

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

Editing Template

CAUTION: Take care not to remove or otherwise edit Project Data fill-point areas (Basic Information, Contract Details and Project Team) when making edits to this document.

AGREEMENT made as of the « » day of « » in the year « »

BETWEEN the Owner:

(Name, legal status, address and other information)

«Len T. Frey, Ph.D. »« Vice Chancellor for Finance & Administration »
«Arkansas State University-Jonesboro »
«P.O. Box 2100 »
«State University AR 72467 »

and the Contractor:

« »« »
« »
« »
« »

for the following Project:

« »
« »
« »

The Architect:

« »« »
« »
« »
« »

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.



ELECTRONIC COPYING of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS
- 10 INSURANCE AND BONDS

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 Construction Manager/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.

The Construction Manager/Contractor understands that the work must comply with accessibility laws, including but not limited to the Fair Housing Act and the Americans with Disabilities Act, and will ensure that the work is built in strict conformance with the Contract Documents including all Drawings, Plans, and Specifications.

“This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a). These regulations prohibit discrimination on the basis of race, color, religion, sex, or national origin, against qualified protected veterans on the basis of veteran status, and against qualified individuals on the basis of disability; and require affirmative action by covered prime contractors and subcontractors to ensure equality of opportunity in all aspects of employment, and to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.”

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.

<< >>

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:

« »

Portion of Work	Substantial Completion Date
« »	« »

, subject to adjustments of this Contract Time as provided in the Contract Documents.

«The Construction Manager/Contractor understands that the work must be completed by the stated deadline. Should the property not be ready for occupancy at the time set in the contract, the parties agree that Owner will incur substantial damages for [insert reason: e.g. paying to place student in alternate housing, leasing alternate space, cancelling classes] and will suffer damage to reputation which will impact the ability to recruit and retain students and/or faculty when their promised [insert facility: e.g. housing, offices, recreational facility] is not available. Because the damages to Owner resulting from a delay in completion of the work are not capable of exact calculation, the parties have bargained for and agree that, if the Construction Manager/Contractor shall fail to complete the work within the contracted time, or extension of time granted by the Owner, then the Construction Manager/Contractor will pay to the Owner the amount of \$ 1,000 per day for liquidated damage for each calendar day that the contract shall be in default after the time stipulated in the contract documents. The parties expressly agree that these liquidated damages are a fair and reasonable amount of compensation to Owner for loss of access to the [insert building name] and do not constitute a penalty. »

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 the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

« »

§ 4.3 Unit prices, if any:

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

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

Item	Price
« »	« »

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:

« »

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the «10th» day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the «10th » day of the

«following » 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 «21» («twenty-one ») days after the Architect receives the Application for Payment;

§ 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. 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, 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 «Five » percent («5 » %). 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;
- .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 «-0- » percent (« 0.0 » %); no retainage held on materials delivered and stored.
- .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.

§ 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, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007.

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

« »

§ 5.1.9 Except with the Owner's prior 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 Release of Liens, Consent of Surety, detailed "As Built" documents, warranties Operation & Maintenance manuals, and commissioning documents have been delivered to Owner.

§ 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:

« »

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.

« »

« »

« »

« »

§ 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:

[« »] 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.

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

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 sixty (60) days following 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. Late payment penalties may be assessed pursuant to Arkansas Code annotated [§19-4-141](#) AND [§22-9-205](#).)

« « »

§ 8.3 The Owner's representative:

«Len T. Frey, Ph.D. »

«Arkansas State University-Jonesboro »

«P.O. Box 2100 »

«State University AR 72467 »

« »

« »

§ 8.4 The Contractor's representative:

« »

« »

« »

« »

« »

<< >>

§ 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:

<< >>

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.

§ 9.1.2 The General Conditions are AIA Document A201–2007, 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:
Attached Exhibit “A”

Section	Title	Date	Pages

§ 9.1.5 The Drawings:

<< Attached Exhibit “B” >>

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:

<< >>

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.

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)

Len T. Frey, Ph. D Vice Chancellor for Finance & Administration

(Printed name and title)

CONTRACTOR (Signature)

<< >><< >>

(Printed name and title)

W
T
A
L
P
M
W
T

BLACK COMMENTS: Lucinda

ORANGE COMMENTS: Katie (5/2014)

**EDIT SUMMARY - ASU-JONESORO EDITS AIA101 - 2007
Agreement Between Owner & Contractor**

OWNER: *Len T. Frey, Ph., D., Vice Chancellor for Finance & Administration, P.O. Box 2100, State University, AR 72467*

_____ Article 2: Language below must be included:

The Construction Manager/Contractor understands that the work must comply with accessibility laws, **including but not limited to the Fair Housing Act and the Americans with Disabilities Act**, and will ensure that the work is built in strict conformance with the Contract Documents including all Drawings, Plans, and Specifications.

“This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a). These regulations prohibit discrimination on the basis of race, color, religion, sex, or national origin, against qualified protected veterans on the basis of veteran status, and against qualified individuals on the basis of disability; and require affirmative action by covered prime contractors and subcontractors to ensure equality of opportunity in all aspects of employment, and to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.” (Must appear in BOLD)

_____ Article 3 - 3.3

Liquidated Damage – Add language below:

The Construction Manager/Contractor understands that the work must be completed by the stated deadline. Should the property not be ready for occupancy at the time set in the contract, the parties agree that Owner will incur substantial damages for [insert reason; e.g. paying to place student in alternate housing, leasing alternate space, canceling classes] and will suffer damage to reputation [insert facility; e.g. housing, offices, recreational facility] is not available. Because the damages to Owner resulting from a delay in completion of the work are not capable of exact calculation, the parties have bargained for and agree that, if the Construction Manager/Contractor shall fail to complete the work within the contract time, or extension of time granted by the Owner, then the Construction Manager/Contractor will pay to the Owner the amount of \$ _____ per day for liquidated damage for each calendar day that the contract shall be in default after the time stipulated in the contract documents. The parties expressly agree that these liquidated damages are a fair and reasonable amount of compensation to Owner for loss of access for the [insert building name] and do not constitute a penalty.

- _____ Article 5 – 5.1.3
Confirm 10th day of the month is reflected in this item, first two lines.
Last line should include ‘or twenty-one (21) days after Owner receives Certified Payment Application.
- _____ Article 5 – 5.1.6 - Change 10% to 5% as retainage for work completed. Zero (0%) retainage is withheld on materials stored.
- _____ Article 5 – 5.1.7 - Line 1 should read ‘Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum....
- _____ 5.2.1 – Add line 3 as follows:
Receipt of Release of Liens, Consent of Surety, detailed “As-Builts” documents, Warranties, Operation & Maintenance Manuals, and Commissioning Documents **has been delivered to the Owner.**
- _____ 6.2 – Add Arbitration pursuant to Section 15.4 of AIA document A201-2007.
- _____ 8.2 Delete all but....late payment penalties may be assessed pursuant to Arkansas Code annotated §19-4-1411 and §22-9-205. **Add back in: Payments due and unpaid under the Contract shall bear interest from sixty (60) days following 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).**

CHECKLIST FOR EDITS REQUIRED ON A201 - PER LUCINDA

General Conditions of the Contract for Construction

in section ‘The Owner’ -

Arkansas State University-Jonesboro

ATTN: Len T. Frey, Ph.D. , Vice Chancellor for Finance & Administration

P.O. Box 2100, State University AR 72467

- _____ 1.5 Change as follows The Architect, Consultants....**and the Owner.....**
- _____ **2.1.2 Delete this section.**
- _____ **2.4 Add at the end ‘within thirty (30) days of receipt of written notice that Owner is exercising its rights hereunder.’**
- _____ **3.2.2 Delete last sentence in this paragraph.**

- _____ **3.2.3** *Delete this section.*
- _____ **3.2.3** *Change number since previous section deleted.*
- _____ **3.9.1** First paragraph, last sentence adds: Per ASU policy a background check is required for construction superintendents assigned to an ASU campus for the term of the contract.
- _____ **5.2.1** *Delete the last sentence.*
- _____ **5.4.3** *Delete last sentence.*
- _____ **6.2.3** *Add 'by Owner' to end of last sentence and omit 'a separate Contractor's delays from that sentence.*
- _____ **9.6.7** *Delete the following from last sentence 'shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.*
- _____ **9.7** *Delete 'plus interest as provided for in the Contract Documents' from the last sentence in this paragraph.*
- _____ **9.10.4** *Delete this paragraph.*
- _____ **9.10.5** *Change this to 9.10.4 since previous paragraph was deleted.*
- _____ **10.3.2** *Add to last sentence 'provided that the clean-up was not required due to Contractor's negligence or mishandling of the hazardous material. In such an instance Contractor should be responsible for all costs, fines or fees related to the presence of the hazardous materials.*
- _____ **10.3.3.** *Delete entire section. Renumber the following sections per this change.*
- _____ **10.3.5** *In last sentence remove 'indemnify the Contractor' and replace with 'be responsible'.*
- _____ **11.3.1.2** *Delete last two sentences from this paragraph.*
- _____ **11.3.3** *Delete last sentence from this paragraph.*
- _____ **11.3.10** *Delete last sentence from this paragraph.*
- _____ **11.4.1** *Delete 'have the right to' from first sentence.*
- _____ **12.1.2** *Delete 'or a separate contractor' from last sentence.*

_____ **12.2.2.1 Delete 'and to make a claim for breach of warranty' from the next to the last Sentence.**

_____ **13.1 Delete and replace with: The Contract shall be governed by the laws of the State of Arkansas. The parties hereby irrevocably consent to the jurisdiction of the State of Arkansas. The parties agree that venue properly lies in the federal and state courts in the State of Arkansas, provided that in the event monetary damages are sought against Owner. Venue properly lies solely in the Arkansas State Claims Commission.**

_____ 13.6 Per Arkansas law, payments due and unpaid under the Contract Documents shall bear interest from **60** days after the date payment is due at such a rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

_____ 13.7 The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law.

_____ **14.1.3 Last line in this section should read 'executed, including reasonable overhead and profit, and costs incurred by reason of such termination.'**

_____ **14.4.3 Delete following from last sentence 'along with reasonable overhead and profit on the Work not executed.'**

_____ 15.1.6 Delete paragraph except **last sentence to remain in this section 'Nothing contained...'**

_____ **15.2.5 Delete portion of last sentence 'mediation and, if the parties fail to resolve their dispute through mediation'**

_____ **15.2.6 Delete.**

_____ **15.2.6.1 Delete. Renumber rest of section accordingly.**

_____ **15.3 Delete entire section**

_____ **15.4 Delete entire section**

THIS TO BE INCLUDED IN ALL ARCHITECTURAL CONTRACT AGREEMENTS:

The Architect understands that the Owner is a state agency and that, therefore, the Work must comply with state and federal accessibility laws, including the Americans with Disabilities Act, the Rehabilitation Act, and the Fair Housing Act and the regulations issued pursuant to these laws. Architect will insure that the Contract Documents, including all Drawings and Specifications, comply with all accessibility laws and regulations.

Paragraph below must be included in ALL contracts (design/construction/etc.) per Traci Perrin.

“This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a). These regulations prohibit discrimination on the basis of race, color, religion, sex, or national origin, against qualified protected veterans on the basis of veteran status, and against qualified individuals on the basis of disability; and require affirmative action by covered prime contractors and subcontractors to ensure equality of

opportunity in all aspects of employment, and to employ and advance in employment qualified protected veterans and qualified individuals with disabilities.”

Effective 3/24/14 Above paragraph must appear in all caps.