

# AIA<sup>®</sup> Document A101<sup>™</sup> – 2007

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

**AGREEMENT** made as of the  day of  in the year  20   
*(In words, indicate day, month and year.)* [Revised June 2009; June 2010; March 2011; October 2011]

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

Case Western Reserve University  
10900 Euclid Avenue  
Cleveland, Ohio 44106-7228

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.

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

AIA Document A201<sup>™</sup>-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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**ARTICLE 1 THE CONTRACT DOCUMENTS**

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.

**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:

Not Applicable

§ 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  (  ) calendar 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.)

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 [redacted] (\$ [redacted] ), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon 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~~ The all-inclusive 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)
[redacted]	[redacted]	[redacted]

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

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

Item	Price
[redacted]	[redacted]

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: month.

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the ~~day of a month~~, the Owner shall make payment of the certified amount first day of a month and the Architect certifies the application for payment in accordance with AIA A201-2007, Article 9, as modified by Owner and attached hereto as Exhibit A. The Owner shall make payment to the Contractor not later than the ~~day of the month~~ fifteenth day of the following month if the Owner also approves of the certified application for payment. 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 ~~( )~~ days after the Architect receives the Application for Payment. forty-five ( 45 ) days after the Architect certifies the Application for Payment and the Owner approves the same application.

(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. ~~Documents and in detail as required by the Owner.~~ 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~~ Owner may require. This schedule, unless objected to by the ~~Architect~~, 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 schedule of values, less retainage of ~~ten percent ( 10% )~~ ~~ten percent ( 10% )~~. 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~~; Construction, as modified by Owner and attached hereto as Exhibit A;
- .2 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 advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ~~ten percent ( 10% )~~ ~~ten percent ( 10% )~~;
- .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~~. A201-2007, as modified by Owner and attached hereto as Exhibit A.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified or withheld 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 or Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and *(Section 9.8.5 of AIA Document A201-2007 as modified by Owner and attached hereto as Exhibit A 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, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007. Withheld, notwithstanding anything contained in the Contract Documents to the contrary, the Contractor shall not be entitled to any progress payment for any Work performed unless the Owner shall have received when due, and approved the following:~~
  - (i) Insurance Certificates
  - (ii) Payment & Performance Bonds, applicable only if Contract Sum is equal to or greater than \$500,000
  - (iii) Appropriate Waiver of liens from the Contractor and all tier-subcontractors and suppliers

§ 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.)*

Not Applicable

§ 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~~ the site for subsequent incorporation in the Work. If the Owner gives prior written approval for offsite storage, the Contractor may make advance payments to suppliers if the Contractor provides the following:

- (i) provide the Owner with a certificate of insurance for full replacement and naming Owner as an additional insured
- (ii) provide a bill of sale
- (iii) provide for onsite inspection by the Owner
- (iv) provide and file the necessary UCC form with the Ohio Secretary of State naming the Owner as the secured party for the goods stored offsite

**§ 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, as modified by Owner and attached hereto as Exhibit A, 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.

**§ 5.2.2** The Owner's final payment to the Contractor shall be made no later than ~~30~~45 days after the issuance of the Architect's final Certificate for Payment, or as follows:

Final Payment will be made to the Contractor only after occurrence of all of the events described below:

- (i) Acceptance of the Work by the Owner as fully performed under the Contract Documents.
- (ii) Written assignment to the Owner by all Subcontractors and suppliers of material and equipment of all warranties and guarantees in the form provided by the Owner.
- (iii) Delivery by the Contractor of three (3) copies of any Maintenance Manual issued by any manufacturer and/or supplier.
- (iv) Delivery by the Contractor of the Project Record reproducible drawing redlined showing all changes.
- (v) Delivery by the Contractor of conditional written releases of all liens and/or requests to file Mechanics', material-men's and like liens against the Project, signed by each Subcontractor and material-man that performed labor or furnished materials in connection with the Work. If any Subcontractor or material or equipment supplier refuses to furnish a release or waiver, the Construction Manager shall furnish a bond satisfactory to the Owner to indemnify him against any such possible lien.
- (vi) Delivery by the Contractor of all deliverables as specified in the Project Specifications and Contract Documents.
- (vii) If required by the Owner, delivery by the Contractor of other data establishing payment or satisfaction of all such obligations.

No payment hereunder, no occupancy of the Project or any part thereof shall be construed as an acceptance of any Work or waiver of any rights of the Owner either in the Contract Documents or at law.

**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.)~~

**§ 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, unresolved Claim, case, controversy, or dispute between the Owner and Contractor arising out of or related to this

Agreement or breach thereof, remaining after an attempt to resolve the dispute by the parties through AIA A201-2007, Article 15.1 and 15.2, as modified by Owner, and attached hereto as Exhibit A., 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~~  Arbitration pursuant to Section 15.3 of AIA Document A201-2007, as modified by Owner, subject to the rights reserved by Owner in subparagraph 15.3.3(g) thereof

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~~A201-2007, as modified by Owner and attached hereto as Exhibit A.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document ~~A201-2007~~A201-2007, as modified by Owner and attached hereto as Exhibit A.

#### ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2007 as modified by Owner and attached hereto as Exhibit A, 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.~~ lowest legal rate prevailing from the date of the agreement to the date of final payment in Cleveland, Ohio (*Insert rate of interest agreed upon, if any.*)

~~%—Key Bank's lowest Prime Rate for Cleveland, Ohio at any time from the date of the agreement until final payment~~

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

Case Western Reserve University  
10620 Cedar Avenue, Room  
Cleveland, Ohio 44106-7228  
Attn:

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

§ 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 Contractor must provide a site specific written safety plan prior to the commencement of the Work. Contractor must provide and obtain all waste manifests required for daily disposal of any hazardous material in connection with

this project, and must submit daily original waste manifests to the Owner, Attn: CWRU Department of Environmental Health and Safety and provide a copy to the project manager.

§ 8.6.2 Contractor must comply with all safety requirements in A201-2007 Article 10, as modified by Owner, and attached hereto as Exhibit A.

§ 8.6.3 The Contractor shall be liable for and hereby agrees to defend, discharge, fully indemnify, and hold the Owner and the Owner's trustees, officers, employees, and agents harmless of, from, and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature (including investigation costs and expenses, settlement costs, and attorney's fees and expenses incident thereto) sustained by or asserted against the Owner arising out of, resulting from, or attributable to the performance or non-performance of the Work (collectively "Claim") including but not limited to any Claim for:

- (a) Any personal or bodily injury, illness, or disease, including death at any time resulting therefrom, including, but not limited to, employees of the Owner, the Contractor, any subcontractor, and any supplier;
- (b) Any loss, damage, or destruction of any property or damage to the Owner's operations;
- (c) Any defects in material or equipment furnished hereunder, and/or
- (d) Any lien or charge of any type, nature, kind, or description which may at any time be filed or claimed against the Project, or any portion thereof, as a consequence of acts or omissions of Contractor, Contractor's agents, servants, employees, subcontractors, Sub-subcontractors, or any of them, and which are not due to Owner's failure to perform its obligations under the Contract Documents; provided this indemnity shall not extend to matters arising from the Owner's sole negligence, or to any liens arising from Owner's separate contractors.

§ 8.6.4 In claims against any person or entity indemnified under Section 8.6.3 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

## 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, Standard Form of Agreement Between Owner and Contractor-Contractor, as modified herein.

§ 9.1.2 The General Conditions are AIA Document A201-2007, General Conditions of the Contract for Construction-Construction as modified by Owner and attached hereto as Exhibit A.

§ 9.1.3 The Supplementary and other Conditions of the Contract-Contract are those contained in the Project Manual prepared by \_\_\_\_\_ on \_\_\_\_\_, 2011, \_\_\_\_\_ pages:

Document	Title	Date	Pages

§ 9.1.4 The Specifications-Specifications are those contained in the document listed below and drawings: (Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Title of Specifications exhibit:

Section	Title	Date	Pages

§ 9.1.5 The Drawings:

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

Title of Drawings exhibit:

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~~

1 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.)*

EXHIBIT A – AIA A201-2007, General Conditions of the Contract for Construction as modified by Owner, pages 1 thru 51

EXHIBIT B – Project Manual Table of Contents, pages 1 of 1

EXHIBIT C – Drawing Index, pages 1 thru

EXHIBIT D – Sample Certificate of Liability Insurance dated 11/14/13, page 1 of 1

EXHIBIT E – Pricing of Construction Contract Change Order Documentation, dated March 2011, pages 1 thru 5

EXHIBIT F – Lien Waivers, pages 1 thru 18

EXHIBIT G – Project Schedule, pages 1 thru

EXHIBIT H – Standard AutoCAD Documentation, pages 1 thru 9

EXHIBIT I – Campus Community Fire and Life Safety Line, pages 1 thru 5

EXHIBIT J – Procedures Regarding Impairments to Fire Protection Systems & Procedures for Establishment of a Fire Watch, pages 1 thru 5

EXHIBIT K – CWRU Smoke-Free Workplace, pages 1 of 1

**ARTICLE 10 INSURANCE AND BONDS**

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

*(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**

See Sample Certificate of Liability Insurance dated 11/14/13, attached as Exhibit D.

**Limit of liability or bond amount ~~(\$0.00)~~ \$ 0.00**

Bonds are required if Contract Sum is equal to or greater than \$500,000.



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

**CHANGE NAME FOR COST RELATED**

**OWNER** *(Signature)*

Stephen M. Campbell, Vice President  
Campus Planning and Facilities Management

*(Printed name and title)*

**CONTRACTOR** *(Signature)*

[Redacted Signature]

*(Printed name and title)*

**And by:**

Office of the Treasury and Investment Services

