# NEW YORK STATE HOMELESS HOUSING AND ASSISTANCE CORPORATION

# RIDER A

# For use with AIA A101-2017, Standard Form of Agreement Between

# Owner and Contractor, 2017 Edition

This Rider is attached to and made a part of the Standard Form of Agreement Between Owner and Contractor (the “Contract”) for the construction or rehabilitation of the Project commonly referred to as\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as more fully described within the Contract, City of \_\_\_\_\_\_\_\_\_\_, New York (the “Project”). The parties hereto agree that the following covenants, terms, and conditions shall be part of and shall modify or supplement the Contract and that in the event of any inconsistency or conflict between the covenants, terms, and conditions of the Contract and this Rider, the covenants, terms, and conditions of this Rider shall control and prevail.

## Article 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

**§3.1** Modify this Section to check the box for: “A date set forth in a Notice to Proceed issued by the Owner."

**§3.3.1** Modify this Section to check the box for: “Not later than “\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_” (“\_\_\_\_”) calendar days from the date of commencement of the Work.”

## Article 4 CONTRACT SUM

**§4.5** Modify this Section to add at the end of the parenthesis the following paragraph:

“The liquidated damages provision contained in the Supplementary General Conditions applies only to the Contractor's failure to timely achieve substantial completion and any Owner’s damages for delay. It does not limit the Owner's remedies for breach of other provisions of this Agreement. The parties agree that, in the event the Contractor fails to timely achieve Substantial Completion, the Contractor or the Contractor’s surety shall pay to the Owner the sum of $ \_\_\_\_\_\_ for each calendar day of delay until the work is substantially complete as liquidated damages, and not as a penalty, in order to indemnify the Owner against loss resulting from the breach. It is agreed that the damages that may result from a breach of this agreement are uncertain and difficult to ascertain, and that the agreed amount is a reasonable estimate of probable damage. The liquidated damages provision applies only to the Contractor’s failure to timely achieve Substantial Completion and does not limit the Owner’s remedies for breach of other provisions of this Agreement. Any liquidated damages accruing hereunder shall be recovered by the Owner by deduction from any monies due to the Contractor hereunder, and if such monies are insufficient to cover such liquidated damages, then the Contractor shall pay the amount of the difference to the Owner.”

## Article 5 PAYMENTS

**§5.1.3** Modify the entire Section to read: “The Owner shall make payment to the Contractor of any HHAP portion of a payment only after the Application for Payment has been forwarded to New York State for payment approval. After the New York State payment approval process has been completed, the HHAP payment shall be forwarded to the Owner for disbursement. The Owner shall make payment usually within 45 days after receipt of an Application for Payment.”

**§5.1.6.1.2** Delete entire subsection.

**§5.1.6.3** Add a new Section to read:

“HHAC, at its sole discretion, will pay for stored materials if deemed essential to the successful completion of the project. Verification of insurance, security and safety of the stored materials must be confirmed before such stored materials will be paid for. Retainage for stored materials will be the same as the retainage for regular contract work.”

**§5.1.7.2** Modify entire Section to read:

"Retainage will be held at the rate of 5%; less such amounts as 2.5 times the value of the Punch List, which shall be further reduced as Punch List items are completed.

**§5.1.9** Modify entire section to read: "Except with the Owner's and HHAC's approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered."

**§5.2.1.2** Delete entire subsection*.*

**§5.2.2** Modify this Section by adding new paragraphs **.1** and **.2** to read as follows:

“**.1** A Final (or Temporary, at HHAC’s sole discretion) Certificate of Occupancy has been issued for the Project; and

**.2** A final Certificate for Payment has been issued by the Architect, and all punch list items have been completed to the satisfaction of the Architect and Owner.”

**§5.3** Add additional term at end to read: “Payments due and unpaid under the Contract from HHAC-provided funding shall bear \_\_\_percent (\_%) interest from the date payment is due.”

## Article 6 DISPUTE RESOLUTION

**§6.2** Check the box for “Litigation in a court of competent jurisdiction”.

## Article 8 MISCELLANEOUS PROVISIONS

**§8.4** Modify entire Section to read: “The Contractor’s representative shall not be changed without ten days’ written notice to the owner provided said representative is approved in writing by the Owner.”

## Article 9 ENUMERATION OF CONTRACT DOCUMENTS

**§9.1.1** Modify by adding the following phrase at the end of the Section: “, including any riders.”

“1. HHAC RIDER A

 2. HHAC SUPPLEMENTARY GENERAL CONDITIONS”

**§9.1.9** Modify this Section as follows:

Insert:

1. All statements, warranties, and representations made by the Contractor in connection with its bid submission or in substantiating its financial status or professional capabilities shall be incorporated into the contract document.

2. M/WBE and SDVOB requirements attached as Exhibit \_\_\_\_.

3. Schedule of Values submitted by the Contractor and attached as Exhibit \_\_\_\_.

4. Letter of Credit or 100% Payment and Performance Bond to be submitted by the

Contractor.

5. Certificates of Insurance to be submitted in forms and amounts approved by the Owner

6. Construction schedule to be submitted by the Contractor prior to the first application for Payment

7. Draw schedule showing the timing of HHAC payments to MWBE and SDVOB subcontractors.

**§9.2** Modify to add a new Section to read as follows: “This agreement shall become valid upon approval of HHAC and submission and approval of items 2-6 above.”

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Signature Date

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Signature Date