

# AIA® Document A101™ – 2007

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

**AGREEMENT** made as of the First day of June in the year Two Thousand Eleven  
(In words, indicate day, month and year.)

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

City of Jonesboro  
1515 West Washington  
Jonesboro, AR 72401  
Telephone Number: (870)932-1052

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

Frank A Rogers & Co., Inc.  
508 South Woods  
PO Box 2807  
West Memphis, AR 72301

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

City of Jonesboro New Facility for Streets & Sanitation Department  
Dan Avenue, Jonesboro, AR  
Vehicle Storage Facility

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

Stuck Associates, PLLC, Limited Liability Company  
PO Box 1425  
328 S Church St  
Jonesboro, AR 72403  
Telephone Number: (870)932-4271  
Fax Number: (870)932-0374

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.

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.

Int.

## 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
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7	TERMINATION OR SUSPENSION
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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 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 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.)*

| The commencement date will be fixed in a Notice to Proceed upon the Owner's approval.

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 One Hundred twenty-six ( 126 ) days from the date of commencement, or as follows:

*(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.)

**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 Hundred Twenty-four Thousand Eight Hundred Thirty-four Dollars and Zero Cents (\$ 624,834.00 ), 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 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.)

§ 4.3 Unit prices, if any:  
(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit (\$0.00)
	Net cost plus percentage fee	8% overhead and profit on the net costs of our own Work and 6% on work done by any Subcontractor

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

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§ 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, unless objected to by the Architect, 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 schedule of values, less retainage of ten percent ( 10 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;
- .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 ten percent ( 10 %);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .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.

§ 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, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and  
*(Section 9.8.5 of AIA Document A201-2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)*
- .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 Section 9.10.3 of AIA Document A201-2007.

§ 5.1.8 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 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.)*

§ 5.1.9 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 Section 12.2.2 of AIA Document A201-2007, 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:

**ARTICLE 6 DISPUTE RESOLUTION**

**§ 6.1 INITIAL DECISION MAKER**

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007, unless the parties appoint below another individual, not a party to this Agreement, to serve as 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 Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, 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.)*

- Arbitration pursuant to Section 15.4 of AIA Document A201-2007
- Litigation in a court of competent jurisdiction
- Other *(Specify)*

**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.

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

**ARTICLE 8 MISCELLANEOUS PROVISIONS**

**§ 8.1** Where reference is made in this Agreement to a provision of AIA Document A201-2007 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 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.)*

%

**§ 8.3** The Owner's representative:  
*(Name, address and other information)*

Harold Perrin  
1515 West Washington  
Jonesboro, AR 72401  
870-932-1052

§ 8.4 The Contractor's representative:  
(Name, address and other information)

Edward A Scoggins  
508 South Woods  
PO Box 2807  
West Memphis, AR 72301

§ 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:

#### 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, Standard Form of Agreement Between Owner and Contractor.

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

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Section 007300	Supplementary Conditions	05/09/2011	6

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

Section	Title	Date	Pages
Section 00010	Table of Contents	05/09/2011	3

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

Number	Title	Date
G001	Cover Sheet	05/09/2011
C001	Erosion Control Plan	05/06/2011
C002	Civil Site Plan	05/06/2011
C003	Grading & Drainage Plan	05/06/2011
C004	Civil Details	05/06/2011
S001	Foundation & Detail	05/09/2011
A101	Floor Plan	05/09/2011
A201	Exterior Elevations	05/09/2011
A251	Building Sections	05/09/2011

Init.

A301	Roof Plan	05/09/2011
A401	Reflected Ceiling Plan	05/09/2011
A501	Wall Section	05/09/2011
E0	Electrical Notes & Legend	04/27/2011
E1	Power Plan	04/27/2011
E2	Lighting Plan	04/27/2011
E3	Panel Schedule	04/27/2011
E4	Electrical Details	04/27/2011
E5	Electrical Specifications	04/27/2011

§ 9.1.6 The Addenda, if any:

Number	Date	Pages
Addendum No. 1	05/19/2011	
Addendum No. 2	05/20/2011	
Addendum No. 3	05/23/2011	

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 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:
  
- .2 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.)*

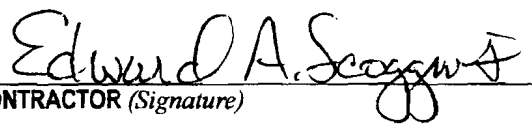
**ARTICLE 10 INSURANCE AND BONDS**

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

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

  
 \_\_\_\_\_  
 CONTRACTOR (Signature)  
 Edward A Scoggins, Vice-President  
 \_\_\_\_\_  
 (Printed name and title)

# **Additions and Deletions Report for AIA<sup>®</sup> Document A101<sup>™</sup> – 2007**

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:41:49 on 06/01/2011.

## **PAGE 1**

**AGREEMENT** made as of the First day of June in the year Two Thousand Eleven

...

City of Jonesboro  
1515 West Washington  
Jonesboro, AR 72401  
Telephone Number: (870)932-1052

...

Frank A Rogers & Co., Inc.  
508 South Woods  
PO Box 2807  
West Memphis, AR 72301

...

City of Jonesboro New Facility for Streets & Sanitation Department  
Dan Avenue, Jonesboro, AR  
Vehicle Storage Facility

...

*(Name, legal status, address and other information)*

Stuck Associates, PLLC, Limited Liability Company  
PO Box 1425  
328 S Church St  
Jonesboro, AR 72403  
Telephone Number: (870)932-4271  
Fax Number: (870)932-0374

## **PAGE 2**

The commencement date will be fixed in a Notice to Proceed upon the Owner's approval.

...

**§ 3.3** The Contractor shall achieve Substantial Completion of the entire Work not later than One Hundred twenty-six (126) days from the date of commencement, or as follows:



PAGE 3

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...

Net cost plus percentage fee      8% overhead and profit on the net costs of our own Work and 6% on work done by any Subcontractor

...

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

PAGE 4

- .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 schedule of values, less retainage of ten percent ( 10 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™–2007, General Conditions of the Contract for Construction;
- .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 ten percent ( 10 %);

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Arbitration pursuant to Section 15.4 of AIA Document A201–2007

...

Harold Perrin  
1515 West Washington  
Jonesboro, AR 72401  
870-932-1052

PAGE 6

Edward A Scoggins  
508 South Woods  
PO Box 2807  
West Memphis, AR 72301

...

Section 007300

Supplementary  
Conditions

05/09/2011

6

...

<u>Section 00010</u>	<u>Table of Contents</u>	<u>05/09/2011</u>	<u>3</u>
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...

<u>G001</u>	<u>Cover Sheet</u>	<u>05/09/2011</u>
<u>C001</u>	<u>Erosion Control Plan</u>	<u>05/06/2011</u>
<u>C002</u>	<u>Civil Site Plan</u>	<u>05/06/2011</u>
<u>C003</u>	<u>Grading &amp; Drainage Plan</u>	<u>05/06/2011</u>
<u>C004</u>	<u>Civil Details</u>	<u>05/06/2011</u>
<u>S001</u>	<u>Foundation &amp; Detail</u>	<u>05/09/2011</u>
<u>A101</u>	<u>Floor Plan</u>	<u>05/09/2011</u>
<u>A201</u>	<u>Exterior Elevations</u>	<u>05/09/2011</u>
<u>A251</u>	<u>Building Sections</u>	<u>05/09/2011</u>
<u>A301</u>	<u>Roof Plan</u>	<u>05/09/2011</u>
<u>A401</u>	<u>Reflected Ceiling Plan</u>	<u>05/09/2011</u>
<u>A501</u>	<u>Wall Section</u>	<u>05/09/2011</u>
<u>E0</u>	<u>Electrical Notes &amp;</u>	<u>04/27/2011</u>
	<u>Legend</u>	
<u>E1</u>	<u>Power Plan</u>	<u>04/27/2011</u>
<u>E2</u>	<u>Lighting Plan</u>	<u>04/27/2011</u>
<u>E3</u>	<u>Panel Schedule</u>	<u>04/27/2011</u>
<u>E4</u>	<u>Electrical Details</u>	<u>04/27/2011</u>
<u>E5</u>	<u>Electrical Specifications</u>	<u>04/27/2011</u>

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<u>Addendum No. 1</u>	<u>05/19/2011</u>
<u>Addendum No. 2</u>	<u>05/20/2011</u>
<u>Addendum No. 3</u>	<u>05/23/2011</u>

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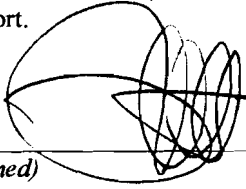
Harold Perrin, Mayor

Edward A Scoggins, Vice-President

## Certification of Document's Authenticity

AIA® Document D401™ – 2003

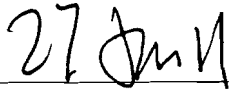
I, Paul Hoelscher, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:41:49 on 06/01/2011 under Order No. 4006750787\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.



(Signed)



(Title)



(Dated)

THE AMERICAN INSTITUTE OF ARCHITECTS



Bond #105510153

AIA Document A312

Performance Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Frank A. Rogers & Co., Inc.
PO Box 805
Newport, AR 72112

SURETY (Name and Principal Place of Business):

Travelers Casualty and Surety Company of America
10810 Executive Center Drive, Suite 400
Little Rock, AR 72231

OWNER (Name and Address):

City of Jonesboro
1515 West Washington
Jonesboro, AR 72401

CONSTRUCTION CONTRACT

Date: 6/1/2011
Amount: \$624,834.00
Description (Name and Location): New vehicle storage facility

BOND

Date (Not earlier than Construction Contract Date): 6/1/2011
Amount: \$624,834.00
Modifications to this Bond:

[X] None [ ] See Page 3

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)
Frank A. Rogers & Co., Inc.

SURETY

Company: (Corporate Seal)
Travelers Casualty and Surety Company of America

Signature: [Handwritten Signature]
Name and Title: Edward A. Scoggins, V.P.

Signature: [Handwritten Signature]
Name and Title: Stephanie McAllister, Attorney-In-Fact

(Any additional signatures appear on page 3)

(FOR INFORMATION ONLY - Name, Address and Telephone)

AGENT or BROKER: M&P Ins
PO Box 99
Newport, AR 72112

OWNER'S REPRESENTATIVE (Architect, Engineer or
other party): Stuck Associates, PLLC
PO Box 1425
Jonesboro, AR 72403

1 The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.

3 If there is no Owner Default, the Surety's obligation under this Bond shall arise after:

3.1 The Owner has notified the Contractor and the Surety at its address described in Paragraph 10 below that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performing the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and

3.3 The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.

4 When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

4.1 Arrange for the Contractor, with consent of the Owner, to perform and complete the Construction Contract; or

4.2 Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or

4.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or

4.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, tender payment therefor to the Owner; or

.2 Deny liability in whole or in part and notify the Owner citing reasons therefor.

5 If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness, the Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the surety proceeds as provided in Subparagraph 4.4, and the Owner refuses the payment tendered or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

6 After the Owner has terminated the Contractor's right to complete the Construction Contract, and if the Surety elects to act under Subparagraph 4.1, 4.2, or 4.3 above, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond, but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract, the Surety is obligated without duplication for:

6.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

6.2 Additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 4; and

6.3 Liquidated damages, or if not liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

7 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators or successors.

8 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

9 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located

and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

10 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.

11 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

## 12 DEFINITIONS

12.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments

have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

12.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

12.3 Contractor Default: Failure of the Contractor, which has neither been remedied nor waived, to perform or otherwise to comply with the terms of the Construction Contract.

12.4 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

## MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL  
Company: \_\_\_\_\_ (Corporate Seal)

SURETY  
Company: \_\_\_\_\_ (Corporate Seal)

Signature: \_\_\_\_\_  
Name and Title:  
Address:

Signature: \_\_\_\_\_  
Name and Title:  
Address:

THE AMERICAN INSTITUTE OF ARCHITECTS



Bond #105510153

AIA Document A312

Payment Bond

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

CONTRACTOR (Name and Address):

Frank A. Rogers & Co., Inc.
PO Box 805
Newport, AR 72112

SURETY (Name and Principal Place of Business):

Travelers Casualty and Surety Company of America
10810 Executive Center Drive, Suite 400
Little Rock, AR 72231

OWNER (Name and Address):

City of Jonesboro
1515 West Washington
Jonesboro, AR 72401

CONSTRUCTION CONTRACT

Date: 6/1/2011
Amount: \$624,834.00
Description (Name and Location): New vehicle storage facility

BOND

Date (Not earlier than Construction Contract Date): 6/1/2011
Amount: \$624,834.00
Modifications to this Bond:

None See Page 6

CONTRACTOR AS PRINCIPAL

Company: Frank A. Rogers & Co., Inc. (Corporate Seal)

SURETY

Company: Travelers Casualty and Surety Company of America (Corporate Seal)

Signature: Edward A. Scoggins
Name and Title: Edward A. Scoggins, V.P.

Signature: Stephanie McAllister
Name and Title: Stephanie McAllister, Attorney-In-Fact

(Any additional signatures appear on page 6)

(FOR INFORMATION ONLY - Name, Address and Telephone)

AGENT or BROKER: M&P Insurance
PO Box 99
Newport, AR 72112

OWNER'S REPRESENTATIVE (Architect, Engineer or other party)

Stuck Associates, PLLC
PO Box 1425
Jonesboro, AR 72403

**1** The Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

**2** With respect to the Owner, this obligation shall be null and void if the Contractor:

**2.1** Promptly makes payment, directly or indirectly, for all sums due Claimants, and

**2.2** Defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity whose claim, demand, lien or suit is for the payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands, liens or suits and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety, and provided there is no Owner Default.

**3** With respect to Claimants, this obligation shall be null and void if the Contractor promptly makes payment, directly or indirectly, for all sums due.

**4.** The Surety shall have no obligation to Claimants under this Bond until:

**4.1** Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and, with substantial accuracy, the amount of the claim.

**4.2** Claimants who do not have a direct contract with the Contractor:

**.1** Have furnished written notice to the Contractor and sent a copy, or notice thereof, to the Owner, within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating, with substantial accuracy, the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed; and

**.2** Have either received a rejection in whole or in part from the Contractor, or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly; and

**.3** Not having been paid within the above 30 days, have sent a written notice to the Surety (at the address described in Paragraph 12) and sent a copy, or notice thereof, to the Owner, stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor.

**5** If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety, that is sufficient compliance.

**6** When the Claimant has satisfied the conditions of Paragraph 4, the Surety shall promptly and at the Surety's expense take the following actions:

**6.1** Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.

**6.2** Pay or arrange for payment of any undisputed amounts.

**7** The Surety's total obligation shall not exceed the amount of this Bond, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

**8** Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any Construction Performance Bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

**9** The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligations to make payments to, give notices on behalf of, or otherwise have obligations to Claimants under this Bond.

**10** The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

**11** No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of one year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2.3, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

**12** Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety, the Owner or the Contractor, however accomplished, shall be sufficient compliance as of the date received at the address shown on the signature page.

**13** When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond



conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

14 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

**15 DEFINITIONS**

15.1 Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone

service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

15.2 Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.

15.3 Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

**MODIFICATIONS TO THIS BOND ARE AS FOLLOWS:**

Paragraph 6 is deleted in its entirety and the following is substituted in its place:

6. When the Claimant has satisfied the conditions of Paragraph 4, and has submitted all supporting documentation and any proof of claim requested by the Surety, the Surety shall, within a reasonable period of time, notify the Claimant of the amounts that are undisputed and the basis for challenging any amounts that are disputed, including, but not limited to, the lack of substantiating documentation to support the claim as to entitlement or amount, and the Surety shall, within a reasonable period of time, pay or make arrangements for payment of any undisputed amount; provided, however, that the failure of the Surety to timely discharge its obligations under this paragraph or to dispute or identify any specific defense to all or any part of a claim shall not be deemed to be an admission of liability by the Surety as to such claim or otherwise constitute a waiver of the Contractor's or Surety's defenses to, or right to dispute, such claim. Rather, the Claimant shall have the immediate right, without further notice, to bring suit against the Surety to enforce any remedy available to it under this Bond.

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL  
Company: \_\_\_\_\_ (Corporate Seal)

SURETY  
Company: \_\_\_\_\_ (Corporate Seal)

Signature: \_\_\_\_\_  
Name and Title:  
Address:

Signature: \_\_\_\_\_  
Name and Title:  
Address: