

DRAFT AIA[®] Document A101[™] – 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

(In words, indicate day, month and ~~year~~-year)

BETWEEN the Owner:

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

The Junior College District of East Central Missouri a/k/a East Central College
1964 Prairie Dell Road
Union, Missouri 63084
Ph: 636-583-5193

and the Contractor:

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

for the following Project:

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

The Architect:

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

The Lawrence Group Architects of St. Louis Inc.
319 North 4th Street
Suite 1000
St. Louis, MO 63102
Ph: 314.231.5700
Fx: 314.231.0816

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.

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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:

N/A

§ 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:

(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~~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.)

It is understood and agreed by the Contractor that time is of the essence of this Contract and that a delay in the Substantial Completion or Final Completion of Work beyond that provided for above would cause damages to the Owner, the amount of which would be difficult, if not impossible, to estimate and prove. Accordingly if the Contractor fails to substantially or finally complete the Work within the period of time set forth herein and in the time period specified in the Project Manual Summary of Work Section 01010, subject to any time extensions permitted hereunder for excusable delays or Owner requested changes, the Contractor shall pay to Owner as liquidated damages, and not as a penalty, the stipulated sum of One Thousand Dollars (\$1000.00) for each calendar day or portion thereof that the Substantial Completion and/or Final Completion, as applicable, is so delayed.

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:

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

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

Item	Price
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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 day of a month, first business day of the month following the month for which the Application covers, the Owner shall make payment of the certified amount~~amount certified by the Architect~~ to the Contractor not later than the day of the month.

thirty (30) days after Architect's receipt of the Application for Payment. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified by the Architect shall be made by the Owner not later than ~~() days after the Architect receives the Application for Payment; forty-five (45) days after Architect's receipt of 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 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 ~~percent ()~~ 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;
- .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%;
- .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 two hundred percent (200% of such amounts as the Architect shall determine for incomplete ~~Work, retainage applicable to such work-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:

(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 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 , included completion or correction of all punchlist items, 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 all close-out documentation required under the Contract Documents, lien waivers and releases of claims from Contractor and all of its Subcontractors and suppliers providing more than \$1,000 of services, equipment or supplies for the Work, warranties and all certified payrolls and affidavit of compliance with the prevailing wage laws have been submitted and 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: complete with all supporting documentation and close-out documents required under this Contract or otherwise reasonably requested by the Owner.

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, 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

☒ 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. For the AIA A201-2007 reference, the reference shall mean the revised AIA A201 2007 provided by Owner in Addendum #2 to the Project Manual.

§ 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.

(Insert rate of interest agreed upon, if any.)

~~%—Prime Interest rate as established by the Bank of America at time payment is due.~~

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

Dr. Jon Bauer
The Junior College District of East Central Missouri a/k/a East Central College
1964 Prairie Dell Road
Union, Missouri 63084
Ph: 636-583-5193

§ 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 prior~~ written notice to the other party.

§ 8.6 Other provisions:

§ 8.6.1 The prevailing party in any legal or alternative dispute resolution proceeding entered into to enforce the terms or provisions of this Contract shall be entitled to recover its reasonable attorneys' fees and/or legal expenses to the extent the party succeeds in such proceeding.

§ 8.6.2 Not less than the prevailing hourly rate of wages specified under Sections 290.210-290.340 (Mo. Rev. Stat.) and set out in the Wage Determination (Franklin County Wage Order #17) provided in Addendum #1 to the Project Manual shall be paid to all workers performing Work under this Contract.

§ 8.6.3 The Contractor shall forfeit as provided under Section 290.250 (Mo. Rev. Stat.) as a penalty to the District on whose behalf this Contract is made, One Hundred Dollars (\$100.00) for each worker employed, for each calendar day, or portion thereof, that such worker is paid less than the stipulated rates for any work done under said Contract by Contractor or any of its Subcontractors. Contractor and all subcontractors shall be required to submit certified weekly payroll sheets with their monthly invoices, showing compliance with Missouri prevailing wage laws, as well as an Affidavit of Compliance with Missouri prevailing wage law at the conclusion of the Project prior to final payment. Accurate records pertaining to wages paid all workers employed on the Project shall be kept within the State of Missouri by Contractor and each subcontractor for a period of one (1) year following final completion.

§ 8.6.4 The Contractor shall furnish both a payment bond which meets all statutory requirements for public works projects (Section 107.170 Mo. Rev. Stat.) and a performance bond in the full amount of the cost of the Work and such performance bond shall meet any and all requirements set forth in the Construction Documents. Contractor's bonds shall include such provisions as will guarantee faithful performance of the prevailing hourly wage clauses under this Contract.

§ 8.6.5 This is a tax-exempt project and Owner has provided Contractor a Missouri State Tax Exemption Certificate. Contract shall make all material purchases for this particular project with the Tax Exemption Certification and

therefore will not incur Missouri State Sales Tax. The Owner will not reimburse the Contractor for sales tax under any circumstance.

§ 8.6.6 Pursuant to Missouri Revised Statute 285.530, all business entities awarded any contract in excess of five thousand dollars (\$5,000.00) with a Missouri public school district must, as a condition to the award of any such contract, be enrolled in and participate in a federal work authorization program with respect to the employees working in connection with the contracted services to be provided, to the Owner (to the extent allowed by E-Verify). Accordingly, the Contractor shall affirm that it is enrolled in such a federal work authorization program and shall provide a sworn affidavit to that effect, which affidavit shall also state that the Contractor does not knowingly employ any person who is an unauthorized alien in connection with the services to be provided to the Owner. The documentation required is attached hereto as Exhibit A. The Contractor shall also provide such other documentation as is requested by the Owner to confirm the foregoing.

§ 8.6.7 Contractor shall comply with RSMo. 292.675 and provide a ten-hour OSHA construction safety program for on-site employees which includes a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations which is at least as stringent as an approved OSHA program. All employees are required to complete the program within 60 days of beginning work on such project. If RSMo. 292.675 applies, Contractor shall forfeit as a penalty to Owner, \$2,500 plus \$100 for each employee employed by Contractor or its subcontractors for each calendar day or portion thereof that any such employee is employed without the required training

§ 8.6.8 Notwithstanding the fact that this Agreement is executed as of the date set forth herein, the parties recognize that portions of the services required hereunder may have already been performed prior to such date, all of which services shall be governed by the terms and conditions of this Agreement. Contractor shall not be entitled to any compensation for such prior activities and services except as expressly provided for herein. Without limiting any of the foregoing, all of the Contractor's liabilities and obligations to the Owner shall apply to all pre-execution services performed by the Contractor, notwithstanding the fact that such services may have been performed prior to the date of this Agreement pursuant to prior negotiations, representations, agreements and understandings or otherwise.

§ 8.6.9 It is the policy of the Owner that weapons (concealed or otherwise), smoking, alcohol, drugs, profanity, amplified sounds and inappropriate behavior (as defined by Owner) are not allowed on any of its job sites. The Contractor shall comply and shall cause all of its Subcontractors to comply with this policy. Violation of this policy may result in immediate dismissal of the individual and/or the contractor committing the violation. In addition, the safety of the public as well as Owner's students, faculty, administrators and staff is of utmost priority. Any individual and/or contractor with disregard for such safety will be immediately dismissed from the job site.

§ 8.6.10 To the extent applicable, Contractor shall comply with Section 290.560 with respect to the workers and laborers performing work on the Project, and only Missouri laborers or laborers from non-restrictive states shall participate in the Project.

§ 8.6.11 Every transient employer as defined in section 285.230 RS Mo. Must post in a prominent and easily accessible place at the work site a clearly legible copy of the following: (1) the notice of registration for employer withholding issued to such transient employer by the director of revenue; (2) proof of coverage for workers compensation insurance or self-insurance signed by the transient employer and verified by the department of revenue through the records of the division of workers compensation; and (3) the notice of registration for unemployment insurance issued to such transient employer by the division of employment security. Any transient employer failing to comply with these requirements shall be liable for a penalty of \$500 per day until the notices required by this section are posted as required by that statute.

§ 8.6.12 The Contractor, all subcontractors, and material suppliers shall be required to comply with all provisions of the "Missouri Domestic Products Act" requiring use of products, materials, commodities, etc., produced in the United States except as modified or excluded by the Act.

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~~Construction, as revised and included in Addendum #2 to the Project Manual.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ 9.1.4 The Specifications:

(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:
[Redacted]
- 2 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- E Verify Documentation

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~~A201–2007 and as set forth on Exhibit A attached hereto.

(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 General Conditions A201

Limit of liability or bond amount ~~(\$0.00)(0)~~

As set forth in General Conditions and herein

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)