# South Carolina Division of Procurement Services, Office of State Engineer Version of AIA Document A101® – 2017

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

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Cite this document as "AIA Document A101\*-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum — SCOSE Version," or "AIA Document A101\*-2017 — SCOSE Version."

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# South Carolina Division of Procurement Services, Office of State Engineer Version of 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

day of

in the year

(In words, indicate day, month and year.)

**BETWEEN** the Owner:

(Name, legal status, address and other information)

Town of Cheraw 200 Market Street Cheraw, SC 29520

The Owner is a Governmental Body of the State of South Carolina as defined in S.C. Code Ann. § 11-35-310.

and the Contractor:

(Name, legal status, address and other information)
DSW Homes, LLC
1650 E. Winding Way Dr., Bldg. B, Ste. 100
Friendswood, TX 77546
409-744-3400

for the following Project:

(Name, State Project Number, location and detailed description)

Town of Cheraw Buyout Demolition Re-Bid D30-N004-MJ

Huckleberry Creek Neighborhood

Demolition and returning parcels to green space in perpetuity of homes in the Huckleberry Creek Neighborhood

The Architect:

(Name, legal status, address and other information)

McCormick Taylor, Inc. (Engineer) 1441 Main Street, Suite 305 Columbia, SC 29201 803-978-2744

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

The Owner and Contractor agree as follows.

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# EXHIBIT A INSURANCE AND BONDS

# ARTICLE 1 THE CONTRACT DOCUMENTS

§ 1.1 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.

§ 1.2 Any reference in this document to the Agreement between the Owner and Contractor, AIA Document A101, or some abbreviated reference thereof, shall mean the AIA A101-2017 Standard Form of Agreement Between Owner and Contractor, SCOSE Version. Any reference in this document to the General Conditions of the Contract for Construction, AIA Document A201, or some abbreviated reference thereof, shall mean the AIA A201-2017 General Conditions of the Contract for Construction, SCOSE Version.

# ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in 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 the date fixed in a Notice to Proceed issued by the Owner. The Owner shall issue the Notice to Proceed to the Contractor in writing, no less than seven (7) days prior to the Date of Commencement. Unless otherwise provided elsewhere in the Contract Documents and provided the Contractor has secured all required insurance and surety bonds, the Contractor may commence work immediately after receipt of the Notice to Proceed.

§ 3.2 The Contract Time as provided in the Notice to Proceed for this project shall be measured from the Date of Commencement of the Work to Substantial Completion.

# § 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 within the Contract Time indicated in the Notice to Proceed.

§ 3.3.2 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.

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# **ARTICLE 4 CONTRACT SUM**

§ 4.1 The Owner shall pay the Contractor the Contract Sum, including all accepted alternates indicated in the bid documents, 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.

§ 4.2 Alternates

§ 4.2.1 Alternates that are accepted, if any, included in the Contract Sum: (Insert the accepted Alternates.)

item

Price

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

Item

**Price** 

§ 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.)

ltem

Units and Limitations

Price per Unit (\$0.00)

§ 4.5 Liquidated damages

§ 4.5.1 Contractor agrees that from the compensation to be paid, the Owner shall retain as liquidated damages the amount indicated in Section 9(b) of the Bid Form for each calendar day the actual construction time required to achieve Substantial Completion exceeds the specified or adjusted time for Substantial Completion as provided in the Contract Documents. The liquidated damages amount is intended by the parties as the predetermined measure of compensation for actual damages, not as a penalty.

# § 4.6 Other:

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

Ink.

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#### ARTICLE 5 PAYMENTS

#### § 5.1 Progress Payments

- § 5.1.1 Based upon Applications for Payment submitted to the Architect and Owner by the Contractor and Certificates for Payment issued by the Architect, 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, or as follows:
- § 5.1.3 The Owner shall make payment of the certified amount to the Contractor not later than twenty-one (21) days after receipt of the Application for Payment.
- § 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 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 Subject to S.C. Code Ann. § 12-8-550 (Withholding Requirements for Payments to Non-Residents), 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 Architect determines, in the Architect's professional judgment, to be reasonably justified.
- § 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 the Architect may withhold payment, or nullify a Certificate of Payment 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 three and one-half percent (3.5%), as retainage, from the payment otherwise due.
- § 5.1.7.2 When a portion, or division, of Work as listed in the Schedule of Values is 100% complete, that portion of the retained funds which is allocable to the completed division must be released to the Contractor. No later than ten (10) days after receipt of retained funds from the Owner, the Contractor shall pay to the subcontractor responsible for such completed work the full amount of retainage allocable to the subcontractor's work.
- § 5.1.7.3 Upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7.

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- § 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201-2017.
- § 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.

#### 6 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; and
  - 2 a final Certificate for Payment has been issued by the Architect.
- § 5.2.2 The Owner's final payment to the Contractor shall be made no later than twenty-one (21) days after the issuance of the Architect's final Certificate for Payment.

#### **ARTICLE 6 DISPUTE RESOLUTION**

§ 6.1 Claims and disputes shall be resolved in accordance with Article 15 of AIA Document A201-2017.

# 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:

§ 8.2.1 The Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the responsibility for and, subject to Section 7.2.1 of the General Conditions, the authority to resolve disputes under Section 15.6 of the General Conditions:

Name: Eric Fosmire, SC Office of Reslience (SCOR)

Title: Chief of Staff and General Counsel

Address: 632 Rosewood Drive, Columbia SC 29201

Telephone: 803-822-9580
Email: eric.fosmire@scor.sc.gov

§ 8.2.2 The Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions:

Name: Nancy Miramonti, SC Office of Resilience (SCOR)

Title: Buyout Program Manager

Address: 632 Rosewood Drive, Columbia SC 29201

Telephone: 803-667-7360

Email: nancy.miramonti@scor.sc.gov

# § 8.3 The Contractor's representative:

§ 8.3.1 The Contractor designates the individual listed below as its Senior Representative ("Contractor's Senior Representative"), which individual has the responsibility for and authority to resolve disputes under Section 15.6 of the General Conditions:

Name: Donald Gerratt

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Title: Chief Executive Officer

Address: 1650 E. Winding Way Dr., Bldg. B, Ste. 100, Friendswood, TX 77546

Telephone: (409) 744-3400

Email: donald.gerratt@dswhomes.com

§ 8.3.2 The Contractor designates the individual listed below as its Contractor's Representative, which individual has the authority and responsibility set forth in Section 3.1.1 of the General Conditions:

Name: John Cegledy
Title: Program Manager

Address: 117 W. Broadway St., Johnsonville, SC 29555

Telephone: (864) 884-1921

Email: john.cegledy@dswhomes.com

§ 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 The Architect's representative:

Name: Jason Hetrick, PE CFM

Title: Assistant Director, McCormick Taylor, Inc.

Address: 1441 Main Street, Suite 305, Columbia SC 29201

Telephone: 803-978-2744

Email: jmhetrick@mccormicktaylor.com

#### § 8.6 Insurance and Bonds

§ 8.6.1 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.

§ 8.6.2 The Contractor shall provide bonds as set forth in AIA Document A101°-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.7 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203<sup>TM</sup>–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format 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.)

# § 8.8 Other Provisions:

§ 8.8.1 Additional requirements, if any, for the Contractor's Construction Schedule are as follows: (Check box if applicable to this Contract)

The Construction Schedule shall be in a detailed precedence-style critical path management (CPM) or primaveratype format satisfactory to the Owner and the Architect that shall also (1) provide a graphic representation of all activities and events that will occur during performance of the Work; (2) identify each phase of construction and occupancy; and (3) set forth milestone dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents.

.1 Upon review by the Owner and the Architect for conformance with milestone dates and Construction Time given in the Bidding Documents, with associated Substantial Completion date, the Construction Schedule shall be deemed part of the Contract Documents and attached to the Agreement as an Exhibit. If returned for non-conformance, the Construction Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted.

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- .2 The Contactor shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Owner of any delays or potential delays. Whenever the Construction Schedule no longer reflects actual conditions and progress of the Work or the Contract Time is modified in accordance with the terms of the Contract Documents, the Contractor shall update the Construction Schedule to reflect such conditions.
- .3 In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary.
- A In no event shall any progress report constitute an adjustment in the Contract Time, any milestone date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§ 8.8.2 The Owner's review of the Contractor's schedule is not conducted for the purpose of either determining its accuracy, completeness, or approving the construction means, methods, techniques, sequences or procedures. The Owner's review shall not relieve the Contractor of any obligations.

# ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101°-2017, SCOSE Version Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101 2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201 2017, SCOSE Version General Conditions of the Contract for Construction
- .4 Form SE-390, Notice to Proceed Construction Contract
  - Drawings

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.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.) AIA Document E204TM-2017, Sustainable Projects Exhibit, dated as indicated below: (Insert the date of the E204-2017 incorporated into this Agreement.) The Sustainability Plan: Date **Pages** Title Supplementary and other Conditions of the Contract: Date **Pages Document** Title 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.) Form SE-310, Invitation for Construction Services Instructions to Bidders (AIA Document A701-2018 OSE Version)

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Certificate of Procurement Authority Issued by the State Fiscal Accountability Authority

Form SE-330, Contractor's Bid (Completed Bid Form)

Form SE-370, Notice of Intent to Award

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

OWNER (Signature)

CONTRACTOR (Signature)

Donald G

**Donald Gerratt, Chief Executive Officer** 

(Printed name and title)

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