

TEMPLATE

AIA® Document A101™ - 2007

*Standard Form of Agreement Between Owner and Contractor
where the basis of payment is a Stipulated Sum*

Editing Template

CAUTION: Take care not to remove or otherwise edit Project Data fill-point areas (Basic Information, Contract Details and Project Team) when making edits to this document.

AS MODIFIED BY OWNER

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month and year)

BETWEEN the Owner: *(Name and address)*

«Waukesha County Department of Parks and Land Use
515 West Moreland Blvd- Room AC230
Waukesha, WI. 53188 »« »
« »
« »
« »

and the Contractor: *(Name and address)*

« »« »
« »
« »
« »

for the following Project: *(Name and locations)*

Minooka Park Restrooms, located at 1927 East Sunset Drive- Waukesha, WI. 53186
Mukwonago Park Restroom, located at S100 W31900 CTH 'LO'- Mukwonago, WI.
53149 »
« »
« »

The Architect: *(Name, address and other information)*

Engberg-Anderson, Inc.
320 East Buffalo Street
Suite 500
Milwaukee, WI. 53202« »« »
« »
« »
« »

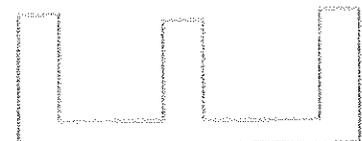
The Owner and Contractor agree as follows.



ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.



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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract together with the performance bond and payment bond, if any, 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. The Contract Documents include the attachments identified as the Exhibits A-C.

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 the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

« Commencement shall begin Monday, March 31, 2014

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

« »

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than « » (« ») days from the date of commencement, or as follows: Monday, September 1, 2014.
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

« »

Portion of Work

Substantial Completion Date

, subject to adjustments of this Contract Time as provided in the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

«In the event the Contractor, without excuse, fails to achieve Substantial Completion within the Contract Time, the Contractor shall pay to the Owner as liquidated damages, and not as a penalty, the sum of _____ Dollars (\$ _____) for each and every calendar day following the end of the Contract Time until Substantial Completion is achieved. However, the Contractor shall not be liable for liquidated damages for a day, or days, of excusable delay occurring during such period following the end of the Contract Time. »

§ 3.4 Substantial Completion occurs when the Work is sufficiently completed in accordance with the Contract so the Owner can occupy or utilize the Work for its intended use. This does not mean that the Work is in fact completed and finished.

§ 3.5 The Contractor shall achieve Final Completion of the entire Work, not later than Wednesday, October 1, 2014. Final Completion of the Work is the date by which the Work must be completed in accordance with the plans and specifications.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be « » (\$ « »), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon and includes the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

«Base Bid:

Accepted Alternates: »

§ 4.3 Unit prices, if any:
(Identify each item and its applicable unit, and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.) Refer to attached Exhibit "C"

Item	Units and Limitations	Price Per Unit (\$ 0.00)
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§ 4.4 Allowances included in the Contract Sum, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
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ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment properly 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 Provided that an Application for Payment is received by the Architect not later than the « twenty-fifth » day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the « last » day of the « following » month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be withheld by the Owner until the following month.
(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 and approved in writing by the Architect and Owner 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 and the Owner may require. This schedule, when, and only when, approved in writing by the Architect and the Owner, 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 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the approved schedule of values, less retainage determined in accordance with the Sec.66.0901(9)(b) of Wisconsin Statutes, which is set forth as follows:

(b) Retained percentages. As the work progresses under a contract involving \$1,000 or more for the construction, execution, repair, remodeling or improvement of a public work or building or for the furnishing of supplies or materials, regardless of whether proposals for the contract are required to be advertised by law, the municipality, from time to time, shall grant to the contractor an estimate of the amount and proportionate value of the work done, which entitles the contractor to receive the amount of the estimate, less the retainage, from the proper fund. The retainage shall be an amount equal to not more than 5% of the estimate until 50% of the work has been completed. At 50% completion, further partial payments shall be made in full to the contractor and no additional amounts may be retained unless the Architect or engineer certifies that the job is not proceeding satisfactorily, but amounts previously retained shall not be paid to the contractor. At 50% completion or any time after 50% completion when the progress of the work is not satisfactory, additional amounts may be retained but the total retainage may not be more than 10% of the value of the work completed. Upon substantial completion of the work, an amount retained may be paid to the contractor. When the work has been substantially completed except for work which cannot be completed because of weather conditions, lack of materials or other reasons which in the judgement of the municipality are valid reasons for noncompletion, the municipality may make additional payments, retaining at all times an additional amount sufficient to cover the estimated cost of the work still to be completed or may pay out the entire amount retained and received from the contractor guarantees in the form of a bond or other collateral sufficient to ensure completion of the job. For the purposes of this section, estimates may include any fabricated or manufactured materials and component specified, previously paid for by the contractor and delivered to the work site or properly stored and suitable for incorporation in the work embraced in the contract.

- .2 The Owner may 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 writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Subparagraphs 5.1.6.1.
- .3 Subtract the aggregate of previous payments made by the Owner.

- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007 as modified; and
- .5 Subtract amounts, if any, being withheld by the Owner as provided in the Contract Documents.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

1. Add, if Final completion of the Work is thereafter materially delayed through no fault of the Contractor, as determined by the Architect, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201-2007 as modified.

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

§ 5.1.8

« »

§ 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
- .2 and a final Certificate for Payment has been issued by the Architect, and
- .3 the Contractor's Release and Waiver of Lien has been received, and
- .4 the final waivers from the Contractor's subcontractors, suppliers, and vendors are submitted to the Architect, and
- .5 if applicable, Prime Contractor affidavit of compliance with prevailing wage rate determination has been received.

§ 5.2.2

«Such final payment shall be made by the Owner no later than thirty-six (36) days after the successful completion of all (5) items listed above. Final payment does not relieve Contractor of its obligation to correct non-conforming Work or to satisfy any requirement which survives final payment.

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ARTICLE 6

§ 6.1

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§ 6.2

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ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2007 as modified.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2007 as modified.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201-2007 as modified or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due 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.) « » « »

§ 8.3 The Owner's representative:

Jason Wilke- Senior Landscape Architect
Waukesha County Department of Parks and Land Use
515 West Moreland Blvd- Room AC230
Waukesha, WI. 53188

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« »
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« »

§ 8.4 The Contractor's representative:
(Name and Address)

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« »
« »
« »
« »
« »

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

§ 8.6.1 The Contractor will comply with all applicable federal, state and local laws concerning discrimination. This includes not engaging in employment discrimination on the basis of age, race, creed, color, disability, marital status, sex, national origin, ancestry, arrest record, conviction record, membership in the national guard or state defense force or any reserve component of the military forces of the United States or this state, or use or nonuse of lawful products off the employer's premises during nonworking hours.

«§ 8.6.2 The Contractor agrees that it is an independent contractor with respect to the services provided pursuant to the Contract. Nothing in the Contract shall be considered to create the relationship of employer and employee between the parties.

§ 8.6.3 If requested, the Contractor shall provide Owner auditors access to and furnish them with information, records and reports regarding powers, duties, activities, organization, property, financial transactions and methods of operation, and any other information, records and reports that relate directly or indirectly to the services being rendered pursuant to the Contract. The Contractor shall also provide access for the Owner auditors to inspect all property, equipment and facilities that are used or made use of by the Contractor in rendering its services pursuant to the Contract. The provisions of this paragraph shall continue for a period of three years following completion of the services.

Any information, records and reports provided to or obtained by the Owner pursuant to the preceding paragraph, or which the Owner otherwise comes into possession of pursuant to the Contract shall be subject to the provisions of Wisconsin's Public

Records Law, including provisions regarding limitations upon access based upon trade secret information and state or federal restrictions.

§ 8.6.4 WAIVER

§ 8.6.4.1 One or more waivers by any party of any term of the Contract will not be construed as a waiver of a subsequent breach of the same or any other term. The consent or approval given by any party with respect to any act by the other party requiring such consent or approval shall not be deemed to waive the need for further consent or approval of any subsequent similar act by such party.

« »

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101–2007 as modified, Standard Form of Agreement Between Owner and Contractor.

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

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

Refer to attached Exhibit "A": Portion of Project Manual.

§ 9.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Refer to attached Exhibit "A": Portion of Project Manual

« »

§ 9.1.5 The Drawings:

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

Refer to attached Exhibit "B": Sheet Index

« »

§ 9.1.6 The Addenda, if any, to the Project Manual, are as follows:

Number	Date	Pages

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 Additional documents, if any, forming part of the Contract Documents:

« »

1. Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

Refer to attached Exhibit "C": Contractor's Bid

« »

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007 as modified.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of insurance or bond	Limit of liability or bond amount (\$ 0.00)
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§ 10.1 The Contractor agrees that it will keep in force and effect insurance policies as outlined below and as required in Article 11 of the General Conditions:

(a) Workers' Compensation and Employer's Liability Insurance – Statutory Workers' Compensation and Employer's Liability insurance with a limit of liability not less than \$100,000 each accident, \$500,000 Disease Policy Limit, \$100,000 Disease each employee. Contractor shall require subcontractors not protected under its insurance to take out and maintain such insurance.

Owner shall not be liable to Contractor or its employees for any injuries to Contractor's employees arising out of the performance of Work under the Contract. Contractor and its workers' compensation insurance carrier agree to waive any and all rights of recovery from Owner for workers' compensation claims made by its employees. Contractor agrees that the indemnification and hold harmless provisions within Paragraph 3.18 of the General Conditions extends to any claims brought by or on behalf of any employee of the Contractor.

(b) Commercial General Liability Insurance – Policy shall be written to provide coverage for, but not limited to, premises and operations, product and completed operations, personal injury, blanket contractual, broad form property damage, independent contractors, XCU-explosion collapse, underground coverage. Limits of liability shall not be less than \$1,000,000 each occurrence, \$1,000,000 aggregate. Policy shall be endorsed to provide for the per project application of limits (ISO endorsement CG2503 or equivalent) or general aggregate must be waived in entirety. The Owner, its boards, commissions, agencies, officers, employees and representatives shall be named as additional insureds on a primary basis and so stated on the Certificate of Insurance.

(c) Automobile Liability Insurance – Business automobile policy covering all owned, hired and non-owned private passenger and commercial vehicles. Limit of liability not less than \$500,000 combined single limit.

(d) Umbrella Liability Insurance – Coverage to be in excess of employer's liability, commercial general liability, and automobile liability insurance. Limits of liability not less than (\$1,000,000) each occurrence, (\$1,000,000) aggregate.

(e) Builder's Risk Insurance – Coverage to be 100% of the total Project value. The Owner, its boards, commissions, agencies, officers, employees and representatives shall be named as additional insureds on a primary basis and so stated on the Certificate of Insurance.

§ 10.2 The Contractor will be required to furnish and pay for a Public Improvement Performance/Labor and Material Payment Bond for the full amount of the Contract Sum, for the diligent, full and faithful performance of the Work for which he has been contracted. Bonds shall be written on Wisconsin AIA Document A312-2010 issued by

a surety company licensed to do business in the State of Wisconsin. The attorney-in-fact who executes the bond on behalf of the surety company shall affix thereto a certificate and current copy of his power of attorney indicating the monetary limit of such power. The Owner reserves the right to accept or reject the use of any surety company.

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

OWNER (Signature)

« »
Printed name and title

Date: _____

Project:

Documents Dated:

C: Kathleen Novack, County Clerk_

CONTRACTOR (Signature)

« »
(Printed name and title)

Date: _____

