

# AIA<sup>®</sup> Document A103<sup>™</sup> – 2017

## **Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price**

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

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

D.A.A. Holdings, LLC  
317 Chartres St.  
New Orleans, Louisiana 70130

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

JJ Costa Company LLC  
P.O. Box 343  
Metairie, Louisiana 70004

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

New Bakery & Apartments  
317 Chartres St.  
New Orleans, Louisiana 70130

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

### **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.

The parties should complete A103<sup>™</sup>–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201<sup>™</sup>–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.

The Owner and Contractor agree as follows.

Init.

## TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	RELATIONSHIP OF THE PARTIES
4	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
5	CONTRACT SUM
6	CHANGES IN THE WORK
7	COSTS TO BE REIMBURSED
8	COSTS NOT TO BE REIMBURSED
9	DISCOUNTS, REBATES AND REFUNDS
10	SUBCONTRACTS AND OTHER AGREEMENTS
11	ACCOUNTING RECORDS
12	PAYMENTS
13	DISPUTE RESOLUTION
14	TERMINATION OR SUSPENSION
15	MISCELLANEOUS PROVISIONS
16	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. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 16.

### 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.

To the extent that the Owner requires any incidental services, construction consulting, or value engineering, the Owner acknowledges that such services are advisory and are not professional design services. The Owner will, with due diligence, refer such questions, matters, and inquiries to the design professionals, and the Contractor shall have no liability to the Owner or the Architect or its consultants for such services requested by the Owner and rendered hereunder.

### 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:

*(Check one of the following boxes.)*

☒ [ X ] A date set forth in a notice to proceed issued by the Owner.

*(Paragraphs deleted)*

The date is to be fixed in a notice to proceed issued by the Owner. In no event shall Notice to Proceed occur prior to Contractor's receipt of a building permit

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

#### § 4.3 Substantial Completion

§ 4.3.1 Owner and Contractor acknowledge and agree that due to market limitations and supply limitations, Contractor is not able to provide a duration as to when the Contract will be completed. As a result, the Contractor shall make its best efforts to achieve Substantial Completion of the entire

*(Paragraphs deleted)*

Work within eight (8) months from Notice to Proceed.

#### § 4.3.2

*(Paragraphs deleted)*

Intentionally deleted.

§ 4.3.3 Owner and Contractor acknowledge and agree that due to market limitations and market restraints, Contractor is not able to provide a firm date as to when Substantial Completion will occur. As a result, Owner and Contractor acknowledge and agree that Contractor shall not be liable for any damages due to delays in completing the Work under the Contract to the extent such delays are caused by factors outside of Contractor's control.

### 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% Overhead and 10% Profit for a total of 15%

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

Not Applicable

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

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**User Notes:**

(1782143330)



Not applicable

§ 5.1.4 Rental rates for Contractor-owned equipment are included in Exhibit A.

§ 5.1.5 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)
§ 5.1.6 <i>(Paragraphs deleted)</i> Intentionally deleted.		

*(Paragraphs deleted)*

## § 5.2 Control Estimate

§ 5.2.1 The Contractor shall prepare and submit to the Owner, in writing, a Control Estimate within 14 days of executing this Agreement. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee. The Control Estimate shall be used to monitor actual costs and the timely performance of the Work. The Contractor shall update the Control Estimate with each Application for Payment as needed to reflect changes in the Work.

§ 5.2.2 The Control Estimate shall include

- .1 the documents enumerated in Article 16, including all Modifications thereto;
- .2 a list of the assumptions made by the Contractor in the preparation of the Control Estimate, including assumptions under Section 5.2.4, to supplement the information provided by the Owner and contained in the Contract Documents;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
- .4 a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment, and the Owner's occupancy requirements; and
- .5 contingencies for further development of design and construction, as required by Section 5.2.4.

§ 5.2.3 The Contractor shall meet with the Owner and Architect to review the Control Estimate. In the event that the Owner or Architect discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Contractor, who shall make appropriate adjustments to the Control Estimate. When the Control Estimate is acceptable to the Owner, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 5.2.4 To the extent that the Contract Documents are anticipated to require further development, the Contractor shall provide in the Control Estimate for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated in a revised Control Estimate by mutual agreement of the parties.

§ 5.2.5 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 5.2.6 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract

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Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Contract Documents.

## **ARTICLE 6 CHANGES IN THE WORK**

§ 6.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Article 7 of AIA Document A201™–2017, General Conditions of the Contract for Construction. The Contractor shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work. The Contractor shall incorporate all changes in the Work and Contract Time as separate entries in the Control Estimate.

§ 6.2 Increased costs for the items set forth in Article 7 which result from changes in the Work shall become part of the Cost of the Work, and the Contractor's Fee shall be adjusted as provided in Article 5.

§ 6.3 If the Contractor receives any drawings, specifications, interpretations or instructions from the Owner or Architect which are inconsistent with the Contract Documents, or encounters unanticipated conditions, any of which will result in a significant change in the Cost of the Work or estimated date of Substantial Completion in comparison with the Control Estimate, the Contractor shall promptly notify the Owner and Architect in writing and shall not proceed with the affected Work until the Contractor receives further written instructions from the Owner and Architect.

§ 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 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.

## **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. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard paid at the place of the Project, except with prior approval of the Owner.

### **§ 7.2 Labor Costs**

§ 7.2.1 Wages or salaries of construction workers directly employed by the Contractor to perform the construction of the Work at the site or at off-site workshops. As identified in Exhibit C.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel performing Work. As identified in Exhibit C.

§ 7.2.2.1 Wages or salaries of the Contractor's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the  
(Paragraphs deleted)  
Work. As identified in Exhibit C.

§ 7.2.3 Wages or salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or while traveling, 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.

§ 7.2.4 Costs paid or incurred by the Contractor, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments, and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions,



provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.2.6 Cost incurred for General Conditions as detailed in Exhibit C.

§ 7.2.7 Preconstruction Cost including but not limited to estimating and project management.

### § 7.3 Subcontract Costs

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

### § 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated in the completed construction.

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### § 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. The total rental cost of any such equipment may not exceed the purchase price of a comparable item.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Contractor's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

### § 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance, insurance deductibles and bonds required by the Contract Documents that can be directly attributed to this Contract. Subcontractor bonds required by Contractor are a Cost of the Work.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. Expenses which the Contractor reimburses personnel for the use of their personal vehicle are a Cost of the Work. Costs of vehicles owned by the Contractor and assigned to personnel engaged in the project are considered a Cost of the Work and will be charged at the Contractor's standard rates.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Contractor, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Contractor is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Contractor had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Contractor failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Contractor's Fee.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

## § 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by negligence of, or failure to fulfill a specific responsibility by, the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

## § 7.8 Related Party Transactions

§ 7.8.1 For purposes of Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Contractor; and (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Contractor.



§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 10.

## **ARTICLE 8 COSTS NOT TO BE REIMBURSED**

§ 8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 15;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Contractor's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Article 7;
- .5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Contractor, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable; and
- .7 Any cost not specifically and expressly described in Article 7.

## **ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS**

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials, and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## **ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS**

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Architect and Owner with an indication as to which bids the Contractor intends to accept. The Owner then has the right to review the Contractor's list of proposed subcontractors and suppliers in consultation with the Architect and to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of a cost-plus a fee, the Contractor shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11.

§ 10.3 The Contractor shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Contractor shall expedite and coordinate the



ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the Owner's approval of the Control Estimate, the Owner shall procure the items on terms and conditions acceptable to the Contractor. Upon the Owner's approval of the Control Estimate, the Owner shall assign all contracts for these items to the Contractor and the Contractor shall thereafter accept responsibility for them.

## ARTICLE 11 ACCOUNTING RECORDS

The Contractor shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## ARTICLE 12 PAYMENTS

### § 12.1 Progress Payments

§ 12.1.1 Based upon Applications for Payment submitted to the Architect 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.

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

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the 10th day of a month, the Owner shall make payment of the amount certified to the Contractor not later than 15 days after submission of the Application for Payment to the Architect. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than fifteen ( 15 ) days after the Architect receives the Application for Payment.

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

§ 12.1.4 With each Application for Payment, the Contractor shall submit the cost control information required in Section 5.2.5 along with payrolls, petty cash accounts, receipted invoices, or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 12.1.5 Applications for Payment shall show the Cost of the Work actually incurred by the Contractor through the end of the period covered by the Application for Payment and for which the Contractor has made or intends to make actual payment prior to the next Application for Payment.

§ 12.1.6 In accordance with AIA Document A201-2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 12.1.6.1 The amount of each progress payment shall first include:

- .1 The Cost of the Work as described in Article 7;
- .2 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .3 The Contractor's Fee computed upon the Cost of the Work described in the preceding Section 12.1.6.1.1 at the rate stated in Section 5.1.1; or if the Contractor's Fee is stated as a fixed sum in Section 5.1.1, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work included in Section 12.1.6.1.1 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

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- .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;
- .5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 12.1.7.

#### § 12.1.7 Retainage

§ 12.1.7.1 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:

Two and a Half (2.5%) Percent

§ 12.1.7.1.1 The following items are not subject to retainage:

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

General Conditions, Bonds, and Insurance

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

*(If the retainage established in Section 12.1.7.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

General Conditions, Demolition, Concrete, Masonry, Rough framing, Metal Support Assemblies, Lighting fixtures

§ 12.1.7.3 Except as set forth in this Section 12.1.7.3, 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 12.1.7.

*(Paragraphs deleted)*

Upon Substantial Completion of the Work, the Contractor will be paid all retainage, exclusive of a reasonable estimate of the Work to be completed attributable to punchlist work. As items on the punchlist are completed, the Contractor shall be entitled to be paid the amount withheld for any such item on the next progress payment.

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

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

§ 12.1.10 The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 12.1.11 In taking action on the Contractor’s Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 12.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner’s auditors acting in the sole interest of the Owner.

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§ 12.1.12 Certain early completing Subcontractors which have been identified by Contractor to Owner as having fully completed their respective work may receive full payment, including release of all retainage withheld on that Subcontractor's work, upon agreement by Architect and Owner that full payment is appropriate provided that such Subcontractors have provided the Owner with full and complete lien waivers and releases.

## § 12.2 Final Payment

§ 12.2.1 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 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 12.2.2.

§ 12.2.2 Within 30 days of the Owner's receipt of the Contractor's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 12.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditor's findings to the Architect.

§ 12.2.2.2 Within seven days after receipt of the written report described in Section 12.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 12.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 12.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 12.2.2.3 If the Owner's auditors report concludes that the Cost of the Work, as substantiated by the Contractor's final accounting, is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

§ 12.2.3 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment.

§ 12.2.4 If, subsequent to final payment, and at the Owner's request, the Contractor incurs costs, described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor for such costs, and the Contractor's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment.

## § 12.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

6 %

## ARTICLE 13 DISPUTE RESOLUTION

### § 13.1

*(Paragraphs deleted)*

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Intentionally deleted.

### § 13.2 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.)*

- ☒ [ X ] Arbitration pursuant to Section 15 of AIA Document A201–2017
- ☐ [ ] Litigation in a court of competent jurisdiction
- ☐ [ ] 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 14 TERMINATION OR SUSPENSION

### § 14.1 Termination

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

#### § 14.1.2 Termination by the Owner for Cause

§ 14.1.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017 after providing written notice and an opportunity to cure, the Owner shall then only pay the Contractor an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 14.1.2.2 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

#### § 14.1.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

*(Paragraph deleted)*

10% on work not executed with the proposal being the basis of determining the remaining work (Exhibit B.)

### § 14.2 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Contract Sum and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except

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that the term "profit" shall be understood to mean the Contractor's Fee as described in Article 5 and Section 6.4 of this Agreement.

## **ARTICLE 15 MISCELLANEOUS PROVISIONS**

§ 15.1 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.

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

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

Joseph Costa, Owner  
P.O. Box 343  
Metairie, LA 70004

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

### **§ 15.5 Insurance and Bonds**

§ 15.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A103™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 15.5.2 The Contractor shall provide bonds as set forth in AIA Document A103–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 15.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or otherwise as 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.)*

§ 15.7 Other provisions:

### **§ 15.7.1 Statutory Employer**

For the purpose of this Agreement, and pursuant to the provisions of the Louisiana Revised Statutes 23:1061(A), Owner and Contractor jointly agree, stipulate and recognize that Owner shall be the statutory employer of any and all of Contractor's employees and/or all employees of any Contractors hired or retained in any manner by Contractor and/or any other person for whom Contractor may be held responsible, while any of the above described persons are performing any work or providing any services under this Agreement. Owner and Contractor further stipulate, agree

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and recognize that all work performed under the Agreement between Owner and Contractor shall be considered part of Owner's trade, business or occupation and shall be specifically considered an integral part of or essential to the ability of Owner to generate its services. Owner and Contractor further stipulate, agree and recognize that the services or work provided by any employee of Contractor or other person retained by Contractor for the performance of any work or service under this Agreement shall be contemplated by and included in this provision and shall be deemed to be performing work or providing services which is an integral part of and essential to the ability of Owner to generate its services.

#### ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 This Agreement is comprised of the following documents:

- .1 AIA Document A103™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A103™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4

(Paragraphs deleted)

Intentionally deleted.

- .5 Drawings

Number	Title	Date
--------	-------	------

- .6 Specifications

Section	Title	Date	Pages
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- .7 Addenda, if any:

Number	Date	Pages
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Portions of Addenda relating to proposal requirements are not part of the Contract Documents unless the proposal requirements are also enumerated in this Article 16.

- .8 Other Exhibits:  
(Check all boxes that apply.)

(Paragraphs deleted)

(Table deleted)

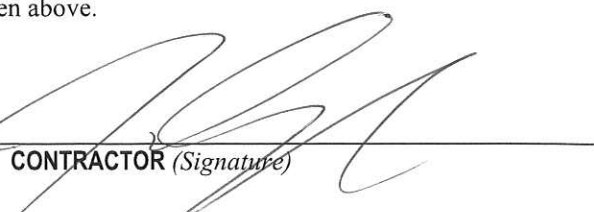
(Paragraphs deleted).9 Other documents, if any, listed below:

JJ Costa Company, LLC's Proposal dated April 19, 2022 attached hereto as Exhibit "B". To the extent any Contract Document conflicts with this Exhibit, this Exhibit shall govern.

Exhibit C – Job Rate Cost.

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

  
OWNER (Signature)

  
CONTRACTOR (Signature)

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HOA NGUYEN  
(Printed name and title)

 JOE COSTELLO  
(Printed name and title)

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## ***Construction Proposal***

**Dated:** April 19, 2022

**Between the Owner:**

**And the Contractor:** JJ Costa Company, LLC  
PO Box 343  
Metairie, Louisiana 70004  
Building Construction State Lic. # 54401  
Residential State Lic. # 880979  
504-834-5594

**For the Project:** Chartres St. Bakery & Apts  
317 Chartres St.  
New Orleans LA 70130

Recent market conditions have reflected frequent cost increases from the manufacturers of materials, and associated freight/fuel surcharges. Additionally, lead times for materials are fluctuating and uncertain. Please recognize this proposal as more of a budgetary guideline as both cost and lead time information are subject to change as well as our subsequent orders with vendors & subcontractors.



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## **Div. 1 General Conditions**

### 890.000 Permits

*Permit cost by Owner*

### 891.000 Insurance

*Builders Risk cost by owner if required*

### 1310.000 Project Management

### 1514.000 Temporary Lighting

### 1517.000 Temporary Utilities

### 1523.000 Sanitary Facilities

*Temporary toilet will remain on site for use by workers for duration of project.*

### 1530.000 Temporary Construction

### 1540.000 Temporary Fencing

*Federal Rent A Fence 800-260-8301 sales@federalrentafence.com*

### 1740.000 Cleaning

*Cleaning consists of daily job-site cleaning and final cleaning of entire work area before turnover to Owner.*

### 1904.000 Trash Disposal

*Haul off all construction debris from project site by way of a dumpster that will be placed on site until demolition is completed.*

### 2070.000 Minor Demolition

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## **Div. 2 Site Work**

### 2070.000 Minor Demolition

### 2361.000 Termite Control

*Termite Pretreatment by Owner's existing termite contractor and all associated costs by owner, coordinate by Contractor.*

2630.000 Storm Drainage

*Roof drains figure with 6 inch pipe*

2820.000 Fences and Gates

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**Div. 3 Concrete**

3050.000 Stucco System

*New stucco Veneer at courtyard*

*Repair plaster wall noted W-8. (total area of 1500 sq ft (scope was not clear)*

3300.000 Cast-In-Place Concrete

---

**Div. 4 Masonry**

4211.000 Brick

*Tuck Point Brick: areas totaling 1000 sq ft only in bid. (scope not totally clear)*

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**Div. 5 Metals**

5511.000 Metal Stairs and Railing

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**Div. 6 Woods & Plastics**

6100.000 Rough Carpentry

6220.000 Millwork - Interior Trim

6400.000 Architectural Woodwork



10801.000 Toilet and Bath Accessories

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**Div. 7 Thermal & Moisture Protection**

7500.000 Membrane Roofing

*As per plans*

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**Div. 8 Doors & Windows**

8100.000 Doors & Frames

*Allowance for the count of (12) windows. (Provide an allowance of \$1,000.00 per window)*

*Interior doors PRIMED MDF DOORS 4 PANEL*

8500.000 Windows

8710.000 Door Hardware

*Door Hardware Allowance \$5200.00*

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**Div. 9 Finishes**

9100.000 Metal Support Assemblies

9510.000 Acoustical Ceiling

*Suspended ceiling in kitchen with vinyl coated gyp. tiles (white)*

9600.000 Floor Finishes

*Allowance of \$42,000.00 for F-2 Approximately 4000 ft.<sup>2</sup>*

*Allowance of \$6.00 sq ft for: F-4 - SEAL EXIST. CONCRETE FLOORS W/ TWO-PART, WATERBORNE POLOMINE EPOXY BY BENJAMIN MOORE. PREP FLOORS PER MFR.'S INSTRUCTIONS.*

*F7 is in the 2nd floor closet and bathroom of Unit 201: figure removing existing tile floor down to tile substrate, adding a layer of treated ½" plywood, and then applying the \$3.50/s.f. LVT*

*Patch Fireplace -See F2 allowance*

9900.000 Paints and Coatings

*prep prime and paint two finish coats on all new material to be painted (woodwork, doors, windows, sheetrock, etc) clean, prep as needed and paint two finish coats on existing painted surfaced apply one coat of dustproofing to raw brick prime with stain blocker and apply two finish coats on previously painted brick, match stain for new wood on second floor rear apt ceiling and paint two finish varnish coats no entire ceiling (exterior facades excluded)*

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**Div. 10 Specialties**

10801.000 Toilet and Bath Accessories

*Allowance of \$2000.00 for bath Accessories*

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**Div. 11 Equipment**

11400.000 Food Service Equipment

*All Equipment and labor to install by owner. If a dumpster is needed for equipment crates and boxes to be disposed of Add \$700 per dumpster to base bid.*

11425.000 Hood and Ventilation Equip

*Hood Package Components  
Kitchen Exhaust System Installation  
Fire Suppression System*

11451.000 Appliances

*Supplied by Owner installed by Contractor*

11455.000 Kitchen & Bath Cabinets

*½ over lay hinges soft close, painted stock color on birch wood, all wood construction framed cabinets*

11456.000 Countertops

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**Div. 13 Special Construction**

2780.000 Stone paving



13900.000 Fire Suppression

Allowance: 28,500.00

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**Div. 15 Mechanical**

15100.000 Plumbing

1. Provide tankless water heaters, expansion tank, recirculation pump, 30 gallon lowboy water heaters with pans, grease interceptor, 2" backflow, 6" backflow, floor drains, floor sinks, trap primers, wall hydrants, ice maker boxes and washing machine boxes.
2. Fixture allowance \$8,500.00 (includes tax) as per addendum #4 item #3 for apartments (5) lavatory bowls, (15) faucets (tubs, lavatories, kitchen sinks) (7) toilets and the bakery's (2) lavatory bowls with faucets.
3. All permits and inspections for plumbing and gas to complete this project.
4. Materials shall be: PEX pipe and fittings for water system, PVC for drain and vent system, and black steel for gas system

15700.000 HVAC

1. Furnish and install (8) split systems, complete with ductwork and piping.
2. Furnish and install (7) toilet exhaust fans with work
3. Furnish and install (5) dryer vents
4. Air Balancing

---

**Div. 16 Electrical**

1.000 1

Door lock access control panel

2780.000 Stone paving

16100.000 Electrical

Fire Alarm System:

1. SILENT KNIGHT ADDRESSABLE FIR CONTROL PANEL WITH UP TO 127 POINTS
2. Silent Knight Key Pad annunciator for IFP 25,50,100
3. Communication Module for Fire Control Panels
4. Silent Knight 5496 Addressable Power Supply
5. SK 505 6sb Silent Knight Smoke and Heat Detector Sounder Base (requires power)
6. SK500-aim addressable point module for 4" box
7. Carbon Monoxide Detector (required for dormitories)
8. SK500-ps Silent Knight addressable single action pull station
9. Wall Mount Horn / Strobe Multi Candela
9. Wall Mount Strobe Multi Candela
10. SK505 aps Silent Knight Photo Electric Smoke Detector Addressable
11. 505 adhr Silent Knight Duct Detector with relay smoke head and sampling tube

12. Engineering, Wire and Termination of the above Products

1. Estimate good for 10 days
2. All existing studs/joist to be exposed by others
3. Price is for electric service, as drawn, manufacturer estimates 8-12 months from date of order
4. Apartment panels to be load centers located on plans
5. All wiring to be MC cable or conduit
6. Alternate on service, redesigned to acquire equipment in reasonable time from reduces price \$3,100.00
7. Electric service closet requires larger area TBD
8. Need all kitchen equipment specs and layout prior to work start, using same quantity of equipment on plans
9. Any added work or equipment will have a T & M charge, no estimated provided

16490.000 Low-Voltage Distribution

- Data Drops (4 per unit @ 6 units)
- TV Drops (4 per unit @ 6 units)
- (6) Door bell Ring ??
- (2) Push Button Door locks

16500.000 Light Fixtures

Allowance: (189) light fixtures (as per A9.0 & A9.1) x \$100.00 per fixture (tax's included in allowance) including and not limited to smoke detectors/carbon detectors/fans/exit/emergency lights/recessed lights/trim/bulbs/ETC

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Total Budget     \$2,162,200.00

All work is guaranteed to be as specified above. All work shall be completed in a workman like manner, in accordance with standard industry practices and manufacturers' instructions. Any deviation or alteration from the above specifications that involves extra costs will be subject to additional charges and time to complete, above and beyond this estimate. Owner shall carry Builder Risk and other required insurances. Contractor shall carry General Liability Insurance and Workers Compensation Insurance as per attached certificate. All labor is guaranteed against defects for a period of one year from the date of completion.





**JJ Costa Company LLC**  
 2708 L & A Road  
 Metairie LA 70001  
 Phone: 504-834-5594  
 Email: info@jjcostacompany.com

### 317 Chartres St. Bakery & Apartments Job Cost

#### 2022 Rate Schedule Cost

Project Management	Office or on-site managing of project	75.00 per hour
Superintendent	Supervisory or Working with tools (includes shop equipment as needed)	75.00 per hour
Master Carpenter	Skilled carpenters (includes shop equipment as needed)	65.00 per hour
Carpenter	Journeyman (includes shop equipment as needed)	57.00 per hour
Carpenter Helper/Delivery	Carpenters (includes company truck & shop equipment as needed)	55.00 per hour
Unskilled laborer		22.00 per hour
Machinery/Equipment		
CNC Router & Programming		110.00 per hour
Skidsteer w/ 1 operator		95.00 per hour
Excavator w/ 1 operator		95.00 per hour
Pickup/delivery		150.00 each way
Trash Trailer		325.00/load
<b>Other Cost</b>		
Equipment Rental other than above	Trash disposal/Dumpsites	
Utilities (Water & Electrical)	Engineering consulting	Barricades
Materials	Architectural consulting	Temporary construction
Subcontractors	Drafting/shop drawings	Protect existing construction
Trades	Building permit	Police
Temporary labor	Street and sidewalk permits	Security
Cleaning	Parking permits	Interests on outstanding payments
Storage	Parking Tickets	
<b>Overhead</b>		5%
<b>Profit</b>		10%

Joe Costa and/or Jay Costa in the role of Project Manager or Superintendent shall be billed at appropriate rate below as needed.  
 Time shall be tracked for this project when working in these specific roles under cost codes