

DRAFT AIA[®] Document A101[™] - 2007

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

AS MODIFIED BY OWNER

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

BETWEEN the Owner:

(Name, ~~legal status, and~~ address ~~and other information~~)

« »
« » [Outagamie County](#)
« » [410 S Walnut St.](#)
« » [Appleton, WI 54911](#)

and the Contractor:

(Name, ~~legal status, and~~ address ~~and other information~~)

« »
« »
« »
« »

for the following Project:

(Name, location and ~~detailed~~ description)

«Outagamie County Template»
« »
« »

The Architect:

(Name, ~~legal status, and~~ 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.

AIA Document A201[™]-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

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), [Request for Bid \(including all Bid Exhibits and Attachments\)](#), 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.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date 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.)

« »

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

« »

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

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than « » (« ») 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.)

In the event the Contractor, without excuse, fails to achieve Substantial Completion within the Contract Time, the Contractor shall pay to the Owner as liquidated damages, and not as a penalty, the sum of _____ Dollars (\$ _____) for each and every calendar day following the end of the Contractor Time until Substantial Completion is achieved. However, the Contractor shall not be liable for liquidated damages for a day, or days, of excusable delay occurring during such period following the end of the Contract Time.

§ 3.4 Substantial Completion occurs when the Work is sufficiently completed in accordance with the Contract so the Owner can occupy or utilize the Work for its intended use. This does not mean that the building is in fact completed and finished.

§ 3.5 The Contractor shall achieve Final Completion of the entire Work, not later than _____, notwithstanding the provisions of 9.10.1 of A201-2007 as modified.

« »

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 The Contract Sum is based upon and includes 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 the 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 that amount expires.)

« »

§ 4.3 Unit prices, if any:

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

Item	Units and Limitations	Price Per Unit (\$0.00)

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

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

Item	Price

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment properly 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 ~~« »~~tenth day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the ~~« »~~last day of the ~~« »~~same month. If an Application for Payment is received by the Architect after the application date fixed above, payment 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 and approved in writing by the Architect and Owner 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, unless objected to by the Architect, and the Owner may require. This schedule when approved in writing by the Architect and the Owner~~ shall be used as a basis for reviewing the Contractor's Applications for Payment.

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

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the approved schedule of values, less retainage of ~~« »~~ percent (~~« »~~ %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™ 2007, General Conditions of the Contract for Construction determined in accordance with Wisconsin Statutes Sec.66.0901(9)(b);
- .2 The owner may Add 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 writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ~~« »~~ percent (~~« »~~ %) as stated in 5.16.1;
- .3 Subtract the aggregate of previous payments made by the Owner; ~~and~~
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007 as modified;
- .5 Subtract amounts, if any, being withheld by the Owner as provided in the Contract Documents.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and *(Section 9.8.5 of AIA Document A201–2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)*
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, as reasonably determined by the Architect and the Owner, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201–2007 as modified.

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

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

« »

§ 5.1.9 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 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 Section 12.2.2 of AIA Document A201-2007, 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, and
- .3 the Contractor's Release and Waiver of Lien has been received, and
- .4 the final waivers from the Contractor's subcontractors, suppliers and vendors are submitted to the Architect, and
- .5 if applicable, Contractor affidavit of compliance with prevailing wage rate determination has been received.

§ 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 does not relieve Contractor of its obligation to correct non-conforming Work or to satisfy any requirement which survives final payment.

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ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision ~~Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as 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.)

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§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, 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.)

☐ ~~Arbitration pursuant to Section 15.4 of AIA Document A201-2007~~

☐ ~~Litigation in a court of competent jurisdiction~~

☐ ~~Other (Specify)~~

☐

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 A201-2007 as modified.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007 as modified.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 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.)

« » % « »

§ 8.3 The Owner's representative:

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

« »
« »
« »
« »
« »
« »

§ 8.4 The Contractor's representative:

(Name ~~and~~ address ~~and other information~~)

« »
« »
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« »
« »

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

§ 8.6 Other provisions:

§ 8.6.1 The Contractor agrees that they are an independent contractor with respect to the services provided pursuant to the Contract. Nothing in the Contract shall be considered to create the relationship of employer and employee between the parties.

§ 8.6.2 If requested, the Contractor shall provide the Owner's auditors access to and furnish them with information, records and reports regarding powers, duties, activities, organization, property, financial transactions and methods of operations, and any other information, records and reports that relate directly or indirectly to the services being rendered pursuant to the Contract. The Contractor shall also provide access for the Owner's auditors to inspect all property, equipment and facilities that are used or made use of by the Contractor in rendering its services pursuant to the Contract. The provisions of this paragraph shall continue for a period of three years following completion of the services.

Any information, records and reports provided to or obtained by the Owner pursuant to the preceding paragraph, or which the Owner otherwise comes into possession of pursuant to the Contract shall be subject to the provisions of Wisconsin's Public Records Law, including provisions regarding limitations upon access based upon trade secret information and state or federal restrictions.

§ 8.6.3 Waiver

§ 8.6.3.1 One of more waivers by any party of any term of the Contract will not be construed as a waiver of a subsequent breach of the same or any other term. The consent or approval given by any party with respect to any act by the other party requiring such consent or approval shall not be deemed to waive the need for further consent or approval of any subsequent similar act by such party.

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ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101–2007 as modified, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201–2007 as modified, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ 9.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

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Section	Title	Date	Pages

§ 9.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

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Number	Title	Date

§ 9.1.6 The Addenda, if any:

Number	Date	Pages

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

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

~~1. AIA Document E201™ 2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:~~



~~2. Other documents, if any, listed below:~~

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract

Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

« »

ARTICLE 10 INDEMNIFICATION, INSURANCE AND BONDS

The Contractor shall maintain indemnification and purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007 as modified.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of insurance or bond

Limit of liability or bond amount (\$0.00)

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)

Approved as to Form,

« »« »

Joseph P. Guidote, Corporation Counsel