

DRAFT AIA® Document A102™ - 2017

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

AGREEMENT made as of the 11 day of April in the year 2022
(In words, indicate day, month and year.)

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

Mountain View Whisman School District
1400 Montecito Avenue
Mountain View, CA. 94043

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

Palisade Builders, Inc.
900 E. Hamilton Ave., Suite 140
Campbell, California 95008

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

Mountain View Whisman School District Employee Housing

For a land description of the Project, see **Exhibit "N"**, Land Description, attached hereto.

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

TCA Architects, Inc.
1111 Broadway, Suite 1320
Oakland, California 94607
Telephone: (510) 545-4222

The Construction Manager:
« Mountain View Owner, LLC
4340 Stevens Creek Boulevard, Suite 220
San Jose, California
Telephone: 669-281-2403 »« »

The Owner and Contractor agree as follows.

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

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

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

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ARTICLE 1 THE CONTRACT DOCUMENTS

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

§ 1.2 INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 Owner and Contractor acknowledge that the intent of the Contract Documents is to provide sufficient guidance to Contractor to enable it to construct the Project consistent with Owner's programmatic intent such that the finished structure complies with Applicable Laws (as defined in Section 2.2 of this Agreement) and Applicable Permits (as defined in Section 2.3 of this Agreement), as such laws and permits are applicable to Contractor's Work, and to otherwise fulfill the requirements of the Contract Documents. The Contract Documents' express inclusion by listing, noting, scheduling, or other mention of materials, products, equipment, and systems shall be a sufficient indication that they will be provided by Contractor in accordance with the grades or standards indicated. Moreover, the use of the singular in notes, schedules or the Specifications shall not limit quantities of materials; furthermore, notations regarding materials, products, and assemblies of materials shall apply for each repetitive use of such material, product or assembly.

§ 1.2.2 The Contract Documents are complementary, and what is required by one document shall be as binding as if required by all. Contractor's Work shall be required to the extent specified by the Contract Documents, including Work that is reasonably inferable from the Contract Documents as being necessary to produce the indicated result or is customarily performed for the type, size and quality of project that is the subject of this Agreement. Contractor's Work includes, and the parties agree that the Contract Sum includes provision for, the construction of a complete and functional building in accordance with the Contract Documents, including those components and elements detailed on the Contract Documents, as well as those components and elements which, even if not detailed in the Contract Documents, are reasonably inferable therefrom. It is understood and agreed that an item of Work is "reasonably inferable" if the item is known by Contractor or reasonably should be known by Contractor based on industry standards to be a required component of a specific assembly indicated in the Contract Documents, or is necessary for the proper execution and completion of the Work, or is necessary to maintain the quality finish levels of the Project that are consistent with the scope of Work indicated in the Contract Documents.

§ 1.2.3 In performing the Work under the Contract Documents, including its review of the Contract Documents prior to commencement of its construction work, Contractor represents and warrants that its Work will meet or exceed industry standards established by prudent and reasonable contractors of comparable experience and expertise that are working in the San Francisco Bay Area ("Standard of Care").

§ 1.2.4 By executing this Agreement, Contractor represents and warrants (i) that Contractor has thoroughly reviewed, evaluated and analyzed the Contract Documents with the specific purpose of attempting to discover whether any ascertainable errors, omissions, discrepancies, and other deficiencies exist in the Contract Documents; and (ii) that Contractor has no knowledge of any errors, omissions, discrepancies, and other deficiencies in the Contract Documents that has not been previously reported to Owner, Construction Manager and to Architect. Contractor makes this representation, subject to the qualification referenced in Section 1.2.6 of this Agreement, whenever each set of Drawings and Specifications is incorporated into the Contract Documents, either by the original Agreement or by Change Order.

§ 1.2.5 Contractor further acknowledges and declares that it has visited and examined the Site, examined all physical, legal, and other conditions affecting the Work and is fully familiar with all of the conditions thereon and thereunder affecting the same. In connection with these acknowledgements, Contractor specifically represents and warrants to Owner that it has, by careful examination, satisfied itself as to and shall not be entitled to any increase in the Contract Sum or Contract Time on the basis of: (1) the known and readily observable nature, location, and character of the Project and the Site, including, without limitation, the surface conditions of the Site and all structures and obstructions thereon, both natural and man-made, all surface water conditions of the Site and the surrounding area, and all known subsurface soil conditions and known subsurface water conditions at the Site as disclosed in the Contract Documents; (2) the nature, location, and character of the general area in which the Project is located, labor supply and labor cost, and equipment supply and equipment costs; (3) the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to complete the Work in the manner and within the cost and timeframe required by the Contract Documents; and (4) any requirements imposed by Applicable Laws and Applicable Permits bearing upon the performance of the Work.

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§ 1.2.6 It is recognized that Contractor's review of the Contract Documents is made in Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

§ 1.2.7 Owner and Contractor expressly understand and agree that, if Contractor fails to perform the obligations of the Contract Documents pertaining to its thorough review, evaluation and analysis of the Contract Documents, Contractor shall bear such costs as would have been avoided if Contractor had performed such obligations. Such costs may be reimbursable if they fall within the definition of "Cost of the Work" under Article 7 of this Agreement, but in no event shall Contractor be entitled to an adjustment of the Guaranteed Maximum Price as a result of such costs. Owner further expressly understands and agrees that Contractor's review, evaluation and analysis that is referred to in this section is qualified with Owner's understanding that Contractor is only promising to conduct its review, evaluation and analysis in accordance with the Standard of Care referenced in Section 1.2.3 of this Agreement.

ARTICLE 2 THE WORK OF THIS CONTRACT

§ 2.1 The Contractor shall fully execute the Work described in the Contract Documents or reasonably inferable as necessary to produce the results indicated in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

§ 2.2 APPLICABLE LAWS

§ 2.2.1 "Applicable Laws" means (i) all laws, codes, building codes, treaties, or ordinances enacted or adopted by any governmental body, agency, or other authority; (ii) all judgments, decrees, injunctions, writs and orders of any court or arbitrator; and (iii) all rules, regulations, orders, interpretations and permits of any governmental body, agency, or other authority having jurisdiction over the Site, or over performance of the Work, all in effect during the period from the effective date of this Agreement to the date Contractor achieves Final Completion of the Work under the Contract Documents.

§ 2.3 APPLICABLE PERMITS

§ 2.3.1 "Applicable Permits" means all waivers, franchises, variances, permits, authorization, licenses or orders of or from any governmental body, agency, or other authority, court or other body having jurisdiction over the work which are required for performance of the Work, all in effect during the period from the effective date of this Agreement to the date Contractor achieves Final Completion of the Work under this Agreement.

§ 2.4 The Contractor shall furnish only skilled and properly trained staff for the performance of the Work. The key members of the Contractor's staff shall be the persons agreed upon with the Owner and identified in the "Schedule of Key Personnel", attached hereto and incorporated herein as **Exhibit "B"**. Such key members of Contractor's staff shall not be changed without the written consent of Owner unless such person becomes unable to perform any required duties due to death, disability, transfer or termination of employment with the Contractor. If a key member is no longer able to perform in the capacity described in **Exhibit "B"**, the Owner and the Contractor shall agree on a mutually acceptable substitute. Any unauthorized change of any key member of Contractor's staff as set forth in **Exhibit "B"** without Owner's consent, in its sole discretion, shall constitute a material breach of contract.

Commented [NT1]: Contractor to Provide Exhibit for Review

2. LABOR, WAGE & HOUR, APPRENTICE AND RELATED PROVISIONS

2.1. Contractor & Subcontractor Registration

2.1.1. Contractor shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations. Labor Code section 1771.1(a) states the following:

"A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

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<#>§ 2.5 Prevailing Wage Project

2.1.2. Contractor acknowledges that, for purposes of Labor Code section 1725.5, all or some of the Work is a public work to which Labor Code section 1771 applies. Contractor shall comply with Labor Code section 1725.5, including without limitation the registration requirements. Additionally, all Contractor's Subcontractors shall comply with Labor Code section 1725.5 to be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of the Contract. Contractor represents that all of its Subcontractors are registered pursuant to Labor Code section 1725.5.

2.1.3. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall post job site notices, as prescribed by regulation. Contractor shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.

2.2. Wage Rates, Travel and Subsistence

- 2.2.1. Pursuant to the provisions of article 2 (commencing at section 1770), chapter 1, part 7, division 2, of the Labor Code of California, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute this Contract are on file at the Owner's principal office and copies will be made available to any interested party on request and are available to any interested party on request or at www.dir.ca.gov/oprl/statistics_and_databases.html. Contractor shall obtain and post a copy of these wage rates at the job site.
- 2.2.2. Holiday and overtime work, when permitted by law, shall be paid for at a rate of at least one and one-half times the above specified rate of per diem wages, unless otherwise specified. The holidays upon which those rates shall be paid need not be specified by the Owner but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in Section 6700 of the Government Code.
- 2.2.3. Contractor shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations ("DIR") ("Director"), regardless of any contractual relationship which may be alleged to exist between Contractor or any Subcontractor and such workers.
- 2.2.4. If during the period this bid is required to remain open, the Director determines that there has been a change in any prevailing rate of per diem wages in the locality in which the Work under the Contract is to be performed, such change shall not alter the wage rates in the Invitation to Bid or the Contract subsequently awarded.
- 2.2.5. Pursuant to Labor Code section 1775, Contractor shall, as a penalty to Owner, forfeit the statutory amount, (currently not to exceed two hundred dollars (\$200) for each calendar day, or portion thereof), for each worker paid less than the prevailing rates, as determined by the Owner and/or the Director, for the work or craft in which that worker is employed for any public work done under Contract by Contractor or by any Subcontractor under it.
- 2.2.6. The amount of the penalty shall not be less than forty dollars (\$40) for each calendar day, or portion thereof, unless the failure of Contractor was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of Contractor.
- 2.2.7. The amount of the penalty shall not be less than eighty dollars (\$80) for each calendar day or portion thereof, if Contractor has been assessed penalties within the previous three (3) years for failing to meet Contractor's prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.
- 2.2.8. The amount of the penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, if the Labor Commissioner determines the Contractor willfully violated Labor Code section 1775.
- 2.2.9. The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Contractor.
- 2.2.10. Any worker employed to perform Work on the Project, which Work is not covered by any classification listed in the general prevailing wage rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by him, and such minimum wage rate shall be retroactive to time of initial employment of such person in such classification.

2.2.11. Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, travel time, subsistence pay, and apprenticeship or other training programs authorized by section 3093, and similar purposes.

2.2.12. Contractor shall post at appropriate conspicuous points on the Site of Project, a schedule showing all determined minimum wage rates and all authorized deductions, if any, from unpaid wages actually earned. In addition, Contractor shall post a sign-in log for all workers and visitors to the Site, a list of all subcontractors of any tier on the Site, and the required Equal Employment Opportunity poster(s).

2.3. Hours of Work

2.3.1. As provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code, eight (8) hours of labor shall constitute a legal days work. The time of service of any worker employed at any time by Contractor or by any Subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract shall be limited and restricted by Contractor to eight (8) hours per day, and forty (40) hours during any one week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of Contractor in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

2.3.2. Contractor shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by Contractor in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of Owner and to the Division of Labor Standards Enforcement of the DIR.

2.3.3. Pursuant to Labor Code section 1813, Contractor shall as a penalty to the Owner forfeit the statutory amount (believed by the Owner to be currently twenty five dollars (\$25)) for each worker employed in the execution of this Contract by Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code.

2.3.4. Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to the Owner.

2.4. Payroll Records

2.4.1. Contractor and all Subcontractors must comply with the compliance monitoring provisions of Labor Code section 1771.4, including furnishing its certified payroll records ("CPR(s)") to the Labor Commissioner of California and complying with any applicable enforcement by DIR. Labor Code section 1771.4 requires Contractor and Subcontractors to provide electronic copies of CPRs to the Labor Commissioner of California at least once every thirty (30) days, and within thirty (30) days of Project Completion. The failure to timely provide the CPRs could result in penalties as determined by Labor Code section 1771.4, applicable laws, and regulations

2.4.2. If requested by the Owner, Contractor shall provide to the Owner and shall cause each Subcontractor performing any portion of the Work to provide the Owner and an accurate CPR(s), showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work.

2.4.3. In addition to any other requirements pursuant to Labor Code sections 1770, et seq., the CPRs enumerated hereunder shall be certified and shall be provided to the Owner on a weekly basis. The CPRs from the Contractor and each Subcontractor for each week shall be provided on or before

Wednesday of the week following the week covered by the CPRs. Owner shall not make any payment to Contractor until:

2.4.3.1. Contractor and/or its Subcontractor(s) provide CPRs acceptable to the Owner, and

2.4.3.2. The Owner is given sufficient time to review and/or audit the CPRs to determine their acceptability. Any delay in Contractor and/or its Subcontractor(s) providing CPRs to the Owner in a timely manner will directly delay the Owner's review and/or audit of the CPRs and Contractor's payment.

2.4.4. All CPRs shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:

2.4.4.1. A certified copy of an employee's CPR shall be made available for inspection or furnished to the employee or the employee's authorized representative on request.

2.4.4.2. CPRs shall be made available for inspection or furnished upon request to a representative of Owner, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the Department of Industrial Relations.

2.4.4.3. CPRs shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the Owner, Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested CPRs have not been provided pursuant to the provisions herein, the requesting party shall, prior to being provided the records reimburse the costs of preparation by Contractor, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Contractor.

2.4.4.4. The form of certification for the CPRs shall be as follows:

I, _____ (Name-Print), the undersigned, am the _____
(Position in business) with the authority to act for and on behalf of _____
(Name of business and/or Contractor), certify under penalty of perjury that the records or copies thereof submitted and consisting of _____
(Description, number of pages) are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of actual disbursements by way of cash, check, or whatever form to the individual or individual named, and (b) we have complied with the requirements of sections 1771, 1811, and 1815 of the Labor Code for any work performed by our employees on the Project.

Date: _____ Signature: _____
(Section 16401 of Title 8 of the California Code of Regulations)

2.4.4.5. Each Contractor shall file a certified copy of the CPRs with the entity that requested the records within ten (10) days after receipt of a written request.

2.4.4.6. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by Owner, Division of Apprenticeship Standards, or Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Contractor awarded Contract or performing Contract shall not be marked or obliterated.

2.4.4.7. Contractor shall inform Owner of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) Business Days, provide a notice of change of location and address.

2.4.4.8. In the event of noncompliance with the requirements of this section, Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Contractor must comply with this section. Should noncompliance still be evident after the ten (10) day period, Contractor shall, as a penalty to Owner, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of Division of Apprenticeship Standards or Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

2.4.4.9. It shall be the responsibility of Contractor to ensure compliance with the provisions of Labor Code section 1776.

2.4.4.10. Apprentices

2.4.4.10.1. Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code section 1777.5, then this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of Contractor to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.

2.4.4.10.2. Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.

2.4.4.10.3. Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only at the work of the craft or trade to which the apprentice is registered.

2.4.4.10.4. Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under chapter 4 (commencing at section 3070), division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which the apprentice is training.

2.4.4.10.5. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractors employing workers in any apprenticeable craft or trade in performing any Work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.

2.4.4.10.6. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractor may be required to make contributions to the apprenticeship program.

2.4.4.10.7. If Contractor or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:

2.4.4.10.7.1. Be denied the right to bid on any subsequent project for one (1) year from the date of such determination;

2.4.4.10.7.2. Forfeit as a penalty to Owner the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.

2.4.4.10.7.3. Contractor and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.

2.4.4.10.7.4. Contractor shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California 94102.

2.4.4.10.7.5. Contractor shall ensure compliance with all certification requirements for all workers on the Project including, without limitation, the requirements for electrician certification in Labor Code sections 108, et seq.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

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

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

The Work shall commence within ten (10) days after Contractor's receipt of a Notice to Proceed and in accordance with the Construction Schedule attached hereto as Exhibit "C".

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

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

§ 4.3 Substantial Completion

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

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

- Not later than calendar days from the date of commencement of the Work.
- By the following date:

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

Deleted: Contractor acknowledges and agrees this is a prevailing wage Project. Contractor shall strictly comply with all applicable State Labor Code requirements (Labor Code Section 1720 et. seq.) including provisions requiring the payment of prevailing wages in connection with the Work performed by Contractor and any of its lower tier subcontractors and shall ensure that all workers of Contractor and its lower tier subcontractors shall be compensated in an amount no less than the general prevailing rate of per diem wages as determined by California Department of Industrial Relations under California Labor Code Sections 1770 et. seq. Contractor shall post the prevailing wage rates for all applicable trades and shall submit copies certified payroll records from Contractor and all of its lower tier subcontractor performing Work for the Project to Owner.

Commented [NT2]: Contractor to Provide Exhibits for Review.
Deleted:

Portion of Work

Substantial Completion Date

§ 4.3.3 If the Contractor fails to achieve Substantial Completion of the entire Work as provided in this Section 4.3.1, liquidated damages shall be assessed as set forth in Section 5.1.6.

ARTICLE 5 CONTRACT SUM

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

§ 5.1.1 The Contractor's Fee: The Contractor's Fee is 3.25 % of the Cost of the Work.
(State a lump sum, percentage of Cost of the Work, or other provision for determining the Contractor's Fee.)

« Subject to Section 5.2 of this Agreement and Article 7 of the AIA A201 General Conditions, the Contractor's Fee shall be 3.25% of the Cost of the Work. »

Deleted: Four and One-Half percent (4.5%)

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

« For approved Change Orders pursuant to Article 7 of the A201 General Conditions, both additive and deductive, the rate of the Contractor's Fee shall remain equal to Four and One-Half percent (4.5%) of the Cost of the Work directly attributable to any such change incurred or paid by Contractor during the performance of 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:

« For any adjustments to the Contract Sum, the Contractor agrees to charge, and accept, as payment for overhead and profit, the following percentages of costs attributable to the change in the Work:

- .1 For Contractor Fee for Changes in the Work, see Article 5.1.2 of the A102 Agreement.
- .2 For Changes in the Work performed by subcontractors, it is agreed that Subcontractors will be permitted to charge a markup of no greater than ten percent (10%) for overhead and profit, provided, however, for change order work performed by a second tier Subcontractor, in no event shall the aggregate mark-up for profit and overhead exceed fifteen percent (15%). »

§ 5.1.4 Attached hereto as Exhibit "I" is Contractor's rental rates for Contractor and Contractor Related Party owned equipment.

Commented [NT3]: Contractor to Provide Exhibit for Review.

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

Item	Units and Limitations	Price Per Unit (\$0.00)
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§ 5.1.6 Liquidated damages:
(Insert terms and conditions for liquidated damages, if any.)

« Liquidated Damages. The Contractor acknowledges and recognizes that the Owner is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time. The Contractor further acknowledges and agrees that if the Contractor fails to complete substantially or cause the Substantial Completion of the entire Work within the Contract Time, the Owner will sustain extensive damages and serious loss as a result of such failure. The exact amount of such damages will be extremely difficult to ascertain. Therefore, the Owner and Contractor agree as set forth below. This liquidated damages provision is intended by the parties to be a good faith estimate of the damages and losses the Owner will suffer due to a delay in Substantial Completion of the Project, and such damages shall be the sole and exclusive monetary remedy of the Owner for said delay and the liquidated damage payment shall be in lieu of all liability for any and all extra costs, losses, expenses, claims,

penalties and any other damages, whether special or consequential, and of whatsoever nature incurred by Owner which are occasioned by any delay in achieving Substantial Completion.

If the Contractor fails to achieve Substantial Completion of the entire Work within the Contract Time as may be adjusted in accordance with the Contract Documents, the Owner shall be entitled to retain or recover from the Contractor, as liquidated damages and not as a penalty, the following per diem amount commencing on the sixteenth (16th) day (Days 1-15 are a grace period where no liquidated damages shall be imposed (“Grace Period”)) following expiration of the Contract Time and continuing until the actual date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages the Owner will incur as a result of the delayed completion of the Work:

- Starting on the sixteenth (16th) calendar day of delay and up through the forty-fifth (45th) calendar day of delay in Contractor achieving Substantial Completion of the Work, liquidated damages shall be assessed at the rate of _____ Dollars (\$ _____) a calendar day for each and every day of delay;
- Starting on the forty-sixth (46th) calendar day of delay and up through the seventy-fifth (75th) calendar day of delay in Contractor achieving Substantial Completion of the Work, liquidated damages shall be assessed at the rate of _____ Dollars (\$ _____) a calendar day for each and every day of delay; and
- Starting on the seventy-sixth (76th) calendar day of delay and up through the date Contractor actually achieves Substantial Completion of the entire Work, liquidated damages shall be assessed at the rate of _____ Dollars (\$ _____) a calendar day for each and every day of delay.

The Owner may deduct liquidated damages described herein from the unpaid amounts then or thereafter due to the Contractor under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due the Contractor shall be payable to the Owner at the demand of the Owner, together with interest from the date of demand at the highest lawful rate of interest.

Initials: _____ / _____
Owner Contractor »

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§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed _____ (\$ _____), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price (“GMP”). The line item costs within the GMP are set forth in the GMP Schedule of Values, Alternates and Allowances attached as **Exhibit “D”** to this Agreement. The GMP includes all construction contingencies, general conditions, supervision, overhead, taxes, insurance, alternates, unit prices (if any), and Allowances. Any adjustment of the GMP based on Allowance items, Contingency, or Changes in the Work shall be made in accordance with Section 5.2.3 and Article 6 herein. Contractor shall provide Owner with written notice prior to making any modification or revision to the GMP Schedule of Values. Any other cost or expense which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. Contractor acknowledges and agrees that the Guaranteed Maximum Price includes, without limitation, all inflationary costs and adjustments, labor and material escalations, and costs related to Covid – 19 workplace requirements in connection with the performance of the Work. However, subject to conditions set forth Section 3.4.6 of the General Conditions, Contractor shall not be responsible for increased cost of materials when caused by tariffs or embargoes, not known by Contractor as of the date of the Agreement.

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§ 5.2.1.1 **Construction Contingency.** The GMP contains a construction contingency in the amount set forth in the GMP Schedule of Values (the “Construction Contingency”). Contractor shall be entitled to payment by Owner from the Construction Contingency, subject to Owner’s prior written approval (which shall not be unreasonably

withheld), solely for Cost of the Work arising from (a) the cost to perform work included in the Contract Documents but inadvertently omitted from Subcontractor scopes of work and otherwise not eligible as the basis for a Change Order (b) cost of acceleration or overtime premiums only when used by Contractor to pick up lost time not due to the fault of Contractor, Subcontractors or anyone under the control of Contractor; (c) minor uninsured casualties not caused by the negligence or other wrongful conduct of Contractor, any Subcontractor, or any person for whom any of them may be responsible; (d) at Substantial Completion of the Work, reimbursement of Contractor's general conditions costs incurred by Contractor in connection with change orders granting Contractor non-compensable extensions of time as defined in Section 8.3.3 of the General Conditions up to a maximum of \$550,00 (expressly excluding Contractor's General Requirement costs); and (e) costs incurred by Contractor to replace a Subcontractor whose Subcontract is terminated for default or augment a Subcontractor who is in default in accordance with its Subcontract, provided that Contractor demonstrates that such replacement or augmentation is not due to the fault of Contractor and that Subcontractor to be replaced/augmented is essential to the Critical Path, limited to the following trades: structural concrete, framing, exterior envelope, waterproofing, drywall, mechanical, electrical, and plumbing. With regard to item (e), Contractor shall only be entitled to use the Contingency to the extent that costs incurred by Contractor in connection with the termination or augmentation are not covered Contractor's back-charge against the defaulting Subcontractor or Contractor's entitlement to a credit from the defaulting Subcontractor for the scope of work performed by the subcontractor that Contractor retained to augment the Subcontractor's work; furthermore, Contractor shall not be permitted to use the Contingency for overtime paid to augment the defaulting Subcontractor's work without the prior written consent of Owner. Contingency items shall not be included in the Cost of Work for purposes of calculating Contractor's Fee. Contractor shall maintain a separate line item describing the utilization of the Construction Contingency. Furthermore, Contractor shall keep accurate records of all Construction Contingency items, with proper documentation which will verify the cost for any Construction Contingency expenditure and shall review same with Owner at weekly project meetings. The Construction Contingency shall not be used for Owner directed changes in the Work to upgrade or enlarge the scope of Work. Any portion of the Construction Contingency that is not utilized shall be returned to the Owner.

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§ 5.2.1.2 Contractor's General Conditions and General Requirements Costs. The GMP Schedule of Values, Alternates and Allowances, attached hereto as **Exhibit "D"**, contains a line item for Contractor's "General Conditions," which is the cost of the facilities and services necessary for the proper execution and completion of the Work but which are not incorporated into the Work and include such items as supervision, field office, temporary utilities, safety, security, clean-up and demobilization and a line item for Contractor's General Requirements. A breakdown of Contractor's General Conditions and General Requirements is attached to this Agreement as **Exhibit "E"** representing a total General Conditions Cost of \$ _____ and a total General Requirements cost of \$ _____. All of Contractor's General Conditions and General Requirements shall be contained in the General Conditions and General Requirements line items contained in **Exhibit "E"** and Contractor General Conditions Costs and General Requirements Costs shall not be increased or reduced in the absence of a circumstance or event that gives rise to a compensable extension of the Contract Time pursuant to Article 8 of the A201 General Conditions (i.e. Contractor shall not be entitled to bill for any General Conditions or General Requirements Costs outside of the General Conditions and General Requirements line items set forth in **Exhibit "E"**.)

.1 Contractor's General Conditions and General Requirements costs are subject to audit by Owner.

.2 In connection with Contractor's monthly Applications for Payment, Contractor shall be entitled to seek payment for its General Conditions and General Requirements Costs based on the Contractor's progress toward completion of the Work. Nothing herein is intended to affect Owner's right to audit Contractor's General Conditions and General Requirements Costs.

§ 5.2.2 Alternates

§ 5.2.2.1 Alternates, if any, included in the Guaranteed Maximum Price: See **Exhibit "D"** GMP Schedule of Values, in which Alternates and Allowances are identified with the letter "A".

Item	Price

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

Item	Price	Conditions for Acceptance
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§ 5.2.3 Allowances, if any, included in the Guaranteed Maximum Price: See Exhibit “D” GMP Schedule of Values, Alternates and Allowance, attached hereto.
(Identify each allowance.)

Item	Price
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§ 5.2.3.1 The price for Work items denoted as "Allowance" in the GMP Schedule of Values may be adjusted up or down for actual costs for completion of the item of Work, which may increase or decrease the GMP. Contractor shall be entitled to Contractor's Fee on final costs of Allowance items, and Contractor shall not be entitled to an increase in general conditions or overhead costs if the cost of an Allowance item increases, except in the case of a compensable extension of the Contract Time as provided in Article 8.3.3 of the A201 General Conditions. Before performing any extra work or ordering any materials which might lead to extra costs or otherwise raise the GMP for Allowance items, the Contractor shall provide the following to the Owner and Construction Manager: (1) written notice in the form of a change order request ("COR"), which shall include detailed pricing information for any proposed adjustments to the Contract Sum and Contract Time; and (2) a proposed updated Schedule of Values. The Contractor agrees to obtain the Owner's written approval prior to any use of, or billing against, any Allowance items and to regularly inform and update the Owner of all information needed to make final selections or decisions for all Allowance items.

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

« See Exhibit “F” Qualifications, Assumptions & Exclusions, attached hereto. »

Commented [NT8]: Contractor or MVO to provide Exhibit for Review.

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

§ 5.2.6 Intentionally Deleted.

ARTICLE 6 CHANGES IN THE WORK

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

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

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

§ 6.4 – Intentionally Deleted.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 Cost of the Work

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

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

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

§ 7.2 Labor Costs

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

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

§ 7.2.2.1 Wages or salaries of the Contractor's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed ~~below~~.
(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

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

§ 7.2.4 Costs paid or incurred by the Contractor, as required by law.

§ 7.3 Subcontract Costs

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

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

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

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

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

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

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Contractor, or a related party as defined in Section 7.8, are set forth in **Exhibit "I", Contractor and Contractor Related Party Equipment Rental Rates**, attached hereto. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

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

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

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

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

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

§ 7.6 Miscellaneous Costs

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

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

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

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

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

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

§ 7.6.5

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§ 7.6.5.1

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

Deleted: cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Contractor had reason to believe that the required design, process or product was an infringement of a copyright or a patent, and the Contractor failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201-2017. The costs of legal defenses, judgments, and settlements, shall not be included in the Cost of the Work used to calculate the Contractor's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8

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§ 7.7 Other Costs and Emergencies

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

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

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

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§ 7.8 Related Party Transactions

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

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

ARTICLE 8 COSTS NOT TO BE REIMBURSED

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

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 15;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Contractor's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Article 7;
- .5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contractor by, the Contractor, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, provided, however, that nothing in this Section 8.1.6 shall prevent Contractor from pursuing an insurance claim for recovery from available insurance to the extent that such costs are covered by insurance with Contractor responsible for payment of any deductible in connection with such claim;
- .7 Any cost not specifically and expressly described in Article 7; and
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

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ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

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

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

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 All Work shall be performed under subcontract agreements for which the Owner has given its prior written consent, or by the Contractor's own forces with the Owner's prior written consent. For those portions of the Work to be performed by Subcontractors, the Contractor agrees to use reasonable efforts to provide three (3) bids from qualified trade contractors who shall be disclosed to the Owner for each such portion of the Work prior to the Contractor retaining any such Subcontractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids (in such form and containing such information as Owner may reasonably require) from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner. By letter to Owner and Construction Manager, the Contractor shall then make a recommendation to Owner as to which bids should be accepted, and request Owner's approval for subcontract award. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection. In no event shall Contractor be entitled to receive compensation or reimbursement for a Cost of the Work performed by a Subcontractor unless Owner has first given its written consent to Contractor's execution of a subcontract agreement with that Subcontractor. Contractor shall complete 90% of the

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buy-out of subcontracts and supplier contracts ("Buy-Out Completion") within one hundred twenty (120) days following the commencement of the Work. Within ten (10) days of Buy-Out Completion, Contractor shall deliver to Owner a statement of all buy-out costs, with a comparison to the amounts designated for such items in **Exhibit "H"** (which includes the "Buy-Out Log"). The net amount of any buy-out savings shown in the Buy-Out Log shall be transferred to the Construction Contingency set forth in Article 5.2.1.1 within seven (7) days from the Contractor's delivery of the Buy-Out Log.

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

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

ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, at Contractor's home office, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Contractor shall preserve these records for a period of six (6) years after final payment, or for such longer period as may be required by law. In addition, on a monthly basis, the Contractor shall provide to the Owner, a Job Cost Report, detailing all Costs of the Work from the prior month. The Contractor also shall provide copies of invoices from each Subcontractor.

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§11.1 All records shall be maintained in accordance with generally accepted accounting procedures, consistently applied. Subcontractors retained by the Contractor on a 'cost-plus' basis shall have the same obligations to retain records and cooperate with audits as are required of the Contractor under this Article 11. If any inspection by the Owner of the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and any other data relating to the Contract Documents reveals an overcharge, the Contractor shall pay the Owner upon demand an amount equal to one hundred percent (100%) of such overcharge, as reimbursement for said overcharge and the administrative expenses incurred in determining the overcharge. The requirements of this Article 11 shall not apply to any portion of an overcharge that is the subject of a good faith dispute between the Owner and the Contractor.

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ARTICLE 12 PAYMENTS

§ 12.1 Progress Payments

§ 12.1.1 Based upon Applications for Payment submitted to the Construction Manager (with a copy to Owner) by the Contractor, and Owner's review and approval of the Application for Payment, the Owner shall make progress payments on account of the Contract Sum, to the Contractor, as provided below and elsewhere in the Contract Documents. Contractor shall use the AIA G702/703 form of Application for Payment (See **Exhibit "U"**, Standard AIA Forms, attached hereto).

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

« On or before the Twenty-Fifth day of the month in which the Contractor will submit an Application for Payment, the Owner, Construction Manager and the Contractor shall meet to review a preliminary draft of such Application for Payment (hereinafter referred to as a "Pencil Draw") prepared by the Contractor. The Pencil Draw shall be for Work performed between the effective date of the previous Application for Payment and the last day of the month for which the present Application for Payment shall be submitted. The Contractor shall revise the Pencil Draw in

accordance with any objection or recommendation of the Owner that is consistent with the requirements of the Contract Documents. Such revised Pencil Draw shall be resubmitted by the Contractor to the Construction Manager as the Application for Payment due on the 5th day of the following month in which the Pencil Draw was first submitted. The Contractor shall also submit with each Application for Payment a written narrative describing the basis for any item set forth in the Application for Payment that does not conform to instructions of the Owner in connection with any applicable Pencil Draw. A outline of the monthly draw schedule is attached hereto as **Exhibit “V”** (“Monthly Draw Schedule”). »

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§ 12.1.3 Provided that an Application for Payment is received by the Construction Manager (with a copy to the Owner) not later than the fifth day of a month, the Owner shall make payment to the Contractor of the amount approved by Owner not later than the fifth day of the **« following »** month. If an Application for Payment is received by the Construction Manager after the application date fixed above, payment of the amount certified shall be made by the Owner not later than **«thirty »** (**«30 »**) days after the Owner receives the Application for Payment. *(Federal, state or local laws may require payment within a certain period of time.)*

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

In addition to the required items, each Application for Payment shall be accompanied by the following, all in a form and substance satisfactory to the Owner:

- (i) Duly executed statutory lien releases from the Contractor and all Subcontractors and suppliers in a form which conforms with the laws of the State of California, establishing payment or satisfaction of the payment requested by the Contractor in the Application for Payment. Conditional waiver and release forms for the respective amounts of the invoices of the Contractor, Subcontractors, and suppliers shall be provided, as well as unconditional waiver and release forms accounting for prior payments made to the Contractor more than 30 days prior to the date of the Application for Payment. The statutory lien release forms are attached hereto as **Exhibit “W”**;
- (ii) An updated GMP Schedule of Values;
- (iii) An updated Construction Schedule;
- (iv) If requested by the Owner, a third party, or as required by the California Department of Industrial Relations, all requested or required certified payroll record (“CPR(s)”) for each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work for the period of the Application for Payment.
- (v) Such other information, documentation and/or materials as the Owner may reasonably require.

Commented [NT15]: Contractor or MVO to Provide for Review.

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

§ 12.1.5.1 The GMP Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner or Construction Manager may require. The GMP Schedule of Values shall be used as a basis for reviewing the Contractor’s Applications for Payment.

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

§ 12.1.5.3 Intentionally Deleted.

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and

for which the Contractor has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the GMP Schedule of Values.

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

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

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

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

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

§ 12.1.8 Retainage

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

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

« From each Application for Payment, Owner shall be entitled to withhold five percent (5%) retention on the Cost of the Work, Contractor's General Conditions, General Requirements and Contractor's Fee except as otherwise set forth in Exhibit "M" - Contractor's Retention. »

Commented [NT16]: Contractor to Provide Exhibit for Review.

§ 12.1.8.1.1 The following items are not subject to retainage:

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

« See Exhibit "M" - Contractor's Retention. »

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

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

« Except with the Owner's prior written approval, which may be withheld in Owner's sole discretion, payments to the Subcontractors shall be subject to retainage of five percent (5%). The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors. Any early release of

retention to Subcontractors will require the agreement of Contractor and Owner. Attached hereto as **Exhibit "M"** is Contractor's Retention Exhibit. »

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

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

« »

§ 12.1.9 Intentionally Deleted.

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

§ 12.1.11 Intentionally Deleted.

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

§ 12.1.13 **Payment for Stored Materials.** For Contractor to receive payment for stored materials (whether stored on-Site or off-Site), but not yet incorporated into the Work, Contractor must fulfill each of the following requirements:

- .1 Contractor shall submit for Owner's approval a "**Stored Materials Schedule**", which shall be submitted at least ninety (90) calendar days prior to any Contractor submission of an Application for Payment for such materials (whether stored on-Site or off-Site); and
- .2 Contractor's request for payment for the stored materials (whether stored on-Site or off-Site) shall not include the cost of incorporating such materials into the Work; and
- .3 Contractor shall provide reasonable evidence to Owner that the materials will be safely and suitably stored on-Site (or off-Site, as applicable) and insured for the full value thereof against theft, destruction or other casualty under insurance policies designating Owner as loss payee and additional insureds as evidenced by insurance binders or endorsements satisfactory to Owner; and
- .4 Contractor shall provide reasonable evidence to Owner that appropriate arrangements have been made such that, immediately upon disbursement of the payment thereof, Owner will have absolute title to the stored materials as evidenced by appropriate bills of sale and payment receipts. Once payment is made by Owner, Owner shall have a perfected security interest in the stored materials and Contractor shall provide evidence of the same to Owner (such as a filed UCC-1 Financing Statement); and
- .5 Contractor shall permit Owner's representatives and Construction Manager to verify that the materials to be so paid for comply with the Plans and Specifications and are of suitable quality for ultimate incorporation into the Work and are free from any apparent defect; and
- .6 Contractor shall provide reasonable evidence to Owner and Construction Manager that all such off-Site materials and components will be physically segregated from the other assets of the supplier or placed in a bonded warehouse or similarly secured facility, and

Deleted:

.7 All other conditions precedent to payments as set forth in the Contract Documents are satisfied.

Notwithstanding the foregoing, in no event shall payments for stored materials (whether on-Site or off-Site) exceed an aggregate of Fifteen Million Dollars (\$15,000,000); provided, however, that upon incorporation into the Work of any stored materials, the payment for such materials shall no longer constitute utilization of such Fifteen Million Dollar (\$15,000,000) limit.

Commented [NT17]: What is this amount based upon? This seems high for the employee housing project.

§ 12.2 Final Payment

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

1. the Contractor has fully performed the Contract, as defined in the Section 9.10 of AIA Document A201 - 2017;
2. the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment;
3. As-Built drawings showing all of the Work actually constructed have been received by Owner;
4. All punch list items have been corrected and approved by Owner;
5. Receipt of warranty documents required in connection with the Work have been provided to Owner;
6. Contractor shall have provided Unconditional lien releases for all prior applications for payment;
7. Receipt of all Conditional Final lien releases;
8. Receipts for diversion of recycled construction debris to an approved recycling facility as required by the local governmental authority with jurisdiction over the issue;
9. Operations and Maintenance Manuals and all other close-out documents required by the Contract Documents have been provided by Contractor; and
10. a final Application for Payment has been reviewed and approved by the Owner.

Deleted: except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment

§ 12.2.2 Within 30 days of the Owner's receipt of the Contractor's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Contractor that it will not conduct an audit. This notification does not include any audit that may be required or requested after this time period related to the District's use of public funds, including Measure T funds, to pay for the Work.

§ 12.2.2.1

§ 12.2.2.2 Within seven days after receipt of the written report described in Section 12.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 12.2.1 have been met, the Owner will either approve Contractor's Application for Payment, or notify the Contractor in writing of the Owner's reasons for withholding payment as provided in Article 9 of AIA Document A201-2017. The time periods stated in this Section 12.2.2 supersede those stated in Article 9 of AIA Document A201-2017.

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

Deleted: .

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

§ 12.2.3 The Owner's final payment to the Contractor shall be made as follows:

« The Owner's final payment to Contractor shall be made no later than thirty five (35) days after the Owner's acceptance of the Work and recordation of a Notice of Completion and satisfaction of all other conditions to payment set forth in the Contract Documents.»

§ 12.2.4 Intentionally Deleted.

§ 12.3

Deleted: Interest
Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below.
(Insert rate of interest agreed upon, if any.)

Payments due and unpaid under the Contract shall bear interest from the date payment is due at three percent (3%) per annum.

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 Initial Decision Maker – Intentionally Deleted

§ 13.2 Binding Dispute Resolution

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

(Check the appropriate box.)

Arbitration pursuant to Section 15 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

Other *(Specify)*

« »

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Termination

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

§ 14.1.2 Termination by the Owner for Cause

§ 14.1.2.1 Intentionally deleted.

§ 14.1.2.2 Intentionally deleted.

§ 14.1.3 Termination by the Owner for Convenience

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

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

«None. »

§ 14.2 Intentionally deleted.

ARTICLE 15 MISCELLANEOUS PROVISIONS

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

§ 15.2 The Owner’s representative:

(Name, address, email address and other information)

«Jason Cave
Mountain View Whisman School District
[Greystone West Company](#)
621 West Spain Street, Sonoma, Ca 95476
Cell: 650.477.8512 Main: 707.933.0624 Fax: 707.996.8390
jason@greystonewest.com

Deleted: 1

§ 15.3 The Contractor’s representative:

(Name, address, email address and other information)

«Jeff J. Jelniker/Matt Eaton
«900 E. Hamilton Ave., Suite 140

Campbell, California 95008 »
«Matte@palisadebuilders.com
JeffJ@palisadebuilders.com»> »
« »

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

§ 15.5 Insurance and Bonds

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

§ 15.5.2 The Contractor shall provide performance and payment bonds in the forms set forth in Exhibit "Y", attached hereto. The Contractor shall not commence the Work until it has provided to the Owner, a Payment (Labor and Material) Bond and a Performance Bond each in an amount equivalent to one hundred percent (100%) of the Contract Sum issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the Owner. The Performance Bond shall name the Owner and Construction Manager as dual obligees.

§ 15.6

« »

§ 15.7 Other provisions:

« § 15.7.1 Design-Build Work. The design-build work to be performed by the Contractor is set forth in Exhibit "K", Design-Build Work, attached hereto (hereinafter "Design-Build Work"). The Design-Build Work will be in strict conformance with the Project's Basis of Design and performance of the Design-Build Work and material shall be satisfactory to the Owner and the Project Architect. The Basis of Design is attached hereto as Exhibit "L". The Design-Build Work includes, without limitation, the preparation of all working drawings, specifications, necessary calculations, certifications and reports and all that is required for a final set of buildable construction documents.

Contractor is to provide a completely engineered and coordinated set of working drawings and specifications for the Design-Build Work. Contractor shall provide such working drawings and specifications to Owner and Construction Manager for review and approval by the Construction Manager, Owner and the Project Architect. Contractor shall not perform any work shown on the working drawings and specifications until Owner notifies Contractor in writing that the same have been approved or that specific work is authorized. Owner shall notify Contractor of the approval or disapproval of the working drawings and specifications within ten (10) days after receipt of the same. If the working drawings and specifications are disapproved, Owner's notice of disapproval shall include specific reasons for the disapproval and shall note a specific requested change to be made. Contractor will revise the working drawings and specifications and submit the same to the Construction Manager Owner for review and approval by Owner.

It is further understood that the scope of this Design-Build Work will provide completed and operable Design-Build Work and includes all work, though not shown or described, which may reasonably be inferred to be Design-Build Work from the Contract Documents. It shall be Contractor's responsibility to make certain that the Design-Build Contract Documents are in accordance with applicable laws, statutes, building codes, ordinances, rules and regulations, and shall comply with good engineering practices.

With respect to the working drawings, specifications and related design documents provided by Contractor for the Design-Build Work set forth above, Owner shall be a joint owner of such documents with the full right to use such documents to complete the Project and make any modifications, expansions, repairs or replacements of such portions of the Project with such drawings and specifications and related design documents. Contractor shall cause its design-build Subcontractors and/or Architects/Engineers to confirm such joint ownership of any drawings, specifications and related design documents furnished by such parties.

Commented [NT19]: MVO to provide insurance requirements for this Work. It appears MVO will carry Builder's Risk and there is an OCIP. Provide insurance information for review.

Commented [NT20]: Contractor to Provide Exhibit for Review.

Deleted: Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below: (If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

Commented [NT21]: MVO to provide Exhibit for Review.

Deleted: Owner's

Deleted:

Commented [NT22]: How will MVO confirm these requirements in its own contract? Or should this be through the CM agreement with MVO?

Deleted: , and its Architect

Deleted: Owner's

Deleted: its

Commented [NT23]: The District isn't under contract with the Architect. This to be performed by MVO.

§ 15.7.2 **Design/Build Workmanship and Materials.** For the Design-Build Work performed by Contractor, Contractor agrees to perform said work and each and every part and detail thereof in the best and workmanlike manner by qualified, careful and efficient workers and to use materials that are satisfactory for the purpose for which they are intended. Without limiting any other obligation herein, Contractor acknowledges that it is performing the work described above, on a design-build basis. Contractor further warrants that its design meets the following criteria.

- (a) All technical or performance criteria described in the Basis of Design, Exhibit L, attached hereto.
- (b) The design is consistent with, and has been coordinated with Contract Documents including the drawings, the plans, and the specifications as well as the work of all other trades affected by the work and/or performing work in the contiguous area. Contractor specifically agrees to coordinate its design with the Architect and its subconsultants.
- (c) Contractor's design and construction work meet the standard of care for the design of such system which is customary in the industry in the location of the project for design-build Contractors holding themselves out as being experts in design-build construction for their trade(s) for the specific type of improvement(s) involved in Contractor's scope of work. Nothing in the subparagraph is intended to limit Contractor's obligations under other provisions of this Agreement.

§ 15.7.3

§ 15.7.5 **Contractor's Knowledge of Conditions for the Work, Including COVID-19 Requirements as of the Execution Date of the Agreement:** By executing this Agreement, Contractor acknowledges that it has knowledge of the current conditions under which the Work will occur, including labor availability and applicable working conditions, including those published by the governmental authorities with jurisdiction over the Project and verifies that: (i) Contractor has included the cost of compliance with same in its Contract Sum, including any site cleaning and Personal Protective Equipment (PPE); and (ii) the Contractor has included appropriate time allowances in its Construction Schedule and the Contract Time is a reasonable period of time for completion of the Work under these conditions.

§ 15.7.6 **NO PERSONAL LIABILITY.** Notwithstanding any other provision of the Contract Documents to the contrary, no general partner, limited partner, member, officer, shareholder, director or other representative of Owner or of any partner, member or manager of Owner shall have any personal liability for the performance of any obligations under the Contract Documents, and no monetary other judgment shall be sought or enforced against any such persons or their assets.

§15.7.7 **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one instrument.

§ 15.7.8 **SERVICE OF NOTICE.** All notices given under the Contract Documents shall be in writing and shall be hand delivered, mailed, sent certified mail, postage prepaid, return receipt requested, or mailed electronically and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice; (ii) if mailed, four (4) business days after the date of posting by the United States Post Office; (iii) if sent by certified mail, when delivered with charged prepaid and (iv) if mailed electronically, the date of delivery to recipient, provided that a copy of the email also shall be delivered by one of the preceding three delivery modes.

§15.7.9 Any indemnity, warranty or guaranty given by the Contractor to the Owner or by the Owner to the Contractor under the Contract Documents shall survive the expiration or termination of this Agreement and shall be binding upon the Contractor or Owner until any action thereunder is barred by the applicable statute of limitations or repose.

§15.7.10 The Contractor represents and warrants that the Contractor holds a license, permit or other special license to perform the Work included in this Agreement, as required by law, or employs or works under the general supervision of the holder of such license, permit or special license, and shall keep and maintain all such licenses, permits and special licenses in good standing and in full force and effect at all times while the Contractor is performing Work under this Agreement.

Deleted: LABOR CODE PROVISIONS:

§15.7.3.1 The Work is subject to compliance monitoring and enforcement by the Department of Industrial Relations. District hereby provides notice of the requirements described in Labor Code § 1771.1(a) that a contractor or subcontractor shall not be qualified to bid on, be listed in a bid or proposal, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Labor Code § 1725.5. Contractor acknowledges that all or a portion of the Services under this Contract are a public work, and that it and its subcontractors have complied with Labor Code § 1725.5, including, without limitation, the registration requirements thereof.

§15.7.3.2 Contractor shall post all required job site notices and shall comply with all applicable requirements prescribed thereby, including but not limited to Labor Code § 1771.4.

§15.7.3.3 Contractor shall comply with all applicable provisions of the Labor Code, Division 3, Part 7, Chapter 1, Articles 1 5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000).

§15.7.3.4 Copies of the prevailing rate of per diem wages are on file with the District and are available to any interested party on request or at www.dir.ca.gov/oprl/statistics_and_databases.html.

§15.7.3.5 Contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the Labor Code, beginning with § 1720, and including §§ 1735, 1777.5 and 1777.6, forbidding discrimination, and §§ 1776, 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts. Contractor shall comply with Labor Code § 1777.5 pertaining to prevailing wage compensation to apprentices for preemployment activities.

§15.7.4. **PAYROLL RECORDS:** Contractor and its subcontractor(s) shall keep accurate certified payroll records of employees and make them available to the Owner immediately upon request.

§ 15.7.11 The terms of the Contract Documents are intended by the parties to be a final expression of their understanding with respect to such terms as are included in the Contract Documents and may not be contradicted by evidence of any prior or contemporaneous statements, representations, agreements or understandings. Additionally, the parties hereby expressly agree that no such statements, representations, agreements or understandings exist. The parties further intend that the Contract Documents constitute the complete and exclusive statement of their terms and that no extrinsic evidence whatsoever may be introduced in any judicial proceeding or arbitration involving the Contract Documents. No addition to, deletion from or modification of any term or provision of the Contract Documents shall be effective unless it is made in a writing signed by the parties hereto.

§ 15.7.12 Both the Owner and the Contractor have, with the assistance of their respective counsel, actively negotiated the terms and provisions contained in this Agreement. Therefore, the parties waive the effect of any statutory or common law provision which construes ambiguities in a contract against the party that drafted the contract.

§ 15.7.13 If any provision of the Contract Documents, or any application of any such provision to any party or circumstances, shall be determined by any court of competent jurisdiction or arbitrator to be invalid and unenforceable to any extent, the remainder of the Contract Documents or the application of such provision to such person or circumstances, other than the application as to which such provision is determined to be invalid or unenforceable, shall not be affected thereby, and each provision shall be valid and shall be enforced to the fullest extent permitted by law.

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 This Agreement is comprised of the following documents:

- .1 AIA Document A102™–2017, Standard Form of Agreement Between Owner and Contractor, as modified
- .2 AIA Document A102™–2017, Exhibit A, Insurance and Bonds, as modified
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified
- .4 Intentionally Deleted.

« »

- .5 Drawings : See **Exhibit “G”**, Contract Documents, attached hereto.

Number	Title	Date

- .6 Specifications: : See **Exhibit “G”**, Contract Documents, attached hereto.

Section	Title	Date	Pages

- .7 Addenda, if any:

Number	Date	Pages

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

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

Commented [NT24]: MVO to confirm all relevant Contract Documents have been included.

[« »] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:

(Insert the date of the E204-2017 incorporated into this Agreement.)

« »

[« »] The Sustainability Plan:

Title	Date	Pages

[« »] Supplementary and other Conditions of the Contract: Not Applicable

Document	Title	Date	Pages

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

- « Exhibit "A" – Insurance and Bonds
- Exhibit "B" Schedule of Key Personnel
- Exhibit "C" Construction Schedule
- Exhibit "D" GMP Schedule of Values, Alternates and Allowances
- Exhibit "E" Contractor's General Conditions and General Requirements
- Exhibit "F" Contractor's Qualifications, Assumptions & Exclusions
- Exhibit "G" Contract Documents
- Exhibit "H" - Contractor Buy-Out Log
- Exhibit "I" – Contractor and Contractor Related Party Equipment Rental Rates
- Exhibit "J" – Not Used
- Exhibit "K" – Design-Build Work
- Exhibit "L" – Basis of Design
- Exhibit "M" – Contractor's Retention
- Exhibit "N" – Land Description
- Exhibit "O" - Not Used
- Exhibit "P" – Not Used
- Exhibit "Q" – Pre-Ordered and/or Deposits on Materials
- Exhibit "R" – Standard Subcontract
- Exhibit "S" – Submittal Schedule
- Exhibit "T" – Permit Responsibility List
- Exhibit "U" – Standard AIA Forms
- Exhibit "V" – Monthly Draw Schedule
- Exhibit "W" – Statutory Lien Releases
- Exhibit "X" – Change Order Tracking Log (Procure)
- Exhibit "Y" - Form of Performance Bond and Payment Bond

»

Contractors are required by law to be licensed and regulated by the Contractor's State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, P.O. Box 26000, Sacramento, CA 95826.

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

OWNER:
Mountain View Whisman School District

CONTRACTOR: Palisade Builders, Inc.,
a California corporation

By: _____
Name:
Its:

By: _____
Name: Jeff J. Jelniker
Its: Vice President

OWNER (Signature)

CONTRACTOR (Signature)

« »« »

(Printed name and title)

« »« »

(Printed name and title)

-
MVO - EH Housing
891516_3.docx

