

## Constantino, Mike

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**From:** John Kniery [JKniery@foleyandassociates.com]  
**Sent:** Wednesday, August 01, 2012 10:11 AM  
**To:** Constantino, Mike; Kendrick, Alexis  
**Cc:** Ed Grogg; blevinson@platinumhc.net; Christopher J. Lukaart  
**Subject:** RE: 08-086  
**Attachments:** aia construction contract.pdf; construction contract signature page.pdf

Mike: Obligation did occur prior to the obligation date. Specifically, the construction contract was signed on September 30, 2011 prior to the October 21, 2011 deadline. Please accept this as correspondence as notice that obligation did occur.

How do we move forward with this issue and that of the permit alteration request?

Thanks for your consideration on this matter.

John P. Kniery

Health Care Consultant  
Foley & Associates, Inc.  
1638 So. MacArthur Boulevard  
Springfield, Illinois 62704  
217.544.1551 - Office  
217.544.3615 - Facsimile  
[foley@foleyandassociates.com](mailto:foley@foleyandassociates.com)

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**From:** Constantino, Mike [<mailto:Mike.Constantino@Illinois.gov>]  
**Sent:** Monday, July 30, 2012 2:23 PM  
**To:** 'foley.associates@sbcglobal.net'  
**Cc:** Williams, Don A.; Kendrick, Alexis  
**Subject:** 08-086

Hi Charlie:

We have a problem with this application. It has not been obligated. It was supposed to be obligated by October 21, 2011. You have invalidated the permit.

Mike Constantino  
Illinois Department of Public Health  
525 West Jefferson

Springfield, Illinois 62761

Fax:(217) 785-4111

Phone:(217) 785-1557

# AIA<sup>®</sup> Document A102<sup>™</sup> – 2007

## **Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price**

AGREEMENT made as of the 30th day of September in the year 2011  
(In words, indicate day, month and year.)

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

Mainstreet Properties Group, Inc.  
109 West Jackson Street  
Cicero, IN 46034

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

Walsh Construction Company II, LLC  
929 West Adams Street  
Chicago, IL 60607

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

Springfield Short Stay Rehab Facility  
3089 Old Jacksonville Road  
Springfield, IL 62704

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

MSKTD of Illinois, Inc.  
1715 Magnavox Way  
Fort Wayne, IN 46804

The Owner and Contractor agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

This document is not intended for use in competitive bidding.

AIA Document A201<sup>™</sup>-2007, 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.

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### 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. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§1.2 The Construction Contract may be amended or modified only by a Modification. A Modification is (1) a written amendment to the Construction Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner or Architect.

### ARTICLE 2 THE WORK OF THIS CONTRACT

§2.1 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.

§2.1.2 The Contractor shall, in conformity with the Contract Documents, assume and fulfill all obligations and perform all Work, as that term is defined in the Contract Documents, required to construct, complete, and make ready the Project for use by the Owner. Contractor's work at the Project shall include all labor, tools, materials, equipment,

services, supervision, and facilities necessary or required to properly and efficiently complete the Work in accordance with the plans and specifications, and in a manner generally accepted in the construction industry during the relevant time period. Contractor shall obtain all permits and licenses necessary for the performance of the Work, including but not limited to any licenses required to conduct business within the State in which the Project is located,

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2.1.3 The minimum quality, quantity and fitness of products, workmanship and services and other elements of Contractor's Work shall be based on the requirements that all such Work shall conform with the quality levels established by the Contract Documents. All services performed by the Contractor and subcontractors pursuant to the Contract Documents shall be performed in accordance with the standard of care and skill generally accepted in the construction industry during the relevant time period or in accordance with any of the practices, methods, in exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, safety and expeditions. This standard of care is not intended to be limited to the optimum practice, methods, or acts generally accepted in the construction industry in the Midwest United States. Contractor and its subcontractors shall perform all construction activities efficiently and with direct requisite expertise, skill, competence, resources, and care to satisfy the requirements of the Contract Documents and all applicable legal requirements.

#### ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

#### ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

*(Insert the date of commencement, if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

Shall be fixed in a notice to proceed.

If, prior to commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

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

§ 4.3 The Contractor shall achieve Substantial Completion of the entire Work not later than Three Hundred Sixty Five ( 365 ) days from the date of commencement, or as follows:

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)*

Portion of Work

Substantial Completion date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time, or for bonus payments for early completion of the Work.)*

Int.

§4.4 It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the date of commencement and the time for completion of the Work as specified in the Contract Documents are essential conditions of this Agreement. All dates expressed in this Agreement or set forth in any notice given by Owner under the terms of the Contract Documents are of the essence.

#### ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.1.1 The Contractor's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee.)*

5.25% of the Cost of the Work

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work:

For additions to the Cost of the Work: 5.25% Fee, 2% Overhead, 1.25% Insurance, 0.77% Bond.

For deductions in the cost of the Work: 5.25% Fee, 1.25% Insurance, 0.77% Bond.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

15% of cost

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

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

Item Note	Units and Limitations	Price Per Unit (\$0.00)
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#### § 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed **EIGHT MILLION SIX HUNDRED TWENTY TWO THOUSAND SIX HUNDRED FIFTY SIX DOLLARS (\$ 8,622,656 )**, subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

*(Insert specific provisions if the Contractor is to participate in any savings.)*

In the event that the Work is fully completed by the Contractor and the final, audited Cost of the Work is less than the Guaranteed Maximum Price (as may be increased or decreased by Change Order or Construction Change Directive) minus the Contractor's Fee, then twenty five percent (25%) of any positive difference shall be paid to the Contractor by the Owner as additional fee.

§ 5.2.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

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

See Exhibit B -- Contract Clarifications

§ 5.2.3 Allowances included in the Guaranteed Maximum Price, if any:

*(Identify allowance and state exclusions, if any, from the allowance price.)*

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User Notes:

(913087070)

Item	Price
See Exhibit B – Contract Clarifications	

§ 5.2.4 Assumptions, if any, on which the Guaranteed Maximum Price is based:

See Exhibit B – Contract Clarifications

§ 5.2.5 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

#### ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 6.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Article 5 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

#### ARTICLE 7 COSTS TO BE REIMBURSED

##### § 7.1 COST OF THE WORK

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.1.2 Where any cost is subject to the Owner's prior approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this Agreement.

##### § 7.2 LABOR COSTS

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site. *(If it is intended that the wages or salaries of certain personnel stationed at the Contractor's principal or other offices shall be included in the Cost of the Work, identify in Article 15, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

§ 7.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

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

  
OWNER (Signature)

V. Edward Cragg, President  
(Printed name and title)

  
CONTRACTOR (Signature)

Walsh Construction Company II, LLC  
Sean C. Walsh, President  
(Printed name and title)

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