's Risk Insurance

Builder's risk insurance can be provided by the owner or the general contractor of the project, provided if the general contractor provides the coverage, the owner, its successors and assigns, must be named as an additional insured on the policy.

Amount/ Valuation	<p>100% of the completed value of all structures (existing and to be constructed) and all materials, equipment, supplies and temporary structures being built or stored at or near the construction site. Completed value will be determined by MaineHousing in its sole discretion. Completed value will not include any site or land costs other than demolition.</p> <p>Loss recoveries must be valued at completed value without deduction for depreciation. For rehabilitation projects, building shells and other salvageable components shall be insured for replacement cost. Replacement cost for historic structures or structures located in an historic district will depend on historic preservation requirements for replacing the structure.</p>
Coverage	<p>No less broad than ISO Form CP 10 30 (<i>Special Cause of Loss</i>), but does not have to be on the ISO form</p> <p>No exclusions for scaffolding</p> <p>No exclusions for testing</p> <p>No coinsurance provision shall apply. An Agreed Value Endorsement is required if the policy includes a coinsurance provision.</p> <p>Coverage must include the interest of the owner, all contractors, subcontractors and suppliers as their interests may appear. Rights of subrogation against MaineHousing must be waived.</p>
Additional Coverage/ Endorsements	<p>Earthquake – 100% of completed value</p> <p>Flood if located in a designated special flood hazard area (<i>Zone A or Zone V or any zone with an A prefix</i>) – maximum</p>

coverage available under the Standard National Flood Insurance Program. MaineHousing may require additional coverage in an amount up to 100% of completed value as determined by MaineHousing based on the location of the project within the designated special flood hazard area and the history of flooding.

Flood if not located in a designated special flood hazard area, but is otherwise required by MaineHousing based on the property's proximity to a designated special flood hazard area and history of flooding – 100% of completed value

Delay of Opening (loss of income) equal to 100% of anticipated gross annual rents

Soft Cost Endorsement (indemnification of finance charges)

Permission to Occupy Endorsement (permission is granted for occupancy of the insured project for the purpose it was intended)

Deductible	Up to \$2,500 unless a higher limit is approved by MaineHousing
Term	Builders risk insurance coverage shall remain valid and in effect until a permanent property policy acceptable to MaineHousing is in place
Insured	Owner or General Contractor
Additional Insured	Owner, its successors and assigns, if coverage is provided by the General Contractor

B. Owner Insurance Coverage

Commercial General Liability

Minimum Amount	\$2,000,000 General Aggregate
	\$2,000,000 Products and Completed Operations Aggregate
	\$1,000,000 Personal and Advertising Injury
	\$1,000,000 Each Occurrence

Aggregate limits shall apply on a “per location” or “per project” basis.

MaineHousing may require higher limits

Coverage	No less broad than latest ISO form CG 00 01, but does not have to be on the ISO form
	Coverage may exclude War, Abuse and Molestation, Fungus, Nuclear Energy, Employment-related Practices, Asbestos and Terrorism. All other exclusions must be reviewed and approved by MaineHousing.
Form	Occurrence basis form

Workers' Compensation/Employer's Liability Insurance

If the owner of the project is a limited partnership or limited liability company and does not have any employees, these requirements apply to the general partner(s) or member(s)/manager(s).

Minimum Amount	\$500,000 Each Accident \$500,000 Disease – Each Employee \$500,000 Disease – Policy Limit or amounts required by statute, whichever is greater
Coverage	Insurance or an approved self-insurance program with coverage required under Maine Workers' Compensation Act

Automobile Liability Insurance

Minimum Amount	\$1,000,000 Each Accident
Coverage	Owned, hired and non-owned vehicles
Form	ISO form CA 00 01 or equivalent

Umbrella Liability Insurance

Minimum Amount	\$1,000,000 for structures with up to 3 floors \$3,000,000 to \$10,000,000 as determined by MaineHousing, for structures with 4 or more floors
Coverage	Excess of General Liability, Automobile Liability and Employer's Liability No less broad than General Liability, Automobile Liability and Employer's Liability
Form	Occurrence basis form

C. Contractor Insurance Coverage (includes general contractors, construction managers and major subcontractors)

Commercial General Liability

Minimum Amount \$2,000,000 General Aggregate
 \$2,000,000 Products and Completed Operations Aggregate
 \$1,000,000 Personal and Advertising Injury
 \$1,000,000 Each Occurrence

Aggregate limits shall apply on a “per location” or
“per project” basis.

MaineHousing may require higher limits

Coverage No less broad than latest ISO form CG 00 01, but does not
have to be on the ISO form

Coverage may exclude War, Abuse and Molestation, Fungus,
Nuclear Energy, Employment-related Practices, Asbestos and
Terrorism. All other exclusions must be reviewed and
approved by MaineHousing.

Form Occurrence basis form

Workers’ Compensation/Employer’s Liability Insurance

Minimum Amount \$500,000 Each Accident
 \$500,000 Disease – Each Employee
 \$500,000 Disease – Policy Limit
 or amounts required by statute, whichever is greater

Coverage Insurance or an approved self-insurance program with
coverage required under Maine Workers’ Compensation Act

Automobile Liability Insurance

Minimum Amount \$1,000,000 Each Accident

Coverage Owned, hired and non-owned vehicles

Form ISO form CA 00 01 or equivalent

Umbrella Liability Insurance

Minimum Amount	\$1,000,000 for structures with up to 3 floors \$3,000,000 to \$10,000,000 as determined by MaineHousing, for structures with 4 or more floors
Coverage	Excess of General Liability, Automobile Liability and Employer's Liability No less broad than General Liability, Automobile Liability and Employer's Liability
Form	Occurrence basis form

D. Design Professional Coverage (including architects and engineers)

Professional Errors and Omissions Insurance

Minimum Amount	\$1,000,000 Each Occurrence \$1,000,000 Aggregate For projects with total construction costs less than \$1,500,000, MaineHousing may consider lower coverage amounts, but in no case, less than \$500,000 Each Occurrence and \$500,000 Aggregate
Coverage	If coverage is on claims made basis, the retroactive date must predate the work being performed.
Term	Coverage must remain in place for 3 years after project completion

**E. Environmental Remediation Contractor's Coverage (only projects
contaminated with hazardous substances, lead, asbestos and other pollutants)**

Pollution Liability Coverage

Minimum Amount	\$1,000,000
Coverage	Cleanup, property damage and bodily injury The retroactive date must pre-date the remediation work start date

REQUIREMENTS FOR COMPLETED PROJECTS

The following insurance shall be obtained and maintained by the owner of the project during the term of MaineHousing's financing.

Property Insurance Coverage

Amount/Valuation 100% of the replacement cost of all structures, improvements and contents. Replacement value shall be determined by MaineHousing and shall be a minimum of \$150 per square foot. Replacement cost for historic structures or structures located in an historic district will depend on historic preservation requirements for replacing the structure.

Loss recoveries must be valued at replacement cost without deduction for depreciation.

No coinsurance provision shall apply. An Agreed Value Endorsement is required if the policy includes a coinsurance provision.

Coverage must include the interest of the owner and all other interests as they may appear. Rights of subrogation against MaineHousing must be waived.

Coverage/ Endorsements

No less broad than ISO Form CP 10 30 (*Special Cause of Loss*), but does not have to be on the ISO form

Earthquake – 100% of the replacement cost

Wind – 100% of the replacement cost

Flood if located in a designated special flood hazard area (*Zone A or Zone V or any zone with an A prefix*) – maximum coverage available under the Standard National Flood Insurance Program. MaineHousing may require additional coverage in an amount up to 100% of the replacement cost as determined by MaineHousing based on the location of the project within the designated special flood hazard area and the history of flooding.

Flood if not located in a designated special flood hazard area, but is otherwise required by MaineHousing based on the property's proximity to a designated special flood hazard area and history of flooding – 100% of the replacement cost

	Loss of Rental Income coverage equal to 100% of anticipated gross annual rents
	Ordinance and Law coverage at no less than 10% of the value of all structures and improvements for demolition and increased cost of construction
Deductible	Up to \$2,500 unless a higher limit is approved by MaineHousing
Form	ISO Form CP 10 30 (<i>Special Cause of Loss</i>) or equivalent
	Evidence of coverage must be on <i>Accord Form 28</i> indicating compliance with the property insurance requirements set forth herein.
	If written on a Business Owner's Policy, ISO Form BP 04 83 is required.
	Standard National Flood Insurance Program form for flood, if required

Boiler and Machinery Insurance Coverage (if not included in property insurance coverage)

Amount/ Valuation	100% of the replacement cost of all structures, improvements and contents. Replacement value shall be determined by MaineHousing and shall be a minimum of \$150 per square foot. Replacement cost for historic structures or structures located in an historic district will depend on historic preservation requirements for replacing the structure.
	Loss recoveries must be valued at replacement cost without deduction for depreciation.
	No coinsurance provision shall apply. An Agreed Value Endorsement is required if the policy includes a coinsurance provision.
	Coverage must include the interest of the owner and all other interests as they may appear. Rights of subrogation against MaineHousing must be waived.
Coverage/ Endorsements	Loss of Rental Income coverage equal to 100% of anticipated gross annual rents

Ordinance and Law coverage at no less than 10% of the value of all structures and improvements for demolition and increased cost of construction

Deductible Up to \$2,500 unless a higher limit is approved by MaineHousing

24 hour maximum deductible on Use and Occupancy

Form *Accord Form 28* indicating compliance with these requirements

Crime Coverage

If the property manager has custody of the owner's funds, both the owner and the property manager must obtain and maintain this coverage.

Amount 25% of anticipated gross annual rents

Coverage Employee Dishonesty, Forgery and Alteration

Commercial General Liability

Minimum Amount \$2,000,000 General Aggregate
\$2,000,000 Products and Completed Operations Aggregate
\$1,000,000 Personal and Advertising Injury
\$1,000,000 Each Occurrence

Aggregate limits shall apply on a "per location" or "per project" basis.

MaineHousing may require higher limits

Coverage No less broad than latest ISO form CG 00 01, but does not have to be on the ISO form

Coverage may exclude War, Abuse and Molestation, Fungus, Nuclear Energy, Employment-related Practices, Asbestos and Terrorism. All other exclusions must be reviewed and approved by MaineHousing.

Form Occurrence basis form

Workers' Compensation/Employer's Liability Insurance

If the owner is a limited partnership or limited liability company and does not have any employees, these requirements apply to the general partner(s) or member(s)/manager(s).

Minimum Amount \$500,000 Each Accident
 \$500,000 Disease – Each Employee
 \$500,000 Disease – Policy Limit
 or amounts required by statute, whichever is greater

Coverage Insurance or an approved self-insurance program with coverage required under Maine Workers' Compensation Act

Automobile Liability Insurance

Minimum Amount \$1,000,000 Each Accident

Coverage Owned, hired and non-owned vehicles

Form ISO Form CA 00 01 or equivalent

Garagekeepers Liability Insurance (if owner provides for-fee parking to public)

Minimum Amount \$25,000 per vehicle

Umbrella Liability Insurance

Minimum Amount \$5,000,000

Coverage Excess of General Liability, Automobile Liability and Employer's Liability

 No less broad than General Liability, Automobile Liability and Employer's Liability

Form Occurrence basis form

Pollution Liability Coverage (only projects contaminated with hazardous substances, lead, asbestos and other pollutants)

Minimum Amount \$1,000,000

Coverage Cleanup, property damage and bodily injury

 The retroactive date must pre-date the remediation work start date

CONSTRUCTION SERVICES
PRECONSTRUCTION DOCUMENT REVIEW – WORKSHEET

Project: _____ Date: _____
 Address _____
 Applicant: _____ Loan Officer: _____

The following documents are required to be reviewed and approved by Construction Services prior to the **construction loan closing** or, in the case of “**one writes**”, where Maine Housing acts as the construction lender and prior to the commencement of work on subject property.

	Date Received	Documents
1.		Construction Drawings & Specifications: Full set of approved, sealed working drawings and specifications signed by the Owner, Architect, Contractor, and MaineHousing. (For projects with a rehab cost of less then \$200,000 a written scope of work may be sufficient to satisfy this requirement.)
2.		Contract: Construction contract signed by the Owner and Contractor and approved by MaineHousing. The contract agreement shall address the following issues: <ul style="list-style-type: none"> • Reference scope of work or plans, specs, addenda by most recent revision date • Large projects should contain detailed schedule of values and unit prices • Specify a specific completion date or time (number of calendar days) • Specify amount and terms of liquidated damages and /or early completion bonus • Amount and reduction of retainage. • All Change Order Proposals and Change Orders must be approved by <i>MaineHousing</i> • CM Contract to contain shared savings clause. • Provide list of Subcontractors (contracts >\$2,000.00) and Suppliers/Venders (purchases >\$10,000.00)
3.		Insurance: Contractor’s Certificate of Insurance, including Builder’s Risk coverage if applicable, with Maine State Housing Authority listed as certificate holder and location of project clearly stated. The certificate shall list coverage for: General Liability, Motor Vehicle Worker’s Comp. <u>Note:</u> The Builder’s Risk certificate must state: “ <i>certificate holder is mortgagee at this location</i> ” (location of project must be clear). In the event the Owner supplies the Builder’s Risk coverage, a Certificate of Insurance in the same form from the Owner’s insurance company. Design Professional’s Certificate of Insurance specifying extent of Errors and Omissions coverage with Maine State Housing Authority listed as a certificate holder.
4.		Building Permit: Copy of the Building permit from the local Code Enforcement Officer or other satisfactory evidence of local approval.
5.		SFMO Permit: Copy of the Construction Permit and Barrier Free Permit issued by the Department of Public Safety, State Fire Marshal’s Office. (For small, non licensed rehab projects this requirement may be waived)
6.		Bonds: One hundred percent Performance and Payment bonds with dual obligee rider naming Maine State Housing Authority. (For projects under \$200,000 this requirement may be waived)
7.		Health Insurance Contractor Compliance Form /Percentage confirmed.
8.		Commissioning Report (Design phase) and Commissioning Plan indicating required inspections and testing.

In certain cases additional information such as an Environmental Site Assessment or itemized cost breakdown may be required.

**2005 MINIMUM STANDARD DETAIL REQUIREMENTS FOR
ALTA/ACSM LAND TITLE SURVEYS**
as adopted by
American Land Title Association
and
National Society of Professional Surveyors
(a member organization of the American Congress on Surveying and Mapping)

It is recognized that members of the American Land Title Association (ALTA) have specific needs, peculiar to title insurance matters, which require particular information for acceptance by title insurance companies when said companies are asked to insure title to land without exception as to the many matters which might be discoverable from survey and inspection and not be evidenced by the public records. In the general interest of the public, the surveying profession, title insurers and abstractors, ALTA and the National Society of Professional Surveyors, Inc. (NSPS) jointly promulgate and set forth such details and criteria for standards. It is recognized and understood that local and state standards or standards of care, which surveyors in those respective jurisdictions are bound by, may augment, or even require variations to the standards outlined herein. Where conflicts between the standards outlined herein and any jurisdictional statutes or regulations occur, the more restrictive requirement shall apply. It is also recognized that title insurance companies are entitled to rely on the survey furnished to them to be of an appropriate professional quality, both as to completeness and as to accuracy. It is equally recognized that for the performance of a survey, the surveyor will be provided with appropriate data which can be relied upon in the preparation of the survey.

For a survey of real property and the plat or map of the survey to be acceptable to a title insurance company for purposes of insuring title to said real property free and clear of survey matters (except those matters disclosed by the survey and indicated on the plat or map), certain specific and pertinent information shall be presented for the distinct and clear understanding between the client (insured), the title insurance company (insurer), and the surveyor (the person professionally responsible for the survey). These requirements are:

1. The client shall request the survey or arrange for the survey to be requested and shall provide a written authorization to proceed with the survey from the person responsible for paying for the survey. Unless specifically authorized in writing by the insurer, the insurer shall not be responsible for any costs associated with the preparation of the survey. The request shall specify that an "ALTA/ACSM LAND TITLE SURVEY" is required and shall designate which of the optional items listed in Table A are to be incorporated. The request shall set forth the record description of the property to be surveyed or, in the case of an original survey, the record description of the parent parcel that contains the property to be surveyed. Complete copies of the record description of the property (or, in the case of an original survey, the parent parcel), any record easements benefiting the property; the record easements or servitudes and covenants burdening the property ("Record Documents"); documents of record referred to in the Record Documents; and any other documents containing desired appropriate information affecting the property being surveyed and to which the survey shall make reference shall be provided to the surveyor for notation on the plat or map of survey.

2. The plat or map of such survey shall bear the name, address, telephone number, and signature of the professional land surveyor who performed the survey, his or her official seal and registration number, the date the survey was completed, the dates of all of the surveyor's revisions and the caption "ALTA/ACSM Land Title Survey" with the certification set forth in paragraph 8.

3. An "ALTA/ACSM LAND TITLE SURVEY" shall be in accordance with the then-current "Accuracy Standards for Land Title Surveys" ("Accuracy Standards") as adopted, from time to time by the National Society of Professional Surveyors and the American Land Title Association and incorporated herein by reference.

4. On the plat or map of an "ALTA/ACSM LAND TITLE SURVEY," the survey boundary shall be drawn to a convenient scale, with that scale clearly indicated. A graphic scale, shown in feet or meters or both, shall be included. A north arrow shall be shown and when practicable, the plat or map of survey shall be oriented so that north is at the top of the drawing. Symbols or abbreviations used shall be identified on the face of the plat or map by use of a legend or other means. If necessary for clarity, supplementary or exaggerated diagrams shall be presented accurately on the plat or map. The plat or map shall be a minimum size of 8½ by 11 inches.

5. The survey shall be performed on the ground and the plat or map of an "ALTA/ACSM LAND TITLE SURVEY" shall contain, in addition to the required items already specified above, the following applicable information:

(a) All data necessary to indicate the mathematical dimensions and relationships of the boundary represented, with angles given directly or by bearings, and with the length and radius of each curve, together with elements necessary to mathematically define each curve. The point of beginning of the surveyor's description shall be shown as well as the remote point of beginning if different. A bearing base shall refer to some well-fixed line, so that the bearings may be easily re-established. The North arrow shall be referenced to its bearing base and should that bearing base differ from record title, that difference shall be noted.

(b) When record bearings or angles or distances differ from measured bearings, angles or distances, both the

record and measured bearings, angles, and distances shall be clearly indicated. If the record description fails to form a mathematically closed figure, the surveyor shall so indicate.

- (c) Measured and record distances from corners of parcels surveyed to the nearest right-of-way lines of streets in urban or suburban areas, together with recovered lot corners and evidence of lot corners, shall be noted. For streets and highways abutting the property surveyed, the name, the width and location of pavement relative to the nearest boundary line of the surveyed tract, and the width of existing rights of way, where available from the controlling jurisdiction, shall be shown. Observable evidence of access (or lack thereof) to such abutting streets or highways shall be indicated. Observable evidence of private roads shall be so indicated. Streets abutting the premises, which have been described in Record Documents, but not physically opened, shall be shown and so noted.
- (d) The identifying titles of all recorded plats, filed maps, right of way maps, or similar documents which the survey represents, wholly or in part, shall be shown with their appropriate recording data, filing dates and map numbers, and the lot, block, and section numbers or letters of the surveyed premises. For non-platted adjoining land, names, and recording data identifying adjoining owners as they appear of record shall be shown. For platted adjoining land, the recording data of the subdivision plat shall be shown. The survey shall indicate platted setback or building restriction lines which have been recorded in subdivision plats or which appear in Record Documents which have been delivered to the surveyor. Contiguity, gores, and overlaps along the exterior boundaries of the surveyed premises, where ascertainable from field evidence or Record Documents, or interior to those exterior boundaries, shall be clearly indicated or noted. Where only a part of a recorded lot or parcel is included in the survey, the balance of the lot or parcel shall be indicated.
- (e) All evidence of monuments shall be shown and noted to indicate which were found and which were placed. All evidence of monuments found beyond the surveyed premises on which establishment of the corners of the surveyed premises are dependent, and their application related to the survey shall be indicated.
- (f) The character of any and all evidence of possession shall be stated and the location of such evidence carefully given in relation to both the measured boundary lines and those established by the record. An absence of notation on the survey shall be presumptive of no observable evidence of possession.
- (g) The location of all buildings upon the plot or parcel shall be shown and their locations defined by measurements perpendicular to the nearest perimeter boundaries. The precision of these measurements shall be commensurate with the Relative Positional Accuracy of the survey as specified in the current Accuracy Standards for ALTA/ACSM Land Title Surveys. If there are no buildings erected on the property being surveyed, the plat or map shall bear the statement, "No buildings." Proper street numbers shall be shown where available.
- (h) All easements evidenced by Record Documents which have been delivered to the surveyor shall be shown, both those burdening and those benefiting the property surveyed, indicating recording information. If such an easement cannot be located, a note to this effect shall be included. Observable evidence of easements and/or servitudes of all kinds, such as those created by roads; rights-of-way; water courses; drains; telephone, telegraph, or electric lines; water, sewer, oil or gas pipelines on or across the surveyed property and on adjoining properties if they appear to affect the surveyed property, shall be located and noted. If the surveyor has knowledge of any such easements and/or servitudes, not observable at the time the present survey is made, such lack of observable evidence shall be noted. Surface indications, if any, of underground easements and/or servitudes shall also be shown.
- (i) The character and location of all walls, buildings, fences, and other visible improvements within five feet of each side of the boundary lines shall be noted. Without expressing a legal opinion, physical evidence of all encroaching structural appurtenances and projections, such as fire escapes, bay windows, windows and doors that open out, flue pipes, stoops, eaves, cornices, areaways, steps, trim, etc., by or on adjoining property or on abutting streets, on any easement or over setback lines shown by Record Documents shall be indicated with the extent of such encroachment or projection. If the client wishes to have additional information with regard to appurtenances such as whether or not such appurtenances are independent, division, or party walls and are plumb, the client will assume the responsibility of obtaining such permissions as are necessary for the surveyor to enter upon the properties to make such determinations.
- (j) Driveways, alleys and other ways of access on or crossing the property must be shown. Where there is evidence of use by other than the occupants of the property, the surveyor must so indicate on the plat or map. Where driveways or alleys on adjoining properties encroach, in whole or in part, on the property being surveyed, the surveyor must so indicate on the plat or map with appropriate measurements.
- (k) As accurately as the evidence permits, the location of cemeteries and burial grounds (i) disclosed in the Record Documents provided by client or (ii) observed in the process of performing the field work for the survey, shall be shown.
- (l) Ponds, lakes, springs, or rivers bordering on or running through the premises being surveyed shall be shown.

6. As a minimum requirement, the surveyor shall furnish two sets of prints of the plat or map of survey to

the title insurance company or the client. If the plat or map of survey consists of more than one sheet, the sheets shall be numbered, the total number of sheets indicated and match lines be shown on each sheet. The prints shall be on durable and dimensionally stable material of a quality standard acceptable to the title insurance company. The record title description of the surveyed tract, or the description provided by the client, and any new description prepared by the surveyor must appear on the face of the plat or map or otherwise accompany the survey. When, in the opinion of the surveyor, the results of the survey differ significantly from the record, or if a fundamental decision related to the boundary resolution is not clearly reflected on the plat or map, the surveyor may explain this information with notes on the face of the plat or map or in accompanying attachments. If the relative positional accuracy of the survey exceeds that allowable, the surveyor shall explain the site conditions that resulted in that outcome with a note on the face of the map or plat.

7. Water boundaries necessarily are subject to change due to erosion or accretion by tidal action or the flow of rivers and streams. A realignment of water bodies may also occur due to many reasons such as deliberate cutting and filling of bordering lands or by avulsion. Recorded surveys of natural water boundaries are not relied upon by title insurers for location of title.

When a property to be surveyed for title insurance purposes contains a natural water boundary, the surveyor shall measure the location of the boundary according to appropriate surveying methods and note on the plat or map the date of the measurement and the caveat that the boundary is subject to change due to natural causes and that it may or may not represent the actual location of the limit of title. When the surveyor is aware of changes in such boundaries, the extent of those changes shall be identified.

8. When the surveyor has met all of the minimum standard detail requirements for an ALTA/ACSM Land Title Survey, the following certification shall be made on the plat:

To (name of client), (name of lender, if known), (name of title insurance company, if known), (name of others as instructed by client):

This is to certify that this map or plat and the survey on which it is based were made in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by ALTA and NSPS in 2005, and includes Items _____ of Table A thereof. Pursuant to the Accuracy Standards as adopted by ALTA and NSPS and in effect on the date of this certification, undersigned further certifies that in my professional opinion, as a land surveyor registered in the State of _____, the Relative Positional Accuracy of this survey does not exceed that which is specified therein.

Date: _____ (signed) _____ (seal)
Registration No. _____

NOTE: If, as otherwise allowed in the Accuracy Standards, the Relative Positional Accuracy exceeds that which is specified therein, the following certification shall be made on the plat:

To (name of client), (name of lender, if known), (name of title insurance company, if known), (name of others as instructed by client):

This is to certify that this map or plat and the survey on which it is based were made in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys," jointly established and adopted by ALTA and NSPS in 2005, and includes Items _____ of Table A thereof. Pursuant to the Accuracy Standards as adopted by ALTA and NSPS and in effect on the date of this certification, undersigned further certifies that in my professional opinion, as a land surveyor registered in the State of _____, the maximum Relative Positional Accuracy is _____ feet.

Date: _____ (signed) _____ (seal)
Registration No. _____

The 2005 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys are effective January 1, 2006. As of that date, all previous versions of the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys are superseded by these 2005 standards.

*Adopted by the American Land Title Association on October 5, 2005.
Adopted by the Board of Directors, National Society of Professional Surveyors on October 24, 2005.
American Land Title Association, 1828 L St., N.W., Suite 705, Washington, D.C. 20036.
National Society of Professional Surveyors, Inc., 6 Montgomery Village Avenue, Suite 403, Gaithersburg, MD 20879*

TABLE A

OPTIONAL SURVEY RESPONSIBILITIES AND SPECIFICATIONS

NOTE: The items of Table A must be negotiated between the surveyor and client. It may be necessary for the surveyor to qualify or expand upon the description of these items, e.g., in reference to Item 6, there may be a need for an interpretation of a restriction. The surveyor cannot make a certification on the basis of an interpretation or opinion of another party. Items 16, 17 and 18 are only for use on projects for the U.S. Department of Housing and Urban Development (HUD).

If checked, the following optional items are to be included in the ALTA/ACSM LAND TITLE SURVEY, except as otherwise negotiated:

1. Monuments placed (or a reference monument or witness to the corner) at all major corners of the boundary of the property, unless already marked or referenced by an existing monument or witness to the corner.
2. Vicinity map showing the property surveyed in reference to nearby highway(s) or major street intersection(s).
3. Flood zone designation (with proper annotation based on federal Flood Insurance Rate Maps or the state or local equivalent, by scaled map location and graphic plotting only.)
4. Gross land area (and other areas if specified by the client).
5. Contours and the datum of the elevations.
6. List setback, height, and floor space area restrictions disclosed by applicable zoning or building codes (beyond those required under paragraph 5d of these standards). If none, so state. The source of such information must be disclosed. See "Note" above.
7. (a) Exterior dimensions of all buildings at ground level
(b) Square footage of:
 (1) exterior footprint of all buildings at ground level
 (2) gross floor area of all buildings; or
 (3) other areas to be defined by the client
 (c) Measured height of all buildings above grade at a defined location. If no defined location is provided, the point of measurement shall be shown.
8. Substantial, visible improvements (in addition to buildings) such as billboards, signs, parking structures, swimming pools, etc.
9. Parking areas and, if striped, the striping and the type (e.g. handicapped, motorcycle, regular, etc.) and number of parking spaces.
10. Indication of access to a public way on land such as curb cuts and driveways, and to and from waters adjoining the surveyed tract, such as boat slips, launches, piers and docks..
11. Location of utilities (representative examples of which are shown below) existing on or serving the surveyed property as determined by:
 (a) Observed evidence
 (b) Observed evidence together with evidence from plans obtained from utility companies or provided by client, and markings by utility companies and other appropriate sources (with reference as to the source of information)
 - railroad tracks and sidings;
 - manholes, catch basins, valve vaults or other surface indications of subterranean uses;
 - wires and cables (including their function, if readily identifiable) crossing the surveyed premises, all poles on or within ten feet of the surveyed premises, and the dimensions of all crossmembers or overhangs affecting the surveyed premises; and
 - utility company installations on the surveyed premises.
12. Governmental Agency survey-related requirements as specified by the client.

13. _____ *Names of adjoining owners of platted lands.*
14. _____ *The distance to the nearest intersecting street as designated by the client*
15. _____ *Rectified orthophotography, photogrammetric mapping, laser scanning and other similar products, tools or technologies may be utilized as the basis for the location of certain features (excluding boundaries) where ground measurements are not otherwise necessary to locate those features to an appropriate and acceptable accuracy relative to a nearby boundary. The surveyor shall (a) discuss the ramifications of such methodologies (e.g. the potential accuracy and completeness of the data gathered thereby) with the title company, lender and client prior to the performance of the survey and, (b) place a note on the face of the survey explaining the source, date, relative accuracy and other relevant qualifications of any such data.*
16. _____ *Observable evidence of earth moving work, building construction or building additions within recent months.*
17. _____ *Any changes in street right of way lines either completed or proposed, and available from the controlling jurisdiction. Observable evidence of recent street or sidewalk construction or repairs.*
18. _____ *Observable evidence of site use as a solid waste dump, sump or sanitary landfill.*
19. _____

Accuracy Standards for ALTA/ACSM Land Title Surveys

Introduction

These Accuracy Standards address Relative Positional Accuracies for measurements that control land boundaries on ALTA/ACSM Land Title Surveys.

In order to meet these standards, the surveyor must assure and certify that the Relative Positional Accuracies resulting from the measurements made on the survey do not exceed that which is allowable.

If the size or configuration of the property to be surveyed, or the relief, vegetation or improvements on the property will result in survey measurements for which the allowable Relative Positional Accuracies will be exceeded, the surveyor must alternatively certify as to the Relative Positional Accuracy that was otherwise achieved on the survey.

Definition:

“Relative Positional Accuracy” means the value expressed in feet or meters that represents the uncertainty due to random errors in measurements in the location of any point on a survey relative to any other point on the same survey at the 95 percent confidence level.

Background

The lines and corners on any property survey have uncertainty in location which is the result of (1) availability and condition of reference monuments, (2) occupation or possession lines as they may differ from record lines, (3) clarity or ambiguity of the record descriptions or plats of the surveyed tracts and its adjoiners and (4) Relative Positional Accuracy.

The first three sources of uncertainty must be weighed as evidence in the determination of where, in the professional surveyor’s opinion, the boundary lines and corners should be placed. Relative Positional Accuracy is related to how accurately the surveyor is able to monument or report those positions.

Of these four sources of uncertainty, only Relative Positional Accuracy is controllable, although due

to the inherent error in any measurement, it cannot be eliminated. The first three can be estimated based on evidence; Relative Positional Accuracy can be estimated using statistical means.

The surveyor shall, to the extent necessary to achieve the standard contained herein, (1) compensate or correct for systematic errors, including those associated with instrument calibration, (2) select the appropriate equipment and methods, and use trained personnel and (3) use appropriate error propagation and other measurement design theory to select the proper instruments, field procedures, geometric layouts and computational procedures to control random errors.

If radial survey methods, GPS or other acceptable technologies or procedures are used to locate or establish points on the survey, the surveyor shall apply appropriate procedures in order to assure that the allowable Relative Positional Accuracy of such points is not exceeded.

Computation of Relative Positional Accuracy

Relative Positional Accuracy may be tested by: (1) comparing the relative location of points in a survey as measured by an independent survey of higher accuracy or (2) the results of a minimally constrained, correctly weighted least square adjustment of the survey.

Allowable Relative Positional Accuracy for Measurements Controlling Land Boundaries on ALTA/ACSM Land Title Surveys

0.07 feet (or 20 mm) + 50 ppm
