

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)

«Raytown Quality Schools»«»
«6608 Raytown Road
Raytown, MO 64133»
«Telephone Number: 816.268.7000»
« »

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

« »«»
«
»
«Telephone Number: »
«»

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

«21010.00 Raytown RHS Renovation»
«Raytown, MO»
« »

The Architect:
(Name, legal status, address and other information)

«Hollis + Miller Architects »« »
«1828 Walnut Street, Suite 922 »
«Kansas City, MO 64108 »
«Telephone Number: 816.442.7700 »

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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EXHIBIT A 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.

Section 1.2 This Agreement represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. Any revision, amendment, or modification to the Standard Form of this Agreement shall be valid, binding, and enforceable only if said revision, amendment or modification is made conspicuous by being underlined, lined-through, or highlighted in this Agreement signed by Contractor and the authorized representative of Owner's Board of Education. In the event of conflict, terms and conditions contained in the Agreement shall take precedence over terms and conditions contained in the General Conditions and the terms and conditions in the General Conditions shall take precedence over all other terms and conditions contained in the other Contract Documents. If the Request for Proposals and the Proposal are included in the Contract Documents, then the Request for Proposals shall take precedence over the Proposal, unless specifically agreed otherwise herein.

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 diligently prosecute and 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
<input type="text"/>	<input type="text"/>

§ 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
<input type="text"/>	<input type="text"/>

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

Item	Price
<input type="text"/>	<input type="text"/>

§ 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)
<input type="text"/>	<input type="text"/>	<input type="text"/>

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

«In the event the Contractor has not completed the work within the time allotted achieved Substantial Completion within the time allotted in accordance with Section 3.3, the Contractor agrees to pay the Owner, or to deduct from its contract sum, not as a penalty but as liquidated damages, a dollar amount based on a calculation for each and every calendar day that the work remains incomplete after the time stipulated set forth in this Contract for Substantial Completion as follows:

\$500.00 / day.»

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

Bonus Incentive for the Early Completion of the Work. In the event that the General Contractor achieves Substantial Completion of all work earlier than the time stipulated Substantial Completion date as set forth in this Contract, the Owner agrees to pay the General Contractor, or add to its contract sum, the amount of \$1,000.00 per calendar day that the work is completed before stipulated date the Substantial Completion date as set forth in this Contract, up to a limit of ten (10) calendar days (maximum of \$10,000). The Bonus Incentive does not apply to authorized adjustments made to the Contract Time during the course of construction, unless such delays are caused by the Owner. »

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 «last» day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the «Thirtieth» 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.

(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 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.

§ 5.1.6 In accordance with AIA Document A201™–2017, 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;
- .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 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.)

«5% »

§ 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.)

« »

§ 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.)

« »

§ 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 approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

Section 5.1.10 If Owner is entitled to deduct liquidated damages, or any other damages or amounts provided in the Contract Documents, including clean-up fees, then Owner shall be entitled to deduct such liquidated damages, amounts and fees at any time.

§ 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

« »
« »
« »
« »

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

[« »] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

[«X»] 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.

Section 6.3. In the event that any party to this Agreement shall be compelled to enforce the terms of this agreement through litigation or retention of legal counsel, the prevailing party in any such enforcement action shall be entitled to the payment of its attorneys’ fees by the breaching party. Any legal action in connection with this Agreement shall be filed in the Circuit Court of Jackson County, Missouri, the United States District Court for the Western District of Missouri, as appropriate, to which jurisdiction and venue the Parties expressly agree.

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 A201–2017.

« »

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

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)

« Josh Hustad, Director of Facility Operations Raytown Quality Schools »

« Raytown Quality Schools »

«5911 Blue Ridge Blvd.»

«Raytown, MO 64133»

«»

<<>>

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

«Sandy Cochran, IIDA, Client Leader»
«Hollis + Miller Architects»
«1828 Walnut St., Ste 922»
«Kansas City, MO 64108 »
«Phone: 816.442.7700 »
«>>
«>>

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior written 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 AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents. Owner preserves all immunities recognized at law. Nothing herein shall be construed as a waiver of Sovereign Immunity or Governmental Immunity by whatever name as set forth in Mo. Rev. Stat. § 537.600 et seq. Any insurance purchased by Owner or Contractor hereto is not intended to act as a waiver, nor is it a waiver of any defense available to Owner and its employees by statute or at common law.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™-2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

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Section 8.6.1 This Agreement shall be based upon the required payment by the Contractor of not less than the prevailing hourly rate of wages, as set out in the Wage Order attached herein and made part of the Specification for Work under the Contract, must be paid to all workers performing work under the Contract. The Contractor will forfeit a penalty to the Owner of \$100.00 per day (or portion of a day) for each worker that is paid less than the prevailing wage for any work done under the Contract by the Contractor or by any Subcontractor.

Section 8.6.2 Prior to commencement of the work, the Contractor shall provide to the Owner a sworn affidavit and other sufficient documentation to affirm its enrollment and participation in the Federal Work Authorization Program. Federal Work Authorization Program means the eVerify program maintained and operated by the United States Department of Homeland Security and the Social Security Administration, or any successor program. The Contractor shall also provide the Owner a sworn affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

Section 8.6.3 As a condition of the Contract, Contractor must provide a 10-hour Occupational Safety and Health Administration (OSHA) construction safety program ("Program") for Contractors on site employees as mandated by Section 292.675, RSMo. Said Program must include a course in construction safety and health approved by OSHA or a similar program approved by the Missouri Department of Labor and Industrial Relations. This requirement includes the following:

8.6.3.1 All of Contractor's on site employees must complete the Program within 60 days of beginning work on the Project;

- 8.6.3.2** Any employee found on the work site subject to this requirement without documentation of the successful completion of the Program will be given 20 days to produce such documentation before being subject to removal from the Project
- 8.6.3.3** Contractor's failure to comply with these requirements will subject it to penalties. Contractor shall forfeit as a penalty to the Owner \$2,500.00 plus \$100.00 for each employee employed by Contractor or Contractor's subcontractor, for each calendar day, or portion thereof, such employee is employed to do work pursuant to this Contract without the required training. Said penalty shall not begin to accrue until the time period in subsections 8.6.2.1 and 8.6.2.2 have elapsed. Contractor will be subject to said penalties notwithstanding any other provision to the contrary in this Contract.
- 8.6.3.4** Contractor shall require its Contracts with all subcontractors to contain these provisions. Contractor shall be responsible for penalties to Owner due to any subcontractor's employees' failure to be able to produce documentary evidence of training in the required program. Contractor may withhold all sums necessary to cover any penalty Owner has withheld or been paid. Contractor may recover any penalties from subcontractor by filing a lawsuit in the Circuit Court of Jackson County, Missouri. Contractor shall have no right of recovery against Owner.

Section 8.6.4 Every transient employer, as defined in Section 285.230, RSMo, must post in a prominent and easily accessible place at the worksite a clearly legible copy of the following: (1) a 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 laws shall, under Section 285.234, RSMo, be liable for a penalty of \$500.00 per day until the notices required by this Section are posted as required by that Statute.

Section 8.6.5 Before employment of any employee, contractor, subcontractor, consultant, or subconsultant who is an individual for work on this Project, the Contractor shall conduct or shall allow the Owner to conduct background checks through all appropriate state agencies and any other background checks as may be standard for entities providing services to public schools, including without limitation, a thorough review of the list of registered sex offenders as provided by the County Sheriff's Department, and any such individual who does not pass such background check as determined by the Owner in its sole discretion shall not be permitted to enter the premises where the Project is located or any other school district property or to work on the Project. The Contractor shall include all of these requirements in its contracts with its subcontractors and suppliers.

Section 8.6 The relationship of the Owner and Contractor is one of District and independent contractor and not master and servant or joint venturers. Except as provided herein, the Contractor does not have authority to act for or on behalf of the Owner.

Section 8.7 Throughout the term of this Agreement, the Architect shall fully comply with all applicable laws and ordinances and the applicable orders, rules, regulations and requirements of all federal, state and municipal governments and appropriate administrative officers and agencies having jurisdiction over the Project, including the policies of the Board of Education of Owner.

§ 8.7 Other provisions:

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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
- .2 AIA Document A101™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

(Insert the date of the E203-2013 incorporated into this Agreement.)

« »

.5 Drawings

Number	Title	Date
Attached as Exhibit "A"		

.6 Specifications

Section	Title	Date	Pages
Attached as Exhibit "B"			

.7 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.

.8 Other Exhibits:

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

[] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below: (Insert the date of the E204-2017 incorporated into this Agreement.)

« »

[] The Sustainability Plan:

Title	Date	Pages

[] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

.9 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.)

«Exhibit A – Index of Drawings
Exhibit B – Table of Contents »

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)

