

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.)

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

~~Clackamas Community College~~
~~19600 Molalla Ave.~~
~~Oregon City, OR 97045~~

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

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

~~Rook Hall Tenant Improvement~~
~~Clackamas Community College -Harmony Campus~~
~~19600 Molalla Ave.~~
~~Oregon City, OR 970457738 SE Harmony Road, Milwaukie OR 97222~~

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

~~Opsis Architecture LLP~~
~~920 NW 17th Avenue~~
~~Portland, OR 97209~~

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 or as reasonably inferable from the Contract Documents as necessary to produce the results the Contract Documents require, 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.)

«The commencement 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.
(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.)

§3.4 Owner is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time. Owner may enter into agreements with third parties based upon the Contractor achieving Substantial Completion of the Work within the Contract Time. If Contractor fails to substantially complete or achieve Substantial Completion of the Work or any portion thereof within the Contract Time, Owner will sustain damages and will incur a loss as a result of such failure. However, the exact amount of damages will be extremely difficult to ascertain. Therefore, in lieu of a precise determination of such damages, the Owner and Contractor agree upon the following terms with respect to liquidated damages.

§3.4.1 If Contractor fails to achieve Substantial Completion of the Work within the Contract Time, Owner is entitled to retain or recover from Contractor as liquidated damages, and not as a penalty, one-half of one percent (.05%) of the Contract Sum per day beginning on the first day following expiration of the Contract Time and continuing each day or portion thereof until the date the Contractor achieves Substantial Completion of the entire Work. The parties agree that these liquidated damages are a reasonable pre-estimate of damages the Owner will incur on a daily basis if completion of the Work is delayed. Contractor will not contest these liquidated damages as being other than the best measure of damages in the event liquidated damages become payable under these provisions.

« »

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)

Any unit prices are complete and include: (i) all materials, equipment, labor, delivery, installation, overhead and profit; and (ii) any other costs or expenses in connection with, or incidental to, the performance of that portion of the Work to which the unit prices apply.

§ 4.4 Allowances included in the Contract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment, including all supporting documentation required by the Contract Documents or reasonably requested by Owner or Architect, submitted to the Owner and 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 Owner and Architect not later than the «last» day of a month, the Owner shall make payment of the certified amount 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 shall be made by the Owner not later than «Thirty» («30») 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, 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.

In addition to other required items, each Application for Payment must be accompanied by the following, all in form and substance to the Owner's satisfaction:

- 1 A sworn statement from the Contractor setting forth all Subcontractors and any material suppliers with whom the Contractor has subcontracted, the amount of each such subcontract, the amount requested for any Subcontractor or material supplier in the application for payment, and the amount to be paid to the Contractor from such progress payment; and
- 2 Beginning with the second Application for Payment and continuing for each application thereafter, Contractor must submit duly executed "after-the-fact" or "trailing" sworn statements from all Subcontractors, material suppliers, and from, as Architect may require, lower tier subcontractors, establishing receipt of payment or satisfaction of payment of all amounts requested on behalf of such entities and disbursed to them prior to the Contractor's submittal of the current 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 « five » percent (« 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 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.)

« »

§ 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 including the Contractor’s responsibility to complete punch list items, 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 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.
(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 unresolved Claim 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*)

« Dispute resolution will proceed according to Section 15 of the General Conditions, as amended. »

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 pursuant to the terms of ORS 279C.570. (*Insert rate of interest agreed upon, if any.*)

« » % « »

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

« [inici group Inc., Patti Miles/Jim McKune, 5100 SW MacAdam Avenue, Portland, OR 97239](#) »

§ 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 written notice to the other party.

§ 8.6 Other provisions:

§ 8.6.1 In addition to all other representations and warranties contained in the Contract Documents, the Contractor represents and warrants the following to Owner as an inducement to Owner to execute this Agreement. These representations and warranties will survive the execution and delivery of this Agreement, any termination of this Agreement and final completion of the Work:

- .1 that it and its Subcontractors are financially solvent, able to pay all debts as they mature and are possessed of sufficient working capital to complete the Work and perform all obligations that the Contract Documents impose;
- .2 that it is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform all obligations that the Contract Documents impose;
- .3 that it is authorized to transact business in Oregon and is properly licensed by all applicable governmental, public and quasi-public authorities that have jurisdiction over Contractor and over the Work and the Project;
- .4 that it is authorized to perform the Work and that the person executing the Agreement has the authority to bind the Contractor to the Agreement;

- .5 that it has visited the Project site, familiarized itself with the local and special conditions under which the Work will be performed and correlated its observations with the requirements of the Contract Documents; and
- .6 that it has the high level of experience and expertise necessary to deliver the Work in accordance with the Contract Documents and that it will perform the Work with the care, skill and diligence of such a contractor.

« »

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, as amended.

§ 9.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction, as amended.

§ 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.)

« »

Section	Title	Date	Pages

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

« »

Number	Title	Date

§ 9.1.6 The Addenda, if any:

Number	Date	Pages

§ 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.)

« The invitation to bid, the Instructions to Bidders, the Contractor's Bid and all forms submitted with the Contractor's bid, including but not limited to performance and payment bonds.

The construction schedule in accordance with Section 3.10.4 of the General Conditions.»

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, except as more specifically described below.
(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	Limit of liability or bond amount (\$0.00)
Performance Bond	<u>Contract Sum</u>
Labor and Material Payment Bond	<u>Contract Sum</u>

Workers Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers. (Required of contractors with one or more employees, unless exempt under ORS 656.027.)

Contractor shall secure, at Contractor's expense, and keep in effect during the term of any Contract, occurrence form commercial general liability and automobile liability insurance for the protection of Contractor, College, its Board of Directors, officers, agents, and employees. Coverage shall include personal injury, bodily injury (including death), and broad form property damage, including loss of use of property, occurring in the course of or in any way related to Contractor's operations, in an amount not less than two million dollars (\$2,000,000.00) combined single limit per occurrence and in an amount not less than four million dollars (\$4,000,000.00) aggregate for general liability. Must list Owner as an additional insured with respect to Contractor's services under this Agreement.

Contractor shall maintain in force, at its own expense, Builder's Risk insurance on an all risk form, including earthquake and flood, for an amount equal to the full amount of the Contract. Any deductible shall not exceed 2 percent of each loss or \$50,000, whichever is more. The policy will include as loss payees the Owner, the Contractor, and its Subcontractors as their interest may appear.

- a) Contractor shall maintain in force, at its own expense, Builder's Risk Installation floater and keep in effect during the term of this Contract, a Builder's Risk Installation Floater for coverage of the Contractors; labor, material, and equipment to be used for completion of the Work performed under this Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Contract. This insurance shall include as loss payees the Owner, the Contractor, and its Subcontractors as their interest may appear.
- b) A loss insured under the Builder's Risk insurance shall be adjusted by the Owner and made payable to the Owner for the insureds, as their interest may appear. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Owner shall have power to adjust and settle a loss with insurers..

If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Agreement for a duration of 24 months, or the maximum time period available to the Contract in the marketplace if less than 24 months. Contractor will be responsible for furnishing certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following Agreement expiration. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this Agreement. Evidence of suitable coverage will be a condition of final acceptance and payment under the Agreement

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)

TEBRA