

DRAFT AIA® Document A101™ – 2017

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, address and other information and address~~)

«Outagamie County»«-»
«320 S Walnut St»
«Appleton, WI 54911»
« »

and the Contractor:

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

« »« »
« »
« »
« »

for the following Project:

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

« »
« »
« »

The Architect:

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

« »« »
« »
« »
« »

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), [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:

(Check one of the following boxes.)

☐ The date of this Agreement.

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

☐ 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: « »

~~§ 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.

~~§ 3.3.4 The Contractor shall achieve Final Completion of the entire Work, not later than ten (10) days after Substantial Completion notwithstanding the provisions of 9.10.1 of A201-2017, as modified by Owner.~~

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

§ 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.)

« »

~~§ 4.6 Other:~~

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

«—»

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 amount certified 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 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 and approving in writing by the Architect and the 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 and the Owner may require. This schedule, ~~of values 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 In accordance with AIA Document A201™-2017, General Conditions of the Contract for Construction as modified by Owner, 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~~ Orders approved.

§ 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, as~~ modified by Owner;
- .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, as modified by Owner; 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: retainage as determined in accordance with~~ Wisconsin Statutes Sec 66.0901(9)(b).

(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.)

«—»

§ 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.)

«—»

§ 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.)

«—»

§ 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, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201-2017.

§ 5.1.9 Except with the Owner's prior 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 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; ~~and~~
- .3 ~~the Contractor's Release and Waiver of Lien has been received; and~~
- .4 ~~the final waivers from the Contractor's Subcontractors, supplies and vendors are submitted to the Architect; and~~
- .5 ~~if applicable, Contractor's affidavit of compliance with Prevailing Wage determinations 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. ~~Final payment does not relieve Contractor of its obligations to correct non-conforming Work or to satisfy any requirements which survive final payment, or as follows:~~

«—»

§ 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.)

«—» % «—»

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.)~~

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§ 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, as modified by Owner.

~~§ 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.)~~

«»

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

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)

« »
« »
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« »
« »
« »

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

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§ 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 Indemnification, 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. The Contractor shall maintain indemnification and purchase and maintain insurance as outlined in the County's Request for Bid (RFB) Attachment

§ 8.5.2 The Contractor shall provide a Performance and a Payment Bond each in the amount of the Contract Sum, bonds as set forth in AIA Document A101™ 2017 Exhibit A, and elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located. Contractor shall furnish both on an AIA A312-2010 Performance Bond and an AIA 312-2010 Payment Bond. The AIA A312-2010 Bonding Form may be replaced with the most current applicable AIA Bonding Form.

§ 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:

§ 8.7.1 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 parties.

§ 8.7.2 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, record 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.

§ 8.8 Waiver

§ 8.8.1 One or 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 part.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, as modified by Owner Standard Form of Agreement Between Owner and Contractor
- ~~.2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds~~
- .3 AIA Document A201™–2017, as modified by Owner General Conditions of the Contract for Construction
- ~~.4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203–2013 incorporated into this Agreement.)~~

« »

- .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.)~~

~~[« »] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204–2017 incorporated into this Agreement.)~~

« »

~~[« »] 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.)

«Contractor's bid response will be reference here—»

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 »

(Printed name and title)