

DRAFT AIA® Document A105™ – 2017

Standard Short Form of Agreement Between Manager and Contractor

AGREEMENT made as of the « TBD » day of « TBD » in the year «2022»
(In words, indicate day, month and year.)

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

« AEG Management HCC, LLC » «a Hawaii Limited Liability Company »
« 1801 Kalakaua Avenue »
« Honolulu, Hawaii 96815 »
« »

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

« TBD » « »
« »
« »
« »

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

«Kitchen Hood Fire Suppression System Replacement»
«Hawaii Convention Center»
«1801 Kalakaua Avenue
Honolulu, Hawaii 96815»

The Project and Construction Manager:
(Name, legal status, address and other information)

«Andrew Tanton
Project Director
Cumming Management Group, Inc.
841 Bishop St., Ste. 725
Honolulu, HI 96813
Email: atanton@cumming-group.com»

The Manager and Contractor agree as follows.

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

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

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TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
3	CONTRACT SUM
4	PAYMENTS
5	INSURANCE
6	GENERAL PROVISIONS
7	MANAGER
8	CONTRACTOR
9	PROJECT AND CONSTRUCTION MANAGER
10	CHANGES IN THE WORK
11	TIME
12	PAYMENTS AND COMPLETION
13	PROTECTION OF PERSONS AND PROPERTY
14	CORRECTION OF WORK
15	MISCELLANEOUS PROVISIONS
16	TERMINATION OF THE CONTRACT
17	OTHER TERMS AND CONDITIONS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contractor shall complete the Work described in the Contract Documents for the Project. The Contract Documents consist of

- .1 This Agreement signed by the Manager and Contractor;
- .2 Special Conditions;
- .3 General Conditions;;
- .4 Request for Proposals for Design and Build Project for the Replacement of the Existing Kitchen Hood Fire Suppression System for Hawaii Convention Center (the "RFP"), including all addenda, attachments, and amendments;
- .5 Contractor's Proposal, including the Equipment and Installation Plan, Implementation and Training Plan, and the BAFO if required and/or submitted;
- .6 Written orders for changes in the Work, pursuant to Article 10, issued after execution of this Agreement; and
- .7 Any other documents, if any, identified as follows:

«N/A »

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The Contract Time is the number of calendar days available to the Contractor to substantially complete the Work.

§ 2.2 Date of Commencement:

Unless otherwise set forth below, the date of commencement shall be indicated in a written "Notice to Proceed" letter.

(Insert the date of commencement if other than the date of this Agreement.)

« »

§ 2.3 Substantial Completion:

Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion, as defined in Section 12.5, of the entire Work:

(Check the appropriate box and complete the necessary information.)

[« »] Not later than « » (« ») calendar days from the date of commencement.

[« »] By the following date: « »

§ 2.4 Liquidated Damages:

The Contractor's failure to substantially complete the Work within the time period set forth in Section 2.3 shall result in liquidated damages in the amount of N/A.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work. Subject to additions and deductions in accordance with Article 10, the Contract Sum is:

« » (\$ « »)

§ 3.2 For purposes of payment, the Contract Sum includes the following values related to portions of the Work: *(Itemize the Contract Sum among the major portions of the Work.)*

Portion of the Work	Value
N/A	N/A

§ 3.3 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and hereby accepted by the Manager:

(Identify the accepted alternates. If the bidding or proposal documents permit the Manager to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

«N/A »

§ 3.4 Allowances, if any, included in the Contract Sum are as follows: *(Identify each allowance.)*

Item	Price
N/A	

§ 3.5 Unit prices, if any, are as follows:

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

Item	Units and Limitations	Price per Unit (\$0.00)
Stop Work Day	(1) Working Day	

ARTICLE 4 PAYMENTS

§ 4.1 Based on Contractor's Applications for Payment certified by the Project and Construction Manager ("CM/PM"), the Manager shall pay the Contractor, in accordance with Article 12, as follows:
(Insert below timing for payments and provisions for withholding retainage, if any.)

«4.1.1 – The period covered for each payment application shall cover 1 (one) calendar month, ending on the last calendar month.

4.1.2 – The Manager will pay the contractor in full minus 10% retainage for each calendar month payment application, certified by the CM/PM, until such a time that the contract is past 50% complete, the retainage will then reduce to 5% until the contract is complete and substantial completion is achieved.

4.1.3 – Application for payment shall show the percentage of completion of each portion of the work, as of the end of the period covered by the application for payment.

»

§ 4.2 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate below, or in the absence thereof, at the legal rate prevailing at the place of the Project.
(Insert rate of interest agreed upon, if any.)

«N/A » % « »

ARTICLE 5 INSURANCE

§ 5.1 The Contractor shall maintain the following types and limits of insurance until the expiration of the period for correction of Work as set forth in Section 14.2, subject to the terms and conditions set forth in this Section 5.1:

§ 5.1.1 Commercial General Liability insurance for the Project, written on an occurrence form, with policy limits of not less than «one million dollars» (\$ «1,000,000.00 ») each occurrence, « five million dollars » (\$ « 5,000,000.00 ») general aggregate, and « » (\$ « ») aggregate for products-completed operations hazard. Commercial General Liability insurance on a per occurrence basis, shall include: (i) Broad form property damage; (ii) Contractual liability insurance, as part of the commercial general liability policy, insuring the Contractor's liabilities assumed under this Contract, including indemnification obligations under Section 8.12; and (iii) personal injury and advertising injury.

§ 5.1.2 Automobile Liability covering vehicles owned, leased, hired, and non-owned vehicles used, by the Contractor, with policy limits of not less than « one million» (\$ « 1,000,000.00 ») per accident, for bodily injury, death of any person, and property damage arising out of the Manager, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage. Automobile Liability insurance shall include coverage for automobile contractual liability.

§ 5.1.3 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 5.1.1 and 5.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 5.1.4 Workers' Compensation at applicable statutory requirements.

§ 5.1.5 Employers' Liability with policy limits not less than « one million dollars» (\$ «1,000,000.00 ») each accident, « » (\$ « ») each employee, and « » (\$ « ») policy limit. Employers' Liability insurance shall also include a Waiver of Subrogation in favor of Manager, the CM/PM, the Hawai'i Convention Center, the Hawai'i Tourism Authority, Anschutz Entertainment Group, Inc. and the State of Hawai'i, and each of its and their respective boards, commissions, agents, Manager, members, shareholders, directors, officers, servants, employees, subsidiaries, and affiliates (hereinafter referred to as "Company Indemnitees"), unless not permitted by applicable law.

§ 5.1.6 The Contractor shall provide builder's risk insurance to cover the total value of the entire Project on a replacement cost basis.

§ 5.1.7 Other Insurance Provided by the Contractor

(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage	Limits
Professional Liability/Errors and Omissions Insurance	Five million dollars (\$5,000,000.00) each claim occurrence
Personal Property Insurance	Value of Contractor’s personal property, tools, equipment and other property

The Professional Liability/Errors & Omissions Insurance shall be for protection of claims arising out of negligent acts, professional services/errors, and omissions by or for the Contractor. The Personal Property insurance shall include a Waiver of Subrogation in favor of the Company Indemnitees.

~~§ 5.2 The Manager shall be responsible for purchasing and maintaining the Manager’s usual liability insurance and shall provide property insurance to cover the value of the Manager’s property. The Contractor is entitled to receive an increase in the Contract Sum equal to the insurance proceeds related to a loss for damage to the Work covered by the Manager’s property insurance.~~

§ 5.3 The Contractor shall obtain an endorsement to its Commercial General Liability insurance policy to provide coverage for the Contractor’s obligations under Section 8.12.

§ 5.4 Prior to commencement of the Work, each party shall provide certificates of insurance showing their respective coverages.

§ 5.5 Unless specifically precluded by the Manager’s property insurance policy, the Manager and Contractor waive all rights against (1) each other and any of their subcontractors, suppliers, agents, and employees, each of the other; and (2) the CM/PM, CM/PM’s consultants, and any of their agents and employees, for damages caused by fire or other causes of loss to the extent those losses are covered by property insurance or other insurance applicable to the Project, except such rights as they have to the proceeds of such insurance.

§ 5.6 All of the insurance in Article 5 shall be subject to the following terms, conditions and endorsements.

§ 5.6.1 **Insurer.** The insurance shall be purchased from a company with an “A-:IX” or better rating from A.M. Best Company, where said insurance company is both lawfully able to provide insurance in the State of Hawaii and that is satisfactory to the Company.

§ 5.6.2 **Additional Insureds Endorsements.** All insurance, except the workers compensation and professional liability insurance, shall include the Company Indemnitees as additional insureds under ISO Form CG 2010 and Form CG 2037 or their equivalents. These endorsements shall apply without regard to other provisions of this Agreement.

§ 5.6.3 **Primary Insurance.** The commercial general liability insurance under Section 5.1.1, the automobile liability insurance under Section 5.1.2 shall apply as primary insurance, without any right of contribution by any other insurance that may be carried by the Company regarding the Work under this Agreement. Any general liability or automobile liability insurance purchased by the Indemnitees is, or has been, specifically purchased as excess over any general liability or automobile liability purchased by the Contractor.

§ 5.6.4 **Severability of Interest.** The insurance shall include a severability of interest clause for all named insureds and additional insureds.

§ 5.6.5 **Duration.** Coverage shall be maintained, without interruption, from the date of commencement of the Contractor’s Services under this Agreement and shall continue for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies. The insurance obligations shall survive the expiration or termination of this Agreement.

§ 5.6.6 Notice of Cancellation, Etc. The Contractor's insurer shall give the Company immediate written notice of any cancellation in accordance with the policy terms but shall provide at least 10 days' written notice for non-payment of premium. The Contractor shall be required to immediately notify Company of any termination, of coverage or if its coverage no longer meets the requirements of this Agreement by registered or certified mail, return receipt requested.

§ 5.6.7 Defense. The insurance obtained by the Contractor, except for professional liability and workers compensation insurance, shall provide that the insurer shall defend any suit against the additional insureds, even if such suit is allegedly or actually frivolous or fraudulent. Defense costs shall apply in excess of any per occurrence limit of liability and shall not reduce any aggregate limits of liability applying under the policies.

§ 5.6.8 Delivery of Certificates and Policies. Original certificates of insurance and all requested endorsements, in a form acceptable to the Manager, must be filed with the Manager prior to commencement of the Contractor's Services. The Contractor's certificate of insurance shall be endorsed as follows: "*The Company Indemnitees (as defined in Section 5.1.5) are named as additional insureds for all insurance except the workers compensation and the professional liability insurance. This insurance is primary to and non-contributing with any and all insurance of the Company Indemnitees.*" The Certificate Holder box shall identify the name and address of the Manager listed on the first page of this Agreement. With respect to insurance coverage required to remain in force after final payment, the Contractor shall annually submit certificates of insurance evidencing continuation of such coverage. The Contractor shall submit copies of the policies within seven days following a request from the Manager.

§ 5.6.9 Lapse in Insurance. Failure to maintain insurance shall constitute a material breach of this Agreement. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Manager receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Manager may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

§ 5.6.10 Subcontractors. If the Contractor subcontracts a third-party sub-consultant to complete any portion of this Agreement, the Contractor shall ensure that the sub-consultant shall provide all necessary insurance and shall name the Company Indemnities and the Contractor listed as additional insureds. The Contractor shall provide such insurance documents to the Company on behalf of sub-consultant.

§ 5.6.11 Non-Waiver. PERMITTING THE CONTRACTOR TO START WORK OR RELEASING ANY PAYMENT PRIOR TO COMPLIANCE WITH THESE REQUIREMENTS SHALL NOT CONSTITUTE A WAIVER THEREOF.

§ 5.7 Waivers of Subrogation

The CM/PM and the Company waive all rights of recovery against each other and the Company Indemnitees for any losses covered by insurance with the exception of the Professional Liability policy. The CM/PM agrees to defend and indemnify the Indemnitees from all such subrogation claims.

ARTICLE 6 GENERAL PROVISIONS

§ 6.1 The Contract

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a written modification in accordance with Article 10.

§ 6.2 The Work

The term "Work" means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment, and services provided, or to be provided, by the Contractor to fulfill the Contractor's obligations.

§ 6.3 Intent

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

§ 6.4 Managership and Use of Architect or Engineer's Drawings, Specifications and Other Documents

Documents prepared by an Architect or Engineer, if any, are instruments of the Architect or Engineer's service for use solely with respect to this Project. The Architect or Engineer shall retain all common law, statutory, and other reserved rights, including the copyright. The Contractor, subcontractors, sub-subcontractors, and suppliers are authorized to use and reproduce the instruments of service solely and exclusively for execution of the Work. The instruments of service may not be used for other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Architect or Engineer.

§ 6.5 Electronic Notice

Written notice under this Agreement may be given by one party to the other by email as set forth below. *(Insert requirements for delivering written notice by email such as name, title, and email address of the recipient, and whether and how the system will be required to generate a read receipt for the transmission.)*

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ARTICLE 7 MANAGER

§ 7.1 Information and Services Required of the Manager

§ 7.1.1 If requested by the Contractor, the Manager shall furnish all necessary surveys and a legal description of the site.

§ 7.1.2 Except for permits and fees under Section 8.7.1 that are the responsibility of the Contractor, the Manager shall obtain and pay for other necessary approvals, easements, assessments, and charges.

§ 7.1.3 Prior to commencement of the Work, at the written request of the Contractor, the Manager shall furnish to the Contractor reasonable evidence that the Manager has made financial arrangements to fulfill the Manager's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Manager provides such evidence.

§ 7.2 Manager's Right to Stop the Work

§ 7.2.1 If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the Manager may direct the Contractor in writing to stop the Work until the correction is made.

§ 7.2.2 Manager shall, at its convenience, have the right to stop work due to an event or any other circumstance. If Contractor believes that it has been impacted by the stop work order, Contractor may submit the reasons it believes it has been impacted via a change order.

§ 7.3 Manager's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Manager to commence and continue correction of such default or neglect with diligence and promptness, the Manager may, without prejudice to other remedies, correct such deficiencies. In such case, the CM/PM may withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Manager for the cost of correction, provided the actions of the Manager and amounts charged to the Contractor were approved by the CM/PM.

§ 7.4 Manager's Right to Perform Construction and to Award Separate Contracts

§ 7.4.1 The Manager reserves the right to perform construction or operations related to the Project with the Manager's own forces, and to award separate contracts in connection with other portions of the Project.

§ 7.4.2 The Contractor shall coordinate and cooperate with the Manager's own forces and separate contractors employed by the Manager.

ARTICLE 8 CONTRACTOR

§ 8.1 Review of Contract Documents and Field Conditions by Contractor

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

§ 8.1.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Manager. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies, or omissions discovered to the CM/PM.

§ 8.2 Contractor's Construction Schedule

The Contractor, promptly after being awarded the Contract, shall prepare, and submit for the Manager's and CM/PM's information a Contractor's construction schedule for the Work. Said Contractor's construction schedule shall comply with HCC's proposed installment schedule, which was attached as part of Appendix B to the RFP, and any subsequent amendments thereto, if any.

§ 8.3 Supervision and Construction Procedures

§ 8.3.1 The Contractor shall supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work.

§ 8.3.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Manager, through the CM/PM, the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Manager or CM/PM have made a timely and reasonable objection.

§ 8.4 Labor and Materials

§ 8.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

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

§ 8.5 Warranty

The Contractor warrants to the Manager and CM/PM that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents. Any material or equipment warranties required by the Contract Documents shall be issued in the name of the Manager or shall be transferable to the Manager and shall commence in accordance with Section 12.5.

§ 8.6 Taxes

The Contractor shall pay sales, consumer, use, and similar taxes that are legally required when the Contract is executed.

§ 8.7 Permits, Fees and Notices

§ 8.7.1 The Contractor shall obtain and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work.

§ 8.7.2 The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the CM/PM in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules, and regulations.

§ 8.8 Submittals

The Contractor shall promptly review, approve in writing, and submit to the CM/PM shop drawings, product data, samples, and similar submittals required by the Contract Documents. Shop drawings, product data, samples, and similar submittals are not Contract Documents.

§ 8.9 Use of Site

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents, and the Manager. Contractor and all Contractor's employees on the HCC's premises shall also conform to HCC's Health & Safety Procedures.

§ 8.10 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 8.11 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, the Contractor shall remove its tools, construction equipment, machinery, and surplus material; and shall properly dispose of waste materials.

§ 8.12 Indemnification

§ 8.12.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Company Indemnitees, from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its sub-consultants or contractors), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise directly or indirectly, in whole or in part, from (a) the Services under this Agreement, or any part of such Services, and (b) any negligent, reckless, or willful act or omission of the Contractor, any sub-consultant or contractor, anyone directly or indirectly employed by them, or anyone that they control, unless due to the negligence or willful misconduct of the Company Indemnitees. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this paragraph.

§ 8.12.2 The Contractor shall defend the Company Indemnitees using counsel selected by the Contractor and approved by the Company. The Contractor's obligations shall include the obligation to pay reasonable attorneys' fees and costs in connection with such defense.

§ 8.12.3 The Contractor shall also indemnify, defend and hold harmless all Company Indemnitees from all suits or claims by a third party for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the Company Indemnitees of articles or services to be supplied in the performance of the Contractor's Services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of the Agreement. The following parties are included but are not limited to the following: Hawai'i Convention Center, AEG Management HCC, LLC, Anschutz Entertainment Group, Inc. ASM Global Parent, Inc., AEG Venue Management Holdings, LLC, the Hawai'i Tourism Authority, and the State of Hawai'i, and each of its and their respective affiliates, related entities and their respective Principals, Owners, Shareholders, Members, Partners, Officers, Directors, Employees, Representatives, Tenants, Agents, Contractors and Volunteers.

ARTICLE 9 CM/PM

§ 9.1 The CM/PM will provide administration of the Contract as described in the Contract Documents. The CM/PM will have authority to act on behalf of the Manager only to the extent provided in the Contract Documents.

§ 9.2 The CM/PM will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work.

§ 9.3 The CM/PM will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The CM/PM will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

§ 9.4 Based on the CM/PM's observations and evaluations of the Contractor's Applications for Payment, the CM/PM will review and certify the amounts due the Contractor.

§ 9.5 The CM/PM has authority to reject Work that does not conform to the Contract Documents.

§ 9.6 The CM/PM will promptly review and approve or take appropriate action upon Contractor's submittals, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 9.7 On written request from either the Manager or Contractor, the CM/PM will promptly interpret and decide matters concerning performance under, and requirements of, the Contract Documents.

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

§ 9.9 The CM/PM's duties, responsibilities, and limits of authority as described in the Contract Documents shall not be changed without written consent of the Manager, Contractor, and CM/PM. Consent shall not be unreasonably withheld.

ARTICLE 10 CHANGES IN THE WORK

§ 10.1 The Manager, without invalidating the Contract, may order changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions, and the Contract Sum and Contract Time shall be adjusted accordingly, in writing. If the Manager and Contractor cannot agree to a change in the Contract Sum, the Manager shall pay the Contractor its actual cost-plus reasonable overhead and profit.

§ 10.2 The CM/PM may authorize or order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such authorization or order shall be in writing and shall be binding on the Manager and Contractor. The Contractor shall proceed with such minor changes promptly.

§ 10.3 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

ARTICLE 11 TIME

§ 11.1 Time limits stated in the Contract Documents are of the essence of the Contract.

§ 11.2 If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, or other causes beyond the Contractor's control, the Contract Time shall be subject to equitable adjustment.

§ 11.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the responsible party.

ARTICLE 12 PAYMENTS AND COMPLETION

§ 12.1 Contract Sum

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

§ 12.2 Applications for Payment

§ 12.2.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the CM/PM an itemized Application for Payment for Work completed in accordance with the values stated in this Agreement. The Application shall be supported by data substantiating the Contractor's right to payment as the Manager or CM/PM may reasonably require, such as evidence of payments made to, and waivers of liens from, subcontractors and suppliers. Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Manager, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 12.2.2 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Manager no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Manager shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or other encumbrances adverse to the Manager's interests.

§ 12.3 Certificates for Payment

The CM/PM will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Manager a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; (2) issue to the Manager a Certificate for Payment for such amount as the CM/PM determines is properly due, and notify the Contractor and Manager in writing of the CM/PM's reasons for withholding certification in part; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Manager of the CM/PM's reason for withholding certification in whole. If certification or notification is not made within such seven-day period, the Contractor may, upon seven additional days' written notice to the Manager and CM/PM, stop the Work until payment of the amount owing has been received. The Contract Time and the Contract Sum shall be equitably adjusted due to the delay.

§ 12.4 Progress Payments

§ 12.4.1 After the CM/PM has issued a Certificate for Payment, the Manager shall make payment in the manner provided in the Contract Documents.

§ 12.4.2 The Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from the Manager, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

§ 12.4.3 Neither the Manager nor the CM/PM shall have responsibility for payments to a subcontractor or supplier.

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

§ 12.5 Substantial Completion

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

§ 12.5.2 When the Contractor believes that the Work or designated portion thereof is substantially complete, it will notify the CM/PM and the CM/PM will make an inspection to determine whether the Work is substantially complete. When the CM/PM determines that the Work is substantially complete, the CM/PM shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, establish the responsibilities of the Manager and Contractor, and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 12.6 Final Completion and Final Payment

§ 12.6.1 Upon receipt of a final Application for Payment, the CM/PM will inspect the Work. When the CM/PM finds the Work acceptable and the Contract fully performed, the CM/PM will promptly issue a final Certificate for Payment.

§ 12.6.2 Final payment shall not become due until the Contractor submits to the CM/PM releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests, or encumbrances arising out of the Contract.

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

ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall take reasonable precautions to prevent damage, injury, or loss to employees on the Work and other persons who may be affected thereby, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

ARTICLE 14 CORRECTION OF WORK

§ 14.1 The Contractor shall promptly correct Work rejected by the CM/PM as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement, and additional testing.

§ 14.2 In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.

§ 14.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Manager may correct it in accordance with Section 7.3.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Assignment of Contract

Neither party to the Contract shall assign the Contract as a whole without written consent of the other.

§ 15.2 Tests and Inspections

§ 15.2.1 At the appropriate times, the Contractor shall arrange and bear cost of tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 15.2.2 If the CM/PM requires additional testing, the Contractor shall perform those tests.

§ 15.2.3 The Manager shall bear cost of tests, inspections, or approvals that do not become requirements until after the Contract is executed. The Manager shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 15.3 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

ARTICLE 16 TERMINATION OF THE CONTRACT

§ 16.1 Termination by the Contractor

If the Work is stopped under Section 12.3 for a period of 14 days through no fault of the Contractor, the Contractor may, upon seven additional days' written notice to the Manager and CM/PM, terminate the Contract and recover from the Manager payment for Work executed including reasonable overhead and profit, and costs incurred by reason of such termination.

§ 16.2 Termination by the Manager for Cause

§ 16.2.1 The Manager may terminate the Contract if the Contractor

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

§ 16.2.2 When any of the above reasons exist, the Manager, after consultation with the CM/PM, may without prejudice to any other rights or remedies of the Manager and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may

- .1 take possession of the site and of all materials thereon owned by the Contractor, and
- .2 finish the Work by whatever reasonable method the Manager may deem expedient.

§ 16.2.3 When the Manager terminates the Contract for one of the reasons stated in Section 16.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 16.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Manager. This obligation for payment shall survive termination of the Contract.

§ 16.3 Termination by the Manager for Convenience

The Manager may, at any time, terminate the Contract for the Manager's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 17 OTHER TERMS AND CONDITIONS

(Insert any other terms or conditions below.)

« »

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

(If required by law, insert cancellation period, disclosures or other warning statements above the signatures.)

« »

MANAGER *(Signature)*

« »« »

(Printed name and title)

CONTRACTOR *(Signature)*

« »« »

(Printed name and title)

LICENSE NO.:

JURISDICTION: