



ARE LIVE: NAVIGATING CONTRACTS

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▶ AIA B101 - 2017: Owner-Architect Agreement

▶ AIA B101 - 2017: Elimination of Exhibit for Initial Information

§ 1.1 This Agreement is based on the Initial Information set forth in this [Section 1.1](#). ~~Article 1 and in optional Exhibit A, Initial Information:~~

(~~Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.~~) [\(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution."\)](#)

▶ AIA B101 - 2017: Sustainable Projects

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

▶ AIA B101 - 2017: Digital Data and BIM Protocols

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.3.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

▶ AIA B101 - 2017: Insurance Obligations

Section 2.5 now covers the Architect's insurance obligations in greater detail than previously set forth in the 2007 B101 Agreement. While there is new language, the changes are not as great as in the Contractor's Insurance Exhibit A, and the requirements here are found within the body of the Agreement and not as a separate exhibit.

▶ AIA B101 - 2017: Owner's Acceptance of Non-Conforming Work

§ 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.

▶ AIA B101 - 2017: Supplemental Service v. Additional Services

§ 4.1 *Additional Supplemental Services*

§ 4.1.1 *The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.*

(Designate the Additional Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement ~~provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)~~

▷ AIA B101 - 2017: Supplemental Service v. Additional Services

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 ~~Insert a~~ A description of each ~~Additional Supplemental~~ Service designated identified in Section 4.1.1 as the Architect's responsibility, ~~if not further described in an exhibit attached to this document~~ is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

▶ AIA B101 - 2017: Supplemental Service v. Additional Services

§ 4.2 Architect's Additional Services

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

▶ AIA B101 - 2017: Communications Between Parties

~~§ 5.1012 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.* 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.*

▶ AIA B101 - 2017: “Cost of Work” includes Owner-Supplied Work

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors’ general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the ~~Architect~~, Architect; the costs of the land, rights-of-way, financing, or contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

▶ AIA B101 - 2017: Liability for Incorrect Estimates

§ 6.7 *If the Owner chooses to proceed under Section 6.6.4, the ~~Architect, without additional compensation,~~ 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 could not reasonably anticipate, 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.*

▶ AIA A201 - 2017: General Conditions to Contract

▶ AIA A201 - 2017: Notice Requirements

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

~~§ 13.3 WRITTEN NOTICE~~

~~Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.~~

▶ AIA A201 - 2017: Digital Data and BIM Protocol

§ 1.7 Digital Data Use and Transmission

The parties intend to transmit shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form, they shall endeavor. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

▶ AIA A201 - 2017: Evidence of Financial Arrangement

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work, and upon written request by the Contractor ~~may request in writing that, the Owner provide~~ shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. ~~Thereafter, the~~ The Contractor ~~may only request~~ shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

▶ AIA A201 - 2017: Contractor's Scheduling Requirements

~~§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES~~

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall ~~prepare and~~ submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall **contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.**

▷ AIA A201 - 2017: Communications Between Parties

~~§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION~~

~~Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the...~~

§ 4.2.4 Communications

~~The Owner and Contractor shall endeavor to communicate with each other through~~ **include** ~~the Architect about matters arising out~~ **in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of** ~~or~~ **the substance of any direct communications between the Owner and the Contractor otherwise** relating to the ~~Contract. Project.~~ Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and ~~material~~ suppliers shall be through the Contractor. Communications by and with ~~separate contractors~~ **Separate Contractors** shall be through the Owner. **The Contract Documents may specify other communication protocols.**

▶ AIA A201 - 2017: Indemnification for Liens

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the 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 Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

▷ AIA A201 - 2017: Insurance and Bonds

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

▶ AIA A201 - 2017: Insurance - Notices of Cancellation

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

▶ AIA A201 - 2017: Claim for Profit on Work Not Performed

Termination by Contractor for Owner's Breach

*§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' ~~written~~ notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including **as well as** reasonable overhead and profit, **on Work not executed, and** costs incurred by reason of such termination, ~~and damages~~.*

▷ AIA A201 - 2017: Claim for Profit on Work Not Performed

Termination by Owner for its Convenience

§ 14.4.3 *In case of such termination for the Owner's convenience, **the Owner shall pay** the Contractor ~~shall be entitled to receive payment for Work properly executed, and;~~ costs incurred by reason of such **the** termination, ~~along with reasonable overhead and profit on the Work not executed~~ **including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.***

▶ AIA A101 - 2017: Insurance and Bonds

▶ AIA A101 - 2017: Insurance and Bonds

Insurance Exhibit

- 1. Distinguishes between required and optional coverage*
- 2. Adopts a “check-the-box” or grocery list of possible types of insurance to be carried*
- 3. Modular as an exhibit for transmittal to carriers and other parties*
- 4. More detailed information about types of insurance provided than ever before*

▶ AIA A101 - 2017: Owner and Contractor Insurance Requirements

Section A2 identifies the Owner's Insurance Requirements.

- 1. Owner's Property Insurance the Owner is to carry*
- 2. Optional coverages offered such as Loss of Use, Expediting Cost, Soft Cost Insurance, etc.*
- 3. Language to protect Contractor and Subcontractors if Owner fails to carry the specified insurance*
- 4. Special and additional considerations are further outlined in the Exhibit*

▶ AIA A101 - 2017: Owner and Contractor Insurance Requirements

Section A3 identifies the Contractor's Insurance Requirements.

- 1. Standard policy types identified, including Commercial General Liability, Automobile, Workers' Compensation, Employers' Liability*
- 2. Optional coverages such as Jones Act, Professional Liability, Pollution Liability, and others*
- 3. Various different types of property insurance also outlined for the Contractor – Railroad, Asbestos, etc.*
- 4. Limitations and Exclusions to coverages are also identified*

▶ Thank you Mike Hanahan and Schiff Hardin!

A detailed discussion and review of all the provisions in the AIA B101 and AIA A201, as well as other issues on construction law, are contained in Mike's class lectures for Professional Practice II/Architecture 544.

These are located on his bio page at www.schiffhardin.com

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