

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 Fifth day of April in the year 2021
(In words, indicate day, month and year.)

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

Duluth Public Schools
ISD#709
215 North 1st Avenue E.
Duluth, MN 55802

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

St. Germain’s Glass, Inc.
212 N. 40th Avenue W.
Duluth, MN 55807

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

Congdon Park Elementary School
3116 E. Superior Street
Duluth, MN
2021 Window Restoration Project BID #1293

The Architect: Substitute Term "Consultant"
(Name, legal status, address and other information)

MRJ Consultants, LLC
5712 Royal Oaks Drive
Shoreview, MN 55126

The Owner and Contractor agree as follows.

The term Consultant will be used instead of Architect for this document and any associated documents.

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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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.



TABLE OF ARTICLES

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2	THE WORK OF THIS CONTRACT
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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.

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.)

Upon Contractor's receipt of Notice to Proceed by Owner. Work can commence on site on or after June 11, 2021

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 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.

[X] By the following date: Substantial Completion August 22, 2021. Final Completion August 29, 2021. Project completion dates will be subject to the delivery date of the new windows.

§ 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
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§ 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 FIVE HUNDRED NINETY FOUR THOUSAND EIGHT HUNDRED TWENTY TWO DOLLARS (\$ 594,822.00), 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
N/A	

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. *(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)*

Item	Price	Conditions for Acceptance
NONE		

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

Item	Price
NONE	

§ 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)
NONE		

§ 4.5 Liquidated damages, if any: *(Insert terms and conditions for liquidated damages, if any.)*

N/A

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

N/A



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:

N/A

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 5th day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 5th 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 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 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.)

Five Percent (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.)

N/A

§ 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.)

N/A

§ 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.

§ 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:

As Stated.

§ 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.)

As Stated

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the 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.)

Mr. Mike Johnston, RRC
MRJ CONSULTANTS, LLC
5712 Royal Oaks Drive, Shoreview, MN 55126



§ 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
- 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.

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.

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)

N/A

§ 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)

Mr. Dave Spooner
Duluth Public Schools- ISD#709
215 North 1st Avenue East
Duluth, MN 55802

Mr. Mike Johnston RRC
MRJ CONSULTANTS, LLC
5712 Royal Oaks Drive
Shoreview, MN 55126

§ 8.3 The Contractor’s representative:

(Name, address, email address, and other information)

Mr. Mike McCabe
St. Germain’s Glass, Inc.
212 N. 40th Avenue W.
Duluth, MN 55807



§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior 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.

§ 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.)

§ 8.7 Other provisions:

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.)

N/A

- .5 Drawings

Number	Title	Date
1-4	2021 Window Replacement Congdon Park Elementary	2/23/2021

- .6 Specifications

Section	Title	Date	Pages
Project Manual	2021 Congdon Park Elementary Window Replacement Project BID #1293	2/3/2021	123

- .7 Addenda, if any:

Number	Date	Pages
1	3/19/2021	6
2	3/23/2021	4



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.)

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

[N/A] The Sustainability Plan:

Title	Date	Pages
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[X] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Project Manual Section 00 60 00	Owners Project Forms		1-43


.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.)

ISD 709 Amendments to 2017 AIA Documents dated 10/23/2020 - 6 pages

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

(Printed name and title)

DocuSigned by:

4643EFB6A20B499...
CONTRACTOR (Signature)
Denny Nelson General Manager

(Printed name and title)

Additions and Deletions Report for **AIA® Document A101® – 2017**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:09:18 ET on 04/05/2021.

PAGE 1

AGREEMENT made as of the Fifth day of April in the year 2021

...

Duluth Public Schools
ISD#709
215 North 1st Avenue E.
Duluth, MN 55802

...

St. Germain's Glass, Inc.
212 N. 40th Avenue W.
Duluth, MN 55807

...

Congdon Park Elementary School
3116 E. Superior Street
Duluth, MN
2021 Window Restoration Project BID #1293

The Architect: Substitute Term "Consultant"

...

MRJ Consultants, LLC
5712 Royal Oaks Drive
Shoreview, MN 55126

...

The Owner and Contractor agree as follows.

The term Consultant will be used instead of Architect for this document and any associated documents.

PAGE 2

[X] Established as follows:

...

Upon Contractor's receipt of Notice to Proceed by Owner. Work can commence on site on or after June

11, 2021

PAGE 3

[] By the following date: Substantial Completion August 22, 2021. Final Completion August 29, 2021.
Project completion dates will be subject to the delivery date of the new windows.

...

§ 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 FIVE HUNDRED NINETY FOUR THOUSAND EIGHT HUNDRED TWENTY TWO DOLLARS (\$ 594,822.00), subject to additions and deductions as provided in the Contract Documents.

...

N/A

...

NONE

...

NONE

...

NONE

...

N/A

...

N/A
PAGE 4

N/A

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 5th day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 5th 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 Thirty (30) days after the Architect receives the Application for Payment.

...

Five Percent (5%)
PAGE 5

N/A

...

N/A

...

As Stated.

...

~~%~~ As Stated

...

Mr. Mike Johnston, RRC
MRJ CONSULTANTS, LLC
5712 Royal Oaks Drive, Shoreview, MN 55126
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[] Arbitration pursuant to Section 15.4 of AIA Document A201-2017

...

N/A

...

<u>Mr. Dave Spooner</u>	<u>Mr. Mike Johnston RRC</u>
<u>Duluth Public Schools- ISD#709</u>	<u>MRJ CONSULTANTS, LLC</u>
<u>215 North 1st Avenue East</u>	<u>5712 Royal Oaks Drive</u>
<u>Duluth, MN 55802</u>	<u>Shoreview, MN 55126</u>

...

Mr. Mike McCabe
St. Germain's Glass, Inc.
212 N. 40th Avenue W.
Duluth, MN 55807
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N/A

...

<u>1-4</u>	<u>2021 Window</u>	<u>2/23/2021</u>
	<u>Replacement Congdon</u>	
	<u>Park Elementary</u>	

...

<u>Project Manual</u>	<u>2021 Congdon Park</u>	<u>2/3/2021</u>	<u>123</u>
	<u>Elementary Window</u>		
	<u>Replacement Project BID</u>		
	<u>#1293</u>		

...

<u>1</u>	<u>3/19/2021</u>	<u>6</u>
<u>2</u>	<u>3/23/2021</u>	<u>4</u>

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[N/A] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:

...

[N/A] The Sustainability Plan:

...

[X] Supplementary and other Conditions of the Contract:

...

Project Manual Section 00 60 00 Owners Project Forms 1-43

...

ISD 709 Amendments to 2017 AIA Documents dated 10/23/2020 - 6 pages

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Michael R Johnston, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:09:18 ET on 04/05/2021 under Order No. 4103808759 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)

MRS Consultants, LLC - President

(Title)

4/5/2021

(Dated)

ISD 709 Amendments to 2017 AIA documents

Dated: 10/23/2020

In interpreting these Amendments, underlining is new language added to the preexisting language and strikeout is deletion of preexisting language.

A201 – 2017 General Conditions

§ 3.7.3 Delete the existing language and substitute the following: If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction, and shall promptly notify the Architect of such Work.

§ 3.18.1 Delete the existing language and substitute the following: To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. If the indemnified party is entitled to separate counsel under the governing law, then Contractor shall pay for those attorney's fees and other costs and disbursements, and the indemnified party may choose its own attorneys subject to the consent of the Contractor, which consent shall not be unreasonably withheld.

§ 4.2.3 Delete the existing language and substitute the following: On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work. However, if the Architect knows or has been informed that the Contractor is not performing the Work in compliance with the Contract Documents then the Architect shall notify the Owner and the Contractor of such noncompliance.

§ 4.2.12 Delete the existing language and substitute the following: Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith. However, the Architect remains liable for its own negligence or breach of contract, if any.

9.6.1 12 Delete the existing language and substitute the following: After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. The Owner retains all rights to claims and defenses notwithstanding having made payments pursuant to Certificates of Payment or having made payments not

pursuant to Certificates of Payment, and the Owner has not waived such claims and defenses and is not estopped from making such claims or defenses.

9.6.6 Delete the existing language and substitute the following: A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents. The Owner retains all rights to claims and defenses notwithstanding having made payments pursuant to Certificates of Payment or having made payments not pursuant to Certificates of Payment, and the Owner has not waived such claims and defenses and is not estopped from making such claims or defenses.

9.6.7 Delete the existing language and substitute the following: Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, ~~create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.~~

9.8.5 Delete the existing language and substitute the following: The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. The Owner retains all rights to claims and defenses notwithstanding a Certificate of Substantial Completion, and the Owner has not waived such claims and defenses and is not estopped from making such claims or defenses.

9.10.1 Delete the existing language and substitute the following: Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. The Owner retains all rights to claims and defenses notwithstanding a final Certificate for Payment, and the Owner has not waived such claims and defenses and is not estopped from making such claims or defenses.

9.10.4 Delete the existing language and substitute the following: The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

The Owner retains any claims for delay and any other consequential damages, breach of warranty whether special or other warranty to which it is entitled under governing law, and any other damages otherwise permitted under the Contract Documents, notwithstanding the making of final payment.

§ 10.3.4 Delete the existing language and substitute the following: The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or

substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances. The Owner also is not responsible for the acts of third parties relating to hazardous substances or materials over which it does not have the right of control, nor for such acts by third parties for which the Owner is not otherwise responsible.

11.3.1 Delete the existing language and substitute the following: The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification,

contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. However, this waiver is not effective if the insurance prohibits such waiver notwithstanding this provision. If such insurance prohibits such waiver, then the party insured shall endeavor to obtain insurance coverage which does not prohibit such waiver.

11.4 Delete the existing language and substitute the following: Loss of Use, Business Interruption, and Delay in Completion Insurance. The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards ~~however caused~~ unless caused by the negligence or breach of contract of the Contractor or Architect.

12.2.2.3 Delete the existing language and substitute the following: The one-year period for correction of Work shall ~~not~~ be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

12.2.5 Delete the existing language and substitute the following: Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work. If the Contractor does not perform its work in compliance with all of its obligations, the Owner's remedies are not limited to the Contractor's obligation to correct the work

13.1 Delete the existing language and substitute the following: Governing Law. The Contract shall be governed by the law of the place where the Project is located, ~~excluding that jurisdiction's choice of law rules.~~ If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

13.4.3 Delete the existing language and substitute the following: If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including the costs of such testing, inspection or approval or those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

15.1.2 Time Limits on Claims. Delete the existing language and substitute the following: The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

15.1.3.1 Delete the existing language and substitute the following: Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. However, this 21 day notice requirement is not a period of limitation that bars a claim made after that 21 day period.

15.1.7 This provision is deleted. Waiver of Claims for Consequential Damages The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- ~~1~~ damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons;
and
- ~~2~~ damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

15.2.5 Delete the existing language and substitute the following: The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties unless one or more parties proceed to make the Claim but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

15.2.6.1 Delete this provision: Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.3 Delete this provision: Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the

dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.


15.4.4.1 Delete the existing language and substitute the following: Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration does not prohibit ~~permits~~ consolidation or the other party agrees to consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

15.4.4.2 Delete the existing language and substitute the following: Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the sought to be joined can be joined under governing law or consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

OWNER (Signature)

(Printed name)

(Printed title)

DocuSigned by:

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CONTRACTOR (Signature)

Denny Nelson

(Printed name)

General Manager

(Printed title)

ISD 709 Amendments to 2017 AIA documents

Dated: 10/23/2020

In interpreting these Amendments, underlining is new language added to the preexisting language and strikeout is deletion of preexisting language.

A101 – 2017 Owner Contractor Agreement

4.5 Delete the existing language and substitute the following: ~~Liquidated damages, if any.~~ Reasonable liquidated damages are not penal and are in addition to, and not a substitute for, any actual or consequential or other damages. Liquidated damages, if any, are as follows:
(Insert terms and conditions for liquidated damages, if any.)

§ 5.1.1 Delete the existing language and substitute the following: 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. Notwithstanding a Certificate for Payment by the Architect, and notwithstanding any payments made to the Contractor, the Owner retains the right to contest such payments and is not estopped or otherwise deemed to have waived claims and defenses relating to payments to the Contractor or relating to any claims or defenses relating to the Contractor's Work. This applies to all parts of this Contract.


§ 5.2.1 Delete the existing language and substitute the following: 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;
- .3 however, the Owner may retain sufficient funds to pay for the estimated cost of 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, until the Contractor has completed those obligations.

OWNER (Signature)

(Printed name)

(Printed title)

DocuSigned by:

4043EFB6A20B499...

CONTRACTOR (Signature)

Denny Nelson

(Printed name)

General Manager

(Printed title)