South Carolina Division of Procurement Services, Office of the State Engineer Version of AIA Document A101™ – 2007

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

This version of AIA Document A101™–2007 is modified by the South Carolina Division of Procurement Services, Office of the State Engineer (“SCOSE”). Publication of this version of AIA Document A101–2007 does not imply the American Institute of Architects’ endorsement of any modification by SCOSE. A comparative version of AIA Document A101–2007 showing additions and deletions by SCOSE is available for review on the SCOSE Web site.

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

AGREEMENT made as of 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)

The Owner is a Governmental Body of the State of South Carolina as defined by Title 11, Chapter 35 of the South Carolina Code of Laws, as amended.

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.

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This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.
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ARTICLE 1 THE CONTRACT DOCUMENTS
§ 1.1 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 fixed in a Notice to Proceed issued by the Owner. The Owner shall issue the Notice to Proceed to the Contractor in writing, no less than seven (7) days prior to the Date of Commencement. Unless otherwise provided elsewhere in the contract documents, and provided the contractor has secured all required insurance and surety bonds, the Contractor may commence work immediately after receipt of the Notice to Proceed.

§ 3.2 The Contract Time as provided in Section 9(a) of the Bid Form for this Project shall be measured from the Date of Commencement. The Contractor agrees that if the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to withhold or recover from the Contractor Liquidated Damages in the amounts set forth in Section 9(b) of the Bid Form, subject to adjustments of this Contract Time as provided in the Contract Documents.

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

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

ARTICLE 4  CONTRACT SUM  

§ 4.1  The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor’s performance of the Contract. The Contract Sum shall be ($__________), 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.)

<table>
<thead>
<tr>
<th>Item</th>
<th>Units and Limitations</th>
<th>Price per Unit ($0.00)</th>
</tr>
</thead>
</table>

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

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Price</th>
</tr>
</thead>
</table>
ARTICLE 5   PAYMENTS
§ 5.1 PROGRESS PAYMENTS
§ 5.1.1 Based upon Applications for Payment submitted to the Architect and Owner 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 The Owner shall make payment of the certified amount to the Contractor not later than twenty-one (21) days
after receipt of 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 and subject to Title 12, Chapter 8, Section 550 of the
South Carolina Code of Laws, as amended (Withholding Requirements for Payments to Non-Residents), 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 three and one-half
percent (3.5%). 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
two and one-half percent (2.5%);

.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 set forth in S.C. Code Ann. § 11-35-3030(4).
(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.)
§ 5.1.9 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.

§ 5.2.2 The Owner’s final payment to the Contractor shall be made no later than twenty-one (21) days after the issuance of the Architect’s final Certificate for Payment.

ARTICLE 6 DISPUTE RESOLUTION
§ 6.1 Reserved

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 supplanted by other provisions of the Contract Documents.

§ 8.2 Reserved

§ 8.3 The Owner’s representatives:
(Name, address and other information)

§ 8.3.1 The Owner designates the individual listed below as its Senior Representative (“Owner's Senior Representative”), which individual has the responsibility for and, subject to Section 7.2.1 of the General Conditions, the authority to resolve disputes under Section 15.6 of the General Conditions:

  Name:
  Title:
  Address:
  Telephone: FAX:
  Email:

§ 8.3.2 The Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions:

  Name:
  Title:
  Address:
  Telephone: FAX:
  Email:
§ 8.4 The Contractor’s representatives:
(Name, address and other information)

§ 8.4.1 The Contractor designates the individual listed below as its Senior Representative (“Contractor's Senior Representative”), which individual has the responsibility for and authority to resolve disputes under Section 15.6 of the General Conditions:

Name:
Title:
Address:
Telephone: FAX:
Email:

§ 8.4.2 The Contractor designates the individual listed below as its Contractor's Representative, which individual has the authority and responsibility set forth in Section 3.1.1 of the General Conditions:

Name:
Title:
Address:
Telephone: FAX:
Email:

§ 8.5 Neither the Owner’s nor the Contractor’s representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

§ 8.6.1 The Architect’s representative:

Name:
Title:
Address:
Telephone: FAX:
Email:

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:

<table>
<thead>
<tr>
<th>Document</th>
<th>Title</th>
<th>Date</th>
<th>Pages</th>
</tr>
</thead>
</table>


§ 9.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Date</th>
<th>Pages</th>
</tr>
</thead>
</table>

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

<table>
<thead>
<tr>
<th>Number</th>
<th>Title</th>
<th>Date</th>
</tr>
</thead>
</table>

§ 9.1.6 The Addenda, if any:

<table>
<thead>
<tr>
<th>Number</th>
<th>Title</th>
<th>Date</th>
</tr>
</thead>
</table>

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:

(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.)

SE-310, Invitation for Construction Services
Instructions to Bidders (AIA Document A701-1997)
Contractor’s Bid (Completed Bid Form)
SE-370, Notice of Intent to Award
Certificate of Procurement Authority issued by the State Fiscal Accountability Authority

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.

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)