



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 1st day of November in the year 2022
(In words, indicate day, month and year.)

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

Town of Apex
Apex, NC
PO Box 250
Apex, NC 27502

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

MLB Construction Services, LLC
1930 N. Salem St.
Apex, NC 27523

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

Town of Apex Mason Street Municipal Building
Mason Street
Apex, NC

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

Hobbs Architects, P.A.
159 W. Salisbury St.
PO Box 1457
Pittsboro, NC 27312

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.

TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	TERMINATION OR SUSPENSION
8	MISCELLANEOUS PROVISIONS
9	ENUMERATION OF CONTRACT DOCUMENTS

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.)

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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[X] Not later than three hundred and sixty-five (365) calendar days from the date of commencement of the Work.

[] By the following date:

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
N/A	N/A

§ 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 Six hundred fifty-seven thousand and two hundred dollars (\$ 6,657,200.00), 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 # G-1: Preferred Brand Alternate for Door Hardware	\$ 0.00
Alternate # G-2: Window Coverings	\$ 25,000.00
Alternate # G-3: Detached Storage Building	\$ 61,000.00
Alternate # G-4: Terrazzo Town Seal	\$ 7,600.00
Alternate # P-1: Preferred Brand Alternates for Sink Faucets	\$ 0.00
Alternate # M-2: Preferred Brand Alternate for DDC System	\$ 100,000.00
Alternate # E-1: Preferred Brand Alternate for Parking Lot Lighting	\$ 4,000.00

§ 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
N/A		

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

Item	Price
Allowance No. 1: Mass Rock removal and disposal off-site	\$3,600
Allowance No. 2: Trench Rock removal and disposal off-site	\$4,200
Allowance No. 3:	\$1,350

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Unsuitable Soils removal and disposal on-site	
Allowance No. 4: Unsuitable Soils removal and disposal off-site	\$15,750
Allowance No. 5: Replacement of removed rock and unsuitable soils with on-site Satisfactory Soil	\$3,450
Allowance No. 6: Replacement of removed rock and unsuitable soils with off-site Satisfactory Soil	\$6,900
Allowance No. 7: Replacement of removed rock or unsuitable soils with Aggregate Base Course	\$13,125
Allowance No. 8: Replacement of removed rock or unsuitable soils with No. 57 Washed Stone	\$1,580
Allowance No. 9: Replacement of removed rock or unsuitable soils with Flowable Fill	\$7,900
Allowance No. 10: Wetland Impervious Clay Liner	\$2,520
Allowance No. 11: Separation/Stabilization Geotextile Fabric	\$200
Allowance No. 12: Biaxial Geogrid	\$400
Allowance No. 13: Full-Depth Asphalt Pavement Repair	\$13,400
Allowance No. 14: Contingency Allowance for unforeseen conditions	\$16,000
Allowance No. 15: Demonstration and Training Time	24 hours of training
Allowance No. 16: Brick Price Allowance	BR-1 - \$370/1000 BR-2 - \$500/1000 Special Shape - \$500/1000
Allowance No. 17: Breakroom Appliances	\$22,000
Allowance No. 18: Electric Vehicle Charging Station	\$10,000.00

§ 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)
Unit Price No. 1: Mass Rock removal and disposal off-site	CY	\$183.00
Unit Price No. 2:	CY	\$210.00

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Trench Rock removal and disposal off-site		
Unit Price No. 3:	CY	\$13.50
Unsuitable Soils removal and disposal on-site		
Unit Price No. 4:	CY	\$21.00
Unsuitable Soils removal and disposal off-site		
Unit Price No. 5:	CY	\$34.50
Replacement of removed rock and unsuitable soils with on-site Satisfactory Soil		
Unit Price No. 6:	CY	\$34.50
Replacement of removed rock and unsuitable soils with off-site Satisfactory Soil		
Unit Price No. 7:	CY	\$37.50
Replacement of removed rock or unsuitable soils with Aggregate Base Course		
Unit Price No. 8:	CY	\$39.50
Replacement of removed rock or unsuitable soils with No. 57 Washed Stone		
Unit Price No. 9:	CY	\$39.50
Replacement of removed rock or unsuitable soils with Flowable Fill		
Unit Price No. 10:	CY	\$42.00
Wetland Impervious Clay Liner		
Unit Price No. 11:	SY	\$2.00
Separation/Stabilization Geotextile Fabric		
Unit Price No. 12:	SY	\$4.00
Biaxial Geogrid		
Unit Price No. 13:	SY	\$134.00
Full-Depth Asphalt Pavement Repair		

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

If the Work is not substantially complete on or before the date provided in Section 3.3 of this Contract, or within an extension period granted by the Owner, the Owner will sustain damage that will be impracticable and extremely difficult to quantify in the event of and by reason of such delays. In such event, the Contractor shall pay to the Owner as Liquidated Damages, and not as penalty, the sum of One Thousand & 00/100 Dollars (\$1,000) for each consecutive calendar day of delay. Any sums that may be due the Owner as Liquidated Damages may be deducted from any monies due or to become due the Contractor under the Contract or may be collected from the Contractor's Surety.

§ 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.

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§ 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 25th day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 10th 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.)

Retainage is 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

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§ 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.)

When the Project is fifty percent (50%) complete, the owner, with written consent of the Surety, shall not retain any further retainage from periodic payments due the Contractor if the Contractor continues to perform satisfactorily and any nonconforming work identified in writing prior to that time by the Architect, engineer, or Owner has been corrected by the Contractor and accepted by the Architect, engineer, or Owner. If the Owner determines the Contractor's performance is unsatisfactory, the Owner may reinstate retainage for each subsequent periodic Application for Payment up to the maximum amount of five percent (5%). The Project shall be deemed fifty percent (50%) complete when the Contractor's gross Project invoices, excluding the value of materials stored off-site, equal or exceed fifty percent (50%) of the value of the Contract, except the value of materials stored on-site shall not exceed twenty percent (20%) of the Contractor's gross Project invoices for the purpose of determining whether the Project is fifty percent (50%) complete.

§ 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.)

N/A

§ 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:

N/A

§ 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.)

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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.)

§ 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)

Daniel Edwards, Capital Projects Manager
Town of Apex
PO Box 250
Apex, NC 27502
Daniel.Edwards@apexnc.org
919-249-3535

§ 8.3 The Contractor’s representative:

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

Tim Carley
General Manager
MLB Construction Services, LLC
1930 N. Salem St.

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§ 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.)

N/A

§ 8.7 Other provisions:

The Contractor shall comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify). Contractor shall require all of the Contractor's subcontractors to comply with the requirements of Article 2 of Chapter 64 of the North Carolina General Statutes (E-Verify).

The Contractor warrants and agrees that no labor supplied by the Contractor or the Contractor's subcontractors in the performance of this Contract shall be obtained by means of deception, coercion, intimidation or force, or otherwise in violation of North Carolina law, specifically Article 10A, Subchapter 3 of Chapter 14 of the North Carolina General Statutes, Human Trafficking.

N.C.G.S. 147-86.59 requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List. As of the date of execution of this Agreement the Contractor hereby certifies that the Contractor is not listed on the Final Divestment List created by the North Carolina State Treasurer and that the Contractor will not utilize any subcontractors found on the Final Divestment List.

Pursuant to Section 3-2 of the Town of Apex Code of Ordinances, Contractor hereby warrants and agrees that Contractor will not discriminate against a protected class in employment, subcontracting practices, or the solicitation or hiring of vendors, suppliers, or commercial customers in connection with this Agreement. For the purposes of this Agreement "protected class" includes age, race, religious belief or non-belief, ethnicity, color, national origin, creed, sex, sexual orientation, gender identity, marital status, natural hair style, genetic information, pregnancy, familial status, disability, veteran or military status, or disabled veteran status.

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:

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

N/A

.5 Drawings: BID SET – AUGUST 8, 2022

Number	Title	Date
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.6 Specifications: BID SET – AUGUST 8, 2022

Section	Title	Date	Pages
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.7 Addenda, if any:

Number	Date	Pages
1	08/17/2022	11
2	08/19/2022	17
3	08/26/2022.	93
4	08/31/2022	3

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
Supplementary Conditions	Supplementary Conditions Modifying AIA Document A201-2017 General Conditions	8-1-22	14

.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 Contract Documents include the advertisement or invitation to bid, Instructions to Bidders, sample

forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, and portions of Addenda relating to bidding or proposal requirements.

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

OWNER *(Signature)*

Catherine Crosby Town Manager
(Printed name and title)

CONTRACTOR *(Signature)*

James M. Dawsey President
(Printed name and title)

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Shawn Purvis, Interim Finance Director

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