

DRAFT AIA® Document A101™ – 2017

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

AGREEMENT made as of the «» day of « May » in the year «»
(In words, indicate day, month and year.)

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

«
»

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

«
»

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

«
»
« »

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

«
»
« »

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.

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

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

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EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

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

If any document that is part of the Contract Documents is inconsistent with another document that is part of the Contract Documents, that conflict shall be resolved by giving precedence to the Contract Documents in the following order: (1) Contractor's qualifications, clarifications and exclusions included in Exhibit 'A-4' dated 4/16/19'; (2) this Agreement as modified; (3) AIA 201 General Conditions as modified. Change Orders shall have the same order of precedence as the specific Contract Document they are amending in inverse chronological order, and in the same order as the specific individual Contract Document they are modifying.

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:

(Check one of the following boxes.)

[] The date of this Agreement.

[] A date set forth in a notice to proceed issued by the Owner. This date of commencement as set forth in the notice to proceed shall be at least one (1) day following the issuance of the notice to proceed, which shall not be issued an earlier than the date all permits necessary for the Work to proceed have been issued by the appropriate governmental jurisdiction.

Notwithstanding the preceding, the Contract Sum, as defined in Article 4, below, shall be valid for a period of thirty (30) days from the execution date of this Contract (the "Validity Period"). Following the expiration of the Validity Period, Contractor will, at the written direction of the Owner, rebid the Work and provide Owner with a Change Order increasing (or decreasing) the Contract Sum. In the event Owner does not direct Contractor to rebid the Work

within thirty (30) days following the expiration of the Validity Period, or Owner does not accept the Change Order which increases or decreases the Contract Sum within five (5) days of Owner's receipt thereof, this Contract shall be considered terminated with no further force or effect on either party hereto. In the event of such termination, Owner shall be responsible to reimburse Contractor in accordance with the provisions of Article 7.1, below.

[<>] Established as follows:

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

<>

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

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

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

[<>] Not later than <> (<>) calendar days from the date of commencement of the Work.

[<>] By the following date: <>

See definition of Substantial Completion in Section 9.8.1 of the AIA Document A201-2017.

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

Portion of Work

Substantial Completion Date

<>

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

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be <>(\$ <>), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

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

Item

Price

<>

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item

Price

Conditions for Acceptance

<>

§ 4.3 Allowances, if any, included in the Contract Sum:

(Identify each allowance.)

Item	Price
1.	

§ 4.4 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
<< >>		

§ 4.5 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

« As time is of the essence of this Contract, Contractor shall pursue the Work in a diligent manner and shall advise Owner as to any possible variance in the work schedule as soon as it is known to the Contractor. SHOULD CONTRACTOR FAIL TO SUBSTANTIALLY COMPLETE THE WORK, AS SUCH TERM IS DEFINED IN THIS AGREEMENT, WITHIN THE DEFINED NUMBER OF CALENDAR DAYS AFTER BEING ISSUED A NOTICE TO PROCEED BY OWNER (OR AN ADDITIONAL NUMBER OF DAYS AS DETERMINED IN THE MANNER DEFINED ELSEWHERE IN THE CONTRACT DOCUMENTS), CONTRACTOR AND OWNER AGREE THAT IT WOULD BE IMPRACTICAL AND/OR EXTREMELY DIFFICULT TO ASCERTAIN THE ACTUAL DAMAGES RESULTING FROM SUCH DELAY IN CONSTRUCTION BEYOND THE TERM DESCRIBED. BECAUSE OWNER WILL INCUR SUBSTANTIAL LOSSES IF THE WORK IS NOT COMPLETED AND THEREUPON AVAILABLE TO MEET OWNER’S NEEDS, IT IS HEREBY AGREED THAT OWNER IS ENTITLED TO RECEIVE FROM CONTRACTOR A PROPER MEASURE OF LIQUIDATED DAMAGES THAT OWNER WILL SUSTAIN PER DIEM BY THE FAILURE OF CONTRACTOR TO COMPLETE THE WORK IN THE TIME STIPULATED. SAID PROPER MEASURE OF LIQUIDATED DAMAGES SHALL BE THE SUM OF FIVE HUNDRED DOLLARS (\$500.00) FOR EACH DAY THAT THE WORK REMAINS UNCOMPLETED BEYOND THE TIME PERIOD SET FORTH ABOVE (OR BY ANY ADDITIONAL PERIOD OF TIME WHICH IS DETERMINED IN A MANNER DEFINED ELSEWHERE IN THE CONTRACT DOCUMENTS). IT IS AGREED THAT THIS SUM IS NOT TO BE CONSTRUED IN ANY SENSE AS A PENALTY, AND THAT PAYMENT OF THE SAME MAY BE AFFECTED BY DEDUCTION FROM THE CONTRACT SUM. THIS LIQUIDATED DAMAGES CLAUSE CONSTITUTES THE OWNER’S SOLE REMEDY FOR INEXCUSABLE DELAY IN COMPLETION OF THE PROJECT, NOTWITHSTANDING ANY OTHER PROVISION OF THE CONTRACT. THE OWNER’S RIGHTS UNDER THIS CLAUSE SHALL NOT BE INTERPRETED AS LIMITING ANY RIGHT OR REMEDY BY THE OWNER ARISING FROM THE CONTRACT OTHER THAN THE CONTRACTOR’S FAILURE TO COMPLETE THE WORK WITHIN THE TIME PERIOD SET FORTH ABOVE.. ALL CHANGE ORDERS SHALL REFLECT THE EXTENSION OR REDUCTION OF TIME, IF ANY, CAUSED BY THE CHANGE ORDER AS APPLIED TO THE ABOVE REFERENCED DATES. THIS SECTION IS SOMETIMES REFERRED TO AS “THE LIQUIDATED DAMAGES PROVISION”.»

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

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ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 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.

§ 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 Provided that an Application for Payment is received by the Architect not later than the « Twenty-Fifth (25th) » day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the « Twenty-Fifth (25th) » day of the « Following » month. 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 « Thirty » (« 30 ») days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

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

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

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

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the 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 the following amount, as retainage, from the payment otherwise due:

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

« 10% »

§ 5.1.7.1.1 The following items are not subject to retainage:

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

«All insurances and bonds »

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

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

« Partial release of retention upon turnover/owner occupancy of units. At least 5% retention shall be held until final Certificate of Occupancy »

§ 5.1.7.3 Except as set forth in this Section 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. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

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

« »

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor (an "excusable delay"), notwithstanding any provision of this Contract and any other Contract Documents to the contrary, including, but not limited to, AIA A201-2017, the Owner shall provide an equitable adjustment in the Contract Sum and Contract Time. The Contractor shall receive \$1,500.00 per working day for all "excusable delays", until substantial completion date, exclusive of prevailing wages, insurance, and Subcontractor impact costs.

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

§ 5.2 Final Payment

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

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.
- .3 a **Certificate of Substantial Completion on Form AIA G704 or such other form as Lender may reasonably require and a final certificate of occupancy issued by the appropriate Governmental Agency**
- .4 **Executed Form AIA G7061706A with final lien wavers (or conditional lien waivers if and to the extent such party is being paid by such final Disbursement and the conditional lien waiver claims an amount due equal to the amount requested in such final Disbursement) attached or such other form reasonably required by Lender or Title Company and written lien waivers releases from General Contractor and all suppliers of labor and materials to the Project**
- .5 **Final as-build Plans for the improvements**

§ 5.2.2 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, or as follows:

« Final payment shall be made within thirty (30) days of the date Contractor has fully performed the Contract (excluding therefrom Contractor's responsibility to correct Work and/or to complete minor punch-list item). »

§ 5.3 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.)

2.00%

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker. (If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

»

§ 6.2 Binding Dispute Resolution

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

(Check the appropriate box.)

[] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

[] 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 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.

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

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)

«Value of the Work Completed, along with an appropriate amount for General Requirements, Supervision, and General Contractor Fees »

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

ARTICLE 8 MISCELLANEOUS PROVISIONS

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

§ 8.2 The Owner’s representative:

(Name, address, email address, and other information)

«
»

§ 8.3 The Contractor’s representative:

(Name, address, email address, and other information)

«
»

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

§ 8.5 Insurance and Bonds

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

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 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 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.)

« »

§ 8.7 Other provisions:

« The proposer shall make themselves aware of all environmental reports and patent conditions provided by the Agency, including but not limited to hazardous substances, such as mold

§ 8.7.1 This Agreement shall not become effective until concurred in writing by the Agency. Such concurrence shall be evidenced by the signature of a duly authorized representative of the Agency on a concurrence letter to be Attached to the Agreement. The concurrence so evidenced by the Agency shall in no way commit the Agency to render financial assistance to the Owner and is without liability to the Agency for any payment thereunder, but in the event such assistance is provided, the concurrence shall signify the provisions of this Agreement are consistent with Agency requirements.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

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

.)

« »

.5 Drawings

Number	Title	Date
« »	« »	« »

.6 Specifications

Section	Title	Date	Pages
« »	« »	« »	« »

.7 Addenda, if any:

Number	Date	Pages
« »	« »	« »

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

.8 Other Exhibits:
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

« »

[« »] The Sustainability Plan:

Title	Date	Pages
« »		

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

Document	Title	Date	Pages
« »			

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

« 1. »

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

« »

OWNER (Signature)

« _____ »

(Printed name and title)

« »

CONTRACTOR (Signature)

« _____ »

(Printed name and title)