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CONTRACT FOR CONSTRUCTION

(GENERAL CONTRACTOR FIXED PRICE FORM)

CHAPTER 2

CONTRACTOR'S AGREEMENT

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Chapter 2: Contractor's Required Services ©2015

**CONTRACT FOR CONSTRUCTION
(General Contractor Fixed Price Form)**

**CHAPTER 2
CONTRACTOR'S REQUIRED SERVICES**

**ARTICLE 1
OWNER'S CONSULTANTS, PROFESSIONALS AND
CONSTRUCTION ADMINISTRATION**

- 1.1 **Owner's Designated Professional Representative.** Unless otherwise directed by the Owner, one designated Professional shall act as the Owner's representative from the effective date of this Contract For Construction until one year from the date of achievement of Substantial Completion.
- 1.1.1 The Professional so designated will be the Owner's design representative during performance of the Work and will be the Owner's representative in dealing with the Contractor on all design and technical matters.
- 1.1.2 The Owner and the Contractor shall communicate with each other in the first instance through the designated Professional.
- 1.1.3 The designated Professional will act as initial interpreter of the requirements of this Contract For Construction and as the Owner's advisor on claims.
- 1.1.4 The Owner's instructions to the Contractor will be issued through the designated Professional.
- 1.2 **Professional Site Visits.** The Professional will visit the Site with sufficient frequency for familiarization with the progress and quality of the Work and to inspect the Work to determine compliance of the Work with:
- (i) this Contract For Construction, including approved shop drawings and other submittals;
 - (ii) the Construction Schedule; and
 - (iii) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.
- 1.3 **Professional Rejection Of Work.** The Professional may disapprove or reject Work which does not comply with:
- (i) this Contract For Construction including approved shop drawings and other submittals; or
 - (ii) applicable laws, statutes, building codes, rules or regulations of any governmental, public and quasi-public authorities and agencies having or asserting jurisdiction over the Project.
- 1.4 **Professional Evaluations.**
- 1.4.1 The Professional will review and evaluate the results of all inspections, tests and written reports required by this Contract For Construction and by any governmental entity having or asserting jurisdiction over the Project. The Professional will take appropriate action on test results, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Professional(s). The Professional will promptly reject Work which does not conform to and comply with testing requirements.
- 1.4.2 The Professional may require inspection or testing of any Work in addition to that required by this Contract For Construction or governmental entities having or asserting jurisdiction over the Project when such additional inspections and testing is necessary or advisable, whether or not such Work is then fabricated, installed or completed. The Professional will take appropriate action on all such special testing and inspection reports, including acceptance, rejection, requiring additional testing or corrective work, or such other action deemed appropriate by the Professional.
- 1.5 **Professional Submittal Activities.** The Professional will review and approve, reject or take other appropriate action on submittals such as shop drawings, product data, samples and proposed equal materials or equipment and requested substitutions within not more than fourteen calendar days, and will not approve any submittals unless such submittals conform with:
- (i) the Project design concept;
 - (ii) this Contract For Construction;
 - (iii) the Owner's budgeted Total Project Construction Cost; and,
 - (iv) the Owner's Planning and Design Standards.
- The Professional's review of submittals shall not constitute final acceptance of materials or equipment furnished or installed if such materials or equipment should be defective or not as represented by approved submittals or as otherwise required by the Construction Documents. The Contractor remains responsible for details and accuracy, for confirming and correlating all quantities and dimensions, for selecting fabrication processes, for techniques of assembly, and for performance of the Work.
- 1.6 **Professional Interpretations.** The Professional will, when requested to do so in writing by the Contractor, promptly and so as to cause no unnecessary delay, render written or graphic interpretations and decisions necessary for the proper execution of the Work. The Professional's interpretations and decisions relating to artistic effect shall be final if not inconsistent with this Contract For Construction.

- 1.7 **Professional Change Order Activities.** The Professional will consult with and advise the Owner concerning, and will administer and manage, all change order requests and change orders on behalf of the Owner.
- 1.8 **Professional Pay Application Activities.** The Professional will review applications for payment, including such accompanying data, information and schedules as the Professional requires, to determine the amounts due to the Contractor and shall authorize payment by the Owner to the Contractor in writing. After the Work is determined to be finally complete and the Professional determines that the Contractor has completed the Work, the Professional will determine whether the Contractor is entitled to final payment, and if so will so certify to the Owner in writing.
- 1.9 **Professional Relationship To Contractor.** The duties, obligations and responsibilities of the Contractor under this Contract For Construction shall not be changed, abridged, altered, discharged, released, or satisfied by any duty, obligation or responsibility of any Professional. The Contractor shall not be a third-party beneficiary of any agreement by and between the Owner and any Professional. The duties of the Contractor to the Owner shall be independent of, and shall not be diminished by, any duties or obligations of any Professional to the Owner.

ARTICLE 2 GENERAL PROJECT SERVICES

- 2.1 **Essential Services.** The Contractor agrees to provide all goods and services required to professionally complete the Work in an expeditious and economical manner consistent with this Contract For Construction and the best interests of the Owner.
- 2.2 **Compliance With Contractual Requirements.** At all times the Contractor is performing services, it shall comply with the requirements set forth in Chapter 1, Chapter 2 and Chapter 3 of this Contract For Construction.
- 2.3 **Cooperative Effort.** The Contractor shall, in consultation with the Owner, Professional(s), and the subcontractors, endeavor to develop, implement and maintain a spirit of cooperation, collegiality, and open communication among the parties so that the goals and objectives of each are clearly understood, potential problems are resolved promptly, and, upon completion, the Project is deemed a success by all parties.
- 2.4 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in General Project Services are listed in Appendix 1 and incorporated herein by reference.

ARTICLE 3 PRE-CONSTRUCTION SERVICES

- 3.1 **Construction Documents Review.**
- 3.1.1 The Professional will provide to the Contractor two hardcopy sets of Construction Documents in a form suitable for reproduction.
- 3.1.2 Prior to commencement of construction activities the Contractor shall review the Construction Documents for clarity, adequacy of detail, consistency, accuracy and completeness to identify:
- (i) conflicts, omissions or overlaps, and unusual design details affecting construction cost and schedules; and,
 - (ii) factors with the potential to impact the Construction Schedule such as materials with long lead time, the unavailability of required labor, and other factors and make suggestions for acceptable alternatives.
- 3.1.3 Upon completion of its review of the Construction Documents, the Contractor shall:
- (i) notify the Professional in writing of all problems, conflicts, defects, omissions, overlaps or deficiencies of which it became aware; and,
 - (ii) assist the Professional with the resolution of the identified problems, conflicts, defects, omissions, overlaps and deficiencies.
- 3.2 **Scheduling.** The Contractor understands and acknowledges the Owner's intent that the Project will be complete by the Date of Substantial Completion. The Contractor shall timely prepare and submit the Construction Schedule for the Owner's review and approval.
- 3.1.1 Unless otherwise directed and approved by the Owner, the Contractor shall prepare the Construction Schedule as a critical path schedule with separate divisions for each major portion of the Work or operations. The Construction Schedule shall include and properly coordinate dates for performance of all divisions of the Work, including completion of off-Site requirements and tasks, so that the Work can be completed in a timely and orderly fashion consistent with the required dates of Substantial Completion and Final Completion.
- 3.2.1 The Contractor shall review, on a weekly basis, the actual status of the Work against the Construction Schedule. The Contractor shall discuss the status of the Work weekly with the Professional, if any, so that proper overall management may be provided.
- 3.2.2 The Contractor shall periodically and in all instances when the Contractor anticipates that performance of the Work will be delayed or in fact has been delayed, but not less frequently than monthly, prepare a revised

Construction Schedule and show actual progress of the Work through the revision date, projected completion of each remaining activity, activities modified since previous submittal, major changes in scope, and other identifiable changes. The updated Construction Schedule shall be accompanied by a narrative report which:

- (i) states and explains any modifications of the critical path schedule, including any changes in logic;
- (ii) defines problem areas and lists areas of anticipated delays;
- (iii) explains the anticipated impact the problems and delays will have on the schedule and scheduled activities;
- (iv) reports corrective action taken or proposed; and
- (v) states how problems anticipated by projections shown on the schedule will be resolved to eliminate delay in delivering the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.

3.3 **Schedule Of Values.** The Contractor shall prepare and present to the Owner and the Professional, if any, the Contractor's schedule of values, apportioning the different elements of the Work for purposes of periodic and final payment. The Contractor's schedule of values shall be presented in the format, and with such detail and supporting information, requested by the Professional or Owner. The Contractor shall not imbalance or artificially inflate any element of its schedule of values. Upon the Professional and Owner's acceptance, the schedule of values shall be used to process and pay the Contractor's payment requests. The schedule of values shall not be changed without written change order authorized by the Owner.

3.4 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in Pre-Construction Services are listed in Appendix 1 and incorporated herein by reference.

ARTICLE 4 CONSTRUCTION SERVICES

4.1 Construction Supervision.

4.1.1 The Contractor shall name a representative (the "Contractor's Representative") to serve as its primary communication contact with the Owner and the Professional(s).

4.1.2 The Contractor's Representative, or a competent person having authority to act for him / her, shall be at the Project site at all times to

- (i) supervise and direct the Contractor's Work at the Site;
- (ii) supervise and coordinate the Contractor's personnel and act as its primary liaison with the Owner and the Owner's Consultant(s);
- (iii) coordinate trade contractors and suppliers, and supervise Site construction services;
- (iv) be familiar with all trade divisions and trade contractors' scopes of Work, all applicable building codes, the Construction Documents, and this Contract For Construction;
- (v) prepare and maintain Project records, process documents, and staff the Site field office;
- (vi) check and review shop drawings and materials delivered to the Site;
- (vii) regularly review the Work to determine its compliance with the Construction Documents and this Contract For Construction; and,
- (viii) periodically confer with the appropriate Owner's consultant(s) to assure acceptable levels of quality.

4.1.3 The Contractor shall promptly reject any Work

- (i) which does not conform to the Construction Documents; or
- (ii) which does not comply with any applicable law, statute, building code, rule or regulation of any public authority or agency of which it is aware.

4.1.4 The Contractor shall comply with and cause its subcontractors and suppliers to comply with the Project Construction Schedule and applicable sub-schedules. The Contractor shall obtain and review schedules from subcontractors and suppliers, coordinate sub-schedules with the Construction Schedule, and enforce compliance with all applicable schedules to insure timely completion of the Work. If at any time a Project is delayed, the Contractor shall immediately notify the Owner of the probable cause(s) and possible alternatives, and make recommendations to minimize expense to the Contractor.

4.1.5 The Professional will visit the Project Site at intervals appropriate to the stage of construction and with sufficient frequency to familiarize itself with the progress and quality of the Work and to inspect the Work. The Professional's interpretations and decisions shall be final regarding the Construction Documents and the Work.

4.2 **Contractor's On-Site Facilities.** Commencing at the Date of Commencement and terminating on the Date Of Final Completion, the Contractor shall provide a Site field office and storage and toilet facilities at the Project Site.

4.2.1 The field office facilities shall be large enough to accommodate required meetings and shall include office furnishings and equipment such as desks, telephones, computers, facsimile machines, copiers and other similar office equipment.

4.2.2 The Contractor shall maintain in the Site field office, on a current basis, all necessary Construction Documents, schedules, shop drawings, product data, samples, purchase orders, maintenance manuals and instructions, daily logs, correspondence, memoranda, and all other Project-related documents.

4.2.3 The Contractor shall provide temporary toilets at the Site for all workers for the complete duration of the construction period. The Contractor shall not permit its agents, employees, consultants, subcontractors or



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- suppliers, or their agents and employees, to use toilet facilities which are part of the Work, or any other Owner facilities on Site, unless previously authorized by Professional and the Owner.
- 4.2.4 The Contractor shall provide and maintain suitable painted sheds or trailers, in a location designated by the Professional or by the Owner, for storage of tools, equipment, devices and materials required or otherwise used for the Work. The Contractor shall bring and store on the Site only those items to be used directly for the Work, and shall promptly remove them when no longer required.
- 4.2.5 Upon approval from the Professional and the Owner, the Contractor may at its own risk use designated vacant property as a lay-down and/or storage area. The Owner and the Professional shall have no liability resulting from or occasioned by such use of the Site by the Contractor.
- 4.3 **Meetings.** The Contractor shall attend those meetings mandated by the Owner or Professional.
- 4.3.1 **Pre-Construction Meeting:** Prior to the beginning of any Work, a pre-construction meeting will be held for the purpose of planning and scheduling the overall Project. This meeting will be called and run by the Contractor, and shall be attended by the Professional and such subcontractors or other parties as the Contractor may direct.
- 4.3.2 **Pre-Start Meeting:** Prior to the beginning of any Work or phase Work, the Professional will meet with the Contractor's Representative, representatives of subcontractors, and others actually involved in the Work to discuss specifications, standards, areas of concern and quality assurance.
- 4.3.3 **Weekly Progress Meeting:** Unless otherwise directed by the Owner, during any Work weekly meetings will be held for purposes of coordination and furthering progress of the Work. These meetings shall be attended by the Contractor's Representative and such subcontractor(s) representatives as the Professional may direct. The Contractor shall record and publish meeting minutes of these progress meetings.
- 4.4 **Commissioning.** The Contractor shall, through the Owner's Representative, schedule and coordinate all equipment and systems start-ups and Project commissioning within its scope of the Work.
- 4.4.1 Not less than twenty-eight calendar days prior to the anticipated date of Substantial Completion, the Contractor shall provide to the Professional, if any, or to the Owner if there is no Professional, all equipment operating and maintenance instructions and manuals, parts lists, guaranties and warranties, so as to allow adequate time for training prior to commissioning and the Owner's occupancy of the Project.
- 4.4.2 The Contractor shall meet with the Owner's personnel not less than twenty-eight (28) calendar days prior to the required date of Substantial Completion to familiarize and train them with respect to maintenance and use of the Project. The appropriate Professional(s) will attend and assist with such familiarization and training.
- 4.5 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in Construction Services are listed in Appendix 1 and incorporated herein by reference.

ARTICLE 5 EXTRA SERVICES

- 5.1 **Definition Of Extra Services.** Extra services include, but are not limited to:
- (i) services performed after the Date Of Final Completion, except when included in Required Services;
 - (ii) services for preparation for and attendance at deposition, discovery or court or other dispute resolution proceedings on behalf of the Owner, except when such proceedings involve issues of fault, neglect or alleged liability of the Contractor, or its agents, employees, or consultants; and,
 - (iii) other services not included in Required Services mutually agreed to by the Owner and the Contractor in writing.
- 5.2 **Initiation Of Extra Services.** The Contractor shall provide such Extra Services as are initiated and authorized in writing by the Owner prior to performance. The services described in this Article 5 are not included in Required Services unless identified as an "Additional Or Modified Required Service".
- 5.3 **Payment For Extra Services.** The Contractor's payment for Extra Services shall be in accordance with applicable provisions of Chapter 1.
- 5.5 **Additional Or Modified Required Services.** Additional or modified required services, if any, included in Extra Services are listed in Appendix 1 and incorporated herein by reference.

ARTICLE 6 SUPPLEMENTAL PROVISIONS

- 6.1 **Site Safety Plan.** In addition to compliance with the provisions of Paragraph 3.4 of Chapter 3 of this Contract For Construction, the Contractor shall comply with the provisions of this paragraph.
- 6.1.1 The Contractor shall develop, maintain and coordinate with its employees and its subcontractors and suppliers a Site-specific safety plan and accident prevention program which shall comply with all MIOSHA, OSHA, state and local construction industry safety and health standards applicable to the Site. The safety plan and accident prevention program shall, at a minimum, provide for all of the following:



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- (i) designation of a qualified safety person with responsibility to administer the program;
 - (ii) weekly instruction to each employee regarding safety issues and procedures;
 - (iii) regular inspections of the Site, tools, materials and equipment to insure that unsafe conditions that could create a hazard are eliminated;
 - (iv) instruction to each employee in the recognition and avoidance of hazards, including the use of personal protective equipment as required by federal, state and local standards;
 - (v) instruction to each employee required to handle or use known poisons, toxic materials, caustics or other harmful substances regarding the potential hazards, safe handling, use, personal hygiene, protective measures required and applicable first-aid procedures to be used in the event of injury;
 - (vi) instruction to each employee likely to encounter known harmful plants, reptiles, animals or insects are present regarding the potential hazards, how to avoid injury and applicable first-aid procedures to be used in the event of injury;
 - (vii) instruction to each employee required to enter a confined space regarding the hazards involved, the necessary precautions to be taken, the use of the required personal protective equipment, emergency equipment, and the procedures to be followed if an emergency occurs; and
 - (viii) instruction in the steps or procedures to be followed in case of an injury or accident or other emergency.
- 6.1.2 The Contractor shall, prior to commencement of any Site activities, supply to the Owner and the Professional a written description of its Site-specific safety plan and accident prevention program as proof of compliance with the foregoing provisions.
- 6.1.3 The Contractor shall, at all times when the Contractor has employees, agents, consultants, subcontractors or suppliers on Site, designate an on-Site qualified safety person who shall assume overall responsibility for implementation of and compliance with the Contractor's Site-specific safety plan and accident prevention program.
- 6.1.4 The Contractor shall provide and maintain temporary first-aid facilities as required by OSHA, MIOSHA and other federal, state and local authorities, laws, ordinances, rules and regulations.
- 6.1.5 The Contractor shall regularly inspect the Site, materials and equipment and regularly monitor work practices and procedures to ensure compliance with its safety plan and accident prevention program, and shall take immediate action to correct or eliminate safety hazards to persons and property.
- 6.2 **General Bond Requirements.** If the Contractor is required to provide performance and payment bond(s), the penal sum of each bond shall be in an amount not less than the Construction Price, as adjusted by any change order(s), and each bond shall:
- (i) be in a form approved by the Owner;
 - (ii) incorporate by reference the terms of this Contract For Construction;
 - (iii) be executed by a company certified by the Secretary of the United States Department of Treasury pursuant to the Act of July 30, 1947 (61 Stat. 646, as amended; 6 U.S.C. 6-13);
 - (iv) be executed by a company licensed and authorized to do business in the state in which the Project is located; and
 - (v) be accompanied by a power of attorney certifying that the person(s) executing the bond have the authority to do so.
- The Contractor shall deliver any required bond(s) and power(s) of attorney to the Owner prior to commencement of the Work.
- 6.3 **Early Completion.** The Contractor may attempt to achieve Substantial Completion before the required date of Substantial Completion. However, such planned early completion shall be for the Contractor's sole convenience and shall not create any additional Contractor rights or Owner obligations under this Contract For Construction, nor shall it change the required dates of Substantial Completion or Final Completion. The Owner shall not pay the Contractor any additional compensation for achievement of Substantial Completion or Final Completion prior to the required dates nor will the Owner owe the Contractor any compensation should the Owner cause the Contractor not to achieve Substantial Completion earlier than the required date of Substantial Completion or Final Completion earlier than the required date of Final Completion.
- 6.4 **Labor Disputes.** Delay caused by labor disputes, picketing, employee boycotts, or the like which directly or indirectly involves employees of the Contractor or its subcontractors and suppliers is not the responsibility of the Owner and shall not result in extension of the dates of Substantial or Final Completion.
- 6.5 **Additional Or Modified Supplemental Provisions.** Additional or modified supplemental provisions, if any, are listed in Appendix 1 and incorporated herein by reference.

ARTICLE 7 REMEDIES FOR DELAY

- 7.1 **Time Of The Essence.** The parties hereto mutually understand and agree that time is of the essence in the performance of this Contract For Construction, that the contract time periods are reasonable for performance of the Work, and that the Owner will incur damages if the Work is not completed on time. The Contractor shall at all times carry out its duties and responsibilities as expeditiously as possible and shall begin, perform and complete its services so that:
- (i) the Work progresses in accordance with the Construction Schedule;
 - (ii) the Work is substantially completed by the required date of Substantial Completion; and



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- (iii) the Work is finally complete by the date of Final Completion.

7.2 **Failure To Timely Achieve Completion.** The parties hereto mutually understand and agree that the Owner will sustain substantial monetary and other damages in the event of a failure or delay by the Contractor in the completion of the Work. If the Contractor inexcusably fails to achieve Substantial Completion by the required date of Substantial Completion as established and previously set forth in this Contract For Construction, the Contractor shall pay to the Owner, as liquidated damages for delay and not as a penalty, the daily amount specified in Chapter 1 for each and every day after the required date of Substantial Completion until Substantial Completion. This liquidated damages provision shall apply and remain in full force and effect in the event that the Contractor is terminated by Owner for default and shall apply until Substantial Completion has been achieved by any completing Contractor. If the Contractor fails to achieve Final Completion by the required date of Final Completion as established and previously set forth in this Contract For Construction, the Contractor shall pay to the Owner, as liquidated damages for delay and not as a penalty, fifteen (15%) percent of the daily amount stated for failure to timely achieve Substantial Completion, even if not actually imposed, for each calendar day of unexcused delay in achieving Final Completion.

7.3 **Compensable Delay.** If the Contractor is delayed at any time in the progress or performance of the Work by:

- (i) acts or omissions of the Owner or Professional, if any;
- (ii) major changes ordered by the Owner in the scope of Work; or
- (iii) any other cause which the Owner determines may justify the compensation of the Contractor for the delay,

the Contractor's compensation shall be equitably adjusted to cover the Contractor's actual and direct increased costs attributable to such delay. However, the Contractor shall nevertheless ensure that the Work is substantially completed by the required date of Substantial Completion and finally complete by the date of Final Completion.

7.4 **Excusable Delay.** If the Contractor is delayed at any time in the progress or performance of the Work by fire or a natural disaster which damages or destroys all or a substantial portion of the Work, the Construction Schedule shall be extended for a period equal to the length of such delay, but only if

- (i) such delay is not in any way caused by default or collusion on the part of the Contractor or by any cause which the Contractor could reasonably control or circumvent;
- (ii) the Contractor would have otherwise been able to timely perform all of its obligations under this Contract For Construction but for such delay; and
- (iii) immediately but not later than seven calendar days after the beginning of any such delay the Contractor gives notice of its delay claim to the Owner.

7.5 **Owner's Right To Withhold Payment.** When it reasonably believes:

- (i) that Substantial Completion will be inexcusably delayed; or
- (ii) that the Contractor will fail to achieve Final Completion by the date of Final Completion, the Owner shall be entitled, but not required, to withhold from any amounts otherwise due the Contractor the daily amount specified for liquidated damages in this Article for each calendar day of the unexcused delay.

If and when the Contractor overcomes the delay in timely achieving Substantial Completion or Final Completion, or any part thereof, for which the Owner has withheld payment, the Owner shall promptly release to the Contractor those funds withheld, but no longer applicable, as liquidated damages.

7.6 **Additional Or Modified Supplemental Provisions.** Additional or modified supplemental provisions, if any, are listed in Appendix 1 and incorporated herein by reference.

**APPENDIX 1
ADDITIONAL OR MODIFIED REQUIRED SERVICES**

GENERAL PROJECT SERVICES [¶ 2.4]

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PRE-CONSTRUCTION SERVICES [¶ 3.7]

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CONSTRUCTION SERVICES [¶ 4.7]

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EXTRA SERVICES [¶ 5.4]

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SUPPLEMENTAL PROVISIONS [¶ 6.5]

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REMEDIES FOR DELAY [¶ 7.6]

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