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 « »
(In words, indicate day, month and year.)

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

«Board of County Commissioners,»
«Hamilton County, Ohio»
«603 County Administration Building»
«138 East Court Street»
«Cincinnati, Ohio 45202»

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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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 the Contract, any bonds required in connection with the Project, the Contractor's Construction Schedule (as defined in Paragraph 3.10 of the General Conditions and as modified from time to time), the Schedule of Values (as defined in Paragraph 9.2 of the General Conditions), other documents listed in this Agreement, and Modifications issued after execution of this Agreement. Unless specifically defined herein, all terms shall have the meaning ascribed thereto in the General Conditions. The Contract Documents form the Contract and all are as fully a part of this Contract as if fully restated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral.

ARTICLE 2 THE WORK OF THIS CONTRACT

§ 2.1 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.

§ 2.2 The Contractor represents to the Owner that all of the Work shall be performed for the Contract Sum set forth in Article 4 hereof, unless a change in the Work is required. A change in the Work is not warranted if the applicable portion of the Work was reasonably inferable from or contemplated by, or a prudent contractor should have realized that same was necessary or appropriate under the Contract Documents in existence as of the date of this Agreement. During performance of the Work, the Contractor agrees to use its best efforts, exercising it best and prudent judgment, to accomplish the Work in conformance with, and as required by or described by, or referred to in, the Contract Documents.

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.)

« »

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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 diligently prosecute the Work and achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

[« »] Not later than «# of days here » («In words here») calendar days from the date of commencement of the Work.

[« »] By the following date: « »

The prosecution of the Work shall conform to the Contractor's Construction Schedule, as provided in Paragraph 3.10 of the General Conditions.

§ 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 Time is of the essence to the Contract Documents and all obligations thereunder. 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 «In words here » ($ «In numbers here »), subject to additions and deductions as provided in the Contract Documents.

§ 4.1.1 Pursuant to the terms and conditions of the General Conditions, the Contractor will prepare, for the Architect's approval, a detailed schedule of values (the "Schedule of Values") of the cost of the Contractor's Work, all elements of which will total the Contract Sum. The Schedule of Values shall categorize the Work in detail, as shown by the Contract Documents.

§ 4.1.2 The Contract Sum may be adjusted only for costs saved or incurred as a result of changes in the Work. All revisions of the Contract Sum will be made in accordance with Article 7 of General Conditions.

§ 4.1.3 The Contract Sum, as reflected in the Schedule of Values, includes all costs and expenses whatsoever arising from the Contractor's performance of the Work.

§ 4.1.4 The Contractor represents that it has based the Contract Sum on the exact materials specified in the Contract Documents. The Contract Sum is not contingent upon approval by Architect or Owner of "substitutes," as contemplated in Subparagraph 3.4.2 of the General Conditions. Any proposed substitution of materials after execution of this Agreement will be governed by the applicable provisions of the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, accepted by the Owner and included in the Contract Sum:

Item	Price

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§ 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

The Allowance shall be used as directed by the Owner. The unused portion of the Allowance shall be credited to the Owner via a deduct Change Order at Project completion.

§ 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, which might result in a change to the Contract Sum.)

«4.6.1 Final Closeout documents will be submitted as per the instructions listed in the General Conditions and Specifications.»

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment, including all supporting documentation, 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 in Article 9 of the General Conditions 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 tenth day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the fifteenth 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 Sixty (60) days after the Architect receives the Application for Payment.

§ 5.1.4 Each Application for Payment shall be based on the Schedule of Values submitted by the Contractor in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Contract Sum among 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.

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§ 5.1.6 Subject to 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 Progress payments made to Contractor shall be subject to the following:

(1) for labor performed prior to Substantial Completion of the Work, the progress payment shall be reduced by eight percent (8%) and made at the rate of ninety-two percent (92%) of the Schedule of Values prepared by the Contractor and approved by the Architect and

(2) provided the materials have been inspected and found to meet the specifications, the progress payment for materials delivered to and suitably stored at the Project site shall be reduced by eight percent (8%) and made at the rate of ninety-two percent (92%) of the Schedule of Values prepared by the Contractor and approved by the Architect. The retained balance shall be paid when such material is incorporated into and becomes a part of the Project.

§ 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.)

«After the Contract is fifty percent (50%) complete, as evidenced by payments in the amount of at least fifty percent (50%) of the Contract Sum to the Contractor, no further funds shall be retained. From the date the Contract is fifty percent (50%) complete, all retained funds shall be deposited into an escrow account designated in section 153.63 of the Ohio Revised Code. »

§ 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.)

« »

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§ 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.

§ 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:

« »

§ 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.)

« »
« »
« »
« »

§ 6.2 Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of the General Conditions, either party may commence 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 the General Conditions.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of the General Conditions.

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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«Assigned Facilities Project Manager Name Here »
«Address »
«Address »
« »
« »
« »

§ 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 the General Conditions.

§ 8.5.2 The Contractor shall provide bonds as set forth in the General Conditions.

§ 8.6 Other provisions:

«**§ 8.6.1** The Contractor must verify all materials, equipment and labor entering into the Work for conformance with the Contract Documents and must keep such full and detailed accounts as may be necessary for proper financial management under the Contract. The system and method of accounting is subject to Architect's approval. Architect and Owner, and their agents and employees, will be afforded access to all the Contractor's records, books, correspondence, instructions, receipts, vouchers, memoranda, and similar data relating to the Contract, and the Contractor must preserve all such records and provide such access for a period of three (3) years after the date of Substantial Completion.

§ 8.6.2 All references throughout the Contract Document to the term "Architect" are hereby replaced by the term "Engineer".»

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 amended

.2 *AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended (the "General Conditions"), contained in the Project Manual dated Month, Year*

.3 The following Drawings as may be revised by the Architect during the course of the Project:

Number	Title	Date

.4 Specifications set forth in the Project Manual:

Section	Title	Date	Pages

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.5 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.

.6 Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.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™–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.)

«The following documents contained in the Project Manual:

1.	Minority, Women, and Small Business Program	1-29
2.	Contractor Safety and Health Specification	1-82
3.	Prevailing Wage Coordinator	1 page
4.	Prevailing Wages	1-XX
5.	Non-Collusion Affidavit of Subcontractor	1 page
6.	Subcontractor's EEO Form	1 page
7.	Affidavit of Contractor – Prevailing Wage	1 page

The following documents executed and submitted by Contractor for the Project:

1.	Executed Personal Property Tax Statement	1 page
2.	Executed Bid Form	1-XX
3.	Executed Non-Collusion Affidavit of Bidder	1 page
4.	Executed Warranty Against an Unresolved Finding for Recovery	1 page
5.	Bidder's Certification Concerning Equal Employment Opportunity Requirements	1 page
6.	Executed Substitution Form (No Substitutions)	1 page
7.	Executed Bid Guaranty and Contract Bond	1-XX»

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

OWNER *(Signature)*	**CONTRACTOR** *(Signature)*
« »« »	« »« »
(Printed name and title)	*(Printed name and title)*
Approved as to form:	Recommended By:
Hamilton County Assistant Prosecuting Attorney	Facilities Director

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