

## **Construction Contract**

This agreement is made by Brian Washington (Contractor) and (Owner) on the date written beside our signatures.

### **Contractor**

Brian Washington  
26A Quincy Street  
Rochester, New York 14069  
Work Phone Number: 585-298-0835  
Email Address: eramos199@aol.com

Brian Washington is operating as a limited liability company in the state of New York.  
Brian Washington will be referred to as PROJECT MANAGER throughout this agreement.

### **Owner**

#### **The Construction Site**

New York

### **I. Project Description**

A. For a price identified below, PROJECT MANAGER agrees to complete for Owner the Work identified in this agreement as the PROJECT MANAGING.

B. The PROJECT MANAGING is described as follows:

Unknown

### **II. Contract Price**

A. In addition to any other charges specified in this agreement, Owner agrees to pay PROJECT MANAGER the following for completing the Work described as the PROJECT MANAGING:

For the cost of labor as defined in this agreement.

For the cost of materials as defined in this agreement.

For the cost of Subcontract Work and services as defined in this agreement.

For the cost of equipment as defined in this agreement.

For the cost of supervision as defined in this agreement.

For the cost of overhead as defined in this agreement.

Plus a fee of 0.21 percent of the total cost.

1. The maximum cost to Owner under this agreement shall not exceed \$1.00 plus any Change Orders approved by Owner. This is the guaranteed maximum price. If the cost to Owner is less than the guaranteed maximum price, cost savings will be shared as follows: Savings will be returned to owner. PROJECT MANAGER will pay 100 percent of the cost of completing the Work that exceeds the guaranteed maximum price.

### **III. Finance Charge**

A. This contract includes a finance charge of \$500.00.

### **IV. Scheduled Start of Construction**

- A. Work under this agreement will begin on 5/31/2019.

## **V. Scheduled Completion of Construction**

- A. PROJECT MANAGER agrees to complete the Work within a reasonable time, subject to such delays as are permissible under this contract.
- B. Owner and PROJECT MANAGER have determined that a definite completion date is the essence of this agreement.
- C. The following contingencies may materially change the estimated completion date:
- Inclement weather or other Force Majeure
  - Shortage of skilled labor or necessary materials
  - Failure to gain permits or required approvals
  - Other factors beyond control of PROJECT MANAGER

## **VI. Documents Incorporated**

- A. This agreement incorporates by reference certain disclosures and notices required by federal and state law. The following documents are incorporated as though included in full as part of this agreement.

Thermal Insulation Disclosure

- B. This agreement incorporates by reference certain documents which define and describe the Work to be done. The following documents are incorporated as though included in full as part of this agreement.

1. **Plans**

2. **Specifications**

3. **Proposal (Estimate or Bid)**

Proposal (Estimate or Bid) dated 5/31/2019.

For the amount of \$0.00.

Reference to PROJECT MANAGER's proposal dated 5/31/2019 is for convenience only. Other Contract Documents identify the Work to be completed under this agreement.

4. **Detailed Drawings**

5. **General Conditions**

6. **Special Conditions**

7. **Project Manual**

8. **Shop Drawings**

9. **Samples**

## **VII. Documents Supplied to Contractor**

- A. Owner will furnish to PROJECT MANAGER at no cost:
1. 3 full sets of Plans and Specifications for all trades, on paper.

If PROJECT MANAGER needs additional Plan sets, Owner will furnish those Plan sets to PROJECT MANAGER at \$1.00 per Plan set.

2. A full set of Plans and Specifications for all trades in electronic format.
3. A project manual in electronic or paper format.
4. PROJECT MANAGER will distribute Contract Documents as required by Subcontractors.

### **VIII. Scope of Work**

A. PROJECT MANAGER shall supervise and direct the Work and accepts responsibility for construction means, methods, techniques, sequences and procedures required to complete the PROJECT MANAGING in compliance with the Contract Documents.

B. Except for materials expressly designated otherwise in the Contract Documents, PROJECT MANAGER warrants that all materials and equipment furnished under this contract shall be of good quality and new.

C. PROJECT MANAGER is responsible for coordination of the various trades and deliveries of equipment, materials and supplies to minimize interference which could delay the Work or pose a hazard to life or property. PROJECT MANAGER shall be responsible for allocation of tasks between trades and will be the final authority on location and routing of equipment and storage of materials on the Job Site.

D. PROJECT MANAGER will ensure that Subcontractors, their agents, and employees adhere to these Contract Documents. PROJECT MANAGER accepts responsibility for all Work performed under this contract, including Work performed by employees of Subcontractors. PROJECT MANAGER will settle disputes among Subcontractors and between PROJECT MANAGER and Subcontractors so that disagreements do not delay completion of the Work or affect quality of the Work.

E. PROJECT MANAGER shall make a best effort to adopt and implement policies and practices designed to minimize Work stoppages, slowdowns, disputes or strikes. Except as may be specifically provided elsewhere in this or a separate agreement, PROJECT MANAGER is not liable to Owner for damages suffered by Owner as a result of Work stoppages, slowdowns, disputes or strikes. PROJECT MANAGER shall allocate labor tasks among the various trades in accordance with local custom, rules, jurisdictional awards, regulations, and decisions, regardless of any classification by the Contract Documents.

F. PROJECT MANAGER shall provide on the Job Site during the period of construction a temporary chemical toilet or water closet which shall be serviced no less than weekly. Upon completion of the Project, PROJECT MANAGER will remove temporary toilet facilities from the site.

G. PROJECT MANAGER shall provide temporary elevators and lifts as may be required by construction personnel, including Subcontractors, Material Suppliers, Inspectors, and Representatives of Owner. Elevators and lifts will comply with all federal, state and local Laws and ordinances in effect at the Job Site. Upon completion of the Project, PROJECT MANAGER will dismantle and remove temporary elevators and lifts.

H. Temporary roadway and parking area, if required, shall be established and maintained by PROJECT MANAGER until the permanent roadway and parking area are complete and accepted. When no longer required, temporary roadway and parking area will be removed by PROJECT MANAGER and the area restored to the condition required by the Contract Documents. Crushed rock, paving, and other road materials from temporary roads shall not be left on the Job Site unless approved by Owner.

I. When necessary for protection of the Work, temporary heating will be provided by, and at the expense of, PROJECT MANAGER.

J. PROJECT MANAGER shall develop and present to Owner for approval (which shall not be withheld unreasonably), a site logistics plan drawn to scale, showing proposed secure and fenced areas, locations and types of temporary barricades, material storage and staging areas, property entrances used for material deliveries, and special material or equipment storage Requirements. This plan will include a description and proposed location for any temporary office, storage trailer, sanitary facilities, and parking for construction personnel.

### **IX. Submittals**

A. PROJECT MANAGER will get prior approval from Owner before buying or installing any material for which prior approval is required by the Contract Documents. If disapproved, Owner will indicate why approval was withheld. Where a contract task requires prior approval, any materials purchased or Work done before approval is at the risk of PROJECT MANAGER.

### **X. Cutting and Patching**

A. PROJECT MANAGER will ensure that cutting and patching required to make building parts fit together properly is done by those skilled in the trade. Work completed by PROJECT MANAGER will have the neatly finished appearance characteristic of professional grade construction.

B. PROJECT MANAGER will ensure that alteration Work done on existing building components does no damage either to the property of Owner or to Work done by others.

C. Except as illustrated on building Plans or described in Contract Documents, PROJECT MANAGER will not alter existing building components without consent of Owner. PROJECT MANAGER will not alter or interfere with the Work of any Separate Contractor without prior consent of the Separate Contractor involved.

D. The color, texture and planes between existing and new materials might not match exactly. PROJECT MANAGER will use due diligence to create the best match possible. Owner acknowledges that patched surfaces may be detectable when construction is complete.

### **XI. Job Site Safety**

A. PROJECT MANAGER will initiate, maintain and supervise construction means and methods and precautions reasonably designed to prevent damage, injury or loss to persons or property on or in the vicinity of the Work Site, including property of Owner, stored materials and construction equipment. PROJECT MANAGER will inspect construction operations to identify and eliminate unsafe conditions, whether caused by employees or agents of PROJECT MANAGER, Subcontractors, vendors, Owner, or the general public. PROJECT MANAGER will ensure that Subcontractors and vendors working under the direction or control of PROJECT MANAGER

comply with all applicable provisions of federal, state and local Laws, rules and regulations, building codes, Requirements of Owner and Requirements in this agreement that relate to safety of persons or property.

B. Except as provided by New York Labor Code Sections 240, 241 or 241-a, nothing in this contract will be interpreted to impose on PROJECT MANAGER responsibility for safety on portions of the Job Site over which PROJECT MANAGER is not exercising control of the means and methods of construction, including, but not limited to, Work by a Separate Contractor, or portions of the PROJECT MANAGING over which Owner has Partial Use or Beneficial Occupancy. Neither is PROJECT MANAGER responsible for unsafe conditions created by Owner before the Date of Commencement or for unsafe conditions about which PROJECT MANAGER has no knowledge or control and about which Owner is fully informed.

C. If at any time Owner becomes aware of any unsafe condition on the Job Site which poses a serious or imminent danger to the health or safety of the public or construction personnel, Owner may notify PROJECT MANAGER orally, with written confirmation, and request immediate corrective action. This notice, when delivered to PROJECT MANAGER or Contractor's Representative, will be considered notice of non-compliance with Contract Documents. If PROJECT MANAGER fails or refuses to take corrective action promptly, Owner may stop all or part of the Work until satisfactory corrective action has been taken. If Work is stopped by Owner for failure to take corrective action, PROJECT MANAGER is not entitled to adjustment of the Contract Price for delay or extension of the Contract Time.

D. If PROJECT MANAGER fails to take immediate corrective action following notice from Owner of any unsafe condition, Owner shall have the right, but not the obligation, to take all necessary corrective action at the expense of PROJECT MANAGER.

E. Nothing in this contract shall be construed to mean that Owner has authority or responsibility to administer, supervise or inspect safety programs or conditions at the Job Site. Any duty of Owner to conduct periodic Inspections of the Work shall not give rise to a duty to review or approve the adequacy of the safety program of PROJECT MANAGER or any safety measure PROJECT MANAGER takes or fails to take.

F. Nothing in this contract shall be construed to impose on PROJECT MANAGER any responsibility for the adequacy or safety of Project Drawings, prints, Plans, or Specifications prepared by others. Neither is PROJECT MANAGER responsible for the adequacy or safety of written instructions or oral instructions issued by Owner.

G. If PROJECT MANAGER determines that construction in compliance with Drawings, prints, Plans, Specifications, written or oral instructions issued by Owner poses an imminent danger to the health or safety of the public or construction personnel, PROJECT MANAGER may stop Work on that portion of the Work considered unsafe and give written notice to Owner of the unsafe condition. With that written notice, PROJECT MANAGER will propose a Change Order which would eliminate the unsafe condition and allow Work to proceed in a safe manner. If PROJECT MANAGER is advised by Owner to proceed without the Change Order proposed, Owner accepts responsibility for negligent acts or omissions of Owner that result in loss or damage resulting from the condition described by PROJECT MANAGER as unsafe.

H. If requested by Owner, PROJECT MANAGER will appoint a qualified accident prevention specialist responsible for monitoring and eliminating unsafe conditions on the Job Site during construction. The appointed accident prevention specialist will manage all safety-related issues at the Job Site and is authorized by this agreement to communicate directly with Owner and anyone acting under direction or control of Owner on issues that concern accident prevention.

## **XII. Protection of People and Property**

### **A. Safety Program**

1. PROJECT MANAGER shall institute and maintain a safety program designed to avoid and prevent unsafe conditions and unsafe acts on the Job Site during the period of construction, whether by PROJECT MANAGER personnel, Subcontractors, Sub-subcontractors, or visitors to the site. The safety program adopted by PROJECT MANAGER will meet all Requirements of federal, state and local Laws and regulations.

### **B. Safety Standards**

1. PROJECT MANAGER will ensure that construction areas, aisles, stairs, ramps, runways, corridors, offices, shops, and storage areas where Work is in progress are lighted with either natural or artificial illumination not less than the minimums set in Table D-3 of Code of Federal Regulation § 1926.56.

2. PROJECT MANAGER will not permit employees, employees of Subcontractors, vendors or the general public to use any walking surface which lacks the structural integrity to support foot traffic. Every working surface or leading edge 6 feet (1.8 m) or more above a lower level will be protected with a guardrail, safety net, or personal fall arrest system. Exception: If PROJECT MANAGER can demonstrate that it is infeasible or creates a greater hazard to use a guardrail, safety net or personal fall arrest system, PROJECT MANAGER may substitute a fall protection plan which meets the Requirements of paragraph (k) of Section 1926.502, 29 Code of Federal Regulations.

3. Where a walking or working surface is adjacent to a hole or opening 6 feet (1.8 m) or more above a lower level (such as a skylight), PROJECT MANAGER will either install a cover or guardrail around the perimeter of the hole or require construction personnel to use a personal fall arrest system.

4. When employees of PROJECT MANAGER, employees of Subcontractors, vendors, or the general public may be exposed to risk of harm from falling objects on the Job Site, PROJECT MANAGER will (1) Erect toe boards, screens, or guardrails to prevent objects from falling from higher levels, or (2) Erect a canopy to catch loose objects before they fall to the surface below, or (3) Barricade the area into which objects could fall and keep personnel out of the barricaded area.

5. PROJECT MANAGER shall ensure that all workers and visitors on the Job Site wear safety hard hats and obey all safety rules and regulations. PROJECT MANAGER shall post a sign in a conspicuous location indicating that safety hard hats are required on-site and shall loan such hats to visitors, as may be required.

### **C. Fire Protection**

1. PROJECT MANAGER shall ensure that all construction personnel take precautions to eliminate fire hazards and prevent fire damage on the Job Site.

2. PROJECT MANAGER shall maintain during construction an appropriate number of fire extinguishers. Fire extinguishers shall be in good working order, conveniently located, clearly visible and readily accessible for proper protection of the Work. Fire extinguishers shall be an approved type, equivalent to 2-1/2 gallon water-pressurized, and appropriate for the likely hazards. In areas with flammable liquid, asphalt, or electrical hazards, fire extinguishers shall be equivalent to the carbon dioxide type or dry chemical type. During freezing weather, extinguishers shall be enclosed in heated cabinets or be of an antifreeze type.
3. PROJECT MANAGER shall ensure that no vehicles, materials, or equipment obstruct fire lanes or aisles unless alternate routing is provided which preserves good access for firefighting trucks and equipment.

#### **D. Protection of Personnel**

1. PROJECT MANAGER shall comply with all applicable Laws, ordinances, rules, regulations, and lawful orders of any public authority bearing on the safety of persons and protection of property, including Requirements of the Occupational Safety and Health Act (OSHA). Where Requirements of federal, state or local Law or regulations are in conflict, PROJECT MANAGER shall comply with the most stringent or demanding provision.
2. PROJECT MANAGER shall supply to Owner, Subcontractors and Sub-subcontractors, a copy of each Material Safety Data Sheet(s) (MSDS) on any Hazardous Material that PROJECT MANAGER, any Subcontractor or any Sub-subcontractor brings on the Job Site. When no longer needed for construction, PROJECT MANAGER shall ensure that Hazardous Materials are removed from the Job Site. No Hazardous Material shall be disposed of or discarded in any means other than as prescribed in the applicable MSDS. No toxic or Hazardous Materials of any description will be placed in refuse disposal containers used for general construction debris.
3. PROJECT MANAGER shall promptly submit to Owner a written notice of any accident on the Job Site that results in personal injury requiring medical treatment or damage to property in excess of \$500. PROJECT MANAGER will make available to Owner a copy of any accident report PROJECT MANAGER is required to file with any public agency or insurance carrier.

#### **E. Protection of Existing Work**

1. PROJECT MANAGER will avoid using for construction operations any planting area which is designated to remain after completion of Construction. Driving of vehicles on landscaped areas is prohibited without approval of Owner. When use of landscaped area is required during the construction period, PROJECT MANAGER shall remove, store, tend and replant all trees, shrubs, and lawn area that interfere with construction operations. If removal and replacement is impractical, PROJECT MANAGER may trim, prune, tie back, cover and protect trees and shrubs during the period of construction. Trees, shrubs and lawn area on the Job Site which do not survive the construction period will be replaced by PROJECT MANAGER at no cost to Owner, prior to Substantial Completion. PROJECT MANAGER shall not use the area under the drip line of trees for storage of construction materials, equipment, trailers or vehicles.
2. Owner will prepare the area adjacent to surfaces to be painted by cutting back shrubs and trees to provide clearance between each shrub or tree and the surface to be painted. PROJECT MANAGER will cover and tie back all shrubs and trees that may be affected by painting of adjacent surfaces.

3. If PROJECT MANAGER parks trailers or equipment on existing parking lots or pavements, wheels and dollies shall be set on plywood pads or blocking large enough to prevent damage to the paved surface. Material stored on new or existing pavements shall be placed on blocking and raised adequately so as not to block surface drainage.
4. PROJECT MANAGER will erect and maintain during the construction period suitable dust-proof temporary partitions designed to protect the building contents and occupants against airborne dust and debris. PROJECT MANAGER will ensure that air conditioning supply air inlets are covered to prevent contamination of the central air conditioning supply. When construction personnel are not on the Job Site, PROJECT MANAGER shall provide temporary covers for doorways, roof, window sash, and other penetrations through the exterior wall.
5. PROJECT MANAGER shall restore to the same condition as before Work started all streets, drives, sidewalks, walls, lights, signs, fences, poles and building components disturbed or damaged by PROJECT MANAGER or Subcontractors during construction.

#### **F. Protection of New Work**

1. PROJECT MANAGER shall protect installed materials during the construction period so finished surfaces (such as plumbing fixtures, woodwork, trim, walls, floors, ceilings and counters) show no signs of damage or deterioration at the time of Substantial Completion. Except as otherwise provided in the Contract Documents, all Work shall be thoroughly cleaned and in a "like new" condition at the time of Substantial Completion. This includes dusting, window cleaning, floor cleaning, and removing grime and stains from finished surfaces.
2. During the period of construction, PROJECT MANAGER will provide protection against the weather to prevent damage to building and materials from rain, wind, snow and ice.
3. When parts of the structure or an adjoining structure require support until connecting members are in place, PROJECT MANAGER shall install temporary support, bracing and tying adequate to prevent damage to the structure and injury to personnel.
4. PROJECT MANAGER will not permit any load to be applied or forces to be introduced on any part of the Job Site that may cause damage to the Work or endanger the safety of persons on or near the Job Site.

#### **G. Public Safety**

1. PROJECT MANAGER will install barriers, direction signs, flashers, warning signals, barricades, and other devices to protect personnel on and adjacent to the site while minimizing disruption of normal pedestrian and motor traffic. PROJECT MANAGER shall not remove or obstruct existing traffic control devices, such as bollards, chains, posts, building signs, or traffic signs, without approval from Owner.
2. Before trenching Work begins, PROJECT MANAGER will locate the position of irrigation piping, call 811 to advise utility companies to mark the location of their service lines, and notify owners and occupants of adjacent property of the Work to be done. PROJECT MANAGER will do no trenching or excavation which could result in undermining or displacement of existing structures or site improvements. All trenches and pits in the vicinity of the Work shall be covered securely or well barricaded and properly lighted at night.



3. PROJECT MANAGER shall protect adjoining property and nearby buildings, roads, and other facilities from airborne dust, dirt, and debris originating on the Job Site. When required, PROJECT MANAGER will control fugitive dust with a watering program.

4. It shall be the responsibility of PROJECT MANAGER to maintain good drainage at the Job Site so water does not accumulate in finished areas or spill into adjacent properties in volumes likely to cause damage. PROJECT MANAGER shall initiate an effective erosion and sedimentation control program which includes measures that minimize erosion and silt runoff.

#### **H. Protection of Site Facilities**

1. The area used by PROJECT MANAGER and Subcontractors working for PROJECT MANAGER will be fenced. If not otherwise provided in the Contract Documents, orange plastic webbed fencing or snow fencing shall be considered acceptable temporary fencing.

2. PROJECT MANAGER shall protect the Job Site and Work from theft, acts of malicious mischief, vandalism, and unauthorized entry both during normal work hours and at other times. PROJECT MANAGER shall be liable for all loss and damage that result from failure to protect the Job Site and the Work.

3. PROJECT MANAGER shall provide and maintain toilet facilities on the Job Site for use by construction personnel. Toilet facilities shall conform to the Requirements of state and local authorities.

#### **XIII. Compliance with Law**

A. PROJECT MANAGER and Owner mutually commit to use reasonable care to meet the Requirements of state, federal and local Law when discharging their responsibilities under this agreement.

B. If PROJECT MANAGER observes that Drawings, Specifications, or other Contract Documents do not comply with applicable Law, PROJECT MANAGER shall promptly notify Owner of the variance. Any changes made to the Contract Documents as a result of this notice shall be handled in the form of a Change Order under this agreement.

C. PROJECT MANAGER shall bear all cost of correcting Work that does not comply with Law if PROJECT MANAGER knows or reasonably should have known that Plans or Contract Documents are Defective, and PROJECT MANAGER fails to give notice of that Defect to Owner.

D. PROJECT MANAGER shall bear none of the cost of correcting Work completed according to Contract Documents but not in compliance with Law if PROJECT MANAGER did not know that Contract Documents or instructions from Owner did not comply with the Law.

E. If Law enacted after the Contract Date changes the Scope of Work under this agreement, PROJECT MANAGER and Owner will execute a Change Order adjusting the Contract Price and Contract Time to accommodate the change in the Scope of Work.

F. PROJECT MANAGER is licensed to do Work described in the Contract Documents. PROJECT MANAGER will notify Owner of any change in that license status. Every Subcontractor working for PROJECT MANAGER will hold a license appropriate for the Work performed.

G. Except as required by Law, Owner is not responsible for any breach of Law by PROJECT MANAGER. Except as required by Law, PROJECT MANAGER is not responsible for any breach of Law by Owner.

#### **XIV. LEED "Green" Construction**

A. The intent of Owner is that the PROJECT MANAGING qualify for certification under current LEED for Homes standards published by U.S. Green Building Certification Institute. These standards require that PROJECT MANAGER follow certain procedures on site and follow specific policies when buying materials. PROJECT MANAGER agrees to adopt LEED policies and procedures as required by the Contract Documents and cooperate with a Green Rater who will inspect the PROJECT MANAGING during construction. Each request by PROJECT MANAGER for payment will include a written report on compliance with LEED criteria during the pay period. PROJECT MANAGER also agrees to have a representative attend LEED compliance conferences as may be required.

B. PROJECT MANAGER will implement an erosion and sedimentation control plan for all construction activities associated with the PROJECT MANAGING. This plan will include all of the following: (1) Stockpile and protect disturbed topsoil from erosion so topsoil can be re-used. (2) Control the path and velocity of runoff with silt fencing or comparable measures. (3) Protect on-site storm sewer inlets and any stream or lake with straw bales, silt fencing, silt sacks, rock filters or comparable measures. (4) Provide swales to divert surface water from hillsides. (5) If ground with a slope of 4: 1 (25%) or more is disturbed during construction, use tiers, erosion blankets, compost blankets, filter socks and berms or some comparable method to keep the soil stabilized.

C. If housing density is less than 7 units per acre and if the site is not previously developed, PROJECT MANAGER will observe "no-disturbance" zones designated on the drawings and will leave at least 40% of the lot area undisturbed (not including the lot area legally protected from disturbance). This undisturbed area can not be used for vehicle parking or material storage. If housing density is less than 7 units per acre and if the site is previously developed, PROJECT MANAGER will observe "no-disturbance" zones designated on the drawings, will undo any previous soil compaction and will remove any existing invasive plants.

D. PROJECT MANAGER will limit the waste of framing materials to 10% or less of framing materials. Waste is defined as the difference in materials ordered and materials actually installed.

E. PROJECT MANAGER will comply with a detailed framing plan and any architectural details which indicate the specific locations, spacing and sizes of all framing members in the floors, walls, roof and ceiling. A gut rehab project earns credit automatically if 90% of the framing for the LEED home is salvaged or maintained from the original home.

F. PROJECT MANAGER will create a cut list and lumber order which corresponds directly to the detailed framing documents. A gut rehab project earns credit automatically if 90% of the framing for the LEED home is salvaged or maintained from the original home.

G. PROJECT MANAGER will implement each of the framing efficiencies shown on the plans. These may include (1) use of precut framing packages, (2) use of open web floor joists, (3) structural insulated wall, roof or floor panels, (4) stud, joist or rafter spacing greater than 16" on center, (5) sizing headers for the actual loads, (6) using ladder blocking or drywall clips or (7) using two-stud corners. The requirements for this credit apply only to exterior framing. A 50% credit can be earned

if only 50% of the wall area meets the requirement for framing efficiencies.

H. PROJECT MANAGER will provide all wood product suppliers with a notice which includes the following elements: (1) a statement that the contractor's preference is to avoid using any tropical wood that lacks a Forest Stewardship Council (FSC) certification; (2) a request that each delivery of wood products include identification of the country of origin for each product supplied; (3) a request for a list of FSC-certified tropical wood products the vendor can supply. If tropical wood is specified in the Contract Documents, PROJECT MANAGER will use only FSC-certified tropical wood products. Reused or reclaimed materials are exempt. A wood species is considered tropical if grown in a country that lies between the Tropics of Cancer and Capricorn. PROJECT MANAGER will install environmentally preferable and locally produced materials which qualify USGBC credit under the LEED for Homes Rating System Tables 24, 25 and 26. ([www.usgbc.org/leed/homes](http://www.usgbc.org/leed/homes)).

I. PROJECT MANAGER will: (1) Investigate and document options available for diverting project waste (including packaging and beverage containers) from landfills and incinerators to recycling and reuse. (2) Document the actual diversion rate for construction waste. The diversion rate for land clearing and demolition, such as on a gut rehab job, must be recorded separately from the diversion rate for the new construction. PROJECT MANAGER will either (1) reduce construction waste to less than 2.5 pounds per square foot of building floor area, or (2) divert at least 25% of the material removed from the site into recycling and reuse rather than landfills or incineration. Land clearing and waste from demolition of structures should not be counted in this calculation. The following do not qualify as waste diversion: reuse of scrap by PROJECT MANAGER, burying material on site, packing unused material into wall cavities, grinding wood into soil amendment, incineration in waste-to-energy facilities.

## **XV. Survey**

A. Owner will employ an engineer or licensed land surveyor to establish lines, points and levels adequate to lay out alignment and elevations for the PROJECT MANAGING. Owner is responsible for accuracy of the survey marks and other site information supplied to PROJECT MANAGER. PROJECT MANAGER shall promptly notify Owner of any discrepancies found in survey markers or other site information supplied by Owner.

B. If PROJECT MANAGER suffers any loss or delay due to inaccuracy of the Job Site survey supplied by Owner, PROJECT MANAGER shall be entitled to an adjustment in the Contract Price and Contract Time, including damages for delay, shutdown and startup expense, lost profits and consequential damages.

C. Owner will provide a topographic survey of the Job Site showing contour lines that depict elevation and slope of the ground surface.

D. PROJECT MANAGER shall use reasonable care to maintain and preserve all survey monuments, markers, hubs and stakes on the Job Site while still needed to complete the Work. If PROJECT MANAGER finds that an established reference point has been lost or destroyed, PROJECT MANAGER may have the reference point reset by a licensed engineer or surveyor at the expense of Owner.

E. Owner will provide PROJECT MANAGER with all relevant site information available to Owner, such as information about soil conditions, easements, utility lines (whether on or adjacent to the site), floodplain maps, fault maps, and existing improvements. These are not Contract

Documents and Owner makes no warrant on the accuracy of information provided to PROJECT MANAGER under the terms of this paragraph.

F. Owner will provide a legal description for the Job Site and the assessor's parcel number.

G. Before Work begins, PROJECT MANAGER shall locate all existing improvements and all utility lines on the Job Site, including phone, electric, cable, gas, water, sewage, and drainage. PROJECT MANAGER is responsible for any damage done to existing lines, cables, pipes, conduit, and improvements.

H. Upon Substantial Completion, PROJECT MANAGER will provide to Owner a copy of a survey by a licensed surveyor or engineer showing the Job Site in plan view as actually completed with distances to adjoining property lines, easements, and utility lines indicated.

#### **XVI. Permits and Fees**

A. PROJECT MANAGER shall secure all permits, licenses and renewals required by government authority to complete construction of the PROJECT MANAGING. If permits are required for Subcontracted Work, Subcontractors will secure those permits. Owner shall assist PROJECT MANAGER in responding to requests for information from the permit-issuing authority. PROJECT MANAGER shall provide Owner a copy of each permit, license and renewal issued by government authority for the PROJECT MANAGING.

B. Owner will pay the building permit fee, Plan check fee, and charges levied by government for testing, Inspection and Re-Inspection of the PROJECT MANAGING.

C. Except as provided elsewhere in this agreement, Owner will pay all fees and application charges imposed by government authority, including, but not limited to, grading permit fees, drainage permit fees, traffic control charges, thoroughfare charges, impact fees, special district fees, sewer fees, water fees, planning fees, school fees, elevator permit fees, charges for temporary access or use of the public right of way, and charges for document processing, hearings, and certifications. Owner will also pay all fees and application charges imposed by any association of property owners having authority over the Job Site.

D. Except as provided elsewhere in this agreement, Owner will pay all application fees and connection charges imposed by utility companies or government agencies for bringing service to the Job Site, and for connecting gas, water, electricity, phone, cable, sewer, and drainage lines.

E. Except as provided elsewhere in this agreement, Owner will secure all approvals for the PROJECT MANAGING that are required by government authority, including planning, easements, remediation, environmental, and zoning approvals.

F. PROJECT MANAGER shall provide state, federal and local agencies of government with all information necessary to issue environmental permits or certificates as may be required for the PROJECT MANAGING. When issued, PROJECT MANAGER shall comply with environmental restrictions imposed by government, including the publication of notices. PROJECT MANAGER will make every reasonable effort to secure environmental permits and certifications on a schedule which meets job Requirements. But any delay in processing of environmental clearances shall entitle PROJECT MANAGER to an extension of the Contract Time.

## **XVII. Taxes**

A. Owner asserts that the PROJECT MANAGING is exempt from sales and use tax and that none should be charged to PROJECT MANAGER or Subcontractors for building materials, supplies, fixtures, equipment, and Installation labor which actually become part of the structure. Supplies, tools and equipment used in the construction process (such as perimeter fencing) will be subject to sales and use tax and payable by PROJECT MANAGER, even if used exclusively on the PROJECT MANAGING. On request of PROJECT MANAGER or any Subcontractor, Owner shall cause a certificate of exemption to be issued as evidence of the tax status of the PROJECT MANAGING. Should sales or use tax be imposed other than as described in this paragraph, Owner agrees that the Contract Price shall be increased by the full amount of all such sales or use tax (including fines and penalties) actually paid by PROJECT MANAGER or Subcontractors.

B. If any federal, state or local tax rate increases or if any new federal, state or local tax is imposed, whether by Law, regulation, or interpretation, between the Contract Date and Substantial Completion, the Contract Price shall be increased by the additional tax levied on PROJECT MANAGER, but only to the extent that the change in rate or new tax could not have been reasonably foreseen on the Contract Date.

## **XVIII. Temporary Utilities**

A. Owner shall permit PROJECT MANAGER to use utility services, including water, electric power, heating and cooling, without charge, as required to complete the Work. PROJECT MANAGER shall provide all required connections to these services in a safe manner and in accord with applicable codes. PROJECT MANAGER shall ensure that utility services furnished by Owner are not wasted. Before Final Completion, PROJECT MANAGER will remove all temporary connections and return the existing water, electric, heating and cooling systems to a condition at least as serviceable as prior to the Date of Commencement. Use by PROJECT MANAGER of water and electricity provided by Owner constitutes a release by PROJECT MANAGER of all Claims and of all liability to Owner for damages which may result from power and water outages or voltage variations.

B. Owner shall provide, at no cost to PROJECT MANAGER, adequate parking for construction personnel during the period of construction.

C. If PROJECT MANAGER elects to put the permanent HVAC system into use, in whole or in part, PROJECT MANAGER shall protect and maintain the HVAC system and pay for the cost of operation. Use of the permanent HVAC system by PROJECT MANAGER shall not constitute acceptance of the system by Owner, nor shall it reduce the HVAC warranty period to which Owner is entitled. If necessary, PROJECT MANAGER shall provide the manufacturer's extended warranty to cover use of the HVAC system by PROJECT MANAGER prior to the date of Substantial Completion. Cost of the extended warranty shall be paid by PROJECT MANAGER.

D. Utility services shall be re-listed in the name of Owner on the calendar day following Substantial Completion, and Owner shall pay for utility services after that date.

E. Anything to the contrary in this contract notwithstanding, Owner will provide, at no cost to PROJECT MANAGER, 110 volt electrical power from the existing distribution system on the Job Site for hand-held portable power tools. PROJECT MANAGER will not use the existing electric power system for welding machines or other electrical equipment with heavy power Requirements.

## **XIX. Permanent Utilities**

A. Owner shall secure and pay for Installation, connection, and modification of permanent electric, water, phone, cable, sewer and gas service as required for the completed Project.

## **XX. Job Cleanup**

A. PROJECT MANAGER shall regularly remove from the Job Site, storage area and adjacent properties all surplus material, rubble, waste and debris resulting from the Work. Construction debris shall be removed to a legal refuse collection site with disposal or recycling fees paid by PROJECT MANAGER. Except as otherwise provided in the Contract Documents, before Substantial Completion, PROJECT MANAGER shall remove from the Job Site all construction equipment, tools, temporary structures, and the foundations of temporary structures, leaving the Job Site clean and ready for occupancy. All painted, enameled, stained, or baked enamel Work shall be cleaned to remove marks, stains, fingerprints and splatter. Glass shall be cleaned to remove stickers, labels, grime, dirt, water spots, mastic, excess caulk, and paint overspray on both interior and exterior surfaces. Hardware shall be cleaned and polished. Floors shall be cleaned to remove splatter, stains, paint, dirt, and dust. All stickers, stains, labels, and temporary covers on fixtures, manufactured articles, appliances, and equipment shall be removed. All paint splatter, paint drip, and oil spots which have accumulated during the construction period shall be removed from concrete and masonry surfaces. PROJECT MANAGER or Subcontractors shall clean and condition HVAC equipment as recommended by the manufacturer. PROJECT MANAGER or Subcontractors shall blow out or flush out all foreign matter from piping, tanks, pumps, fans, motors, switches, panels, and boilers, and sanitize potable water systems. PROJECT MANAGER or Subcontractors shall remove all excess paint from equipment identification plates.

B. PROJECT MANAGER shall provide a trash disposal facility on the Job Site for use by construction personnel. The on-site trash facility provided by PROJECT MANAGER shall be of an appropriate size for the Project and placed in a location approved by Owner. All construction debris shall either be placed in the trash facility provided by PROJECT MANAGER or hauled to a legal disposal site, at the discretion of PROJECT MANAGER. When any trash container provided by PROJECT MANAGER is full, contents shall be removed to a legal disposal facility at the expense of PROJECT MANAGER.

## **XXI. Project Sign**

A. Owner grants to PROJECT MANAGER the right to display a small sign (2' x 3' maximum) listing the company name, address, logotype, phone number, and website address of PROJECT MANAGER.

B. PROJECT MANAGER may, without cost to Owner, erect a sign at the Job Site measuring up to 4' x 8' and listing the Project name, company name, address, logotype, phone number, and website address of PROJECT MANAGER. If directional signs are needed, PROJECT MANAGER may erect signs with direction arrows and the company name to guide employees and visitors to the Job Site entrance. No signs shall be erected without prior approval of Owner.

C. PROJECT MANAGER shall fabricate and erect a Project sign designed by Owner and bearing the name of the Project, Prime Contractor, principal Subcontractors, designers, consultants, lead lender, a short Project description, and expected Completion Date. Location of the Project sign will be designated by Owner. PROJECT MANAGER may erect directional signs at the Job Site with

approval of Owner with respect to size, style and location. Directional signs may bear the name of PROJECT MANAGER and a directional symbol. No other signs will be permitted except by permission of Owner.

## **XXII. Royalties, Patents and Copyrights**

A. Owner shall obtain all licenses necessary to use any invention, article, appliance, process, or technique of whatever kind in the Work, and shall pay all royalties and license fees required. If, before manufacturing or using any invention, process, technique, article or appliance in performance of the Work, Owner has or acquires information that the same is protected by patent or copyright Law, making it necessary to secure the permission of the patent or copyright owner, Owner shall promptly advise PROJECT MANAGER. PROJECT MANAGER may adopt some other invention, process, technique, article or appliance for use in the Work. Should Owner have reason to believe that using the invention, process, technique, article or appliance in the Work would constitute an infringement of a patent or copyright and fail to inform PROJECT MANAGER, Owner shall be responsible for any loss or liability due to the infringement. Owner shall hold PROJECT MANAGER, officers, agents, and employees, harmless against any loss or liability for or on account of the infringement of any patent rights or copyrights in connection with any invention, process, technique, article or appliance required by the Plans or Specifications, including use by PROJECT MANAGER unless PROJECT MANAGER had actual knowledge of the potential infringement and failed to notify Owner.

## **XXIII. Project Superintendent**

A. PROJECT MANAGER shall employ a competent Superintendent and any necessary assistants or alternates, all approved by Owner. The Superintendent shall not be changed except with the consent of Owner, unless the Superintendent is discharged by PROJECT MANAGER. The Superintendent shall have authority to represent PROJECT MANAGER in all matters relating to the Project. Communications with the Superintendent shall have the same force and effect as direct communication with PROJECT MANAGER.

B. The Project Superintendent shall be able to read, write, and communicate in the English language.

C. The Project Superintendent shall be experienced in the type of Work being performed under this contract, shall be able to read and understand the Plans and Specifications, and shall be capable of communicating, orally and in writing, with construction personnel.

D. The Superintendent may not perform the Work of any trade, pick up materials, or perform any task not directly related to Supervision and coordination of the Work.

## **XXIV. Employee Relations**

A. PROJECT MANAGER is responsible for performance of all construction crews, including employees of Subcontractors, and shall enforce strict discipline and good order on the Job Site.

B. PROJECT MANAGER will enforce the following rules on the Job Site: (1) Anyone found in possession of a firearm will be directed to leave immediately and will not be allowed to return, (2) Possession, sale, or distribution of alcohol or illicit drugs is prohibited. Anyone under the influence of alcohol or illicit drugs will be directed to leave immediately, (3) PROJECT MANAGER will certify that personnel on the Job Site have consented to submit to drug and alcohol screening and

testing including pre-employment, for cause, periodic or random tests, and (4) Entry on the Job Site shall constitute consent to Inspection of an employee's person, vehicle, and personal effects by PROJECT MANAGER, Owner, or other authority. Any employee who is found in violation of these Job Site rules or who refuses to permit Inspection shall be barred from the Job Site at the discretion of PROJECT MANAGER or Owner.

C. PROJECT MANAGER will ensure that personnel will be furnished and required to use safety equipment complying with OSHA standards, including hard hats, safety glasses with permanently attached side shields, body harnesses with shock cord lanyard, steel toe work boots, and appropriate protective equipment and clothing. Any employee who refuses to comply with OSHA standards shall be barred from the Job Site at the discretion of PROJECT MANAGER or Owner.

D. PROJECT MANAGER shall pay not less than the wage scale of the various classes of labor as shown in a prevailing wage schedule provided by Owner. Wage rates on this schedule are minimum rates only and do not include fringe benefits such as health, welfare and pension contributions, and travel allowances. PROJECT MANAGER and each Subcontractor shall keep, or cause to be kept, an accurate record showing the names and trade classification of all workers employed in connection with the Work and showing the actual per diem wage paid to each worker. Pay records shall be open at all reasonable hours for Inspection by Owner. PROJECT MANAGER and every Subcontractor and Sub-subcontractor shall keep posted on the construction Site, in a conspicuous place, a copy of all prevailing wage and fringe benefit rates.

E. Employment and training of apprentices shall be in accord with apprentice agreements under which each apprentice is training. Every apprentice shall be paid the wage appropriate for the craft or trade under which the apprentice is indentured. PROJECT MANAGER or any Subcontractor employing an apprentice shall hold a certificate approving PROJECT MANAGER or the Subcontractor for employment and training of apprentices. PROJECT MANAGER and the Subcontractor shall comply with any limitation on the number of apprentices or the ratio of apprentices to journeymen who may be employed in the craft or trade on the Work.

F. PROJECT MANAGER will allow only qualified, careful and skilled personnel to do the Work. Each worker shall have the appropriate license, certification or experience necessary to complete the tasks assigned.

G. PROJECT MANAGER shall discharge from employment on the PROJECT MANAGING any worker who cannot or will not meet standards for acceptable performance or who fails to comply with reasonable expectations for personal conduct.

H. Any worker employed on the PROJECT MANAGING by PROJECT MANAGER or by any Subcontractor who, in the opinion of Owner, is not careful and competent, does not perform Work in a proper and skillful manner, or is disrespectful, intemperate, disorderly, or neglects or refuses to comply with directions given, or who abuses drugs or alcohol, possesses contraband, harasses or is belligerent toward other employees shall, at the written request of Owner, be discharged from the PROJECT MANAGING by PROJECT MANAGER or Subcontractor and shall not be employed again in any portion of the Work without written consent of Owner. Should PROJECT MANAGER or a Subcontractor continue to or again employ anyone on the PROJECT MANAGING subject to a request under this paragraph, Owner may suspend Work until the request for discharge is honored. Any issue or circumstance relating to or resulting out of this paragraph shall not be construed or interpreted as interference with the responsibility of PROJECT MANAGER to determine the means,



methods, techniques, sequences and procedures required to complete the PROJECT MANAGING as described in the Contract Documents.

#### **XXV. Emergency Response**

A. In any Emergency threatening the health, safety or life of persons or serious and immediate damage to property, PROJECT MANAGER shall use best efforts and full discretion without special instruction or authorization from Owner to prevent the threatened damage, injury or loss. When directed by any authority, PROJECT MANAGER shall provide Emergency assistance without special instruction or authorization from Owner. However, PROJECT MANAGER shall notify Owner promptly if PROJECT MANAGER believes any significant changes in the Work or variations from Contract Documents have been caused by the Emergency response.

B. Provided PROJECT MANAGER is not responsible for the Emergency condition and provided the additional cost to PROJECT MANAGER for the Emergency response is not covered by insurance or recoverable from others, PROJECT MANAGER shall be granted a Change Order to compensate for the Emergency response.

C. PROJECT MANAGER shall respond immediately to calls for assistance at the Job Site any time, day or night, when circumstances require the presence of PROJECT MANAGER to protect health or safety or the Work or adjacent property.

D. PROJECT MANAGER shall post on the Job Site a list of current Emergency telephone numbers. The list shall include telephone numbers for responsible individuals who can be contacted after normal working hours in the event of an Emergency. This list shall be posted in a prominent place on the PROJECT MANAGING and protected from the weather.

#### **XXVI. Owner's Responsibilities**

A. Owner will respond in writing and with reasonable promptness to written requests from PROJECT MANAGER for information relevant to completion of the Work. Owner will identify a Representative qualified to respond to questions from PROJECT MANAGER when Owner is not available. PROJECT MANAGER is authorized to rely on written responses from Owner and the identified Representative.

B. Owner affirms that Owner has the right to enter into this agreement and has the right to contract for construction of the PROJECT MANAGING on the Job Site. Owner shall pay all taxes and assessments due on the Job Site during the period of construction and shall take all reasonable actions required to protect marketable title to the Job Site.

C. Owner shall have sole responsibility to secure financing for the PROJECT MANAGING and shall pay all fees, charges, or other costs of such financing, including Inspection fees charged by any lender. The nonperformance of any lender shall not affect the obligation of Owner to PROJECT MANAGER. Owner hereby authorizes and directs any lender on the PROJECT MANAGING to furnish PROJECT MANAGER with full information on undisbursed loan proceeds when requested by PROJECT MANAGER.

D. On request of PROJECT MANAGER, Owner shall provide clear and convincing evidence that Owner has access to funds committed to payment of the unpaid balance of the Contract Price. Owner shall inform PROJECT MANAGER of any significant change in the availability of funds committed to make payments required under the Contract Documents. Failure of Owner to comply with the

terms of this paragraph shall relieve PROJECT MANAGER of the obligation to begin or continue the Work.

E. Owner will not interfere with or permit others to interfere with, stop, hinder, or delay completion of the Work by PROJECT MANAGER or Subcontractors except as provided under this agreement.

F. Owner will coordinate the Work of Separate Contractors on the Job Site to ensure that Work under this contract can proceed without interference. Owner affirms that contracts with Separate Contractors require their cooperation with PROJECT MANAGER.

G. All materials to be furnished by Owner under the Contract Documents shall be on hand and available at the location specified, when required in the normal course of construction. PROJECT MANAGER makes no warrant that materials Furnished by Owner are suitable for use in the PROJECT MANAGING and may reject such materials if Installation would materially increase the cost of construction or substantially delay completion of the PROJECT MANAGING.

H. During the Contract Time, Owner shall, at the expense of Owner, provide and maintain a surfaced roadway connecting the Job Site with a public highway.

I. Owner shall obtain all consents and approvals required from any architectural review committee, homeowners association, or similar entity having the right to review and approve Plans prior to construction.

#### **XXVII. Construction by Others**

A. Owner shall neither hire nor retain Separate Contractors, Subcontractors, employees or agents of Owner to perform Work on the Job Site while Work is being done under this agreement by PROJECT MANAGER.

#### **XXVIII. Representations by Contractor**

A. The Contract Price is based on PROJECT MANAGER's careful evaluation of Plans, Specifications, Contract Documents, local conditions, including availability of labor, material, equipment, and transportation, the kind and character of soil and terrain, all available reports and tests on soil conditions, Work to be performed by Owner or Separate Contractors, environmental and historic preservation considerations, applicable Code Requirements, climatic conditions, and other local conditions that may affect cost to PROJECT MANAGER or duration of construction.

B. PROJECT MANAGER shall use skill and attention to complete the Work in a timely manner consistent with the Contract Documents.

C. PROJECT MANAGER has reported to Owner all errors, inconsistencies, ambiguities, and omissions found in the Plans and Specifications and has concluded that the Contract Documents define the Work required with enough detail to allow PROJECT MANAGER to complete the PROJECT MANAGING.

D. Based on a thorough evaluation of the Contract Documents, the Job Site, and all conditions that may affect construction cost and duration, PROJECT MANAGER affirms that the Contract Price and Contract Time are fair and reasonable for completion of the PROJECT MANAGING.

E. Owner has reported to PROJECT MANAGER all conditions known to Owner which may not be apparent to PROJECT MANAGER and which might significantly increase cost of the Work or delay completion. These concealed conditions include, but are not limited to, hazards on the Job Site, unsuitable soil conditions, prior Defective Work of others, latent Defects in the Plans or Specifications, earlier attempts to do Similar or related Work, and obligations imposed by government.

F. PROJECT MANAGER affirms that the company is financially solvent, licensed, experienced, competent, and has resources necessary to complete the Work in compliance with the Contract Documents.

G. PROJECT MANAGER affirms that all Subcontractors will be financially solvent, licensed, experienced, competent, and will have resources necessary to complete the Work assigned in compliance with the Contract Documents.

### **XXIX. Disclaimer by Owner, Reliance by Contractor**

A. PROJECT MANAGER acknowledges that information offered by Owner on subsurface or concealed conditions or structures at the Job Site represent only the opinion of Owner based on limited knowledge and understanding and is not part of the contract. Owner disclaims the accuracy of information provided to PROJECT MANAGER.

### **XXX. Payment Plan**

A. Owner will pay to PROJECT MANAGER the Contract Price at completion of the Work.

### **XXXI. Cost-Plus Reimbursements**

#### **A. General Requirements**

1. Applications for payment shall be based on entries in a job cost accounting system maintained for the PROJECT MANAGING by PROJECT MANAGER. Reports generated by the accounting system shall make it easy to reconcile payments by Owner against applications for payment by PROJECT MANAGER. Every charge in each application for payment shall be supported by a paper or electronic copy of a paid invoice, receipt, cancelled check, voucher or ledger entry and archived in a file maintained by PROJECT MANAGER and available for Inspection during normal business hours by Owner.

2. Applications for payment shall be accompanied by copies of invoices, receipts, cancelled checks, vouchers and ledgers which validate each charge in the application for payment.

3. On requests of Owner, PROJECT MANAGER shall make all payment records on the PROJECT MANAGING available for audit by a representative of Owner. Records shall be available for audit during regular business hours for the duration of the Project and until 4 years after the date of final payment under this contract.

4. Unless caused by negligence of PROJECT MANAGER or someone acting on behalf of PROJECT MANAGER, Owner shall reimburse PROJECT MANAGER for expenses associated with handling temporary emergencies that endanger life, health or property on the Job Site, making repairs, remedying Defects and removing Defective Work. However, no reimbursement shall be made for any loss covered by insurance.

5. A cost is reasonable and necessary if, in its nature and amount, it does not exceed what would be incurred by a prudent person in the conduct of a competitive business. Specifically: (1) Is this type of cost generally recognized as ordinary and necessary in the conduct of the Contractor's business or contract performance? (2) Is this a generally accepted sound business practice that would result from arm's-length bargaining? (3) Does this expense comply with the Contractor's responsibilities to the Owner, other customers, the owners of the construction business, employees, and the public at large? (4) Is this a significant deviation from the Contractor's established business practice?

6. If a cost benefits others in addition to Owner, at least a portion of the cost shall be allocated to Owner for reimbursement under any of the following conditions: (1) If the expense was incurred specifically for the Work, (2) If the expense can be distributed to both the Work and other jobs in reasonable proportion to the benefits received by each, or (3) If the expense is necessary to the overall operation of the business of PROJECT MANAGER although a direct relationship to the Work cannot be shown.

### **B. Reimbursement of Labor Costs**

1. Owner shall reimburse PROJECT MANAGER for all labor expenses reasonably necessary to complete the PROJECT MANAGING, including the expense of construction craft personnel working on the Job Site and field office staff as authorized in this contract. Reimbursable Labor costs shall include salary and wages, payroll taxes, insurance based on payroll, pension, profit sharing and ESOP contributions based on payroll, sick pay, vacation pay, medical, dental and life insurance expense, relocation costs, travel pay and subsistence. Reimbursement shall be made for all Labor expenses actually paid by PROJECT MANAGER for work performed on the Job Site and, with prior approval of Owner, for Work performed at designated workshops, facilities or fabrication yards away from the Job Site. Reimbursable tasks shall include demolition, removal, dismantling, cleanup, repair and construction of all temporary and permanent structures reasonably necessary to comply with Requirements in the Contract Documents.

2. The following positions are the maximum authorized field office staff positions reimbursable under this contract:

One Project Manager

One Project Superintendent

One Assistant Superintendent

One Project Engineer

One Clerk of the Works

One Project Secretary

One assistant project manager

One assistant designer

3. Between the Date of Commencement and Substantial Completion, costs for field office staff shall be reimbursable starting when each staff member begins Work at the Job Site and ending when each staff member leaves for the calendar day. Charges for field office staff will be non-reimbursable when not present on the Job Site during any Work Day. Any charges to Owner for payroll taxes, insurance, bonuses, fringe benefits, holiday or vacation time, sick time, retirement contributions, travel and subsistence for field office staff shall be limited to amounts actually paid by PROJECT MANAGER.

4. Except as otherwise provided in this contract, labor costs for general management, technical services, estimating, selling, accounting, bookkeeping, professional services, design and engineering services and clerical staff of PROJECT MANAGER working at locations other than the Job Site are not reimbursable under this contract.
5. Wages, salaries and benefits of construction personnel and field office staff shall be comparable to pay and benefits of employees with Similar skills and responsibilities working on Similar construction projects in the area. PROJECT MANAGER shall accept no gratuity, gift or kickback from any employee or prospective employee without prior written approval of Owner.
6. Overtime wages paid to hourly or salaried construction personnel shall be reimbursable only if approved in writing in advance by Owner. Reimbursement will be at the overtime rate actually paid. If overtime Work is required as a result of Inexcusable Delay caused by PROJECT MANAGER or anyone responsible to PROJECT MANAGER, the overtime premium or shift differential portion of payroll expenses and the related labor burden costs for overtime Work will be non-reimbursable.
7. Prior to making any application for payment which includes a payroll burden markup rate for any class of employees, PROJECT MANAGER shall submit a detailed description of how the proposed rate has been computed, including charges for payroll taxes, payroll insurance and employee benefits. Prior to Final Completion, PROJECT MANAGER shall prepare and submit to Owner a reconciliation of estimated and actual payroll burden costs and include the appropriate adjustment in the final application for payment.
8. Applications for payment shall reflect only the proportionate share of FICA, Medicare, state and federal unemployment insurance taxes actually paid by PROJECT MANAGER.
9. PROJECT MANAGER shall disclose to Owner in writing if insurance is purchased through any subsidiary, affiliate or parent company, or if PROJECT MANAGER is self-insured. The cost of insurance is reimbursable only to the extent that insurance cost is comparable to what other construction contractors doing Similar Work, with Similar loss ratios and with Similar experience modifiers, actually pay for Similar coverage.
10. The costs of labor union membership benefits are not reimbursable to PROJECT MANAGER.
11. Reimbursement shall include all costs to PROJECT MANAGER associated with delay of the Work, including demobilization and mobilization costs, so long as PROJECT MANAGER is not responsible for the delay.

### **C. Reimbursement of Material Costs**

1. Except as provided elsewhere in this contract, the cost of all materials reasonably necessary to complete the PROJECT MANAGING shall be reimbursable expenses and shall be included by PROJECT MANAGER in applications for payment. Cost of materials shall include sales or use tax on materials, tariffs, duties, consumable supplies, small tools, delivery expense, insurance premiums on materials when actually paid by PROJECT MANAGER and all other related costs when approved in advance by Owner.
2. All purchases of materials shall be at market prices with the most attractive terms available, including discounts and free delivery when available. Major purchases shall be made after comparing competitive offers from principal Material Suppliers. No purchase shall be made through any subsidiary, affiliate or parent company of PROJECT MANAGER without prior written consent

of Owner. PROJECT MANAGER shall accept no gratuity, gift or kickback from any Material Supplier without prior written approval of Owner.

3. Discounts of 2 percent or less for accelerated payment of invoices for materials shall accrue to PROJECT MANAGER unless Owner deposits with PROJECT MANAGER a sum sufficient to cover the cost of accelerated payment of invoices for materials. All other discounts and all discounts of more than 2 percent, including rebates, refunds and proceeds from sale of surplus material and equipment, shall accrue to Owner. All credits issued on materials shall accrue to the benefit of Owner. All materials paid for by Owner but not used in the PROJECT MANAGING shall remain the property of Owner.

4. PROJECT MANAGER hereby assigns to Owner any and all Claims for antitrust Law violations or damages arising therefrom as to goods, materials and services purchased under the terms of this contract. PROJECT MANAGER warrants and represents that each Material Supplier and Subcontractor shall make a Similar assignment of antitrust Claims to Owner.

#### **D. Reimbursement of Subcontract Costs**

1. Except as provided elsewhere in this contract, the cost of all Subcontracts and all services reasonably necessary to complete the PROJECT MANAGING shall be reimbursable expenses and shall be included by PROJECT MANAGER in applications for payment. Reimbursable service expenses shall include insurance and Bond premiums, finance charges, utility charges, fuel, reproduction services, permits, testing and Inspection fees, finance charges, penalties and forfeitures (unless due to negligence of PROJECT MANAGER or a Subcontractor), professional and consulting fees, royalties and license fees, debris hauling and tippage charges, engineering and accounting service fees, legal, mediation or arbitration expenses (other than those arising from disputes between PROJECT MANAGER and Owner), and scheduling charges reasonably necessary to complete the Work.

2. PROJECT MANAGER shall award Subcontracts and buy services for the PROJECT MANAGING on the most attractive terms available after comparing competitive offers from reputable firms. No Subcontract shall be awarded or service contract granted to a subsidiary, affiliate or parent company of PROJECT MANAGER without prior written consent of Owner. PROJECT MANAGER shall accept no gratuity, gift or kickback from any Subcontractor or service provider without prior written approval of Owner.

#### **E. Reimbursement of Equipment Costs**

1. Except as provided elsewhere in this contract, the cost of all equipment expenses reasonably necessary to complete the PROJECT MANAGING shall be reimbursable expense and shall be included by PROJECT MANAGER in applications for payment. Reimbursable equipment expense shall include the rental cost of machinery and equipment, small tools, temporary facilities and structures, the cost of moving rented equipment and temporary facilities to and from the Job Site, the cost of Installation, erecting and dismantling, and minor repairs made to equipment, machinery and temporary facilities at the Job Site.

2. PROJECT MANAGER shall rent equipment, machinery and temporary facilities for the PROJECT MANAGING on the most attractive terms available after comparing competitive offers from reputable firms. No equipment shall be rented from a subsidiary, affiliate or parent company of PROJECT MANAGER without prior written consent of Owner. PROJECT MANAGER shall accept

no gratuity, gift or kickback from any equipment dealer or service provider without prior written approval of Owner.

3. Discounts of 2 percent or less for prompt payment of equipment invoices shall accrue to PROJECT MANAGER unless Owner deposits with PROJECT MANAGER a sum sufficient to cover the cost of accelerated payment of invoices for equipment. All other discounts and all discounts of more than 2 percent, including rebates, refunds, credits and proceeds from sale of surplus equipment, shall accrue to Owner.

4. Contractor-owned equipment shall mean tools, machinery, temporary facilities and equipment used on the PROJECT MANAGING but owned by PROJECT MANAGER or by affiliates, parent companies or related parties. Prior to Date of Commencement, PROJECT MANAGER shall submit to Owner for approval a schedule showing each piece of Contractor-owned equipment which may be used on the PROJECT MANAGING. This schedule shall show the fair market value if purchased new or used, the proposed billing rate, the forecast duration of equipment use and the estimated total cost to Owner for the PROJECT MANAGING, including movement to and from the Job Site. Within 5 days of receipt of the equipment schedule, Owner shall either approve the equipment schedule in whole or in part or elect to have PROJECT MANAGER buy or rent specific pieces of equipment from other sources.

5. Except as approved by Owner, billing rates for Contractor-owned equipment shall not exceed costs published in the current edition of the *National Construction Estimator* (or equivalent) for rental of Similar equipment for a similar duration.

6. Without written approval of Owner, charges for any piece of Contractor-owned equipment shall not exceed 90 percent of the fair market value of such equipment on the Date of Commencement. Should the aggregate billing for any piece of equipment reach 90 percent of the fair market value at the Date of Commencement, reimbursement for that piece of equipment shall terminate. PROJECT MANAGER shall not take out of service any equipment for which reimbursement has terminated without written approval of Owner.

7. PROJECT MANAGER shall disclose to Owner the terms of any lease/purchase agreement PROJECT MANAGER may have on equipment billed to Owner.

8. The cost of routine scheduled maintenance and minor equipment repairs shall be reimbursed by Owner. Major repairs are capital costs and are covered by the equipment billing rate.

#### **F. Reimbursement of Supervision Costs**

1. Owner shall reimburse PROJECT MANAGER for all Supervision expenses reasonably necessary to complete the PROJECT MANAGING. Except as otherwise provided in this contract, reimbursement of Supervision expenses is limited to charges for construction personnel actually working on the Job Site.

2. Between the Date of Commencement and Substantial Completion, costs for Supervision shall be reimbursable starting when the Supervisor reports for Work on the Job Site and ending when the Supervisor leaves for the day. Charges for Supervision will be non-reimbursable when the Supervisor is not present on the Job Site or at some other location approved in advance and in writing by Owner.

3. Overtime wages paid to the Supervisor shall be reimbursable only if approved in writing in advance by Owner. Reimbursement shall be at the overtime rate actually paid. If overtime Work is required as a result of Inexcusable Delay caused by PROJECT MANAGER or anyone responsible to PROJECT MANAGER, the overtime premium or shift differential portion of payroll expenses and the related labor burden costs for overtime Work will be non-reimbursable.

#### **G. Reimbursements of Overhead Costs**

1. Owner shall reimburse PROJECT MANAGER for all overhead expenses reasonably necessary to complete the PROJECT MANAGING. Overhead expenses shall be billed to Owner based on estimated amounts approved in advance by Owner and reconciled with actual expenses before the date of Final Completion. The difference between estimated and actual overhead cost shall be debited or credited in the final payment to PROJECT MANAGER.

2. Overhead of PROJECT MANAGER shall mean all costs of doing business not associated with any particular construction Project. Overhead includes home office rent, home office insurance, supplies, utilities, office equipment and furnishings, shipping and transportation, advertising, general management, technical services, estimating, selling, accounting, bookkeeping, business licenses and taxes (except income taxes), professional and clerical fees and engineering services. Overhead for the PROJECT MANAGING shall be calculated using the ratio that Work on PROJECT MANAGING bears to all Work undertaken by PROJECT MANAGER during the period of construction. Multiply that ratio by the total overhead cost during the period of construction to find the reimbursable overhead expenses of PROJECT MANAGER under this contract.

#### **XXXII. Audit of Records**

A. Accounting books and records of PROJECT MANAGER shall be available for Inspection and copying by Owner or a person authorized by Owner during normal working hours at a place of business designated by PROJECT MANAGER. Records made available shall include both electronic and paper versions of accounting records, receipts, vouchers, purchase orders, Subcontract files (including proposals of successful and unsuccessful bidders), original estimates, estimating worksheets, correspondence, written policies and procedures, Change Order files (including documentation on negotiated settlements), payroll ledgers, record of allocation of overhead expense, and other documents which relate to the Work.

B. Accounting books and records of PROJECT MANAGER shall be retained for Inspection and copying by Owner for a period of 3 years after Final Completion.

C. PROJECT MANAGER shall require that all Subcontractors working for PROJECT MANAGER on the PROJECT MANAGING have the same obligation for Inspection, copying and retention of records as PROJECT MANAGER has. PROJECT MANAGER shall bear all costs (including attorney's fees) of enforcement of the right of Owner to Inspect and copy records in the event a Subcontractor refuses to fully cooperate.

D. PROJECT MANAGER shall keep payroll records showing the name, address, Social Security number, job classification, straight time and overtime hours worked each calendar day, and the actual wages paid to each person employed in the Work.

E. On request, PROJECT MANAGER shall release a certified copy of an employee's payroll record for Inspection and copying by the employee, Owner, or agency of government. Any copy of a



payroll record made available for Inspection or copying by a public agency or Owner shall be marked or obliterated to prevent disclosure of the employee's name, address, and Social Security number.

#### **XXXIII. Interest**

- A. Payments due and not paid under the Contract Documents shall bear interest from the date payment is due at a monthly rate of 0.10 percent.
- B. No interest shall accrue on funds properly retained under the terms of this contract.

#### **XXXIV. Liens and Waivers**

A. Within 7 calendar days after receipt of funds from Owner for Work done by a Subcontractor or materials provided by a Material Supplier, PROJECT MANAGER will either (1) Pay for that Work and those materials, or (2) Notify the Subcontractor or Material Supplier, in writing, of the intention to withhold all or some portion of the payment due and explain why payment is being withheld.

#### **XXXV. Waivers of Lien**

A. With each application for payment, PROJECT MANAGER shall provide to Owner (1) Conditional waivers of lien from PROJECT MANAGER, from each Material Supplier, and from each Subcontractor to the PROJECT MANAGING confirming payment for all Work and materials covered by the application, and (2) Certification from each Material Supplier and Subcontractor covered in a prior application for payment that previous conditional waivers of lien have become unconditional. Waivers of liens shall be in a form satisfactory to Owner, title insurer, and lenders. PROJECT MANAGER shall furnish any supplemental waivers of lien as may be reasonably required by Owner, title insurer, or lenders. Conditional waivers of lien become unconditional on receipt of the payment which is requested.

B. PROJECT MANAGER agrees to include in each Subcontract agreement for the PROJECT MANAGING a provision requiring (1) A conditional waiver of lien from each Subcontractor to the PROJECT MANAGING confirming payment for all Work and materials covered by each application for payment, and (2) Certification from each Subcontractor covered in a prior application for payment that previous conditional waivers of lien have become unconditional. Waivers of liens shall be in a form satisfactory to Owner, title insurer, and lenders.

C. Any decision made in good faith by Owner not to exercise the right to require waivers of lien shall not relieve PROJECT MANAGER of any obligation to any third party.

D. Upon receipt of payment, PROJECT MANAGER shall furnish to Owner a full and unconditional release of lien for that portion of the Work covered by a prior conditional release of lien.

E. Failure by PROJECT MANAGER to provide waiver of lien forms as required under this agreement shall not excuse Owner from making timely payment if PROJECT MANAGER has secured a Payment Bond on the PROJECT MANAGING with a licensed Surety company which guarantees payment in full of any Claim for which a waiver of lien has not been secured.

#### **XXXVI. Settlement of Lien Claims**

A. Providing Owner is not in default on any payment due PROJECT MANAGER, PROJECT MANAGER agrees to reimburse Owner for the cost to Owner (including Bond cost and reasonable attorney's fees) of settling or discharging any lien Claim filed on the PROJECT MANAGING by a Subcontractor, Material Supplier or tradesman of PROJECT MANAGER.

B. No right of Owner to reimbursement from PROJECT MANAGER or deduction from payments due PROJECT MANAGER for a lien Claim on the PROJECT MANAGING shall arise so long as the Work which is the subject of the lien Claim is in dispute resolution, mediation, arbitration or litigation.

#### **XXXVII. Details on Lien Claims**

A. By making application for payment, PROJECT MANAGER certifies that PROJECT MANAGER is unaware of any lien or property rights claimed on the PROJECT MANAGING made or threatened under state Law by Subcontractors, Material Suppliers or tradesmen except as specified in the application for payment. Owner is entitled to withhold payment to PROJECT MANAGER until such time as PROJECT MANAGER makes full disclosure of all details concerning lien or property right Claims made or threatened on the PROJECT MANAGING by Subcontractors, Suppliers or tradesmen.

B. PROJECT MANAGER agrees to deliver to Subcontractors, Material Suppliers and tradesmen for the PROJECT MANAGING the following address for delivery of lien notices:

,

C. At the request of Owner, PROJECT MANAGER shall supply Owner with a complete list of all Subcontractors, Material Suppliers, and tradesmen who have or may have the right to Claim a lien on the PROJECT MANAGING under state Law. This list shall include an estimate by PROJECT MANAGER of the amount due or to become due to each Subcontractor, Material Supplier, or tradesman.

D. PROJECT MANAGER agrees to furnish to any Subcontractor on request of that Subcontractor: (1) A copy of each invoice or payment request by PROJECT MANAGER, (2) Estimates made by PROJECT MANAGER to Owner of the percentage of completion of the PROJECT MANAGING, and (3) Detailed information about payments made by Owner for each portion of the Work done by such Subcontractor.

E. PROJECT MANAGER acknowledges and agrees that at the time this contract is signed, no Work has been performed and no materials have been furnished for the PROJECT MANAGING.

#### **XXXVIII. Grounds for Withholding Payment**

A. Owner may withhold payment due PROJECT MANAGER for Defective Work which has not been corrected in compliance with terms of this agreement.

B. Owner may withhold payment due PROJECT MANAGER for failure by PROJECT MANAGER to meet financial obligations to Subcontractors, tradesmen or Material Suppliers on the PROJECT MANAGING. Failure to meet financial obligations shall not constitute cause to withhold payment if PROJECT MANAGER has provided a Payment Bond from a licensed Surety, guaranteeing payment of Subcontractors, Material Suppliers, and tradesmen.

C. Owner may withhold payment due PROJECT MANAGER when reasonable evidence exists that the PROJECT MANAGING cannot be completed for the unpaid balance of the contract amount. Inability to complete the Project for the unpaid balance shall not constitute grounds to withhold payment if PROJECT MANAGER has provided a completion Bond from a licensed Surety guaranteeing completion of the PROJECT MANAGING.

D. Owner may withhold from payments due PROJECT MANAGER a sum adequate to reimburse Owner for any damage suffered by Owner or for which Owner may be liable and which was caused by an act or neglect of PROJECT MANAGER or by anyone for whom PROJECT MANAGER may be liable. Damage to Owner shall not constitute grounds to withhold payment if PROJECT MANAGER has insurance coverage which would prevent loss to Owner from the damage claimed.

E. Owner may withhold payment due PROJECT MANAGER when it is reasonable to believe that liquidated damages due Owner upon completion will exceed the balance due PROJECT MANAGER upon completion.

F. Owner may withhold payment due PROJECT MANAGER for unauthorized deviations from the Contract Documents or persistent failure to observe Requirements of the Contract Documents.

G. Owner may withhold payment due PROJECT MANAGER for neglect of PROJECT MANAGER to obtain a required permit or license or to comply with applicable Law, ordinance, code, or regulation, providing such neglect of PROJECT MANAGER has a material impact on satisfactory completion of the PROJECT MANAGING in compliance with the Contract Documents.

H. Owner may withhold payment due PROJECT MANAGER for failure to keep Work progressing in an orderly manner consistent with a reasonable time schedule.

I. If Owner withholds any payment under terms of this agreement, Owner will notify PROJECT MANAGER in writing of the amount being withheld, the reason why payment is withheld, and what must be done to release the payment otherwise due.

J. Grounds entitling Owner to withhold certain amounts due PROJECT MANAGER under this agreement shall not relieve Owner of the obligation to pay PROJECT MANAGER other amounts then due and shall not relieve Owner of the obligation to pay in full when the reason for withholding payment no longer exists.

K. Payments made by Owner with knowledge of a Defect, Claim, damage, delinquency, neglect, or failure of PROJECT MANAGER does not constitute waiver of the right of Owner to withhold payment at a later date for an earlier Defect, Claim, damage, delinquency, neglect, or failure by PROJECT MANAGER.

L. Should any mediation, arbitration or court proceeding determine that Owner was not justified in withholding payment to PROJECT MANAGER, the amount wrongfully withheld shall be treated as an unpaid balance and accrue interest as provided by Law or this contract from the calendar day payment was wrongfully withheld.

#### **XXXIX. Final Payment**

A. PROJECT MANAGER will submit an application for final payment to Owner when the Work has been completed in compliance with the Contract Documents. If Owner agrees that Work has been completed, payment is due PROJECT MANAGER for the entire unpaid balance of the contract

amount.

B. Except as provided otherwise in this agreement, Owner shall pay the amount due within 5 calendar days after approval of any application for payment.

C. Making of final payment constitutes waiver of all Claims by Owner against PROJECT MANAGER except those Claims previously made in writing and delivered to PROJECT MANAGER and those obligations otherwise provided by this agreement or by operation of Law.

D. The acceptance of final payment by PROJECT MANAGER constitutes a complete and unconditional waiver and release of any and all Claims by PROJECT MANAGER of whatever nature, and regardless of whether they are then known or unknown, and a complete and unconditional release of Owner, and every person for whom Owner is responsible, for any and all matters related to the contract or otherwise, except those Claims which have been made in writing and identified by PROJECT MANAGER as not having been settled at that time.

E. Owner has no obligation to make final payment until unconditional waivers of lien in a form satisfactory to Owner, lenders and Sureties have been received from PROJECT MANAGER, Subcontractors, vendors, tradesmen, and all Material Suppliers with lien rights on the PROJECT MANAGING. PROJECT MANAGER may furnish a Bond satisfactory to Owner in lieu of waivers of lien.

F. Owner has no obligation to make final payment until all as-built Drawings, certificates, warranties and job records required by the Contract Documents have been submitted to Owner.

G. Owner has no obligation to make final payment until all Punch List items have been satisfactorily completed unless Owner agrees to accept a certified check equal to the value of any uncompleted Work.

H. Owner has no obligation to make final payment until a certificate of occupancy has been issued or a final Inspection has been completed by the appropriate governing authority.

I. Owner has no obligation to make final payment until all applicable certificates of insurance required to remain in force after completion of the Work have been delivered to Owner.

J. Owner has no obligation to make final payment until all Sureties having issued Bonds on the Project give their consent to final payment by Owner.

K. Application for final payment constitutes affirmation by PROJECT MANAGER that all payrolls, bills for materials, equipment charges, and other obligations of PROJECT MANAGER in connection with the Work have been paid or otherwise satisfied.

L. Owner will notify PROJECT MANAGER of the date when notice of Final Completion is recorded.

M. Any other provision of this agreement notwithstanding, Owner may deduct from the final payment funds sufficient to cover liquidated damages, mechanics' lien Claims, back charges from Owner and other Claims made against PROJECT MANAGER on the PROJECT MANAGING unless PROJECT MANAGER posts a Bond from a licensed Surety sufficient to guarantee satisfaction of any such Claims.

N. After receipt of an application for final payment and before tender of the final payment, Owner may accept the Work for occupancy or use while asserting Claims against PROJECT MANAGER disputing the amount of compensation due PROJECT MANAGER, disputing the quality of the Work, its completion, or its compliance with the Contract Documents, or any other reason.

O. If completion of the Work is delayed unreasonably at no fault of PROJECT MANAGER, PROJECT MANAGER shall be entitled to final payment for all Work completed without prejudice to the right of PROJECT MANAGER to complete the PROJECT MANAGING at a later date and without prejudice to the right of Owner to make Claims against PROJECT MANAGER for Defects in Work completed.

P. Owner acknowledges sole responsibility for payments due under this agreement. But to the extent that the cost of the PROJECT MANAGING is covered by insurance, Owner assigns to PROJECT MANAGER all Claims and future rights to payment under any casualty, property damage or flood insurance policy, excluding any Claim for loss to building contents. Owner agrees to endorse and deliver promptly to PROJECT MANAGER each check received from an insurance carrier which constitutes reimbursement for the cost of the PROJECT MANAGING until the Work done by PROJECT MANAGER is paid in full. Owner authorizes any insurer to issue a settlement check for this Work payable to both Owner and PROJECT MANAGER.

#### **XL. Changes in the Work**

A. Except as provided elsewhere in this agreement, no change to this contract (including modification, clarification, interpretation or correction of the Plans or Specifications) shall be made without mutual agreement and a written Change Order signed by PROJECT MANAGER and Owner identifying the change, the cost of the change, and the effect on Project schedule, if any.

B. Any change in Plans, Specifications or Contract Documents necessary to conform to existing or future Laws, codes, ordinances or regulations shall be considered Extra Work.

C. Changes in the Work required due to defects or inconsistencies in Plans, Specifications or other Contract Documents shall be considered Extra Work.

D. Any act, error, or omission by Owner or anyone acting on behalf of Owner which increases the cost of completing the Work or delays the Contract Completion Date shall be considered Extra Work.

E. Owner may order Extra Work or make changes in the Work before a Change Order is signed when injury to person or property or a significant increase in cost or a significant delay would likely result from processing a routine Change Order.

F. PROJECT MANAGER may take on Extra Work or make changes in the Work before a Change Order is signed when injury to person or property or a significant increase in cost or a significant delay would likely result from processing a routine Change Order.

G. The price adjustment for Extra Work or reduced Work required by a Change Order shall be the difference in cost to PROJECT MANAGER for material, labor (including actual medical, pension and vacation expense), Subcontract expense, equipment cost, supervision, taxes, insurance and overhead plus a reasonable profit. Profit and overhead (including Job Site overhead, off-site overhead and overhead caused by delay) shall be 25 percent of the cost of Work performed by crews of PROJECT MANAGER and 15 percent for Work performed by any Subcontractor. No deduction

for overhead and profit shall be made on a Change Order which results in a net credit to Owner.

H. No Claim for Extra Work shall include a charge by PROJECT MANAGER for negotiating details of the Change Order with Owner.

I. Any increase in the cost to PROJECT MANAGER of labor, materials, equipment or Subcontract Work between the time the contract is executed and the time the Work is done shall be considered Extra Work so long as the increase is beyond control of PROJECT MANAGER. PROJECT MANAGER shall provide detailed records showing each cost change claimed.

J. The cost to Owner of any Extra Work shall include any loss by PROJECT MANAGER due to change in quantity discounts, forfeiture of deposits, restocking charges, cancellation charges, waste of time or materials or additional delivery charges.

K. If any Change Order increases or decreases the time required for completion, Owner and PROJECT MANAGER shall make an appropriate adjustment in the Contract Completion Date.

L. Any adjustment claimed by PROJECT MANAGER in the Contract Completion Date shall be supported by a schedule depicting activities or events which determine the Completion Date (critical path) prior to the Change Order. Any change in the Work which affects activities not on the critical path (Float or slack time), and which can be accomplished within the Float or slack time, shall not result in a change in the Contract Completion Date.

M. PROJECT MANAGER shall include in Subcontract agreements for the PROJECT MANAGING the following language: "Any Claim by a Subcontractor for Extra Work shall be made with PROJECT MANAGER. Only PROJECT MANAGER has the right to make a Claim with Owner for changes in the Work. No Subcontractor at any Tier shall have the right to file a Claim for Extra Work with Owner.

N. PROJECT MANAGER may delay acting on any written or oral direction, instruction, interpretation, or determination of Owner which would constitute Extra Work and may assert the right to an amendment to this contract by written Change Order before proceeding.

O. On receipt of any instruction or information which PROJECT MANAGER interprets as requiring Extra Work, PROJECT MANAGER shall prepare and submit to Owner a proposal describing the change in the Work using (where appropriate) Drawings, Specifications, narrative, the cost to Owner for making the change, and the proposed revision in the Contract Completion Date, if any.

P. PROJECT MANAGER is authorized to make minor changes in the Work which are in the interest of Owner, do not materially alter the quality or performance of the Work, and do not affect the cost or time of performance, and comply with applicable Laws, codes, ordinances and regulations. PROJECT MANAGER will inform Owner of each minor change made in the Work.

Q. Owner is authorized to make minor changes in the Work which are in the interest of Owner, do not materially alter the quality or performance of the Work, do not affect the cost or time of performance, and comply with applicable Laws, codes, ordinances and regulations.

R. Other clauses in this agreement notwithstanding, there will be no reduction in the value of the Work without a written Change Order.

S. When a change in the Work has been proposed by Owner, PROJECT MANAGER shall halt Work in the area of the proposed change and take steps to minimize any loss or waste which might result from implementing the proposed change.

T. When signed by PROJECT MANAGER and Owner, each Change Order becomes a Contract Document.

U. Acceptance by PROJECT MANAGER of payment for a Change Order shall constitute a waiver by PROJECT MANAGER of all other Claims by PROJECT MANAGER based on Work described in the Change Order.

V. Execution of any Change Order by Owner shall not constitute acceptance of any Work or materials not in accordance with the Contract Documents, nor shall it relieve PROJECT MANAGER of responsibility for faulty materials or workmanship or operate to release PROJECT MANAGER or any Surety of PROJECT MANAGER from obligations arising under contract or Performance Bonds.

W. Notwithstanding any provision in this agreement to the contrary, PROJECT MANAGER shall be entitled to payment for Extra Work and an extension of the Contract Completion Date if acts or omissions of Owner, anyone acting on behalf of Owner or government authority, whether written or oral, explicit or implied, modify the Contract Documents or methods of the Work and thereby increase cost to PROJECT MANAGER or delay the Contract Completion Date.

X. Failure of PROJECT MANAGER and Owner to agree on the terms of a Change Order shall be resolved under the provisions of this agreement which cover Claims and disputes.

Y. Cost to Owner for making a change in the Work shall not exceed the amount quoted in any written proposal for that change provided by PROJECT MANAGER.

Z. Should PROJECT MANAGER and Owner fail to agree promptly on the terms of a Change Order, PROJECT MANAGER shall be paid, pending resolution of the dispute, the portion of the cost of the change not in dispute, including the costs of time and materials required to execute the change. Payments required under this paragraph shall be made as the Work progresses, concurrently with progress payments.

AA. Should PROJECT MANAGER and Owner fail to agree promptly on the cost of a Change Order, PROJECT MANAGER shall maintain separate accounts, by job order or other suitable accounting procedure, of all incurred segregable, direct costs (less allocable credits) of Work allocable to the change. PROJECT MANAGER shall maintain such accounts until PROJECT MANAGER and Owner agree on the cost of change or until the issue is resolved under provisions of this contract relating to disputes.

BB. Failure of PROJECT MANAGER and Owner to agree on the cost of a change in the Work or failure to agree that Extra Work is required does not prejudice the right of PROJECT MANAGER to Claim that Work performed was beyond Requirements of the Contract Documents.

#### **XLI. Cooperation of the Parties**

A. Owner and PROJECT MANAGER acknowledge that open communication and cooperation will be required to complete the PROJECT MANAGING on time, as estimated, and in compliance with the Contract Documents. PROJECT MANAGER and Owner each agree to identify a representative who will be available to resolve minor problems, answer questions and reach mutually

acceptable solutions. The individuals identified by PROJECT MANAGER and Owner shall try to reach informal agreement on problems as they arise but are under no obligation to do so.

B. Both PROJECT MANAGER and Owner pledge that their relations will be conducted with courtesy and consideration in an environment characterized by mutual respect. Owner pledges to respond promptly to requests by PROJECT MANAGER for guidance, assistance and payments when due and agrees to extend to PROJECT MANAGER the deference and latitude a dedicated professional deserves. PROJECT MANAGER pledges to commit the skill and resources required to complete the PROJECT MANAGING in a manner that complies with both the letter and spirit of the Contract Documents and enhances the reputation of PROJECT MANAGER for dependability and professionalism.

## **XLII. Job Conferences**

A. Prior to the start of construction, PROJECT MANAGER and Owner shall hold a pre-construction conference to identify: (1) The people who will be involved in construction of the PROJECT MANAGING, their chain of authority, addresses, telephone numbers, fax numbers and email addresses to be used when requesting information or giving notices, (2) The proposed construction schedule, (3) Procedures for approving Shop Drawings, product data and Submittals, (4) Procedures for handling Change Orders, (5) Construction Site Requirements such as dust and erosion control, storm water management, Project signs, clean up and housekeeping, temporary facilities, utilities, security, and traffic, (6) Safety Requirements and procedures, (7) Quality control, testing, Inspections and notice Requirements, (8) Inspection procedures, and (9) The handling of payment requests.

B. PROJECT MANAGER shall send a representative to Job Site progress conferences when scheduled by Owner. This representative shall have authority to act on behalf of PROJECT MANAGER on issues that concern contract compliance or affect the completion schedule. These conferences shall include Subcontractors, Material Suppliers and others who can contribute to job progress. At these conferences, the representative of PROJECT MANAGER shall be prepared to assess progress of the Work, purchases, deliveries, Shop Drawings, product data, quality control Samples, possible conflicts, compatibility problems, time schedules, weather limitations, temporary facilities, space and access limitations, structural limitations, government regulations, safety, Inspection and testing Requirements, performance results, recording Requirements, protection, and Similar considerations. Owner shall set the time, date and place of these conferences and act as conference chair. Phone or web conferencing may be used with the consent of all attending any conference.

C. Owner may impose a reasonable fine (not to exceed \$100) on PROJECT MANAGER for failure to participate in a scheduled conference. Any fine imposed shall be deducted from the next progress payment due.

D. PROJECT MANAGER shall require that appropriate Subcontractors be present at scheduled job conferences.

## **XLIII. Value Engineering**

A. PROJECT MANAGER is encouraged to submit in writing to Owner detailed value engineering proposals which will accelerate completion, reduce cost to Owner, or which offer significant benefits (including long-term benefits) to Owner. On acceptance of any value engineering proposal, Owner



and PROJECT MANAGER shall execute a detailed Change Order identifying the change and value of the direct cost saving or enhanced value to Owner. Owner shall pay to PROJECT MANAGER 50 percent of the direct cost saving or enhanced value identified in any Change Order that results from a written value engineering proposal submitted by PROJECT MANAGER. In the absence of any such value engineering proposal, PROJECT MANAGER is deemed to have accepted construction details provided by the Contract Documents as adequate to produce satisfactory Work.

B. PROJECT MANAGER may restrict the right of Owner to make use of any value engineering proposal or make any use of supporting data for a value engineering proposal by appending to the proposal the following language: "No part of this value engineering proposal shall be disclosed, duplicated or used for any purpose other than to evaluate this proposal. Once accepted by Owner by issuance of a Change Order, Owner shall have the right to duplicate, use, and disclose any data or information in this value engineering proposal in any manner and for any purpose whatsoever."

C. Proposals for value engineering changes shall be prepared at the expense of PROJECT MANAGER. PROJECT MANAGER shall be paid for value engineering changes when the Change Order has been approved by Owner and the Work has been completed.

D. PROJECT MANAGER shall remain obligated to perform in accord with terms of the Contract Documents unless and until a Change Order adopting a value engineering proposal is approved by Owner.

E. PROJECT MANAGER shall pay for any design, engineering, consultant, or staff services necessary to review and evaluate a proposed value engineering Change Order.

F. Calculation of the saving or enhanced value to Owner that may result from a value engineering proposal shall be based on the PROJECT MANAGING only, without consideration of other projects, future acquisitions, royalties or collateral savings.

G. Value engineering proposals must not delay completion of the PROJECT MANAGING or adversely affect the quality of design or construction or the operation or maintenance of the PROJECT MANAGING.

#### **XLIV. Contractor Claims**

A. If PROJECT MANAGER claims that any instruction, Drawing, act or omission of Owner or any representative of Owner, or any agency of government, increases costs to PROJECT MANAGER, requires extra time or changes the Scope of Work, PROJECT MANAGER shall have the right to assert a Claim for such costs or time.

B. Unresolved Claims or disputes shall not cause PROJECT MANAGER to delay or suspend Work or for Owner to delay or suspend payments as provided by this agreement. Continued performance by PROJECT MANAGER shall not be deemed a waiver of any Claim for additional compensation or an extension of Time for Completion. PROJECT MANAGER shall cooperate with Owner and representatives of Owner to mitigate potential damages, delay and other adverse consequences arising out of the condition which is the subject of the Claim.

C. PROJECT MANAGER and Owner agree to make a good faith effort to resolve all Claims that arise under this agreement and shall seek the opinion of expert disinterested parties on the validity of Claims, when appropriate. Claims not resolved to the mutual satisfaction of PROJECT MANAGER and Owner shall be resolved under the provisions of this agreement covering dispute resolution.

#### **XLV. Notice of Claims**

A. No Claim by PROJECT MANAGER shall be considered unless PROJECT MANAGER provides Owner with a notice that there will be a Claim for additional compensation or an extension of time. This notice of Claim shall be made no less than 5 calendar days after PROJECT MANAGER recognizes or should have recognized that circumstances exist which support such a Claim. The notice of Claim shall include: (1) The date of the notice, (2) The date the basis for the Claim was discovered, (3) The circumstances that support the Claim, and (4) The estimated additional cost to Owner or additional time required to complete the PROJECT MANAGING.

B. If the Claim involves Extra Work, PROJECT MANAGER shall maintain detailed records which show each expense incurred, including payroll records and receipts for Subcontracted Work, materials and equipment. These detailed records shall be made available to Owner for verification while Work subject to the Claim is being performed.

C. Within 10 calendar days after completion of Work which is the subject of a notice of Claim, PROJECT MANAGER shall provide to Owner a written final statement of Claim. The final statement of Claim shall include: (1) The date of the statement, (2) The date when Work done under the Claim was completed, (3) The full and final amount of the Claim and the additional time Claimed, and (4) An offer to provide detailed written records substantiating each element of the Claim.

D. The final statement of Claim shall be accompanied by a certificate executed by PROJECT MANAGER and stating as follows: "I certify that this claim is made in good faith; that the supporting information is accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which Owner is liable; and, that I am duly authorized to certify the claim on behalf of PROJECT MANAGER."

E. Neither mediation nor arbitration shall relieve the obligation of PROJECT MANAGER to give timely notice of Claims. No conduct or settlement negotiation during mediation shall be considered a waiver of the right of Owner to assert that Claim procedures were not followed.

F. PROJECT MANAGER agrees and understands that no oral approval, either express or implied, of any Claim shall be binding upon Owner unless and until such approval is ratified by execution of a written Change Order.

#### **XLVI. Dispute Resolution**

A. Except as provided elsewhere in this agreement, all Claims and disputes between PROJECT MANAGER and Owner arising out of or relating to the Contract Documents or contract warranty or the breach thereof, except for Claims which have been waived by the making or acceptance of final payment, shall be decided by courts of competent jurisdiction in the county where the PROJECT MANAGING is located.

B. Should either Party bring suit in court to enforce the terms of this agreement, any judgment or award shall include court costs and reasonable attorney's fees to the successful Party plus interest at the legal rate.

#### **XLVII. Insurance**

## A. General Requirements

1. PROJECT MANAGER shall carry workers' compensation insurance and public liability insurance as required by Law and regulation for the protection of PROJECT MANAGER and Owner during progress of the Work.

### Notice to Owner Required by New York Law

**MECHANICS' LIENS:** Any contractor, subcontractor, or materialman who provides home improvement goods or services pursuant to this home improvement contract and who is not paid may have a valid legal claim against your property known as a mechanic's lien. Any mechanic's lien filed against your property may be discharged. Payment of the agreed-upon price under the home improvement contract prior to filing of a mechanic's lien may invalidate such lien. You may contact an attorney to determine your right to discharge a mechanic's lien.

**TRUST FUNDS:** Except as provided below for hourly pay, PROJECT MANAGER is legally required to deposit all payments received prior to completion in accordance with subdivision four of section seventy-one-a of the lien law and that, in lieu of such deposit, PROJECT MANAGER may post a bond, contract of indemnity or irrevocable letter of credit with Owner guaranteeing the return or proper application of such payments to the purposes of the contract.

**PROGRESS PAYMENTS:** If this contract provides for one or more progress payments to be paid to PROJECT MANAGER by Owner before substantial completion of the work, the contract shall include a schedule of such progress payments showing the amount of each payment, as a sum in dollars and cents, and specifically identifying the state of completion of the work or services to be performed, including any materials to be supplied before each such progress payment is due. The amount of any such progress payments shall bear a reasonable relationship to the amount of work to be performed, materials to be purchased, or expenses for which the contractor would be obligated at the time of payment.

**EXCEPTION FOR HOURLY PAY:** If the contract provides that the home improvement contractor will be paid on a specified hourly or time basis for work that has been performed or charges for materials that have been supplied prior to the time that payment is due, such payments for such work or materials shall not be deemed to be progress payments for the purposes of this agreement and shall not be required to be deposited in accordance with provisions of this agreement on progress payments.

**RIGHT TO CANCEL:** In addition to any right otherwise to revoke an offer, Owner may cancel the home improvement contract until midnight of the third business day after the day on which Owner has signed this agreement. Cancellation occurs when written notice of cancellation is given to PROJECT MANAGER. Notice of cancellation, if given by mail, shall be deemed given when deposited in a mailbox properly addressed and postage prepaid. Notice of cancellation shall be sufficient if it indicates the intention of Owner not to be bound. Notwithstanding the foregoing, this paragraph shall not apply to a transaction in which Owner has initiated the contact and the home improvement is needed to meet a bona fide emergency of Owner, and the owner furnishes the home improvement contractor with a separate dated and signed personal statement in the handwriting of Owner describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the home improvement contract within three business days. For the purposes of this paragraph Owner shall mean any representative of Owner.

**RIGHT TO RECEIVE THIS CONTRACT:** This contract is legible, in plain English, and describes clearly other documents incorporated into the contract. Before any work is done, Owner shall be furnished a copy of the Contract Documents signed by PROJECT MANAGER. This contract may include other matters agreed to by the parties to this contract.

## Signatures

The signatures that follow constitute confirmation by those signing that they have examined and understand the Contract Documents and agree to be bound by the terms of these documents.

PROJECT MANAGER may not begin Work before receiving from Owner a written notice to proceed. Any Work performed by PROJECT MANAGER before receipt of the notice to proceed shall be done at the risk of PROJECT MANAGER and without obligation of Owner.

By signing this agreement, PROJECT MANAGER confirms Inspection of the Job Site and signifies familiarity with all local conditions, Laws, and regulations under which the Work is to be performed.

This contract is for immediate acceptance. Any delay in acceptance beyond 6/5/2019 will require renegotiation of the terms of this agreement.

If this contract is not signed by PROJECT MANAGER at the time it is signed by Owner, PROJECT MANAGER shall, within 15 days thereafter, either give Owner written notice of rejection of the contract or sign the contract and supply owner with copy of the signed contract. The notice of rejection or signed contract will be delivered to Owner either personally or by certified or registered mail. In case of rejection, any payment made by Owner will be returned with the notice of rejection.

This contract shall not be effective until financing for the PROJECT MANAGING has been approved and funds are available. In the event that Owner is unable to get financing for the PROJECT MANAGING within 60 days after the contract is signed, this contract shall be considered terminated unless Owner and PROJECT MANAGER mutually agree to an extension.

This agreement is entered into as of the date written below.

Owner

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

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed Name)

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

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed Name)

Brian Washington, Contractor

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

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Printed Name and Title)

### **Insulation Disclosure (In Compliance with 16 CFR Section 460)**

PROJECT MANAGER makes the following disclosures in compliance with 16 Code of Federal Regulation Section 460. The PROJECT MANAGING includes installation of the following thermal insulation:

Coverage area includes framing members but not doors, windows or other large openings in the exterior frame. R-values may be less where building components limit placement of insulation. For example, it may not be possible to place insulation at building corners, at fireplaces and around the perimeter of doors and windows. Listed R-values are based on information supplied by the insulation manufacturer. PROJECT MANAGER may have to substitute other materials but will maintain the R-values described here.

**Change Order Agreement**

Today's Date \_\_\_\_\_ Original contract date \_\_\_\_\_

Job Address \_\_\_\_\_ Original contract price \$ \_\_\_\_\_

Job Address \_\_\_\_\_ Sum of previous changes \$ \_\_\_\_\_

City, ST, ZIP \_\_\_\_\_ Cost of this change \$ \_\_\_\_\_

Contractor \_\_\_\_\_ Revised contract price \$ \_\_\_\_\_

Description of this change \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

A. Material and supplies cost: \$ \_\_\_\_\_

B. Taxes and fees \$ \_\_\_\_\_

C. Direct labor: \$ \_\_\_\_\_

D. Indirect labor costs: \$ \_\_\_\_\_

E. Equipment and tools: \$ \_\_\_\_\_

F. Subtotal: ..... \$ \_\_\_\_\_

G. Overhead at \_\_\_\_\_ % of line F: \$ \_\_\_\_\_

H. Subcontracts: \$ \_\_\_\_\_

I. Overhead at \_\_\_\_\_ % of line H: \$ \_\_\_\_\_

J. Subtotal: ..... \$ \_\_\_\_\_

K. Profit at \_\_\_\_\_ % of lines F and J: \$ \_\_\_\_\_

L. Subtotal: ..... \$ \_\_\_\_\_

M. Total cost, lines F, J and L: [ ] Add [ ] Deduct \$ \_\_\_\_\_

N. Items specifically excluded from this change: \_\_\_\_\_

\_\_\_\_\_

Q. This proposal is valid for \_\_\_\_\_ days.

R. We require \_\_\_\_\_ days extension of the contract time.

[ ] We are proceeding with this work per your authorization.

[ ] Please return a signed copy of this agreement as your acknowledgment of this change.

This Change Order incorporates by reference the terms, conditions, notices, disclosures and waivers in the original contract and all change orders approved since execution of the original contract.

This Change Order is accepted by \_\_\_\_\_ Date \_\_\_\_\_