

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 « » in the year «20 »
(In words, indicate day, month and year.)[Revised October 2018]

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

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

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

« »« »
« »
« »
« »

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

« »
« »
« »

The Architect:
(Name, 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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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:
(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
[REDACTED]	[REDACTED]

§ 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
[REDACTED]	[REDACTED]

§ 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
[REDACTED]	[REDACTED]	[REDACTED]

§ 4.3 Allowances, if any, included in the Contract Sum: (Identify each allowance.)

Item	Price
[REDACTED]	[REDACTED]

§ 4.4 The all-inclusive 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)
[REDACTED]	[REDACTED]	[REDACTED]

§ 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 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.

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the «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 B. The Owner shall make payment of the amount certified to the Contractor not later than the «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 of the amount certified shall be made by the Owner not later than «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 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 Owner may require. This schedule of values, unless objected to by 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™–2007, 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 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 as set forth in §5.1.7 below. 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, as modified by Owner and attached hereto as Exhibit B;
- .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, less retainage as set forth in §5.1.7 below; 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 A201–2007, as modified by Owner and attached hereto as Exhibit B;
- .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 A201–2007;
- .5 The amount, if any, for any Work performed unless the Owner and/or Architect 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 Contractor and all tier-subcontractors and suppliers; and
- .6 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.)

« Not Applicable »

§ 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.)

« Not Applicable »

§ 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.)

« Any reduction or release of retainage, or portion thereof, by Owner, shall not be a waiver of (a) any of the Owner's rights to retainage in connection with other payments to the Contractor or (b) any other right or remedy that the Owner has under the Contract Documents, at law or in equity. Owner may reinstate retainage at any time if Owner determines, in Owner's sole discretion, that Contractor is not performing Work in accordance with the Contract Documents. Owner shall be entitled to retain up to two hundred percent (200%) of the punch list as provided in Section 9.8.5 of the General Conditions.»

§ 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 A201–2007.

§ 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 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 Article 12 of AIA Document A201–2007, as modified by Owner and attached hereto as Exhibit B, 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 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.

« »

§ 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 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»

ARTICLE 6 DISPUTE RESOLUTION

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§ 6.2 Binding Dispute Resolution

For any 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 B, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

[] 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)*

« »

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 A201–2007, as modified by Owner and attached hereto as Exhibit B.

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

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 B 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)

«Case Western Reserve University»
«10620 Cedar Avenue, Room»
«Cleveland, Ohio 44106-7228»
«Attn:»
«Email: »
«Cell Phone:»

§ 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 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance 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 A.

Limit of liability or bond amount (\$ 0.00)

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

§ 8.7 Other provisions:

«8.7.1 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.

8.7.2 Contractor must comply with all safety regulations in A201-2007 Article 10, as modified by the Owner, and attached hereto as Exhibit B.

8.7.3 The Contractor shall be liable for and hereby agrees to defend, discharge, fully indemnify, and hold the Owner and 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.

8.7.4 In claims against any person or entity indemnified under Section 8.7.3 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 Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.»

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, as modified herein.
- .2 AIA Document A201™-2007, General Conditions of the Contract for Construction, as modified by Owner and attached hereto as Exhibit B.
- .3 Drawings

Title of Drawings exhibit:

- .4 Specifications are those contained in the document listed below and drawings:

Title of Specifications exhibit:

- .5 Addenda, if any:

Number	Date	Pages
_____	_____	_____

- .6 Other Exhibits:

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

[] Supplementary and other Conditions of the Contract are those contained in the Project Manual prepared by _____ on _____, 2018, _____ pages 1 thru ____:

Document	Title	Date	Pages
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.7 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 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.)

- «EXHIBIT A – Sample Certificate of Liability Insurance dated 11/14/13
- EXHIBIT B – AIA A201-2007, General Conditions of the Contract for Construction as modified by Owner, pages 1 thru 52
- EXHIBIT C – Project Manual Table of Contents, pages 1 thru
- EXHIBIT D – Drawing Index, pages 1 thru
- 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 Tobacco-Free Policy dated 7/7/17, page 1 of 1»

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)

« »« »

(Printed name and title)

And by:

John F. Sideras, Sr. Vice President for Finance & CFO
Office of Finance