



# AIA<sup>®</sup> Document Comparative

## A103<sup>™</sup> – 2007 Compared to A114<sup>™</sup> – 2001

Additions to A114–2001 are underlined. Deletions from A114–2001 are in ~~strikethrough~~ text.

### TITLE

#### **Standard Form of Agreement Between Owner and Contractor**

*where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price*

### COVER PAGE

**AGREEMENT** made as of the \_\_\_\_\_ day of \_\_\_\_\_  
in the year \_\_\_\_\_

*(In words, indicate day, month and year)*

**BETWEEN** the Owner

*(Name, address and other information)*

And the Contractor

*(Name, address and other information)*

~~The~~ for the following Project ~~is:~~

*(Name, location, and detailed description)*

The Architect ~~is:~~

*(Name, address and other information)*

The Owner and Contractor agree as follows.

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## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement. ~~These listed, all of which~~ form the Contract and are ~~all~~ 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 Modifications, appears in Article 15.~~ If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

## ARTICLE 2 THE WORK OF THIS CONTRACT

~~§ 2.1~~ The Contractor shall execute the Work described in the Contract Documents, except ~~to the extent as~~ specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 3 RELATIONSHIP OF THE PARTIES

~~§ 3.1~~ The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or 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 the date of this Agreement, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.  
*(Insert the date of commencement if it differs from the date of this Agreement, or if applicable, state that the date will be fixed in a notice to proceed.)*

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

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

**§ 4.3** The Contractor shall achieve Substantial Completion of the entire Work not later than (        ) days from the date of commencement or as follows:

*(Insert the number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. ~~Unless stated elsewhere in the Contract Documents~~ If appropriate, insert ~~any~~ requirements for earlier Substantial Completion of certain portions of the Work.)*

, subject to adjustments of this Contract Time as provided in ~~Section 6.2.4~~ the Contract Documents.

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

## 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 actual Cost of the Work as defined in Article 7 plus the Contractor's Fee.

~~§ 5.25.1.1~~ The Contractor's Fee is:

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

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

*Note: Section 5.1.2 formerly appeared at Section 5.2, where it was part of the parenthetical instruction.*

~~§ 5.3~~ If the extent of changes is such that application of the adjustment provisions herein will cause substantial inequity to the Owner or Contractor, in the aggregate, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

*Note: Section 5.3 is incorporated into Section 6.4.*

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

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

§ 5.1.5 Unit prices, if any:

*(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable)*

<u>Item</u>	<u>Units and Limitations</u>	<u>Price Per Unit</u>
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## ~~ARTICLE 6~~ § 5.2 CONTROL ESTIMATE AND CONTRACT TIME

§ 6-45.2.1 The Contractor shall prepare and submit to the Owner, in writing, a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee. The Control Estimate shall be used to monitor actual costs and the timely performance of the Work. The Contractor shall update the Control Estimate with each Application for Payment as needed to reflect changes in the Work.

§ 6-25.2.2 The Control Estimate shall include:

- .1 the documents enumerated in Article ~~45~~16, including all Addenda thereto, and the Conditions of the Contract;
- .2 a list of the clarifications and assumptions made by the Contractor in the preparation of the Control Estimate, including assumptions under Section ~~6-45.2.4~~, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- .4 a project schedule indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment requiring long-lead time, and the Owner's occupancy requirements showing portions of the Project having occupancy priority; and
- .5 contingencies for further development of design and construction as required by Section ~~6-45.2.4~~.

§ 6-35.2.3 The Contractor shall meet with the Owner and Architect to review the Control Estimate. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Contractor, who shall make appropriate adjustments to the Control Estimate. When the Control Estimate is acceptable to the Owner, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 6-45.2.4 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor shall provide in the Control Estimate for 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 in a revised Control Estimate by mutual agreement of the parties.

§ 6-55.2.5 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised ~~at mutually agreed upon intervals~~ and submitted with each Application for Payment.

## **ARTICLE 6 CHANGES IN THE WORK**

§ 6.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201™-2007, General Conditions of the Contract for Construction. The Contractor shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work. The Contractor shall incorporate all changes in the Work and Contract Time as separate entries in the Control Estimate.

§ 6.2 Increased costs for the items set forth in Article 7 which result from changes in the Work shall become part of the Cost of the Work, and the Contractor's Fee shall be adjusted as provided in Article 5.

§ 6.3 If the Contractor receives any drawings, specifications, interpretations or instructions from the Owner or Architect which are inconsistent with the Contract Documents, or encounters unanticipated conditions, any of which will result in a significant change in the Cost of the Work or estimated date of Substantial Completion in comparison with the Control Estimate, the Contractor shall promptly notify the Owner and Architect in writing and shall not proceed with the affected Work until the Contractor receives further written instructions from the Owner and Architect.

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

*Note: Section 6.4 incorporates former Section 5.3.*

## **ARTICLE 7 COSTS TO BE REIMBURSED**

### **§ 7.1 COST OF THE WORK**

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

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

### **§ 7.2 LABOR COSTS**

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

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.  
*(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 15 the personnel to be included, whether for all or only part of ~~the~~ their time, and the rates at which their time will be charged to the Work.)*

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

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

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

### **§ 7.3 SUBCONTRACT COSTS**

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

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

§ 7.4.1 Costs including transportation and storage 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, including of transportation and, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. 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 previously used 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 costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. The total rental cost of any Contractor-owned item may not exceed the purchase price of a comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

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

~~§ 7.5.4~~ Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

~~§ 7.5.5~~ ~~That portion of the reasonable travel and subsistence expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.~~

*Note: Section 7.5.5 is revised and moved to Section 7.6.10.*

~~§ 7.5.6.7.5.5~~ Costs of materials and equipment stored off-site at a mutually acceptable location, ~~if approved in advance by the Owner with the Owner's prior approval.~~

## § 7.6 MISCELLANEOUS COSTS

~~§ 7.6.1~~ ~~Premiums for that portion of insurance and bond premiums bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.~~

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

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

~~§ 7.6.4~~ Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-49972007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

~~§ 7.6.5~~ Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. Such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee, however. If such royalties, fees and costs are excluded by the last sentence of Section 3.17.4 of AIA Document A201-49972007 or other provisions of the Contract Documents, they shall not be included in the Cost of the Work.

~~§ 7.6.6~~ Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

~~§ 7.6.6.7.6.7~~ ~~Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the Owner as set forth in the Contract Documents.~~

~~§ 7.6.7.7.6.8~~ Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior written approval, which shall not be unreasonably withheld.

~~§ 7.6.87.6.9~~ Subject to the Owner's prior approval, expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work, if approved by the Owner.

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

*Note: Section 7.6.10 is revised former Section 7.5.5.*

## **§ 7.7 OTHER COSTS AND EMERGENCIES**

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

§ 7.7.2 Costs ~~due to emergencies~~ incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.64 of AIA Document A201-~~1997~~2007.

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

## **§ 7.8 RELATED PARTY TRANSACTIONS**

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

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

## **ARTICLE 8 COSTS NOT TO BE REIMBURSED**

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

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Sections ~~7.2.2 and 7.2.3~~, or as may be provided in Article ~~4~~15;
- .2 Expenses of the Contractor's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Article 7;
- .4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- ~~.5 Rental costs of machinery and equipment, except as specifically provided in Section 7.5.2.~~
- ~~.6~~5 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them; or for whose acts any of them may be liable ~~to fulfill a specific responsibility of the Contract; and~~
- ~~.7~~6 Any cost not specifically and expressly described in Article 7.

## **ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS**

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment ~~therefore~~ 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 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Contractor and Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom ~~there is the Contractor has reasonable objection on the Contractor's part.~~

§ 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~~ cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11, below.

## ARTICLE 11 ACCOUNTING RECORDS

~~§ 11.1~~ The Contractor shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract; ~~and the to substantiate all costs incurred.~~ The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's ~~accountants~~ auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including: complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract, ~~and~~. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## ARTICLE 12 PAYMENTS

### § 12.1 PROGRESS PAYMENTS

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

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

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the ( ) day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the ( ) day of the ~~same~~ ( ) month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 12.1.4 With each Application for Payment, the Contractor shall submit ~~partial release of liens,~~ the cost control information required in Section 5.2.5 along with payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment; ~~plus (4) retainage provided in Section 12.1.6.2, if any, applicable to prior progress payments.~~

§ 12.1.5 Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.

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

- .1 Take the Cost of the Work as described in Article 7;
- .2 Add the Contractor's Fee, less retainage of \_\_\_\_\_ percent ( \_\_\_\_\_ %). The Contractor's Fee shall be computed upon the Cost of the Work described in the preceding Section 12.1.6.1 at the rate stated in Section 5.21.1; or if the Contractor's Fee is stated as a fixed sum in that ~~paragraph~~Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work ~~in the preceding clause~~ bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract retainage of \_\_\_\_\_ percent ( \_\_\_\_\_ %) from that portion of the Work that the Contractor self-performs;
- ~~.34~~ Subtract the aggregate of previous payments made by the Owner;
- ~~.45~~ Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 or resulting from errors subsequently discovered by the Owner's ~~accountants~~auditors in such documentation; and
- ~~.56~~ Subtract amounts, if any, for which the Architect has withheld or withdrawn a Certificate for Payment as provided in the Contract Documents.

~~§ 12.1.7 Additional retainage, if any, shall be as follows:~~

~~§ 12.1.8~~12.1.7 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of not less than \_\_\_\_\_ percent ( \_\_\_\_\_ %). The Owner and Contractor shall agree ~~on upon~~ (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and ~~retention for Subcontractors;~~ (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

~~§ 12.1.9~~12.1.8 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the 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 ~~accountants~~auditors acting in the sole interest of the Owner.

## § 12.2 FINAL PAYMENT

*Note: Parts of Section 12.2 are renumbered to reflect the proper sequence of auditing events that may occur before final payment.*

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work, as provided in Section 12.2.2 of AIA Document A201-~~1997~~2007, and to satisfy other requirements, if any, which extend beyond final payment; ~~and~~
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

~~§ 12.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:~~

~~§ 12.2.3~~12.2.2 The Owner's ~~accountants~~auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's ~~accountants~~auditors report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Architect will, within seven days after receipt of written report of the Owner's ~~accountants~~auditors, either issue to the Owner a final Certificate for Payment with a copy to the Contractor or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of AIA Document A201-~~1997~~2007. The time periods stated in this Section 12.2.3-~~2~~ supersede those stated in Section 9.4.1 of AIA Document A201-~~1997~~2007. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

~~§ 12.2.4~~12.2.3 If the Owner's ~~accountants~~auditors report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to ~~demand~~ arbitration ~~request mediation~~ of the disputed amount without ~~a further seeking an initial decision of the Architect.~~ Such ~~demand for arbitration~~ pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment.

Failure to ~~demand arbitration~~ request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's ~~accountants/auditors~~ becoming binding on the Contractor. Pending a final resolution by ~~arbitration~~ of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

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

**§ 12.2.5** If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment.

## ARTICLE 13 DISPUTE RESOLUTION

### **§ 13.1 INITIAL DECISION MAKER**

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

### **§ 13.2 BINDING DISPUTE RESOLUTION**

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:  
*(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

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

## ARTICLE ~~13~~14 TERMINATION OR SUSPENSION

**§ ~~13~~14.1** The Contract may be terminated by the Contractor, or by the Owner, as provided in Article 14 of AIA Document A201–1997. However, the amount to be paid to the Contractor under Section 14.1.3 of AIA Document A201–1997 shall not exceed the amount the Contractor would be entitled to receive under Section 13.2 below. Subject to the provisions of Section 14.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

**§ ~~13~~14.2** The Contract may be terminated by the Owner for cause or for convenience as provided in Article 14 of AIA Document A201–~~1997~~2007; however, the Owner shall then only pay the Contractor an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section ~~5.25.1.1~~ or, if the Contractor's Fee is stated as a fixed sum in that ~~Paragraph~~Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner.

**§ ~~13~~14.3** The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section ~~13~~14.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article ~~13~~14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

**§ ~~13~~14.4** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–~~1997~~2007; in such case, the Contract Sum and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–~~1997~~2007, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections ~~5.25.1.1~~ and ~~5.36.4~~ of this Agreement.

## ARTICLE 4415 MISCELLANEOUS PROVISIONS

§ 4415.1 Where reference is made in this Agreement to a provision of AIA Document A201–1997/2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 4415.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any)*

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

§ 4415.3 The Owner's representative is:  
*(Name, address and other information)*

§ 4415.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

§ 4415.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

### § 44.6 DISPUTE RESOLUTION

~~§ 44.6.1 Claims, disputes or other matters in question between the parties to this Agreement shall be resolved by mediation or by arbitration. Prior to arbitration, the parties shall endeavor to reach settlement by mediation.~~

~~*(Refer to Sections 4.4 through 4.6 of AIA Document A201–1997, General Conditions of the Contract for Construction, for specific requirements related to mediation and arbitration provisions.)*~~

§ 4415.6 Other provisions:

## ARTICLE 4516 ENUMERATION OF CONTRACT DOCUMENTS

§ 4516.1 The Contract Documents ~~include~~ are enumerated in the sections below.

§ 4516.1.1 The Agreement is this executed 2001 edition of the AIA Document A103–2007, Standard Form of Agreement Between Owner and Contractor, ~~AIA Document A114.~~

§ 4516.1.2 The General Conditions are the 1997 edition of the AIA Document A201–2007, General Conditions of the Contract for Construction, ~~AIA Document A201.~~

§ 4516.1.3 The Supplementary and other Conditions of the Contract are as follows:

<u>Document</u>	<u>Title</u>	<u>Date</u>	<u>Pages</u>
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§ 4516.1.4 The Specifications and Addenda, if any, are as follows:  
*(Either list here or refer to an exhibit attached to this Agreement)*

<u>Section</u>	<u>Title</u>	<u>Date</u>	<u>Pages</u>
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§ 4516.1.5 The Drawings are as follows, and are dated \_\_\_\_\_ unless a different date is shown below:  
*(Either list here or refer to an exhibit attached to this Agreement)*

<u>Number</u>	<u>Title</u>	<u>Date</u>
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§ 16.1.6 The Addenda, if any:

<u>Number</u>	<u>Date</u>	<u>Pages</u>
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Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article ~~4516.~~

~~§ 45.1.6~~ § 16.1.7 Other Additional documents, if any, forming part of the Contract Documents are as follows:

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

2 Other documents, if any, listed below:

*(List here any additional documents, such as a list of allowances or unit prices that are intended to form part of the Contract Documents. AIA Document A201–1997/2007 provides that bidding requirements, such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid, are not part of the Contract*

Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

## ARTICLE 1617 INSURANCE AND BONDS

~~§ 16.1~~ The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201-19972007.

~~(List required State bonding requirements, if any, and limits of liability for insurance and bonds. AIA Document required in Article 11 of A201-19972007 gives other specific requirements or insurance and bonds.)~~

## SIGNATURE

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

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
CONTRACTOR (Signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)