
AIA Document A101

Standard Form of Agreement Between Owner and Contractor

where the basis of payment is a

STIPULATED SUM

1987 EDITION

*The 1987 Edition of AIA Document A201, General Conditions of the Contract for Construction, is adopted
in this document by reference.*

The name of this Agreement is:

Agreement to Perform Exterior Envelope Renovations at Durham City
Hall and City Hall Annex

AGREEMENT

made as of the day of in the year of
~~Nineteen Hundred and~~ two thousand and ~~thirteen~~ (2013)

BETWEEN the Owner, City of Durham:

(Name and address)

City of Durham
101 City Hall Plaza
Durham, NC 27701

and the Contractor:

(Name and address)

Burney and Burney Construction Co. Inc.
3410 N. Memorial Drive
Greenville, NC 27834

The Contractor is a corporation organized and existing in the State of North
Carolina

The Project is:

(Name and location)

City Hall and Annex Exterior Envelope Renovations
101 City Hall Plaza
Durham, NC 27701

The Architect is:

(Name and address)

Roughton Nickelson DeLuca Architects, PA (RND Architects)
3608 University Drive, Suite 204
Durham, NC 27707

The Owner and Contractor agree as set forth below.

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; these 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 Modifications, appears in Article 9.

ARTICLE 2
THE WORK OF THIS CONTRACT

The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows:

- 2.1 The Contractor is the single prime contractor.
- 2.2 This is a multiprime contract project, and the Contractor is:
- 2.2.1 the general contractor.
 - 2.2.2 the plumbing contractor.
 - 2.2.3 the electrical contractor.
 - 2.2.4 the HVAC contractor.
 - 2.2.5 the contractor to perform the Work.

ARTICLE 3
DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The date of commencement is the date from which the Contract Time of Paragraph 3.2 is measured, ~~and shall be the date of this Agreement, as first written above, 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 date of commencement shall be:
- the date of this Agreement.
 - fixed in a notice to proceed.
 -

Unless the date of commencement is established by a notice to proceed issued by the Owner, the Contractor shall notify the Owner in writing not less than five days before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

3.2 The Contractor shall achieve Substantial Completion of the entire Work not later than Two-hundred and eighty (280) days after the date of commencement referred to in paragraph 3.1.
(Insert in the preceding sentence the calendar date or number of calendar days after the date of commencement. Also insert below any requirements for earlier Substantial Completion of certain portions of the Work, if not stated elsewhere in the Contract Documents.)

subject to adjustments of this Contract Time as provided in the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

ARTICLE 4 CONTRACT SUM

4.1 The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract the Contract Sum of Four million six hundred twenty thousand Dollars (\$4,620,00.00), 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 decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date until which that amount is valid.)

Alternate No. A1 – Provide preferred brand/vendor brick will increase the base bid by zero dollars (\$0.00)

Alternate No. A3 – Replace revolving door at main entrance will increase the base bid by zero dollars (\$0.00)

Alternate No. L1 – Landscaping and exterior improvements will increase the base bid by zero dollars (\$0.00)

Alternate No. M1 – Provide preferred brand/vendor building controls will increase the base bid by zero dollars (\$0.00)

Alternate No. E2 – Exterior accent lighting – color-changing LED fixtures at Chambers and main entrance will increase the base bid by zero dollars (\$0.00)

Alternate No. E3 – Exterior landscape lighting – "Column" style fixtures at ground level will increase the base bid by zero dollars (\$0.00)

4.3 Unit prices, if any, are as follows: See Subparagraph 9.2.2 of the Supplementary Conditions.

1. Unit Price No. 1 – Tuckpointing of \$14.00 per Linear Foot

ARTICLE 5 PROGRESS PAYMENTS

5.1 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.

5.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

5.3 Provided an Application for Payment is received by the Architect not later than the 1st day of a month, the Owner shall make payment to the Contractor not later than the 25th 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 45 days after the Architect receives the Application for Payment.

5.4 Each Application for Payment shall be based upon the 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 and be prepared in such form and supported by such data to substantiate its accuracy as the Architect Owner may require. This Schedule, unless objected to by the Architect Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

5.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

5.6 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

5.6.1 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 total 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 the dispute may be included as provided in Subparagraph 7.3.7 of the General Conditions even though the Contract Sum has not yet been adjusted by Change Order;

(There shall be no retainage on periodic or final payments for contracts having a total project cost less than \$100,000.00. For contracts having a total project costs equal to or greater than \$100,000.00, the maximum retainage is FIVE (5%))

5.6.2 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 %);

(There shall be no retainage on periodic or final payments for contracts having a total project cost less than \$100,000.00. For contracts having a total project cots equal to or greater than \$100,000.00, the maximum retainage is FIVE (5%))

5.6.3 Subtract the aggregate of previous payments made by the Owner; and

5.6.4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of the General Conditions.

5.7 The progress payment amount determined in accordance with Paragraph 5.6 shall be further modified under the following circumstances:

5.7.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to ninety-five percent (95 %) of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work and unsettled claims; and

5.7.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Subparagraph 9.10.3 of the General Conditions.

5.8 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 Subparagraph 5.6.1 and 5.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

5.8.1 If after the project is deemed fifty percent (50%) complete based upon the Contractor's gross project invoices, excluding the value of materials stored off-site, except that the value of the materials stored on-site shall not exceed 20% of the Contractor's gross project invoices for the purpose of determining the percent completion of the Project, and the Contractor provides Owner the following:

- .1 Written verification evidencing 50% completion of the Project; and,
- .2 Written consent of the surety named in the project performance and payment bonds agreeing that the Owner shall not retain any further retainage from periodic payments due to the Contractor;

the Owner shall cease holding retainage from future periodic payments if the Owner finds that the Contractor is performing satisfactorily, and any nonconforming work identified in writing by the Owner (prior to the point of 50% project completion) has been corrected by the Contractor and accepted by the Owner. If, however, the Owner determines the Contractor's performance is unsatisfactory, the Owner may reinstate the specified retainage for each subsequent periodic payment. Notwithstanding anything to the contrary, Owner may assess retainage after 50% project completion, even if the Contractor has complied with Paragraph 5.8.1.1 and 5.8.1.2 and continues to perform satisfactorily as necessary to retain two and one-half percentage (2.5%) total retainage through the completion of the Project.

5.8.2 If by or before the Project is deemed 50% complete and one hundred percent (100%) performance has been completed for the following "early" finishing trades: (1) structural steel; (2) piling; (3) caisson; or (4) demolition; and after the Owner has approved or certificated that such early finishing work is acceptable and in accordance with the Contract Documents, and after the Contractor provides Owner the following:

- .1 The early finishing trade subcontractor's written request for such payment; and,
- .2 Written consent of the surety named in the project performance and payment bonds agreeing that the Owner shall make such early finishing trade payment;

the Owner shall make full payment to the Contractor for said 100% completed early finishing trade work less retainage of five-tenths percent (0.5%)(of the early finishing trade contract) upon the later occurrence of (1) 60 days receipt of said early finishing trade subcontractor's written request, or (2) immediately upon receipt of said written consent of the surety.

5.8.3 Within 60 days of receipt by owner of (1) a pay request and (2) written consent of the surety, and after Owner has either (1) received a certificate of substantial completion, or (2) received beneficial occupancy or use of the Project (if applicable), the Owner shall pay an amount sufficient to increase total payment to Contractor to the Contract Price, less such amounts as the Owner shall determine in accordance with the Final Payment provisions of Article 6, including up to 250% of the Owner's estimate of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

5.8.4 Notwithstanding any of the retainage provisions described herein, there shall be no retainage on periodic or final payments for contracts having a total project cost less than \$100,000.00, and, in addition to any retainage amounts allowed to be held by the Owner, the Owner shall also retain all rights allowed under this Agreement to withhold payment to the Contractor for unsatisfactory job progress, defective or nonconforming construction not remedied, disputed work, or third-party claims filed against the Owner or reasonable evidence that a third-party claim will be filed.

ARTICLE 6 FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor within 30 days after ~~when~~ (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct nonconforming Work as provided in Subparagraph 12.2.2 of the General Conditions and to satisfy other requirements, if any, which necessarily survive final payment; and (2) a final Certificate for Payment has been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment, ~~or as follows:~~

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, ~~or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~
(Insert rate of interest agreed upon, if any.)

four (4) percent simple interest per year

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

7.3 Other provisions: (Check one box.)

Subparagraph 7.3.1, titled "Liquidated Damages," shall apply to this Agreement.
The amount of liquidated damages shall be five hundred dollars (\$500.00) per day.

Subparagraph 7.3.1, titled "Liquidated Damages," shall not apply to this Agreement.

7.3.1 Liquidated Damages. The parties recognize that Owner will suffer financial loss if the Work is not completed within the Contract Time (including adjustments and extensions, if any). They also recognize the delays, expense, and difficulty to both parties involved in proving or contesting the amounts of those losses. Instead of requiring proof of those amounts, it is agreed that Contractor shall be liable for and

shall pay Owner the amount specified above in paragraph 7.3 per day as liquidated damages, and not as a penalty, for each day after the Contract Time until Substantial Completion. The amounts stated as liquidated damages are agreed to be reasonable estimates of Owner's losses and expenses for delays, including inspections, architectural and engineering services, and administrative costs. If any part of those delays is caused by Owner, liquidated damages shall not be charged for the portion of the delay time that was caused by Owner but shall be charged for the portion not so caused. Owner may collect liquidated damages by retaining moneys otherwise due Contractor in the amount of such damages, and by other legal means. Nothing in this Subparagraph 7.3.1 shall reduce Owner's rights under Article 14 of the General Conditions or other provisions of the Contract Documents. In its discretion, Owner may waive some or all liquidated damages against the Contractor. Such a waiver is valid only if done by a signed writing that refers specifically to this Subparagraph 7.3.1 and specifically mentions "liquidated damages." Such a waiver shall not constitute an extension of the Contract Time.

7.3.2 **Performance and Payment bonds** The Contractor is is not required to furnish performance and payment bonds.

7.3.3 **Additional Provisions** E-Verify Compliance. The contractor represents and covenants that the contractor and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (NCGS). The City is relying on this E-Verify Compliance section in entering into this contract. The parties agree to this section only to the extent authorized by law. If this section is held to be unenforceable or invalid in whole or in part, it shall be deemed amended to the extent necessary to make this contract comply with NCGS 160A-20.1(b).

ARTICLE 8 TERMINATION OR SUSPENSION

- 8.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.
8.2 The Work may be suspended by the Owner as provided in Article 14 of the General Conditions.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

- 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:
9.1.1 The Agreement is this executed Standard Form of Agreement Between Owner and Contractor, AIA Document, 1987 Edition.
9.1.2 The General Conditions are the General Conditions of the Contract for Construction, AIA Document A201, 1987 Edition.
9.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual, ~~dated and are~~ as follows:

Date of Project Manual: September 6, 2013

Document	Title	Pages
	Document 022704W CITY OF DURHAM SUPPLEMENTARY CONDITIONS TO AIA 201 (1987 EDITION) FOR USE WHEN AN ARCHITECT IS NOT TO ADMINISTER THE PROJECT	19
	Claim Form for Additional Time on the Basis of Adverse Weather Conditions	2
ST-1 to ST-4	Notice on Reimbursement for Sales and Use Taxes, with implementing forms	4
	Subcontractor Monthly Record of Payment Report	1
	Final Subcontractor Record of Payment Report	1

9.1.4 The Specifications are those contained in the Project Manual dated as in Subparagraph 9.1.3, and are as follows:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages

Refer to Exhibit A: List of Specifications, 4 pages

9.1.5 The Drawings are as follows, ~~and are dated unless a different date is shown below:~~
(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date

Refer to Exhibit B: List of Drawings, 2 pages

9.1.6 The Addenda, if any, are as follows:

Number	Date	Pages
No. 1	9/27/13	20
No. 2	10/2/13	3
No. 3	10/16/13	29

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

9.1.7 Other documents, if any, forming part of the Contract Documents are as follows:

(List here any additional documents which are intended to form part of the Contract Documents. The General Conditions provide that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Exhibit A: List of Specifications, 4 pages

Exhibit B: List of Drawings, 2 pages

~~This Agreement is entered into as of the day and year first written above and is executed in at least three original copies of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.~~

IN WITNESS WHEREOF, this Agreement is executed under seal by the duly authorized officers of the City and the Contractor.

CITY OF DURHAM

ATTEST:

By: _____

Burney and Burney Construction Co., Inc.

ATTEST:

Secretary
(Affix corporate seal.)

By: _____

President