

# AIA A201 – 2017 Revisions

# Overview of Major Changes

- ⦿ Article 11's Insurance Provisions
  - Now a separate Exhibit B to allow for easier review.
  - More options to be tailored for each project.
- ⦿ Termination for Convenience
  - Replaces contractor's right to reasonable overhead and profit on work not performed with requirement that parties negotiate a termination fee.

# Overview of Major Changes

- ② Date of Commencement and Substantial Completion
  - Check boxes in place of write in space with default provisions
- ② Owner's Right to Perform Work if Contractor Defaults
  - Owner no longer permitted to unilaterally issue deduct CO.
  - But Architect may certify withholding or nullifying prior payment.

# Overview of Major Changes

- ⦿ Differing Site Conditions
  - Shortens notice provision from 21 to 14 days
- ⦿ Liquidated Damages / Early Completion Bonus
  - More prompts to facilitate discussion on these terms
- ⦿ Notice provision
  - Moved to Article 1 and must be written
  - 2017 version permits notice by email except for notice of claims

# Overview of Major Changes

- ⦿ Contractor's Means and Methods
  - Requires contractor to give notice and propose alternative. Absent objection, contractor is authorized to proceed with alternative.
- ⦿ Direct communication between owner and contractor permitted.
  - Owner responsible to notify architect.

# Article 1 – General Provisions

- ① 1.1.8 – Added “Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interruptions or decisions rendered in good faith.”
- ① 1.2.1.1. – New severability clause

# Article 1 – General Provisions

## ⦿ 1.6.1 – Notice

- “Notice” is now defined as being in writing.
- Permitted by email except for notice of claim under 1.6.2

## ⦿ 1.7 and 1.8 – Digital data and BIM

- Defaults to parties agreeing to use AIA Form E203, BIM and Digital Data exhibit unless another agreement is included
- New provision 1.8 states that using BIM will be at the users sole risk and will not create liability in the author.

# Article 2 – The Owner

## 2.2.1 – Owner Financial Information

- Now requires Owner to provide “reasonable evidence” that Owner can fulfill its financial obligations (if Contractor requests it).
- Contractor has no obligation to commence work until Owner provides evidence, and Contract Time must be extended for any delays.



# Article 2 – The Owner

- ◎ 2.2.2 – Owner Financial Information
  - After Contractor commences work, it can only request evidence of financing in 1 of 3 conditions:
    - Owner fails to make payments
    - Contractor identifies a reasonable concern regarding Owner's ability to make payment; or
    - Changes in work materially changes the Contract Sum.
  - If Owner fails to provide info within 14 days, Contractor can stop work with Contract Time extended and Contract Sum adjusted for reasonable cost of shut down

# Article 2 – The Owner

- ◎ 2.2.4 – New confidentiality provision
  - If Owner provides financial information and marks it “confidential” Contractor can only disclose:
    - If required by law (after 7 days written notice to owner); or
    - To employees, consultants, sureties, or subcontractors who need to know for the Project and who agree to be bound by confidentiality

# Article 2 – The Owner

- ◎ 2.5 – Owner's right to perform Contractor's work in the event of default or neglect
  - Contractor still has 7 days from notice to commence and continue correction
  - If Contractor fails within 7 days, Owner can correct and charge amounts to Contractor, but only with Architect approval.

# Article 3 – The Contractor

- ◎ 3.3 – Supervision and Construction Procedures
  - Previously, if Contract Documents directed certain means and methods, Owner could direct Contractor to proceed over objections, but Owner assumed responsibility for any resulting damages.
  - Now, Contractor must propose alternative means and methods, which the Architect evaluates for solely for conformance with design. Unless the Architect objects, Contractor can proceed with alternative.

# Article 3 – The Contractor

## ⦿ 3.5.2 – New Provision

- Requires all warranties to be issued in name of Owner or transferrable to Owner and commencing “in accordance with Section 9.8.4” (i.e. on the date of substantial completion as certified by the Architect or otherwise stated in the Certificate of Substantial Completion)

## ⦿ 3.7.4 – Concealed or Unknown Conditions

- Contractor required to provide notice in 14 days instead of 21 days of observing the condition

# Article 3 – The Contractor

## ③ 3.10.1 – Project Schedule

- Now requires Contractor to include a date of commencement, interim milestone date, and date of substantial completion
- Now requires Contractor to include a breakdown by activity and durations for each portion of work

## ③ 3.12.10.1 – Contractor design responsibilities

- When Contractor is required to provide design services or certifications for systems, material or equipment, new language states that Contractor shall be entitled to rely on the accuracy and adequacy of design criteria.

# Article 4 – The Architect

## ④ 4.2.4 – Communications

- In 2007 version, Owner and Contractor were to communicate through the Architect.
- Now, Owner and Contractor communicate with each other, but are required to include the Architect on all communications that relate to the Architect's services or professional responsibilities. And Owner has duty to promptly notify the Architect of any other communications relating to the Project.

# Article 5 - Subcontractors

## ● 5.3 – Subcontracts

- 2007 version did not require the Contractor to have a written contract with its subcontractors that binds subcontractors to all obligations of Contractor relating to specific scope of work
- 2017 version requires all subcontracts to be in writing



# Article 6 – Separate Contractors

- ◎ 6.1 – New addition defines term
  - Defined as “other contractors retained by the Owner under separate agreements.”
  - 2017 version requires the Owner to use a contract with substantially similar terms and conditions with any Separate Contractor, specifically identifying provisions relating to insurance and subrogation.

# Article 6 – Separate Contractors

## ◎ 6.2.2

- Relates to predecessor work by Separate Contractors and Contractor's obligation to notify of apparent discrepancies or defects in construction or operations.
- Adds language that Contractor is not responsible for discrepancies or defects if not “apparent.”

# Article 7 – Changes in the Work

## 7.4 – Minor Changes

- New language was added to state that if the Architect orders the Contractor to proceed with a minor change (i.e. defined as one that doesn't affect Contract Time and Contract Sum) and the Contractor believes it is entitled to additional time or money as a result of the change, the Contractor is required to notify the Architect and not proceed with the work.
- As with other changes, if the Contractor proceeds with the work without notice, it waives any right to additional time or money.

# Article 8 - Time

## 8.3.1 – Delays and Extensions of Time

- Adverse weather conditions specifically identified as allowable reason for extension of time in 2017 version (although generally considered included in “other causes beyond Contractor’s control” in 2007 version).
- Adds language that the “other delays” can include those asserted by the Contractor, although the Architect will still need to determine it is a valid reason.

# Article 9 – Payments and Completion

## ◎ 9.2 – Schedule of Values

- 2017 version provides mechanism for the Contractor to adjust the schedule of values by submitting changes to the Architect with appropriate support. If Architect doesn't object, it will be used for subsequent pay applications.

# Article 9 – Payments and Completion

- 9.5.2 – New provision stating that if either the Owner or Contractor disagrees with the Architect's decision regarding a Certificate for Payment, it can proceed with a claim under Article 15.
- 9.6.8 – New provision requiring the Contractor to defend and indemnify the Owner from any lien or payment claim provided Owner “has fulfilled its payment obligations”

# Article 10 – Protection of Persons and Property

## ④ 10.2.5

- Minor change to clarify that Contractor must remedy any damage or loss if caused in any part by Contractor even if others may also be liable. Contractor's recourse is to pursue a claim under Article 15.

# Article 11 – Insurance and Bonds

- Article 11 is left with a general description of the kinds of insurance both the Contractor and Owner are required to maintain plus details of the waiver of subrogation, all else moved to Exhibit A.
- Waiver of subrogation was revised to clarify that it applies to any insurance in place that covers a loss instead of just Builders Risk specific to the project (addressing a split in courts).



# Exhibit A – Insurance and Bonds

## ● New sections:

- A.2.4 – Optional extended Owner's insurance (e.g. business interruption, soft cost insurance)
- A.3.2.2.2 – adds a provision that the Contractor's CGL policy must not contain exclusions or restrictions on coverage for 11 specifically identified claims.
- A.3.2.8 – adds a provision that Contractor is required to have PL insurance if required to furnish professional services.

# Article 12 – Uncovering and Correction of Work

## ① 12.1.2

- Clarifies that if work is uncovered and determined to be correct, Contractor is not only entitled to an adjustment in Contract Sum, but also in Contract Time if the investigations caused a delay.

# Article 13 – Misc Provisions

## ④ 13.1

- Added provision to confirm that the contract is governed by the law where the project is located and the provision is binding regardless of the application of any state's choice of law provisions.

# Article 14 – Termination or Suspension

- ④ 14.1.3 – Revised to allow the Contractor to recover for overhead and profit on work not executed if Contractor properly terminates (including for reasons beyond Owner's control, such as act of government).
- ④ 14.4.3 – Ironically, this section was revised to remove Contractor's entitled to overhead and profit on work not executed when the Owner terminates for convenience, but does allow the Contractor to recover a termination fee if agreed by the parties.

# Article 15 – Claims and Disputes

- 15.1.1 – New language was added to the definition of claim to clarify that the Owner's right to LDs is unilateral and does not require the Owner to file a claim.
- 15.1.3.2 – New section stating that if a claim is discovered after Project completion and expiration of warranty period, the parties do not need to go through the Initial Decision Maker.

# Article 15 – Claims and Disputes

## ⦿ 15.4.4.1 and .2

- Revised to state that consolidation and joinder in arbitration must be made in accordance with the rules of the governing arbitration administrator and is no longer in the sole discretion of either of the parties.

# Conclusion

- ⦿ No earth shattering changes, but some significant changes that should be reviewed and discussed with attorneys and insurance agents.
- ⦿ No longer able to finalize the 2007 version of the A201 after October 31, 2018 of this year.



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# 2017 AIA A101 CHANGES



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# Article 3

- ⦿ 2007: Date of Commencement provision
- ⦿ § 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.

# Article 3

- 2017: Date of Commencement now uses check-the-box option:

## 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.

# Article 3

## ● 2017: Substantial Completion check-box as well:

### § 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.)*

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

☐ By the following date:

# Article 3

2017:

- Liquidated Damages are specifically anticipated by adding Section 3.3.3:
- §3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Sections 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

# Article 4: Contract Sum

- ⦿ Adds Section 4.5:

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

- ⦿ Adds Section 4.6:

- §4.6 Other: *(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)*

# Article 5: Payments

- ⦿ Section 5.1.4 revised to state “This schedule of values shall be used as a basis for reviewing the Contractor’s Applications for Payment.”
- ⦿ § 5.1.6.1 added: 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.

# Article 5: Payments

- § 5.1.6.2 added: 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.

# Article 7: Termination or Suspension

- Termination for convenience fee added:
- §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.)



# Exhibit A

- ◎ New Exhibit A, Insurance and Bonds added
  - Seven pages long
  - A check-the-box menu of insurance products and coverage the parties can select from
  - The Owner is the default provider of Builder's Risk insurance
  - The Contractor is required to carry commercial general liability insurance with eleven types of claims that cannot be excluded, such as residential (if applicable), roofing and exterior insulation finish systems ("EIFS").



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# 2017 AIA A102 CHANGES



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# Article 4

## ◉ Date of Commencement changes to check-the-box:

### ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 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.

# Article 4

- Date of Substantial Completion also changes to check-the-box:

## § 4.3 Substantial Completion

§ 4.3.1 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.)*

- ☐ Not later than \_\_\_\_\_ ( \_\_ ) calendar days from the date of commencement of the Work.
- ☐ By the following date:

# Article 4

- Liquidated Damages again specifically anticipated:
- §4.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Sections 4.3, liquidated damages, if any, shall be assessed as set forth in Section 5.1.6.
- §5.1.6 Liquidated damages, if any: *(Insert terms and conditions for liquidated damages, if any.)*

# Article 5: Contract Sum

- ⦿ After pre-existing §5.2.4, Assumptions, if any, upon which the Guaranteed Maximum Price is based: *(Identify each assumption.)*,
- ⦿ The 2017 version adds:
- ⦿ §5.2.6 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 5.2.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 5.2.4 and the revised Contract Documents.

# Article 12: Payments

Clarifies payments:

- ⦿ § 12.1.5 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 Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

# Article 12: Payments

- § 12.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.
- § 12.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 12.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.
- § 12.1.5.3 When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect.



# Article 12: Payments

- ◎ § 12.1.7.1 The amount of each progress payment shall first include:
  - .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
  - .2 That portion of the Guaranteed Maximum Price 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;
  - .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
  - .4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 12.1.7.1.1 and 12.1.7.1.2 at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 12.1.7.1.1 and 12.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

# Article 12: Payments

- ◎ §12.1.7.2 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;
  - .5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
  - .6 Retainage withheld pursuant to Section 12.1.8.

# Article 12: Payments

## §12.1.8 Retainage

- §12.1.8.1 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.)*
- §12.1.8.1.1 The following items are not subject to retainage: *(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*
- §12.1.8.2 Reduction or limitation of retainage, if any, shall be as follows: *(If the retainage established in Section 12.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*
- §12.1.8.3 Except as set forth in this Section 12.1.8.3, 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 12.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows: *(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)*

# Article 14: Termination or Suspension

Termination for convenience fee added:

- §14.1.3 Termination by the Owner for Convenience
- If the Owner terminates the Contract for 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.)*

# Exhibit A

- ◎ New Exhibit A, Insurance and Bonds added
  - Seven pages long
  - A check-the-box menu of insurance products and coverage the parties can select from
  - The Owner is the default provider of Builder's Risk insurance
  - The Contractor is required to carry commercial general liability insurance with eleven types of claims that cannot be excluded, such as residential (if applicable), roofing and exterior insulation finish systems ("EIFS").



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# 2017 AIA A401 CHANGES



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# Article 3: Contractor

## Contractor defined:

- §3.1.1 The Contractor is the person or entity identified as such in this Agreement and is referred to throughout the Subcontract Documents as if singular in number. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all Project matters requiring the Contractor's approval or authorization. The term "Contractor" means the Contractor or the Contractor's authorized representative.

# Article 3: Contractor

Added:

- ◎ §3.1.2 The Contractor shall render decisions in a timely manner and in accordance with the Contractor's construction schedule.
- ◎ §3.3.5 The Contractor shall promptly notify the Subcontractor of any fault or defect in the Work under this Subcontract or nonconformity with the Subcontract Documents.



# Article 3: Contractor

Revised:

- §3.3.6 The Contractor shall furnish to the Subcontractor within 30 days after receipt of a written request, or earlier if so required by law, information necessary and relevant for the Subcontractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property, usually referred to as the site, on which the Project is located and the Owner's interest therein. If the Contractor does not have such information, the Contractor shall request the information from the Owner in accordance with Article 2 of AIA Document A201-2017 and promptly furnish the information received from the Owner to the Subcontractor.

# Article 3: Contractor

## Liquidated Damages:

- §3.4.1 Liquidated damages, if provided for in the Prime Contract, shall be assessed against the Subcontractor only to the extent caused by the Subcontractor or any person or entity for whose acts the Subcontractor may be liable, and in no case for delays or causes arising outside the scope of this Subcontract.

# Article 3: Contractor

Revised:

- §3.5 Contractor's Remedies
- If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within five working days after receipt of notice from the Contractor to commence and continue correction of such default or neglect with diligence and promptness, the Contractor may, without prejudice to other remedies the Contractor may have, remedy such default or neglect and withhold, in accordance with Section 11.1.7.2, the reasonable cost thereof from current or future payments due the Subcontractor. If payments due to the Subcontractor are not sufficient to cover such amounts, the Subcontractor shall pay the difference to the Contractor.

# Article 4: Subcontractor

“Subcontractor” defined:

- ⦿ §4.1 General
- ⦿ The Subcontractor is the person or entity identified as such in this Agreement and is referred to throughout the Subcontract Documents as if singular in number. The Subcontractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Subcontractor shall designate in writing a representative who shall have express authority to act on the Subcontractor’s behalf with respect to the Project. The term “Subcontractor” means the Subcontractor or the Subcontractor’s authorized representative.

# Article 4: Subcontractor

Added:

- §4.2.3.2 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Subcontractor represents to the Contractor that the Subcontractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Subcontract Documents.

# Article 4: Subcontractor

Added:

- ⦿ § 4.6.2 All material, equipment, or other special warranties required by the Subcontract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with the Subcontract Documents.

# Article 4: Subcontractor

Added:

- §4.9 Professional Services Provided by Subcontractor
- §4.9.1 The Subcontractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Subcontract Documents or unless the Subcontractor is required to provide such services in order to carry out the Subcontractor's responsibilities for its own construction means, methods, techniques, sequences, and procedures. The Subcontractor shall not be required to provide professional services in violation of applicable law.
- §4.9.2 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Subcontractor by the Subcontract Documents, the Contractor will provide all performance and design criteria that such services must satisfy to the extent the Contractor has received such performance and design criteria from the Owner and Architect under the terms of the Prime Contract.

# Article 4: Subcontractor

- §4.9.3 If professional design services or certifications by a design professional are required because of means, methods, techniques, sequences, or procedures required by the Contractor and related to the Work of the Subcontractor, the Contractor will provide all performance and design criteria that such services must satisfy.
- §4.9.4 The Subcontractor shall be entitled to rely upon the adequacy, accuracy, and completeness of the performance and design criteria received from the Contractor under this Section 4.9.
- §4.9.5 The Subcontractor shall cause the professional services performed under this Section 4.9 to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop drawings and other submittals related to the Work designed by such design professional shall bear the professional's written approval when submitted to the Contractor. The Contractor shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by the design professionals, provided the Contractor has provided to the Subcontractor all performance and design criteria required by this Section 4.9.



# Article 6: Claims and Disputes

Default location of the arbitration is now the location of project:

- §6.3 Arbitration
- §6.3.1 If the Contractor and Subcontractor have selected arbitration as the method of binding dispute resolution in Section 6.2, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. The arbitration should be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Subcontract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

# Article 6: Claims and Disputes

Adds consequential damages waiver:

- ⑥ §6.4 Waiver of Claims for Consequential Damages
- ⑥ The Contractor and Subcontractor waive claims against each other for consequential damages arising out of or relating to this Subcontract, including without limitation, any consequential damages due to either party's termination in accordance with Article 7. Nothing contained herein shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of this Agreement.

# Article 9: Date of Commencement

- Date of commencement and date of substantial completion are changed to check-the-box, like the A101 and A102.

## ARTICLE 9 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 9.1 The date of commencement of the Subcontractor's 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 Contractor.

☐ Established as follows:

*(Insert a date or a means to determine the date of commencement of the Subcontractor's Work.)*

If a date of commencement of the Subcontractor's Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 9.2.2 Subject to adjustments of the Subcontract Time as provided in the Subcontract Documents, the Subcontractor shall achieve substantial completion of the Subcontractor's Work:

*(Check one of the following boxes and complete the necessary information.)*

☐ Not later than (      ) calendar days from the date of commencement of the Subcontractor's Work.

☐ By the following date:

# Article 9: Date of Commencement

- Liquidated damages provision added:
- §9.2.4 If the Subcontractor fails to achieve substantial completion as provided in this Section 9.2, liquidated damages, if any, shall be assessed as set forth in Section 3.4.

# Article 11: Payments

- ◉ Progress payment calculations changed similar to the A101 and A102:
- ◉ §11.1.7.1 The amount of each progress payment shall first include:
  - .1 That portion of the Subcontract Sum properly allocable to completed Work:
  - .2 That portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site by the Subcontractor for subsequent incorporation in the Subcontractor's Work or, if approved by the Contractor, suitably stored off the site at a location agreed upon in writing; and
  - .3 The amount, if any, for changes in the Work that are not in dispute and have been properly authorized by the Contractor, to the same extent provided in the Prime Contract, pending a final determination by the Contractor of the cost of changes in the Subcontractor's Work, even though the Subcontract Sum has not yet been adjusted.

# Article 11: Payments

- ◎ §11.1.7.2 The amount of each progress payment shall then be reduced by:
  - .1 The aggregate of previous payments made by the Contractor;
  - .2 The amount, if any, for Work that remains uncorrected and for which the Contractor has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017 for a cause that is the fault of the Subcontractor;
  - .3 For Work performed or defects discovered since the last payment application, any amount for which the Contractor may withhold payment in whole or in part, as provided in Article 9 of AIA Document A201-2017, for a cause that is the fault of the Subcontractor; and
  - .4 Retainage withheld pursuant to Section 11.1.8 of this Agreement.

# Article 11: Payments

Added:

- 11.1.10 Provided the Contractor has fulfilled its payment obligations under the Subcontract Documents, the Subcontractor shall defend and indemnify the Contractor and Owner from all loss, liability, damage, or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any of the Subcontractor's subcontractors, suppliers, or vendors of any tier. Upon receipt of notice of such lien claim or other claim for payment, the Contractor shall notify the Subcontractor. If approved by the applicable court, when required, the Subcontractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

# Article 12: Insurance and Bonds

Revised:

- §12.1.6 Additional Insured Obligations. To the fullest extent permitted by law, the Subcontractor shall cause its commercial general liability coverage to include: (1) the Contractor, the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions during the Subcontractor's operations; and (2) the Contractor and Owner as additional insureds for claims caused in whole or in part by the Subcontractor's negligent acts or omissions for which loss occurs during the Subcontractor's completed operations. The additional insured coverage shall be primary and non-contributory to any of the Contractor's and Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.



# Article 12: Insurance and Bonds

Added:

- §12.1.7 Notice of Cancellation or Change in Coverage.  
Within three (3) business days of the date the Subcontractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Subcontract Documents, the Subcontractor shall provide notice to the Contractor of such impending or actual cancellation or expiration. Upon receipt of notice from the Subcontractor, the Contractor shall, unless the lapse in coverage arises from an act or omission of the Contractor, have the right to suspend the Work in accordance with this Agreement until the lapse in coverage has been cured by the procurement of replacement coverage by the Subcontractor. The furnishing of notice by the Subcontractor shall not relieve the Subcontractor of any contractual obligation to provide any required coverage.

# Article 12: Insurance and Bonds

Added:

- ⦿ §12.2 Subcontractor's Required Performance Bond and Payment Bond
- ⦿ §12.2.1 The Subcontractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows: *(Specify type and penal sum of bonds.)*
  - **Type** **Penal Sum (\$0.00)**
  - Payment Bond
  - Performance Bond
- ⦿ Payment and Performance Bonds shall be AIA Document A312TM, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312TM, current as of the date of this Agreement.

# Article 12: Insurance and Bonds

Added:

- §12.2.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations under this Agreement, the Subcontractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.
- §12.3 Contractor's Insurance and Bond Obligations
- §12.3.1 The Contractor shall furnish to the Subcontractor certificates of insurance evidencing insurance coverage required of the Contractor under the Prime Contract.



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# 2017 AIA B101 CHANGES



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# The BIG Picture . . . new

- ⦿ “Initial information” section
- ⦿ Sustainable project exhibit (AIA E 204-2017)
- ⦿ General liability insurance requirement for “completed operations.” (§2.5.7)
- ⦿ Designer to be paid for reviewing Contractor requests for substitutions, changes due to code interpretations (§3.5.2.3 and 3.5.3.3; §4.2.1).

# The BIG Picture . . . new

- ⦿ Designer must be included in communications about the scope of services or responsibilities (§5.12)
- ⦿ Designer to be paid for re-design if budget exceeded due to changes in market conditions that could not have been reasonably anticipated (§6.7).

# The BIG Picture . . . new

- ⦿ Owner's license to use design granted only after the Owner substantially performs its obligations under the Agreement, including payment to the Architect (§7.3).
- ⦿ Termination fee paid in the event of termination for convenience – eliminates former “termination expenses” entitlement on the basis of anticipated profit on the balance of the job (§9.7)

# Article 2 – Architect's Responsibilities

§ 2.5 - The Architect shall maintain the following **insurance** ~~for the duration~~ until termination of this Agreement. If any of the requirements set forth below ~~exceed~~ are in addition to the types and limits the Architect normally maintains, the Owner shall ~~reimburse~~ pay the Architect ~~for any additional cost~~: as set forth in Section 11.9.



# Article 2 – Architect’s Responsibilities

§ 2.5.7 To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for **Commercial Liability** and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Architect’s negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner’s insurance policies and shall apply to both ongoing **and completed operations.**

# Article 2 – Architect's Responsibilities

Verify your CGL policy endorsement includes completed operations coverage.

# Article 3

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

# Article 3

§ 3.4.1 The construction documents shall consist of drawings and specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the work.

# Article 3

§ 3.5.2.3 ~~The~~ If the bidding documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an additional service, consider requests for substitutions, ~~if the bidding documents permit substitutions~~ and shall ~~and~~ prepare and distribute addenda identifying approved substitutions to all prospective bidders.

# Article 3

§ 3.6.4.2 “... The Architect’s review shall not constitute approval of safety precautions or, ~~unless otherwise specifically stated by the Architect, of any~~ construction means, methods, techniques, sequences or procedures.”

the Architect assumes no responsibility for the Contractor’s means and methods – **PERIOD!**

# Article 3

## § 3.6.6.1 The Architect shall:

.4 issue a final certificate for payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information and belief, the work complies with the requirements of the contract documents.

*Architect does not warrant compliance of the Contractor's work with the contract documents.*

# Article 4 Supplemental and Additional Services

§ 4.1 ~~Additional~~ Supplemental Services

§ 4.2 ~~3~~ Architect's Additional Services



# Article 4 Supplemental and Additional Services

Additional Services include:

§ 4.3.2.1.2 ~~Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system design, in depth material research, energy modeling, or LEED certification~~ enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;

# Article 4 Supplemental and Additional Services

Additional Services include:

**§ 4.2.1.3** Changing or editing previously prepared Instruments of Service necessitated by ~~the enactment or revision of codes, laws or regulations or official interpretations~~ of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Services were prepared in accordance with the applicable standard of care;

# Article 4 Supplemental and Additional Services

Services necessitated by changes in code were previously addressed in section 4.2.1.3, but are now relocated to section 4.2.1.2.

New provision for additional services is added to 4.2.1.3 to deal with services prompted by code interpretations by authorities.

Not directed at code change, but unforeseen code interpretation.

# Article 5 Owner's Responsibility

~~§ 5.10~~ 12 ~~Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate~~ The Owner shall include the Architect in all communications with the Contractor and that relate to or affect the Architect's consultants through the architect about matters arising out of or relating to the Contract Documents services or professional responsibilities.

# Article 5 Owner's Responsibility

The Owner shall promptly notify the Architect of the substance of any direct communications ~~that may affect the Architect's services.~~ between the Owner and the Contractor otherwise relating to the project. Communications by and with the Architect's consultants shall be through the Architect.

*Owner bears affirmative duty to Architect to disclose its communications with Contractor; and have no communications with Architect's sub-consultants except through Architect.*

# Article 6 Cost of Work

§ 6.3 ... If the Owner requests ~~detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.~~ requires a detailed estimate of the cost of the work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1., as a supplemental service.

“Cost estimating services” agreed up front and bear separate compensation.

# Article 6.7

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, ~~the Architect, without additional compensation,~~ the Architect shall **modify the construction documents as necessary to comply with the Owner's budget** for the cost of the work at the conclusion of the construction documents phase services, or the budget as adjusted under Section 6.6.1. ~~The~~ If the Owner requires the Architect to modify the construction documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the cost of the work **due to market conditions the Architect cannot reasonably anticipate.**

# Article 6.7

The Owner shall compensate the Architect for the modifications as an additional service pursuant to Section 11.3; otherwise the Architect's services for modifying the construction documents shall be without additional compensation. In any event, the Architect's modification of the construction documents shall be the limit of the Architect's responsibility under this Article 6.



# Article 7.3

§ 7.3 ~~Upon execution of this Agreement, the~~ The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing using, maintaining, altering and adding to the project, provided that the Owner substantially performs its obligations, obligations under this agreement, including prompt payment of all sums ~~when due, under this Agreement.~~ due pursuant to Article 9 and Article 11.

Executed Agreement ≠ License; Payment = License

# Article 9 Termination or Suspension

~~§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated~~ If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, together with Reimbursable Expense then due and all Termination Expenses as defined in Section 9.7. reimbursable expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

# Article 9 Termination or Suspension

~~§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect. In addition to any amounts paid under Section 9.6, if the Owner terminates this agreement for its convenience pursuant to Section 9.5, or the Architect terminates this agreement pursuant to Section 9.4, the Owner shall pay to the Architect the following fees:~~

.1 Termination Fee:

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

# Article 9 Termination or Suspension

Gone is “termination expenses”, which included “anticipated profit on the value of the services not performed by the Architect.”

A recognition that in the case of termination for convenience, compensation for anticipated profits are simply not the norm or appropriate.

Architect is free to negotiate the newly inserted termination fee.

*Thank you*