

In September 2018, NCARB updated the *ARE 5.0 Handbook* to include 2017 AIA Contract Documents updates for the following documents:

- A101-2017: *Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum*
- A201-2017: *General Conditions of the Contract for Construction*
- B101-2017: *Standard Form of Agreement Between Owner and Architect*
- C401-2017: *Standard Form of Agreement Between Architect and Consultant*
- G701-2017: *Change Order*
- G704-2017: *Certificate of Substantial Completion*

Some of the changes are more extensive than others. To help you navigate the *ARE 5 Review Manual*, keep this PDF supplement at hand. We recommend reviewing the list of changes for your upcoming exam and marking those sections with an asterisk:

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## UPDATES TO ARE5 REVIEW MANUAL RELATED TO SIGNIFICANT CHANGES IN THE 2017 AIA DOCUMENTS

The text in bold face refers to the page number in ARE5RM and the book heading

### **2-14, Architect's Insurance**

Add a new bullet point:

- *employers' liability*: The architect is now required to also carry employers' liability insurance, which covers costs if an employee makes claims for illness or injury caused by their work or negligence on the part of the employer. It covers liability arising out of work-related injuries that do not fall under workers' compensation. In some cases both workers' compensation and employers' liability can be covered by one policy.

### **2-14, Owner's Insurance**

The first sentence should read: As stated in AIA Document A101, *Standard Form of Agreement between Owner and Contractor*, and AIA Document A101-Exhibit A, *Insurance and Bonds*, the owner is required to carry liability insurance as well as property insurance for the full insurable value of the work.

Delete the last sentence about boiler insurance.

Add new text as follows:

The requirements for the owner's insurance have been moved to Document A101, Exhibit A from the *General Conditions of the Contract*. While many of the same requirements are included additional types of insurance have been added in a checklist form making it easier for the owner to review and add to the agreement. If a particular type of insurance is added the owner also needs to include the limits of coverage. The following types of insurance may be selected if required for a particular project.

- Insurance for existing structures when remodeling or constructing an addition
- Loss of use, business interruption, and delay in completion insurance
- Ordinance or law insurance

This covers costs to satisfy minimum requirements of any law or ordinance regulating the demolition, construction, repair, replacement, or use of the project.

- Expediting cost insurance

This covers reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replace of the property.

- Extra expense insurance

This provides for the reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of damaged property.

- Civil authority insurance

This covers losses arising from an order of a civil authority prohibiting access to the project, provided such order is the direct result of physical damage covered under the required property insurance.

- Ingress/egress insurance

This covers loss due to the necessary interruption of business due to physical prevention of ingress or egress from the project as a direct result of physical damage.

- Soft costs insurance

This insurance covers a range of miscellaneous costs to reimburse the owner for costs due to the delay of the project, such as construction loan fees, architect's or engineer's fees, property taxes, building permits, interest on loans and insurance premiums.

- Cyber security insurance

## **2-15, Contractor's Insurance**

Delete existing text and add:

As with the owner's insurance requirements, contractor insurance requirements have been moved from the *General Conditions of the Contract* to Document A101—Exhibit A, Insurance and Bonds, which requires that contractors carry the following types of insurance. This list is more extensive than in previous editions of the *General Conditions of the Contract*. Of course, not all of the following would be needed on every project.

- Commercial general liability
- Automobile liability coverage
- Workers' compensation
- Employer's liability
- Jones Act, and the Longshore & Harbor Workers' Compensation Act (if work involves hazards arising from work on or near navigable waterways)
- Professional Liability insurance if the contractor is required to furnish professional services as part of the work

- Pollution Liability insurance if the work involves the transport, dissemination, use, or release of pollutants
- Maritime liability insurance associated with the operation of a vessel
- Insurance for the use or operation of manned or unmanned aircraft, if the work requires such activities.
- Property insurance
- Railroad Protective liability insurance
- Asbestos abatement liability insurance
- Insurance for physical damage to property while it is in storage and in transit to the construction site
- Property insurance covering property owned by the contractor and used on the project, including scaffolding and other equipment.

The contractor, as well as the architect, may now achieve the required limits and coverage for general liability and automobile liability through a combination of primary and excess or umbrella liability insurance, provided such insurance policies result in the same or greater coverage separately.

### **5-3, Initial Information**

Add the following text after the two existing paragraphs:

The changes to the B101 document include the following changes and additions.

Instead of a separate, optional exhibit for some initial information, Article 1 now includes all the relevant information into the agreement, putting all the information in one place.

If the Owner identifies a sustainable objective the owner and architect shall complete and incorporate AIA Document E204-2017, *Sustainable Projects Exhibit* (described below) into the Agreement. Sustainable project services can then be added as a supplemental service under Section 4.1 describing supplemental and additional services. This replaces the previous sustainable projects agreement between owner and architect.

If initial information materially changes, in addition to adjusting the schedule, the architect's services, and the architect's compensation as before, the owner must now, in the 2017 document, also adjust the owner's budget for the work.

The parties to the agreement must agree on protocols for the transmission and use of instruments of service or any other information in digital form. They must use AIA Document E203-2013, *Building Information Modeling and Digital Data Exhibit* and the requisite AIA Document G202-213, *Project Building Information Modeling Protocol Form*. If either party does not use these documents, they do so at their own risk and there is no liability to the other party and its contractors or consultants when using or relying on digital data.

### **5-3, The Architect's Responsibilities**

Add the following paragraph:

The insurance requirements under Article 2 now contain a more detailed description of the required types of insurance and the architect is now required to maintain the insurance until termination of the agreement, which is *now* for a minimum of one year following substantial completion as spelled out in a new paragraph 9.8 in Article 9. Previously it was for the duration of the agreement.

The architect may now achieve the required limits and coverage for general liability and automobile liability through a combination of primary and excess or umbrella liability insurance, provided such insurance policies result in the same or greater coverage separately. The architect's insurance must include the owner as an additional insured for claims caused in whole or in part by the architect's negligent acts or omissions.

### **5-4, Basic Services**

In the first paragraph at the top of the page, wording has been changed from "environmentally responsible design" to "sustainable design" when requiring the architect to consider such design alternatives during schematic design.

Add the following bullet points:

- The architect is not responsible for the owner's directive or substitution, or for acceptance of non-conforming work, made or given without the architect's written approval. Previously the acceptance of non-conforming work was not included.
- If the bidding documents permit substitutions, the architect, upon the owner's written authorization, will now, as an additional service, be paid for reviewing requests for substitutions and preparing addenda. Previously the architect was not paid.

Under the bullet point *contract administration services* add the following:

In addition to notifying the owner of deficiencies in the work during site visits, a provision has been added to require the architect to promptly notify the owner of known deviation from the most recent *construction schedule* submitted by the contractor.

In the paragraph concerning review of submittals in Document B101 wording has been *deleted* that could allow any possibility that the agreement can specify that the architect will be responsible for the contractor's safety precautions or means and methods of construction. The exception stated in the second paragraph under "contract administration services" is no longer valid. Instead, there is a new procedure as detailed in the *General Conditions for the Contract for Construction*, Section 3.3.1. Refer to the reference to page **5-18, The Contractor** in this document.

### **5-5, The Owner's Responsibilities**

The owner's duty is greatly expanded by the provision that the owner must include the architect in communications with the contractor where the communications relates to or affects the architect's services. A new requirement is added that the owner must notify the architect of the substance of its communications with the contractor in any matter relating to the project. In the previous agreement communications by the owner with the contractor had to be through the architect. Now the owner can communicate directly with the contractor but must include the architect. However, the requirement remains that any communications by and with the consultants shall be through the architect.

### **5-6, Terms and Conditions of the Contract**

Under the bullet point *instruments of service* the owner's license to use the instruments of service is no longer created upon execution of the agreement, but is only granted by the architect after the owner has substantially performed its obligation under the agreement, *including payment to the architect*.

### **5-7, Terms and Conditions of the Contract**

Add the following paragraph to the bullet point *termination*: As part of the agreement the architect and owner must now agree to a termination fee and/or licensing fee if the owner intends to continue using the architect's instruments of service. If the owner terminates the agreement for the owner's convenience the owner must pay the agreed upon termination fee and/or licensing fee. This provision also applies to the architect terminating the agreement if the owner suspends the project for more than 90 cumulative days for reasons other than the fault of the architect. The term "termination fee" is new and may include anticipated profit. Both situations require not less than seven days written notice. As a new provision, the agreement automatically terminates one year from the date of substantial completion.

Add the following new bullet point, *assignment*: Under the provision allowing assignment of the agreement to a lender providing financing for the project a new sentence has been added to specifically

require the lender, in addition to assuming the owner's rights and obligations, to make payments owed by the owner to the architect.

### **5-7. Cost of the Work**

Replace the first paragraph with the following:

The *cost of the work* is the total cost to the owner to construct the project designed and specified by the architect and includes the contractors' general conditions cost, overhead, and profit. The new agreement now specifically states that the cost of the work includes owner-supplied work. Costs are figured at current market rates. The cost of the work does not include professional fees, land costs, rights-of-way, financing, and contingencies for changes in the work or other costs that are the responsibility of the owner.

Delete the entire last paragraph and add the following:

The architect's estimate of the cost of the work is based on current area, volume, or similar conceptual estimating techniques. If the owner requires a detailed estimate the architect shall provide such an estimate, but it is identified as a supplemental service.

If the owner chooses to reduce to cost of the work in consultation with the architect because the project is over budget at the conclusion of the construction documents phase the owner must now compensate the architect for modifications to the documents if the overage is due to market conditions the architect could not reasonably anticipate; otherwise the architect must modify the construction documents without additional compensation. Previously, the architect was required to modify the construction documents without additional compensation regardless of the circumstances.

### **5-8, Additional Services Not in Agreement**

Replace the forth bullet point with the following:

The architect is allowed to be paid, as an additional service, for making changes to the instruments of services caused by a later, *official interpretation* of applicable codes or regulations that were acceptable prior to the issuance of the building permit and that were prepared in accordance with the applicable standard of care. Previously, the wording stated the additional service was also allowed by the enactment or revision of codes, laws or regulations as well as official interpretations.

### **5-10, Compensation Methods**

Add the following after the first paragraph:

While any method may be specified, the new Article 11 on compensation has been revised by breaking down the basic methods into three groups: stipulated sum, percentage basis, and "other." When

compensation is based on a stipulated sum or a percentage basis the agreement must now include the percentages for each phase of the project. Also, in the new 2017 document the phrase “Bidding or Negotiation” has been replaced with “Procurement Phase.”

Add a new bullet point: • *progress payments*: Progress payments are calculated by multiplying the percentages by the owner’s most recent budget. Compensation from previous progress payments is not adjusted to take into account subsequent updates to the owner’s budget. When compensation is on a percentage basis and any portion of the project is deleted or not constructed the architect is entitled to compensation for all services performed on that portion. Refer to Progress Payments later in this chapter.

Add a new bullet point: • *architect’s insurance*: If the types and limits of insurance coverage required in Article 2 are in addition to the types and limits the architect normally maintains, the owner must pay the architect for the additional costs.

### **5-13, Add the following two paragraphs before “Identification of Contract Documents”**

The new 2017 agreement documents between owner and contractor make many of the same changes across all three, A101, A102, and A103. As with AIA Document A201-2017, the most significant change to these three documents is the creation of the insurance and bonds exhibit, known as Exhibit A at the end of each of the documents. Note that the short form contracts continue to include insurance provisions in the main body of the contract. These include AIA Document A104-2017, *Standard Abbreviated Form of Agreement Between Owner and Contractor* and AIA Document A105-2017, *Standard Short Form of Agreement Between Owner and Contractor*.

Additionally, the agreements for sustainable projects have been retired and replaced with a separate document, AIA Document E204-2017, *Sustainable Projects Exhibit*, which can be attached to other agreements if there are sustainable project goals.

### **5-13, Basic Provisions**

Replace the third paragraph with the following:

Article 3 is titled “Date of Commencement and Substantial Completion.” Establishing the dates for commencement of the work and for substantial completion have been simplified by adding check boxes. The commencement of work can be either the date of the agreement, the date set forth in a notice to proceed issued by the owner, or a stated date. If a date of commencement of the work is not selected, then it shall be the date of the agreement.

Replace the fourth paragraph with the following:

*Substantial completion* is the stage at which the work, or a designated portion of it, is sufficiently complete that the owner can occupy it or use it for its intended purpose, in accordance with the contract documents. Substantial completion is established by a fixed number of calendar days from the date of commencement of the work or by a specific date written into the agreement. The completion time may be extended, as provided for in the general conditions, when the delay is due to weather or other circumstances beyond the control of the contractor.

Add the following paragraph:

As with AIA Document A201-2017, if the owner terminates the agreement for convenience the requirement for reasonable overhead and profit on the work not executed has been *deleted* and costs attributable to termination of subcontracts and a termination fee, if any, have been *added*. The parties agree in advance what the termination fee would be.

Add the following paragraph:

The requirement for insurance and bonds for both the owner and contractor is now in a separate Exhibit A at the end of Document A101-2017.

#### **5-14, Progress Payments**

Replace the last two paragraphs with the following:

The procedure for making payments has been simplified, separating retainage language into its own section. For payment calculations, there are now two subsections, one to include the amount that each progress payment should include, and one subsection to include the amount by which each payment should be reduced. Along with the usual language requiring payment for work performed and materials and equipment delivered and stored, there is now a requirement to pay that portion of construction change directives that the architect determines to be reasonably justified. The previous method of calculating progress payments based on percentages of completion and the schedule of values has been eliminated. Instead, the owner must pay that portion of the contract sum and material and equipment delivered and stored properly allocable to the completed work.

In the subsection on reductions, it now includes 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 does intend to pay. This new language was previously in the *General Conditions of the Contract (A201-2007)* but is now in this document to prevent the general contractor from seeking progress payments for self-performed work.

The retainage subsection now includes a much more thorough procedure for withholding retainage. The possible reasons for withholding payment are given in AIA Document A201-2017, Article 9.5 as in previous documents. However, in the new retainage section, there are spaces to be filled in to enumerate the percentage for retainage for each progress payment, which items are not subject to retainage, and for reduction or limitation of retainage, if any. It also allows the contractor, upon substantial completion, to submit an application for payment that includes the retainage withheld from prior applications for payment.

#### **5-15, Enumeration of Contract Documents**

Add the following after the last bullet point:

Additional documents that are made as part of this document are specifically listed, such as the *General Conditions of the Contract*, drawings, specifications, and other documents. Included in this list is AIA Document E203-2013, *Building Information Modeling and Digital Data Exhibit*. There are check boxes for “Other Exhibits” including AIA Document E204-2017, *Sustainable Projects Exhibit* as well as *Supplementary and other Conditions of the Contract*.

#### **5-16, Add the following new section after A101 text**

### **STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONTRACTOR WHERE THE BASIS OF PAYMENT IS THE COST OF THE WORK PLUS A FEE WITH A GUARANTEED MAXIMUM PRICE—AIA DOCUMENT A102**

In both Document A102-2017 and Document A103-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work plus a Fee without a Guaranteed Maximum Price, revisions to the contract documents can be made after the guaranteed maximum price (GMP) or control estimate has been set if they are consistent with the stated assumptions contained in the guaranteed maximum price or control estimate. The contractor must notify the owner and architect of any inconsistencies between the agreed-upon assumption contained in Section 5.2.4 and the revised contract documents.

Document A102-2017 retains the references to the percentages of completion and the schedule of values, unlike A101-2017. The GMP must now be separately allocated to each portion of the work, including the contingency and the contractor’s fee.

Both A102-2017 and A103-2017 include a new section forbidding the contractor from making advance payments to suppliers for materials that have not been delivered to the project site without the prior approval of the owner.

New to the A102-2017 document is the provision *not* allowing as a reimbursed expense bonuses, profit sharing, incentive compensation and any other discretionary payment paid to anyone hired by the contractor or paid to any subcontractor or vendor, unless the owner has made prior approval.

## **5-17, General Provisions**

A new provision has been added stating that if a court finds one provision of the agreement to be void, the remainder of the agreement is still valid.

Section 1.6.1 provides that where contract documents require one party to notify or give notice to the other party, such notice must be in writing and delivered in person, by mail, by courier, or, now allowed, by electronic transmission if a method has been set forth in the agreement. However, in Section 1.6.2 notice of *claims* must be made by registered mail, certified mail, or by courier providing proof of delivery. Previously only certified or registered mail was allowed for claims.

Delete the last paragraph and add the following:

The parties to the contract must agree on protocols on the transmission and use of Instruments of Service and any other information in digital form. The AIA Document E203-2013, *Building Information Modeling and Digital Data Exhibit*, must be used to establish the protocols. Previously A201 just said the parties *intend* to transmit. Any use of, or reliance on, building information modeling without agreement to protocols set forth in AIA Document E203-2013, *Building Information Modeling and Digital Data Exhibit* and the requisite AIA Document G202-213, *Project Building Information Modeling Protocol Form* is at the using or relying party's sole risk without liability to the other party and its contractors or consultants or other contributors to the BIM model.

## **5-17, The Owner**

Replace the first paragraph with the following:

Article 2, "Owner," outlines the duties, responsibilities, and rights of the owner. Among these is the requirement to furnish reasonable evidence that the contractor can be paid. New provisions in this article give the contractor significant rights. Prior to commencement of the work the owner *must*, upon written request by the contractor, furnish the contractor with reasonable evidence that the owner has made financial arrangements to fulfill the owner's obligations under the contract. Previously, the language stated that "the contractor *may* request such evidence." The contractor does not have to commence work until the owner provides such evidence. Once work has begun, the contractor can only request such evidence if

## **5-18, The Contractor**

Place after the first paragraph on Page 5-18:

While the contractor is still totally responsible for supervision and construction procedures, if the contract documents give specific instruction concerning construction means, methods, techniques, sequences, or procedures the contractor shall evaluate the jobsite safety related to them as in the 2007 document and give written notice to the owner if the procedures are not safe. However, *now the contractor shall propose alternative means, methods, techniques*. The *architect must then evaluate* the proposed alternative solely for conformance with the design intent. Unless the architect objects to the contractor's proposed alternative, the contractor shall perform the work using the contractor's alternative means and methods. This relieves the architect of responsibility the architect might otherwise have for those things associated with changes implemented by the contractor.

Add the following to bullet point *concealed or unknown conditions*:

If concealed conditions are discovered by the contractor the contractor must provide notice to the owner and architect no later than 14 days after first observance. Previously it was 21 days. Although not spelled out it is important to know that the geotechnical report is *not* a contract document. No part of the drawings or specifications should give any indication that the geotechnical report is a contract document—it is just “available information” that should be in Division 00 31 00 of the project manual, Available project information.

Add the following to bullet point *design services*:

Delete the last sentence of the first paragraph and replace with the following: If the contractor is required to provide professional services related to systems, materials, or equipment specifically required by the contract documents the owner and architect must specify all performance and design criteria that such services must satisfy. In the 2017 document the contractor is now entitled to rely on the adequacy and accuracy of such criteria. In the 2007 document the contractor was *not* responsible for the adequacy of the design criteria provided in the contract documents.

Add a new paragraph to the bullet point, *design services*:

Note that when professional services are provided by *subcontractors* (fire-protection, for example) the *design criteria* must be provided through the Contractor, which comes from the design professional. This provision is found in AIA Document A401-2017, *Standard Form of Agreement Between Contractor and Subcontractor*.

## **5-20, The Architect**

Add an additional paragraph:

Communication between the owner and contractor shall include the architect in all communications that relate to or affect the architect's services or professional responsibilities. This is different than *through* the architect as previously written. The owner must notify the architect of the substance of any direct communications between the owner and contractor. Communication with the architect's consultants is still through the architect. Communication with subcontractors and suppliers is still through the contractor. Communication with separate contractors is still through the owner.

### **5-20, Changes in the Work**

Add to the paragraph on *minor changes in the work*:

For minor changes in the work, if the contractor believes such changes may affect the contract sum or contract time the contractor must notify the architect and shall not proceed to implement the work. (A change order would be required.) However, if the contractor performs the work in the architect's order for a minor change, the contractor waives any adjustment to the contract sum or extension of the contract time.

### **5-22, Insurance and Bonds**

Replace the first paragraph with the following:

For the duration of the project, both the owner and contractor are required to maintain insurance to protect against various types of losses. Most of Article 11 on Insurance and Bonds in the 2007 document has been deleted and now refers to a new Exhibit A to AIA Document A101-2017, *Standard Form of Agreement between Owner and Contractor, Insurance and Bonds*. A similar Exhibit is found in AIA Document A102-2017, *Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*, and AIA Document A103-2017, *Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price*. This article mainly gives the requirements that the owner and contractor maintain insurance described in the agreement or elsewhere in the Contract Documents (A101, etc.). It also contains two paragraphs on Waivers of Subrogation. Additional provisions as required by the unique nature of each project are included in the supplementary conditions.

### **5-23, Termination or Suspension of the Contract**

Add the following new paragraph at the end of the existing text:

If the owner terminates the contract for the owner's convenience, as in the 2007 version, the contractor must be paid for the work properly executed and costs incurred by reason of the termination. However, in the 2017 document the requirement for reasonable overhead and profit on the work not

executed has been *deleted* and costs attributable to termination of subcontracts and a termination fee, if any, have been *added*.

### **5-26, Architect-Consultant Agreement**

Add the following to the initial paragraph:

Although the consultant is not responsible for the acts or omissions of the architect, the consultant must provide prompt written notice to the architect if the consultant becomes aware of any errors, omissions, or inconsistencies of the consultant's work.

Add a second and third paragraph:

New paragraphs have been added, as with other agreements, for the parties to agree on protocols governing the transmission and use of instruments of service in digital form. Reference is made to AIA Document E203-2013, *Building Information Modeling and Digital Data Exhibit* and the requisite AIA Document G202-213, *Project Building Information Modeling Protocol Form*. If either party does not use these documents, they do so at their own risk and there is no liability to the other party and its contractors or consultants when using or relying on digital data.

Instead of referring to dispute resolution provisions set forth in the prime agreement, new provisions have been added specifically for this document, including mediation and arbitration.

Add the following bullet points:

- A requirement has been added that the consultant must provide its services in the phases and sequences directed by the architect and subject to the same standards and provisions that the architect is required to meet.
- The provision for site visits has been moved to a new section. There is a space to fill in the number of site visits the consultant must make during construction as in the 2007 edition.

### **5-26, Architect's Responsibilities**

Add the following paragraph:

The architect must furnish to the consultant a copy of the preliminary estimate or updated estimates of the work submitted to or received from the owner, bidding documents, and other cost information to the extent that they pertain to the consultant's portion of the project. The architect shall provide prompt written notice to the consultant if the architect becomes aware of any errors, omissions, or inconsistencies of the consultant's work.

5-27, Add the following new section before the CONSENSUSDOCS section; delete the C401-SP section

## **AIA E204-2017, SUSTAINABLE PROJECTS EXHIBIT**

AIA document E204-2017 is designed to be added to any AIA document to address the requirements associated with sustainable projects. This document is meant to *replace* the Sustainable Projects documents such as AIA A201 SP-2007, AIA C401 SP-2007 and AIA B101 SP-2007, which have been retired.

The document sets forth the roles and responsibilities for each of the project participants. It can be used on a wide variety of sustainable projects, including those where a sustainability certification is required or those in which the sustainable objective is based on performance-based sustainability objectives. E204-2017 is not a standalone document. It is intended to be attached as an exhibit to an existing agreement on a project that includes a sustainable objective. For assistance in completing a project with sustainable goals the architect can use AIA Document D503-2013, Appendix F, *Example of a Sustainability Plan*; and AIA Document B214-2012, *Standard Form of Architect's Services: LEED® Certification*.

### **The Sustainability Process**

AIA Document E204-2017 defines a standard process for completing a sustainable project. To begin the process, the owner must set a *sustainable objective*, a goal to be achieved by incorporating sustainable measures into the design, construction, maintenance, and operations of the project. For example, the objective may be to achieve certification through LEED or another sustainable building rating system, to reduce the building's impact on the environment, to enhance the health and well-being of building occupants, or to improve energy efficiency.

A sustainable objective may be based on a code or other jurisdictional requirement, such as meeting the requirements of a state energy code, or it may be voluntary, such as wanting the project to achieve a LEED platinum rating. Although the architect may suggest a sustainable objective, it is the owner's responsibility to make the final decision. It is also important that the architect explain the cost implications of the sustainable objective so that the owner can make an informed decision.

Before the end of the schematic design phase, the architect, owner, consultants, and other relevant team members should hold a *sustainability workshop*. This may even be held earlier as part of the programming process. At the sustainability workshop, the team members confirm the sustainable objective, establish the goals and expectations for the project, and discuss possible sustainable measures. A *sustainable measure* is a specific design or construction element, or a post-occupancy use, operation, maintenance or monitoring requirement, that must be completed in order to achieve the sustainable objective. The team also reviews the effect that the sustainability measures will have on the project's feasibility and budget.

Next, the architect prepares a sustainability plan. A *sustainability plan* is a contract document that identifies and describes the

- sustainable objective
- sustainable measures that will be used to achieve the objective
- strategies that will be used to implement the sustainable measures
- associated roles and responsibilities of the owner, architect, and contractor
- specific details about design reviews
- details about the testing required to verify achievement of the sustainable measures
- details about the sustainability documentation required for the project

AIA Document D503-2013, *Guide for Sustainable Projects* and Appendix F of that document provides a format for completing a sustainability plan.

*Sustainability certification* is certification of sustainable design, construction, or environmental or energy performance. Certification is issued by an agency *certifying authority* such as Green Building Certification Inc., which issues LEED certification. If the objective is certification, the sustainability plan can take the form of a spreadsheet that lists these items:

- the sustainable measures needed to achieve the sustainable objective
- the potential and expected value of each credit from the certifying authority
- the responsible party (owner, architect, contractor, or other) and whether the party is primarily responsible for implementing the measure or just provides support
- detailed description of the implementation strategies selected to achieve the sustainable measures, the details about design reviews or testing, and the sustainability documentation required

The sustainability plan is submitted to the owner for approval. The architect must then incorporate the sustainable measures into the drawings and specifications as appropriate. The sustainability plan may be bound into the project manual with the specifications. The architect must prepare the schematic design, design development, and construction documents that incorporate the sustainable measures identified in the sustainability plan.

### **Additional Responsibilities of the Architect using the Sustainable Projects Exhibit**

If some of the materials and equipment that the architect proposes to use have had limited testing or verification of performance, then the architect must discuss with the owner how the sustainable objective may be affected if the materials and equipment do not perform according to the manufacturer's or supplier's representations. If the owner agrees to use the materials and equipment anyway, the owner must put this

decision in writing. As long as this is done, the architect is not responsible for any damages arising from the failure of the materials or equipment.

The architect must implement those sustainable measures that were identified as the architect's responsibility in the sustainability plan and make adjustments as needed as the design work and construction move forward. The architect has a duty to keep the owner informed of how the project is progressing toward achievement of the sustainable measures, as well as of any deficiencies that will affect that achievement. The architect must also notify the owner of proposed changes that will materially affect the achievement of a sustainable measure or the sustainable objective.

If the sustainable objective of the project includes sustainability certification, the architect must register the project, first providing the owner with copies of all the agreements that the certifying authority will require in order to register the project and pursue the sustainability certification. The owner must agree to the certification requirements, and the owner and architect must review them before moving forward with additional sustainability services. The owner must give written notice to the architect to proceed with the registration. The architect performs these services as an agent of the owner. Any fees paid to the certifying authority are reimbursable expenses.

As the project nears completion, the architect must collect the sustainability documentation, submit the documentation to the certifying authority, and prepare and submit the application for certification to the certifying authority. The architect may also be required to prepare and file necessary documentation with the certifying authority to appeal a ruling or other interpretation denying a requirement, prerequisite, credit, or point necessary to achieve the sustainability certification.

During the construction administration phase the architect has the following responsibilities.

- The architect must advise and consult with the owner regarding the progress of the project toward achieving the sustainable measures. As part of the field reports prepared during regular site visits, the architect must notify the owner of any known deviations from the contract documents that might impact achievement of sustainable measures.
- If a proposed design or construction change that is needed to address a field condition might impact a sustainable measure or the sustainable objective, the architect must notify the owner.
- The architect must respond to the contractor's requests for information when the contractor asks the architect to describe how a product, material, or equipment was intended to satisfy the requirements of a sustainable measure.
- The architect must register the project with the certifying authority. Any fees paid by the architect to do so are deemed reimbursable expenses.

- The architect must collect the sustainability documentation from the owner and contractor, organize and manage the information and confirm that it is in an appropriate format, and submit the documentation to the certifying authority as required for the sustainability certification process.
- The architect must prepare and submit the application for certification to the certifying authority and, if needed, prepare responses to any additional questions or documentation required by the certifying authority
- As part of the sustainable measures, the project may require the use of materials and equipment that have had limited testing or verification of performance. The architect may be unable to determine whether the materials or equipment will perform as represented by the manufacturer or supplier. The architect must discuss the situation with the owner, including the potential effects on the sustainable objective if such materials or equipment are used. The owner must render a written decision regarding the use of such materials or equipment. If the owner decides to proceed with the use of such materials or equipment, the architect is permitted to rely on the manufacturer's representations and is not responsible for any damage arising from the failure of the material or equipment to perform in accordance with the manufacturer's representations.

Assuming the architect receives timely notice from the owner or certifying authority, the architect must prepare and file necessary documentation to appeal a ruling or interpretation denying a requirement to achieve a sustainability certification.

### **Responsibilities of the Contractor using the Sustainable Projects Exhibit**

Article 3 of AIA E204-2017 adds these items to the contractor's responsibilities given in AIA Document A201-2017, *General Conditions of the Contract for Construction*.

- The contractor must perform any sustainable measures specified in the sustainability plan as being the contractor's responsibility.
- If the owner or architect recognizes a condition that will affect the achievement of a sustainable measure, the contractor must meet with the owner and architect to discuss alternatives and remedy the condition.
- The contractor is not required to ascertain that the contract documents are in accordance with the requirements of the certifying authority, but if the contractor becomes aware of such conditions, the contractor must notify the architect.
- If the contractor wants to make a substitution, he or she must include a written description identifying any potential effect the substitution may have on the project's achievement of a sustainable measure or the sustainable objective.

- The contractor must complete any sustainability documentation required by the sustainability plan or other contract documents. This may include documentation that must be submitted after substantial completion.
- If professional design services or certifications by a design professional related to systems, materials, or equipment are required of the contractor by the contract documents and the contractor's design professional proposes the use of materials or equipment that have had limited testing or verification of performance, the contractor must discuss the situation with the architect and owner, including the potential effects on the sustainable objective if such materials or equipment are used. The owner must render a written decision regarding the use of such materials or equipment. If the owner decides to proceed with the use of such materials or equipment, the contractor and architect are permitted to rely on the manufacturer's representations and are not responsible for any damage arising from the failure of the material or equipment to perform in accordance with the manufacturer's representations.
- The contractor must make available to each proposed subcontractor copies of the sustainability plan prior to the execution of the subcontract agreement and identify to the subcontractor terms of the proposed subcontract that may be at variance with the sustainability plan.
- For construction waste management, the contractor must recycle, reuse, remove, or dispose of materials as required by the contract document. As part of this requirement, the contractor must prepare and submit to the architect and owner a construction waste management and disposal plan.

### **Owner's Responsibilities using the Sustainable Projects Exhibit**

The exact nature of the owner's responsibilities depends on what was specifically identified in the sustainability plan (such as applying for certification), but may include some or all of the following.

- perform the sustainable measures that are specified in the sustainability plan as being the owner's responsibility
- providing any information requested by the architect or contractor that is relevant for achieving the sustainable objective, such as design drawings, record drawings, operation and maintenance manuals, building operation costs, historical building data, or repair records
- complying with the requirements of the certifying authority as they relate to the ownership, operation, and maintenance of the project during construction and after completion of the project (for example, the owner may be required to submit utility bills)

- preparing, filing, and prosecuting any appeals to the certifying authority in the event that sustainability certification is awarded and then later revoked or reduced

comply with the requirements of the certifying authority as they relate to the ownership, operation, and maintenance of the project

- providing the services of a commissioning agent, unless the architect is specifically contracted to do so as an additional service

Because achieving the sustainable objective is dependent on many factors beyond the contractor's and architect's control, neither the architect nor the contractor warrant or guarantee that the project will achieve the sustainable objective.

### **50-5, Construction Observation**

In addition to notifying the owner of deficiencies in the work during site visits, a provision has been added to require the architect to promptly notify the owner of known deviation from the most recent *construction schedule* submitted by the contractor.

Delete the second sentence of the third paragraph and replace with the following:

Communication between the owner and contractor shall include the architect in all communications that relate to or affect the architect's services or professional responsibilities. This is different than *through* the architect as previously written. The owner must notify the architect of the substance of any direct communications between the owner and contractor. Communication with separate contractors is still through the owner.

### **50-7, Safety**

Add a new paragraph:

As discussed in Chap. 5, if the contract documents give specific instruction concerning construction means, methods, techniques, sequences, or procedures the contractor shall evaluate the jobsite safety related to them and give written notice to the owner if the procedures are not safe. However, in the current version of the *General Conditions of the Contract*, the contractor shall propose alternative means, methods, techniques. The architect must then evaluate the proposed alternative solely for conformance with the design intent. Unless the architect objects to the contractor's proposed alternative, the contractor performs the work using the contractor's alternative means and methods. This relieves the architect of responsibility the architect might otherwise have for those things associated with changes implemented by the contractor.

### **50-8, Conformance with Sustainability Requirements**

Replace the first paragraph with the following: When a project is completed using AIA Document E204, *Sustainable Projects Exhibit*, one or more of the following are required.

In the first paragraph after the first set of bullet points replace “AIA sustainability project documents” with AIA Document E204, *Sustainable Projects Exhibit*.

#### **50-10, Minor Changes in the Work**

In the new document, for minor changes in the work, if the contractor believes such changes may affect the contract sum or contract time the contractor must notify the architect and shall not proceed to implement the work. (A change order would be required.) However, if the contractor performs the work in the architect’s order for a minor change, the contractor waives any adjustment to the contract sum or extension of the contract time.

#### **50-12, Submittals**

In the sixth paragraph add the following:

Wording has been *deleted* that could allow any possibility that the agreement can specify that the architect will be responsible for the contractor’s safety precautions or means and methods of construction.

#### **50-15; Intermediate Payments**

Replace the first two paragraphs at the top of the page with the following:

The procedure for making payments has been simplified, separating retainage language into its own section. For payment calculations, there are now two subsections, one to include the amount that each progress payment should include, and one subsection to include the amount by which each payment should be reduced. Along with the usual language requiring payment for work performed and materials and equipment delivered and stored, there is now a requirement to pay that portion of construction change directives that the architect determines to be reasonably justified. The previous method of calculating progress payments based on percentages of completion and the schedule of values has been eliminated. Instead, the owner must pay that portion of the contract sum and material and equipment delivered and stored properly allocable to the completed work.

In the subsection on reductions, it now includes 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 does intend to pay. This new language was previously in the General Conditions of the Contract (A201-2007) but is now in this document to prevent the general contractor from seeking progress payments for self-performed work.

The retainage subsection now includes a much more thorough procedure for withholding retainage. The possible reasons for withholding payment are given in AIA Document A201-2017, Article 9.5 as in previous documents. However, in the new retainage section, there are spaces to be filled in to enumerate the percentage for retainage for each progress payment, which items are not subject to retainage, and for reduction or limitation of retainage, if any. It also allows the contractor, upon substantial completion, to submit an application for payment that includes the retainage withheld from prior applications for payment.