

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 Twentieth day of May in the year Two Thousand Twenty-two
(In words, indicate day, month and year.)

BETWEEN the Owner:

(Name, legal status, address and other information)

Asbury Park School District
910 Fourth Avenue
Asbury Park, New Jersey 07712
Telephone Number: 732-776-2606

and the Contractor:

(Name, legal status, address and other information)

H&S Construction and Mechanical, Inc.
721 Bayway Avenue
Elizabeth, New Jersey 07202
Telephone Number: 908-352-4345
Fax Number: 908-352-0644

for the following Project:

(Name, location and detailed description)

21K113 HVAC Projects at
Multiple Schools
Asbury Park, New Jersey 07712

The Architect:

(Name, legal status, address and other information)

Spiezle Architectural Group, Inc.
1395 Yardville Hamilton Square Road
Suite 2A
Hamilton, New Jersey 08691
Telephone Number: 609-695-7400
Fax Number: 609-394-2274

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. 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.

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TABLE OF ARTICLES

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EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Contractor's Bid, 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.)

Work will commence within Ten (10) Calendar Days after issuance of written "Notice to Proceed."

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.)

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[] Not later than () calendar days from the date of commencement of the Work.

[X] By the following date: August 23, 2023

§ 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

All work will be substantially completed in accordance with the Contract Documents and Contractor's Construction Schedule for substantial completion of the entire project including a Certificate of Occupancy for the Asbury Park High School, Bradley Elementary School, Thurgood Marshall School, and the Dr. Martin Luther King, Jr. School.

Substantial Completion Date

August 23, 2023

All time limits stated in the Contract are of the essence.

§ 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 Six Million Two Hundred Nine Thousand Dollars and Zero Cents (\$6,209,000.00), 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
Alternate No. AB-01: APHS – Remove Two Dust Collectors.	\$24,000.00
Alternate No. AB-02: APHS – Supply Ductwork in Locker Rooms & Adjacent Rooms.	\$16,000.00
Alternate No. AB-03: BES – Replace Rooftop Condensing Units.	\$36,000.00
Alternate No. AB-04: BES – Replace Suspended Air Handling Units.	\$90,000.00
Alternate No. AB-05: MLK – New Transformer.	\$64,000.00
Alternate No. AB-06: TMES – Insulate Supply Ductwork.	\$55,000.00

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

Item	Price
Allowance No. AL-01: Lump Sum Allowance.	\$50,000.00

Upon completion of the project, any unused portions of the Allowance will be credited to the Owner.

§ 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.)

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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.)

In the event of the failure of the Contractor to complete the said work within the time stated in its proposal, and in accordance with article 8.1.5, the Contractor shall be liable to the Owner in the sum of ONE THOUSAND (\$1,000.00) DOLLARS per day for each and every calendar day that the work remains incomplete in accordance with designated phased completions. This sum shall be treated as liquidated damages (and not a penalty) for the loss to the Owner of the use of premises in a completed state of construction, alteration or repair, and for added administration and inspection costs to the Owner on account of the delay; provided, however, that the said liquidated damages shall be in addition to other consequential losses or damages that the Owner may incur by reason of such delay, such as, but not limited to, reasonable attorney's fees, all additional consequential Architectural and Engineering fees incurred including, but not necessarily limited to, additional design work, submittal reviews, correspondence, inspections, job meetings, reviewing applications for payment, punchlists, and similar services, etc. by the Owner after the scheduled date of substantial completion as indicated in article 8.1.5, other added costs of the project and the cost of furnishing temporary services, if any. Any such sums for which the Contractor is liable may be deducted by the Owner from any monies due or to become due to the Contractor.

§ 4.6 Other:

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

None.

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 An Application for Payment must be approved by the Architect prior to submission to the Owner. Following approval by the Architect, the approved Application for Payment or Certificate for Payment shall be submitted to the Owner with a payment voucher. If approved by the Owner for payment, which approval shall not be unreasonably withheld, such payment shall be made during the Owner's subsequent payment cycle. Provided that an Application for Payment is reviewed and approved, the required payment date shall be no more than 90 calendar days from approval.

The Owner reserves the right to withhold on account of subsequently discovered evidence, the whole or part of any monthly payment to such extent as may be necessary to protect against loss on account of defective work not remedied or any form of payment claims against the Contractor that may subsequently have accrued. The Owner shall withhold the retainage as prescribed N.J.S.A. 18A:18A-40 et seq. and N.J.A.C. 19:30-3.5(a)(1). All payments shall comply with the New Jersey Prompt Payment Act, N.J.S.A. 2A:30A-1 et seq.

In accordance with N.J.S.A. 2A:30A-2, the billing date is established fourteen (14) days prior to the regular meeting of the Owner. Notwithstanding the above, pursuant to N.J.S.A. 2A:30A1 et seq. (the "Act"), a public or governmental entity that requires the entity's governing body to vote on authorizations for each periodic payment, final payment, or retainage monies, such as the Owner, is excepted from the timing requirements of the Act. Accordingly, the Owner shall not approve the Contractor's Application for Payment until it is certified by the Architect in accordance herewith and shall not approve the Contractor's Certified Payment Application until the next scheduled public meeting of the Owner following the Owner's receipt of the Certified Payment Application from the Architect. The Owner shall not make payment to the Contractor for the Certified Payment Amount until the Owner's subsequent payment cycle following its approval of the Payment Application. In the event the total cost of project exceeds \$100,000, partial

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payments shall be made in accordance with the contract documents, which provisions are permissible exceptions to the requirements set forth in N.J.S.A. 2A:30A-2. All disputes regarding whether a party has failed to make payments pursuant to N.J.S.A. 2A:30A-1 et seq. may be submitted to a process of alternative dispute resolution. If the contractor has a performance bond, two percent (2%) of the amount due on each partial payment shall be withheld when the outstanding balance exceeds \$500,000 and five percent (5%) of the amount due on each partial payment shall be withheld when the outstanding balance is \$500,000 or less.

§ 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.)

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 "Pursuant to N.J.S.A. 18A:18A-40, et seq., the Owner shall withhold 2% of the amount due on each partial payment when the outstanding balance of the contract exceeds \$500,000.00 and the Owner shall withhold 5% of the amount due on each partial payment when the outstanding balance of the contract is \$500,000.00 or less.

§ 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:

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(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.)

None.

§ 5.1.7.3

(Paragraphs deleted)

Deleted.

§ 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 indicated in the General Conditions of the Contract for Construction. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The Final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner.

§ 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.)

Interest shall be in accordance with N.J.S.A. 2A:30A-2(c) – Prime Rate plus one percent.

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.)

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of A.I.A. Document A201-2017.

§ 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

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[] 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.)

None.

§ 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)

Geoffrey Hastings, Business Administrator/Board Secretary
Asbury Park School District
910 Fourth Avenue
Asbury Park, New Jersey 07712
Telephone Number: 732-776-2606

§ 8.3 The Contractor's representative:

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

Daniel Hernandez, President
H&S Construction and Mechanical, Inc.
721 Bayway Avenue
Elizabeth, New Jersey 07202
Telephone Number: 908-352-4345
Fax Number: 908-352-0644

§ 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 the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth 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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§ 8.7 Other provisions:

The Contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

§ 8.8 The Contractor represents that, to the best of its knowledge, information and belief, none of its employees in engaged in conduct that does, or may, constitute a conflict of interest under, or a violation of, the School Ethics Act, N.J.S.A. 18A:12-21, et seq., and N.J.A.C. 6A:28-1.1, et seq.

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 Deleted
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction (subject to modifications as specified in Project Manual Section 006212 Supplementary Conditions)
- .4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exchange Addendum

(The following table is intended to provide a summary of the documents included in the Agreement.)

B. Schedule

Section	Title	Page
	Construction Schedule (to be provided by the Contractor)	
	General and Special Conditions	

C. Specifications

Section	Title	Page	Page
	Building Information Modeling and Digital Data Exchange Addendum		

D. Addenda, Change

Section	Title	Page	Page
006212	Supplementary Conditions	006212	006212
006212	Supplementary Conditions	006212	006212
006212	Supplementary Conditions	006212	006212

(The following table is intended to provide a summary of the documents included in the Agreement.)

E. Other Documents

(The following table is intended to provide a summary of the documents included in the Agreement.)

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F. The Construction Plan

Section	Title	Page	Page
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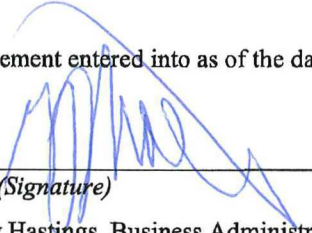
[X] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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- .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.)

The Owner's Instruction to Bidders and the Contractor's Bid Proposal.

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



OWNER (Signature)

Geoffrey Hastings, Business Administrator/Board
Secretary
(Printed name and title)



CONTRACTOR (Signature)

Daniel Hernandez, President
(Printed name and title)

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