

# DRAFT AIA® Document A101™ – 2017

## Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

**AGREEMENT** made as of the « 1 » day of «December» in the year «2022»  
(In words, indicate day, month and year.)

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

« New Horizons Affordable Housing and Development Inc. »« »  
«2160 41st Street »  
« Capitola, CA 95010 »  
« »

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

« »« »  
« »  
« »  
« »

License No. \_\_\_\_\_

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

« Natural Bridges Development »  
«415 Natural Bridges Drive »  
« Santa Cruz, CA 95060 »

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

« William C. Kempf Architects »« »  
« 105 Locust Street, Suite B »  
« Santa Cruz, CA 95060 »  
« »

The Owner and Contractor agree as follows.

The Work consists of the construction of the Natural Bridges development which includes but is not limited to, a 20-unit 3-story apartment building, and attendant site improvements as set forth in the Plans and Specifications. The Work is financed with the following funding sources: construction loan from the Housing Authority of the City of Santa Cruz. The Project is subject to certain federal requirements.

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

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

The parties should complete A101™-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

## TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

### EXHIBIT A INSURANCE AND BONDS

#### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

#### ARTICLE 2 THE WORK OF THIS CONTRACT

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

#### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

The date of this Agreement.

A date set forth in a notice to proceed issued by the Owner.

Established as follows:

*(Insert a date or a means to determine the date of commencement of the Work.)*

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

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

#### § 3.3 Substantial Completion

**§ 3.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:  
*(Check one of the following boxes and complete the necessary information.)*

[  ] Not later than «four hundred twenty-six» ( «426» ) calendar days from the date of commencement of the Work.

[  ] By the following date: «»

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

Portion of Work	Substantial Completion Date
« »	« »

**§ 3.3.3** If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

**ARTICLE 4 CONTRACT SUM**

**§ 4.1** The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be «» (\$ «») subject to additions and deductions as provided in the Contract Documents. The Contract Sum is based on the Contractor’s Schedule of Values attached as an Exhibit to this Agreement and incorporated herein.

**§ 4.2 Alternates**

**§ 4.2.1** Alternates, if any, included in the Contract Sum:

Item	Price
« »N/A	« »

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

Item	Price	Conditions for Acceptance
« »N/A	« »	« »

**§ 4.3** Allowances, if any, included in the Contract Sum:  
*(Identify each allowance.)*

Item	Price
« »N/A	« »

All Allowances, if any, shall be expressly identified in the Contractor’s Schedule of Values and shall indicate the scope of coverage of the Allowance. Contractor shall give written notice to the Owner if the estimated costs to perform the work and/or supply the material or equipment by the Allowance will exceed the amount estimated for that Allowance prior to commencing work covered by the Allowance. If the actual cost of any Allowance items is more or less than the Allowance amount set forth in the Schedule of Values, the difference shall be transferred to the Owner as an additive or deductive Change Order as applicable.

**§ 4.4** Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
« »	« »	« »

**§ 4.5** Liquidated damages, if any:

*(Insert terms and conditions for liquidated damages, if any.)*

**Liquidated Damages for Delay.** Time is of the essence in the performance of the Work. By executing this Agreement, Contractor represents that it can and will complete the Work within the dates set forth in this Article 3. Contractor acknowledges that Owner's funders and investors require completion of the Work within the time set forth in this Article 3 and such funding sources would be in jeopardy if the Work is delayed. If the Contractor fails to reach Substantial Completion by the date required by Article 3 of this Agreement, the parties agree that the Owner would suffer damages related to the delay, but that such damages would be extremely difficult and impracticable to ascertain. The parties therefore agree that a reasonable estimate of the damages to be suffered by the Owner in the event of such a delay is Two Thousand Dollars (\$2,000) per day. The Contractor shall therefore pay to the Owner that amount for each calendar day during which Substantial Completion is delayed beyond the date for Substantial Completion required and as set forth in this Article 3. At the Owner's discretion, Owner shall be entitled to deduct such amount from any payment otherwise due Contractor. Any such amount not deducted shall be immediately payable by Contractor to Owner on Owner's demand. Such payments are as liquidated damages and are not a penalty. Such liquidated damages are not in lieu of Contractor's indemnity obligations set forth separately in the Contract, nor shall these liquidated damages preclude the Owner from recovering its actual damages for any damages claimed by third parties even if arising out of the Contractor's delay.

**§ 4.6 Other:**

*(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)*

**Changes in the Work.** For changes in the Work, the total amount of overhead and profit claimed shall not exceed fifteen percent (15 %) of the documented direct costs of the work to be performed pursuant to the Change Order or Construction Change Directive for the subcontractor and five percent (5%) for the Contractor when work is performed by the subcontractor, or a total of fifteen percent (15%) when work is performed by the Contractor. General conditions/requirements shall not be included in additive Change Orders unless the Owner has approved additional Contract Time and the Owner has approved additional general conditions/requirements pursuant to Article 8 of the A201. When both additions and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase if any. The same overhead and profit limits as established for change order additions shall be credited to change order deductions. No other cost, including special damages of any type, arising out of or connected with the performance of extra work, of any nature, may be recovered by the Contractor.

**ARTICLE 5 PAYMENTS**

**§ 5.1 Progress Payments**

**§ 5.1.1** Provided the Contractor is not in breach of its obligations under the Contract Documents, and based upon Applications for Payment including all supporting documentation submitted to the Owner and the Architect by the Contractor and Certificates for Payment issued by the Architect and approved by the Owner, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

**§ 5.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

Contractor's monthly allowable draw of general conditions shall be at a rate roughly equal to the percentage of the Work which has been completed, and shall be in accordance with a schedule of payments to be agreed upon with the Owner (the "General Conditions Payment Schedule"). If at any time the amount of general conditions paid to the Contractor as percentage of the total general conditions due, exceeds the percentage of the Work completed, or the Lender or Owner requires a readjustment in the monthly amount, the Owner and the Contractor shall adjust the General Conditions Payment Schedule as necessary to bring the payment amount more in line with the percentage of Work that has been completed.

**§ 5.1.3** After a complete Application for Payment is received by the Architect and the Owner and a Certificate for Payment has been issued by the Architect and approved by Owner the Owner shall make payment of the amount certified to the Contractor not later than thirty (30) days after receipt of the Application for Payment.

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

**§ 5.1.4** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the

various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect and Owner may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 5.1.5** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

**§ 5.1.6** In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 5.1.6.1** The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Owner determines to be included.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which payment may be withheld or a Certificate of Payment nullified in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

### **§ 5.1.7 Retainage**

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

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

Ten percent (10%)

**§ 5.1.7.1.1** The following items are not subject to retainage:

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

« N/A »

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

*(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)*

The Owner shall have the option but not the obligation to reduce the retention requirements of the Contract or release any portion of retention prior to the date specified in the Contract. Exercise of this option by the Owner shall not be a waiver of any of the Owner's rights to retention in connection with other payments to the Contractor and shall be subject to the approval of Lenders to the Work.

### **§ 5.1.7.3 INTENTIONALLY DELETED**

*(Insert any other conditions for release of retainage upon Substantial Completion.)*

**§ 5.1.8 INTENTIONALLY DELETED**

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

**§ 5.2 Final Payment**

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

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment
- .2 a final Certificate for Payment has been issued by the Architect; and
- .3 all conditions set forth in Section 9.10.2 of AIA Document A201-2017, as modified, have been satisfied.

**§ 5.2.2** The Owner’s final payment to the Contractor shall be made in accordance with Section 9.10.2 of AIA Document A201-2017 as modified.

**§ 5.3 INTENTIONALLY DELETED.**

**ARTICLE 6 DISPUTE RESOLUTION**

**§ 6.1**

**INTENTIONALLY DELETED**

**§ 6.2 Binding Dispute Resolution**

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

*(Check the appropriate box.)*

Arbitration pursuant to Section 15.4 of AIA Document A201–2017, and subject to the limitations set forth therein

Litigation in a court of competent jurisdiction, if not subject to arbitration

Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 7 TERMINATION OR SUSPENSION**

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

**§ 7.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

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

§ 8.2 The Owner’s representative:  
*(Name, address, email address, and other information)*

Tom Graham  
New Horizons Affordable Housing and Development Inc.  
2160 41st. Ave  
Capitola, CA 95010  
thomasg@hasantacruz.org

§ 8.3 The Contractor’s representative:  
*(Name, address, email address, and other information)*

[to be inserted]

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

**§ 8.5 Insurance and Bonds**

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents. The bonds shall be in recordable form and shall name the Owner and the Housing Authority of the City of Santa Cruz as co-obligees or assignees.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017 shall be provided to the Owner's and Contractor's representatives at the email addresses listed above.

[Redacted]

§ 8.7 Other provisions:

**§ 8.7.1 Contractor Representations.** The Contractor represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents) as a material inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement and any termination of this Agreement:

- .1 The Contractor and its Subcontractors are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
- .2 The Contractor is able to furnish the plant, tools, materials, supplies, equipment, and labor itself or through its Subcontractors required to complete the Work and perform its obligations hereunder, and has sufficient experience and competence to do so;

- 3 The Contractor is authorized to do business in the State of California and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Contractor and over the Work and the Project;
- 4 The Contractor's execution of this Agreement and performance thereof is within the Contractor's duly authorized powers;
- 5 The Contractor is a sophisticated contractor who possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this particular Project, and will perform the Work with the care, skill, and diligence of such a Contractor;
- 6 Except as disclosed to Owner in writing, there are no claims, actions, investigations, suits, or proceedings pending affecting Contractor's performance under the Contract Documents; and
- 7 All financial information delivered to Owner, including all information relating to the financial condition of the Contractor or any of its partners, joint venturers, or members (as applicable), fairly and accurately represents the financial condition being reported on as of its date. All such information is prepared in accordance with generally accepted accounting principles consistently applied, unless otherwise noted. There has been no material adverse change in the financial condition of any of the persons described above-reported at any time to Owner, except as previously disclosed to Owner in writing in later financial information and found acceptable to Owner in its sole and absolute discretion.
- 8 Neither Contractor nor its principals, as defined at 49 CFR 29.995, and to the best of Contractor's knowledge, nor any of its subcontractors, are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the Project by any federal department of agency.

**§ 8.7.2 Contractor Notifications.** Contractor shall notify Owner promptly in writing of any and all of the following:

- 1 Any litigation or claim of any kind affecting or relating to Contractor or its subsidiaries or any material subcontractor where the amount claimed is or maybe one hundred Thousand Dollars (\$100,000) or more whether covered by insurance or not.
- 2 Any termination of a construction contract to which Contractor is a party.
- 3 Any default or potential default of a Subcontractor or material supplier (including without limitation, its inability to maintain its schedule).
- 4 Any material adverse change in Contractor's or any material Subcontractor's financial condition, any material adverse change in Contractor's or any material Subcontractor's operations, or any change in the management of Contractor or any material Subcontractors.
- 5 Any other circumstance, event, or occurrence that results in a material adverse change in Contractor's or any material Subcontractor's ability to timely perform any of its obligations under any of the Contract Documents.

For the purposes of this Section, "Material Subcontractor" means a subcontractor performing greater than \$150,000 of work on the Project.

**§ 8.7.3 Lender Requirements.** The Contractor acknowledges that the Owner is financing the Work with funds from public and/or private lenders to the Work as described below (the "Lenders") and that such Lenders have imposed and may impose additional requirements on the Owner, the Contractor, and any Subcontractors including but not limited to approval of change orders, approval prior to release of any payments under the Contract including Progress Payments, Final Payments and payment of retention, and insurance requirements. Applicable requirements of the Lenders are set forth in an Exhibit to this Agreement and are also incorporated into the Contract. The Contractor



agrees to use its best efforts to comply with the requirements of the Lenders that bear upon the performance of the Work. The Contractor shall also: (1) make the site of the Work available at reasonable times for inspection by the Lenders or the Lenders' representatives; (2) consent to and execute all documents reasonably requested by the Owner in connection with the assignment of the Contract Documents to the Lenders for collateral purposes; and (3) promptly furnish the Owner with information, documents, and materials that the Owner may reasonably request from time to time in order to comply with the requirements of the Lenders including but not limited to information necessary to process payments and change orders, and information pertaining to subcontractors.

#### § 8.7.4 Prevailing Wages.

##### Davis Bacon Act Requirements.

This Project shall be constructed in compliance with the prevailing wage requirements of the federal Davis-Bacon Act as Set forth in an Exhibit to this Agreement, and in accordance with the wage rate determination attached as an Exhibit to this Agreement. A copy of the applicable Davis Bacon wage decision and any additional classifications shall be posted by the Contractor at the work site in a prominent place readily accessible to the workers.

Contractor shall submit to the Owner weekly certified payrolls for each work week from the time work is started until the construction of the Project is completed on Department of Labor Payroll Form WH-347 or equivalent approved by the Owner, and a "Weekly Statement with Respect to the Payment of Wages," using either Department of Labor Form WH-348, or an equivalent form approved by Owner. Weekly payrolls shall be completed and submitted promptly, no later than seven work days following completion of the work week. Monthly progress payments will not be released until all payroll reports are up to date. Contractor shall, and shall require its subcontractors to maintain certified payrolls, and to submit copies of such certified payrolls to Owner, upon request, in order to verify compliance with these requirements.

The Contractor shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Owner) the Owner against any claim for damages, compensation, fines, penalties or other amounts to the extent arising out of the failure or alleged failure of any person or entity (including the subcontractors) to pay prevailing wages as determined pursuant to the prevailing wage provisions of the federal Davis-Bacon Act and implementing rules and regulations in connection with the construction of the Project or any other work undertaken or in connection with the Project. Contractor's indemnity obligations shall survive the termination or expiration of the Contract.

Contractor shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Owner) the Owner against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of the Contractor, Subcontractors, or any person they are responsible for, to pay prevailing wages as determined pursuant to CLC Section 1720 et seq., to employ apprentices pursuant to CLC Sections 1777.5 – 1777.7, or comply with all other applicable provisions of CLC Section 1720 et seq., CLC Sections 1810-1815, and implementing regulations of the DIR in connection with construction of the Project. The Contractor's indemnity obligations shall survive the termination or expiration of this Contract.

Contractor, shall, if requested by Owner, provide to Owner or Owner's lenders documentation evidencing the proper payment of prevailing wages and maintenance of labor records as required by the applicable requirements.

Additional Prevailing Wage requirements may be set forth in the Lender Requirements attached to this Agreement as an Exhibit.

##### **[If State Prevailing Wages are applicable the following will Apply]**

*[[Construction of the Project is subject to state prevailing wages under California Labor Code ("CLC") Section 1720 et seq. and the implementing regulations of the Department of Industrial Relations (the "DIR"). The Contractor shall and shall cause Subcontractors to pay prevailing wages in the construction of the Project as those wages are*

determined pursuant to CLC Section 1720 et seq., to employ apprentices as required by CLC Sections 1777.5 - 1777.7 and the implementing regulations of DIR, and comply with all other applicable provisions of CLC Section 1720 et seq., and implementing regulations of the DIR. The Contractor shall and shall cause Subcontractors to keep and retain such records as are necessary to determine if such prevailing wages have been paid as required pursuant to CLC Section 1720 et seq., and apprentices have been employed as required by CLC Sections 1777.5 – 1777.7. Pursuant to CLC Section 1727 the Owner may withhold from the Contractor all amounts required to satisfy any civil wage and penalty assessment issued by DIR.

All subcontracts shall include the requirements set forth in CLC 1720 et seq. including a copy of the CLC Sections listed in CLC Section 1775(b)(1).

Pursuant to CLC Section 1771.1, the Contractor shall and shall cause all Subcontractors to register with the DIR in accordance with CLC Section 1725.5, and shall maintain such registration until the Owner's release of final payment. Notice of this registration requirement shall be included in all invitations to bid and a bid shall not be accepted or any contract or subcontract entered into without proof of registration pursuant to CLC Section 1725.5. The Contractor shall provide the Owner evidence of its registration and the registration of all Subcontractors including all registration numbers, the name of all Subcontractors, and any other information requested by the Owner in order to comply with CLC Section 1773.3(a) prior to the first day on which the Contractor has workers employed on the site. The Owner may withhold final payment due until at least thirty (30) days after all information required by CLC Section 1773.3(a)(2) has been received by the Owner. Unregistered contractors and subcontractors are subject to penalties and stop orders pursuant to CLC Section 1725.5.

Pursuant to CLC Section 1771.4, construction of the Project is also subject to compliance monitoring and enforcement by the DIR. The Contractor shall and shall cause Subcontractors to keep accurate payrolls and shall submit payroll and other records to the DIR as required by CLC Section 1776 et seq., or in such other format as required by the DIR. The Contractor shall monitor payment of prevailing wages by Subcontractors by periodic review of the certified payroll records of Subcontractors and take corrective action if necessary in accordance with CLC Section 1775(b).

During the construction of the Project, the Contractor shall post at the property the applicable prevailing rates of per diem wages, and shall post job site notices in compliance with Title 8 California Code of Regulations 16451(d), or otherwise as required by the DIR. Copies of the currently applicable current per diem prevailing wages are available from the DIR website, [www.dir.ca.gov](http://www.dir.ca.gov). The Contractor shall also comply with the working hours requirements set forth in CLC Sections 1810-1815.

Contractor shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Owner) the Owner against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of the Contractor, Subcontractors, or any person they are responsible for, to pay prevailing wages as determined pursuant to CLC Section 1720 et seq., to employ apprentices pursuant to CLC Sections 1777.5 – 1777.7, or comply with all other applicable provisions of CLC Section 1720 et seq., CLC Sections 1810-1815, and implementing regulations of the DIR in connection with construction of the Project. The Contractor's indemnity obligations shall survive the termination or expiration of this Contract.]]

### § 8.7.5 Section 3 Requirements.

The work performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u ("Section 3"). The purpose of Section 3 is to ensure that employment and other economic opportunities generated by Department of Housing and Urban Development (HUD) assistance or HUD-assisted projects covered by Section 3, shall to the greatest extent feasible, be directed to low- and very-low income persons, particularly persons who are recipients of HUD assistance for housing.

(1) The Contractor agrees to comply with HUD's regulations in 24 CFR Part 75, which implement Section 3. As evidenced by its execution of this contract, the contractor certifies that it is under no contractual or other impediment that would prevent it from complying with the Section 3 regulations.

(2) Pursuant to Section 3, to the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations Contractor shall ensure:

(A) that employment and training opportunities arising in connection with the Project are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the Project is located. Where feasible, priority for opportunities and training described above should be given to: (i) Section 3 workers residing within the service area or the neighborhood of the project, and (ii) participants in YouthBuild programs; and

(B) that contracts for work awarded in connection with the Project are provided to business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the Project is located. Where feasible, priority for opportunities and training described above should be given to: (i) Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the Project, and (ii) participants in YouthBuild programs.

(3) Contractor will be considered to have complied with the Section 3 requirements, in the absence of evidence to the contrary, if it certifies that it has followed the prioritization of effort set forth in subsection (1) above, and meets or exceeds the applicable Section 3 benchmark as described in 24 C.F.R. 75.23(b).

(4) Contractor shall maintain records of its Section 3 activities and cause such records to be accurate and current and in a form that allows the Owner to comply with the reporting requirements of 24 C.F.R. 75.25.

(5) Contractor shall require all subcontractors performing work on the Project to comply with the Section 3 requirements.

(6) Noncompliance with Section 3 requirements may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD-assisted contracts.

**§ 8.7.6 Nondiscrimination.** Contractor shall comply with the following nondiscrimination requirements: Title VI of the Civil Rights Act of 1964 as amended; Title VIII of the Civil Rights Act of 1968 as amended; Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended; Section 504 of the Rehabilitation Act of 1973 (29 USC 794, et seq.); the Age Discrimination Act of 1975 (42 USC 6101, et seq.); Executive Order 11063 as amended by Executive Order 12259 and implementing regulations at 24 C.F.R. Part 107; Executive Order 11246 as amended by Executive Orders 11375, 12086, 11478, 12107; Executive Order 11625 as amended by Executive Order 12007; Executive Order 12432; Executive Order 12138 as amended by Executive Order 12608. During the performance of the Contract, the Contractor assures that no otherwise qualified person shall be excluded from participation or employment, denied program benefits, or be subjected to discrimination based on race, color, national origin, sex, age, or disability, under any work performed pursuant to the Contract, as required by the laws set forth above and all implementing regulations.

**§ 8.7.7 Equal Employment Opportunity.** During the performance of this contract, the contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice to be provided by or at the direction of the Government advising the labor union or workers representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and with the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by HUD and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the rules, regulations, or orders, the Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions as may be imported and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

(7) The Contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Government, the contractor may request the United States to enter into such litigation to protect the interest of the United States.

**§ 8.7.8 Lead-based Paint.** Contractor shall comply with the requirements of the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 et seq.), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. 4851 et seq.), and implementing regulations at 24 C.F.R. Part 35.

**§ 8.7.9 Conditions of Approval/Mitigation Measures.** Contractor shall comply with the Conditions of Approval/Mitigation Requirements set forth in an Exhibit to this Agreement.

**§ 8.7.10 Entire Agreement/Amendment.** This Agreement (which includes any exhibits, riders or schedules attached hereto) constitutes the entire agreement between the parties and there are no other agreements, understandings, representations or warranties, oral or written, relating to the subject matter hereof between the parties. The parties to this Contract have read and reviewed this Contract and agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party (including, but not limited to, Civil Code Section 1654) shall not apply to this Contract. This Agreement may not be amended, changed or modified, in whole or in part, except in writing, signed by both parties.

**§ 8.7.11 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

**§ 8.7.12** California Business and Professions Code Section 7030:

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CA 95826.

**ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS**

**§ 9.1** This Agreement is comprised of the following documents:

- .1 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction

« »

.5 Drawings

Number	Title	Date
« »		

.6 Specifications

Section	Title	Date	Pages
« »			

.7 Addenda, if any:

Number	Date	Pages
« »		

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.8 Other Exhibits:

*(Check all boxes that apply and include appropriate information identifying the exhibit where required.)*

[ « » ]

« »

[ « » ]

Title	Date	Pages
« »		

[ « » ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
« »			

.9 Other documents, if any, listed below:

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

- Exhibit A: AIA Document A101™-2017, Insurance and Bonds
- Exhibit B: Contractor's Schedule of Values
- Exhibit C: Construction Schedule
- Exhibit D: Drawings and Specifications (list)
- Exhibit E: Federal Labor Standards
- Exhibit F: Special Conditions
- Exhibit G: Davis Bacon Wage Determination

»  
«

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

« New Horizons Affordable Housing and  
Development Inc.  
»

« »

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

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

« »« »

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

« »« »

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