



General Conditions of the Contract for Construction (A201) and Related Documents

Prepared by:
David M. McGlone
Eckert Seamans Cherin & Mellott, LLC

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General Conditions of the Contract for Construction (A201) and Related Documents

AIA Document A201-2017 is the General Conditions of the Contract for Construction (the “General Conditions”). It is probably the most frequently used of the AIA documents. It is adopted by reference into the agreements between the Owner and the Contractor and Contractor and Subcontractor. AIA Document A201-2017 is used on both public construction contracts and private construction contracts. The General Conditions spell out the and further define the obligations and duties running between the parties to the construction contract. The purpose of the General Conditions is to ensure consistency between the numerous contracts on a construction project. By incorporating a standard set of General Conditions into the various construction contracts, the parties guarantee that everyone is working from the same starting point. Some of the most important clauses of AIA Document A201 include the following:

A. Owner Responsibilities

Article 2 of AIA Document A201 contains the duties and obligations of the Owner on the Project. The Owner is defined as the Owner of the construction project and excludes the Architect. Paragraph 2.1.1. The Owner must designate an individual to have the authority to bind him or her in matters that require its approval or authorization. Id. The Owner is also required to notify the Contractor of the information “necessary and relevant” for the Contractor to evaluate, give notice of, or enforce its mechanic’s lien rights within fifteen (15) days of a written request by the Contractor. Paragraph 2.1.2.

Via Article 2.2, the Owner is required to provide certain information to the Contractor. Upon the written request of the Contract, prior to the Commencement of the Work and thereafter, the Owner must furnish “reasonable evidence” that financial arrangements have been made so as to fulfill its obligations under the Contract. Paragraph 2.1.2. The furnishing of this

information is a condition precedent to commencement or continuation of the Work by the Contractor if Owner has previously failed to make payment. Id. Once sufficient evidence has been furnished, the Owner must not materially vary from the financial arrangements without prior notice to the Contractor. Id.

The Owner is required to provide and pay for all necessary approvals, easements, assessments and charges (except for permits and fees) required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Paragraph 2.3.1. This makes practical sense. Additionally, the Owner must provide all surveys describing the physical characteristics, legal limitations and utility locations for the Project site and a legal description of the site. Paragraph 2.3.4. This becomes important in relation to differing site condition claims, as the Contractor is “entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.” Id. Additionally, the Owner must furnish any other information or services relevant to the Contractor’s performance of Work “under the Owner's control” after receipt of a written request for such information or services. Paragraph 2.3.4.

The Owner has the right to require the Contractor to stop Work in certain circumstances:

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by paragraph 12.2 [Correction of Work] or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3 [Coordination with Separate Contractors].

Paragraph 2.4. This is a powerful tool in the event the Contractor is not complying with its contractual obligations. It is intended to ensure that the Owner obtains the Project for which it contracted.

Similarly, the Owner has the right to self-perform Work in the event the Contractor fails to perform adequately:

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner, may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1., withhold or nullify a Certificate of Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

Paragraph 2.5. Before an Owner invokes this paragraph, it must comply with the notice requirements. The Owner must notify the Contractor of the defective Work and demand that it correct the problem. If it is not corrected, the Owner must give a second notice, stating that it intends to correct the Work on its own if it is not corrected. Typically, the Contractor is just required to commence the remedial work during this secondary period. Many courts typically enforce such notice clauses as a valid prerequisite. See, e.g., Providence Washington Ins. Co. v. Beck, 356 Mass. 739 (1970) (regarding termination notice requirements). This right of the Owner is enhanced by Article 6 of Document A201 which allows the Owner to “perform construction or operations related to the Project with the Owner’s own forces, and to award separate contracts in connection with other portions of the Project” Paragraph 6.1.1. Additionally, the Owner is still free to pursue other remedies against the Contractor, such as legal action for breach of contract.

B. Contractor Responsibilities

The Contractor has numerous obligations under AIA Document A201-2017. Some of the most important are listed in Article 3. The most basic obligation is that the Contractor must perform the Work in accordance with the Contract Documents. Paragraph 3.1.2. This obligation is twofold: 1) the Contractor must perform all of the Work required in the Contract Documents; and 2) the Contractor must complete the Work in the manner specified in the Contract Documents. The Contractor is not relieved of its responsibility to perform in accordance with the Contract Documents by 1) activities or duties of the Architect in the Architect's administration of the Contract; or 2) by tests, inspections, or approvals required or performed by persons other than the Contractor. In other words, failure to comply is not excused merely because the Architect tells you to deviate from the plans and specifications. Paragraph 3.1.3.

The Contractor has a duty to review the Contract Documents and field conditions prior to performing work on the Project. The review allows the Contractor to discover any discrepancies between the various Construction Documents or any field conditions which would prevent the Project from being completed as specified. Specifically, the Contractor agrees to carefully study and compare the Drawings and other Contract Documents relative to the various portions of the Work and the information furnished by the Owner and has visited the site. Paragraph 3.2.1. Further, the Contractor must take field measurements of the existing conditions at the site and observe any conditions affecting it. Paragraph 3.2.2. While the General Conditions state that the purpose behind the inspection requirement is to "facilitate construction" and not for the purpose of discovering errors, omissions or inconsistencies, the Contractor must report any errors, inconsistencies and/or omissions that it does find and report them to the Architect as a request for information. Id.

However, it is clear that the Contractor is not held to the expertise of an Architect. Paragraph 3.2.3 recognizes that the Contractor's review is made in its capacity as a Contractor and not as a licensed design professional (unless otherwise stated in the Contract Documents). The Contractor is not responsible for discovering whether the Contract Documents are in accordance with the applicable laws, statutes, ordinances, building codes, rules and regulations, but any nonconformity which is discovered must be reported to the Architect. Id.¹ Additionally, if the Contractor believes that it will require additional cost or time due to clarifications made in response to the Contractor's requests for information, it is allowed to make a Claim for such funds, pursuant to Article 15. Paragraph 3.2.4. Conversely, if the Contractor fails to perform its inspection requirements, it is liable to the Owner for such costs and damages that would have been avoided had performed its obligations. Id. However, the Contractor will not be liable for damages resulting from errors, omissions or inconsistencies or for differences in the field measurements or conditions and the Contract Documents unless the Contractor recognized the inconsistency and failed to report it to the Architect. Id.

Paragraph 3.3 relates to the Contractor's supervision of the Work. The contractor must supervise and direct the Work using its best skill and attention. Paragraph 3.3.1. The Contractor "shall solely be responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portion of the Work under the contract". Id. The AIA takes the position that the Contractor is the expert on means and methods of Construction and lets it determine the best manner in which to accomplish the Work. This

¹ This is consistent with the principle known as the Spearin doctrine under which the an owner impliedly warrants the information, plans and specifications which an it provides to a general contractor. See United States v. Spearin, 248 U.S. 132 (1918). Under the Spearin doctrine the Owner impliedly warranties that the plans and specifications provided by the Owner are: 1) accurate; and 2) suitable for their intended use. Any general contract clauses requiring the contractor to examine the plans and specifications and site conditions do not overcome the this implied warranty.

includes scheduling and coordination. Even where the Contract Documents give specific instructions as to the construction means and methods, the Contractor must evaluate jobsite safety and be responsible for it. Id. If it believes that the Work cannot be performed safely, as specified in the Contract Documents, the Contractor must notify the Owner and Architect and shall not proceed without further written instructions. Id. If, after the requisite notification, the Contractor is instructed to proceed using the original construction means and methods, the Owner is solely responsible for any loss caused thereby. Id. In other words, the Owner may overrule the Contractor in relation to Construction means and methods only at its own risk.

Under Paragraph 3.3.2, the Contractor agrees to be responsible to the Owner for the acts and omissions of its employees, Subcontractors and their agents and employees, and any other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors. Paragraph 3.3.2. This is because the Contractor is in the best position to supervise their work. Likewise, the Contractor is responsible for inspecting portions of Work already performed to determine that it is in the proper condition to receive subsequent work.

Paragraph 3.4 relates to labor, materials, equipment and employees used on the Project. The Contractor is responsible for the labor, materials and equipment to complete the Work. Paragraph 3.4.1. This includes temporary and permanent equipment and materials. The Contractor may only make substitutions with the consent of the Owner, after evaluation of the proposed substitution by the Architect, and by Change Order. Paragraph 3.4.2. Additionally, the Contractor must enforce strict discipline and good order on the Project and must not allow “unfit” or persons “not skilled” in tasks perform on the Project. Paragraph 3.4.3.

One of the most important obligations that a Contractor makes in the General Conditions is its warranty of the Work:

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alternations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

Paragraph 3.5.1. Basically, this paragraph requires the Contractor to warrant that the Project is of the quality required under the Contract Documents. If a Contractor installs materials which are substandard, it has breached this paragraph of the General Conditions and is liable for the damage caused thereby. This warranty survives the completion of the of the Work on the Project.

Article 3.7 addresses permitting and legal requirements undertaken by the Contractor. It is the Contractor's responsibility to obtain and pay for the building permits and other permits, governmental fees, licenses and inspections necessary for the execution and completion of the Work which are customarily secured after execution of the Contract. Paragraph 3.7.1. The Contractor agrees to comply with and give notices required by laws, ordinances, rules, regulations and order of public authorities applicable to the performance of the Work. Paragraph 3.7.2. These can range from statutes to orders of the building inspectors. It is not the Contractor's responsibility to ensure that the Contract Documents are in accordance with the applicable laws, statutes, ordinances, building codes, rules and regulations; however, if it knows that the Contract Documents are not in compliance, it must inform the Architect and Owner in writing. Paragraph 3.7.3. This notification provision is important in that in the event that the Contractor knowingly performs work contrary to laws, statutes, ordinances, building codes, and rules and regulations

without giving the proper notice to the Architect and Owner, the Contractor assumes the responsibility for the Work and will bear the costs attributable for correcting the Work.

Paragraph 3.7.3.

Article 3.9 is the only obligation relating to how the Contractor must manage the Project. The Contractor must employ a competent superintendent and necessary assistants to be on the Project site during the performance of the Work. Paragraph 3.9.1. The superintendent is the Contractor's representative and communications to the superintendent are binding upon the Contractor. Id. All important communications must be confirmed in writing. Id.² If an Owner desires additional personnel on a Project, it may specify them in the Supplemental General Conditions or in the Specifications.

A frequent cause of problems on a construction project is the project schedule. The Contractor's scheduling obligations are contained in Article 3.10. Promptly after being awarded the Contract, the Contractor must prepare and submit a construction Schedule for the Owner's and Architect's information. Paragraph 3.10.1. Interestingly, the Owner and Architect do not have to approve the schedule. While the AIA does not specify the use of a Critical Path Method ("CPM") schedule, it is the most common form of schedule. The schedule as submitted must not exceed the time limits under the Contract Documents. Id. Additionally, the Contractor must update the schedule at appropriate intervals as required by the conditions of the Work and the Project. Id. It is common that the Contractor submit schedule updates on a monthly basis. The Contractor must also prepare and keep current for the Architect's approval, a schedule of submittals coordinated with its schedule which provides the Architect a reasonable time to review submittals. Paragraph 3.10.2. Unlike the project scheduling requirements, the Architect

² As a practical matter, all communications between and among the Contractor, Owner and Architect should be in writing so as to prevent future misunderstandings.

must approve the submittal schedule. While seemingly minor, the issue of timely submitting submittals for review and the speed of the turn-around by the Architect often becomes an issue on the Project. The Contractor agrees to perform the Work in accordance with the most recent schedules submitted to the Architect. Paragraph 3.10.3.

Article 3.12 governs shop drawings, product data and samples. The Contractor will review this information for compliance with the Contract Documents then approve and submit the information to the Architect for approval “with reasonable promptness and in such sequence to cause no delay in the Work.” Paragraph 3.12.5. The Architect, in turn, must review the information to determine it conforms with the information given and the design concept expressed in the Contract Documents. Paragraph 4.2.7. By submitting the information to the Architect, the Contractor makes the representation that it has determined and verified the materials, field measurements and field construction criteria and has checked and coordinated the information with the requirements of the work and the Contract Documents. Paragraph 3.12.6. The Contractor agrees not to perform any portion of the Work which requires the submittal and review of information by the Architect until such submittal has been reviewed by the Architect. Paragraph 3.12.7.

The Work performed must be in accordance with the approved submittals. Paragraph 3.12.8. The Contractor is not relieved from any deviations from the requirements of the Contract Documents by the Architect’s approval of a submittal unless the Contractor has informed the Architect of the deviation in writing at the time of the submittal and the Architect has given written approval to a minor deviation or a Change Order or Construction Change Directive has been issued, authorizing the deviation. Id. There are a number of miscellaneous requirements for the Contractor. The Contractor agrees to confine operations on the site to areas permitted by

law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Paragraph 3.13. The Contractor is responsible for the cutting and patching of the Work. Article 3.14. The Contractor must keep the Project and surrounding areas free from waste materials and, at the completion of the Work, remove all trash, tools, equipment, machinery and surplus materials. Paragraph 3.15.1. If it fails to do so, the Owner may clean-up the Project at the Contractor's expense. Paragraph 3.15.2. Additionally, the Contractor must allow the Owner and Architect access to the Work. Paragraph 3.16.

C. Indemnity Requirements

Article 3.18 governs indemnification on the Project. Paragraph 3.18.1 provides:

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

This paragraph requires the Contractor to indemnify the Owner. It has some important limitations. It only applies to personal injury or property damage - it is not a blanket indemnity. Additionally, it only applies in the event that the injury was caused by the Contractor or someone for whom they are liable. Some states stipulate an indemnity provision relating to subcontractors will only be found to be valid if the subcontractor and/or its employees are responsible for causing the damage.

Paragraph 3.18 .2 states:

In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Subparagraph 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

Via this paragraph, the Owner and Architect seek to limit the worker's compensation acts from cutting-off an employer's liability to its own employee as is normally the case.

D. Insurance Requirements

Article 11 of AIA Document A201 governs insurance and bonds on the Project.

There are many type of insurance required for the Project. Paragraph 11.1.1 requires the Contractor to obtain liability insurance for claims arising out of or resulting from operations under the Contract for which the Contractor may be liable, as required by the contract.

E. Consequential Damages

An important clause in AIA Document A201 relates to the parties' ability to recover consequential damages. Consequential damages are damages which are caused by as a consequence of a party's breach of the contract. For an Owner, consequential damages may include anticipated rent from a piece of property which was finished in an untimely manner. For a Contractor, they could be lost profits associated with the contractor's inability to work on a different project which it had anticipated that it would be able to perform. Paragraph 15.1 waives claims for consequential damages by both parties:

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing , business and reputation, and for loss of management or employee productivity or of services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses, including the compensation of personnel stationed there, for losses of financing, business and

reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Subparagraph 15.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

This clause modifies many states law in that it bars the recovery of consequential damages in their entirety.

The 1987 edition of AIA Document A201 was silent as to the recovery of consequential damages. Under the 1987 version of the document, at least one court awarded consequential damages to a contractor. See Perini Corp. v. Great Bay Hotel & Casino, Inc., 129 N.J. 479, 610 A.2d 364 (1992). Because of the outcome of this case, the AIA modified Document A201 to specifically bar the recovery of consequential damages in its 1997 revision.

F. Payment/Performance Bonds

Article 11.1 et seq. governs a Contractor's payment and performance bond requirements on a Project. Under this Paragraph, an Owner may require the Contractor to provide bonds covering the faithful performance of the Contract (the "Performance Bond") and payment of obligations on the Project (the "Payment Bond"). Paragraph 11.1.2. An Owner should seriously consider requiring bonds on a Project. While requiring bonds may increase the price of the Contract (by the bond premium), it gives an Owner peace of mind that the Project will be performed for the Contract Price and that the Subcontractors and suppliers will be paid for their Work on the Project. Payment and Performance bonds are required on public projects; however, they are equally important on private project, especially in light of a subcontractor's ability to lien a Project. If a Project is bonded, the Contractor is required to promptly furnish a copy of the requisite payment bond to any person or entity who may be a potential beneficiary thereunder.

Paragraph 11.1.3. However, if bonds are going to be required, Contractors should be made aware of that fact as soon as possible, preferably before bidding, to allow them to factor the costs of the bonds into their bid. Unlike prior versions wherein A201 governed the type and extent of bonds, the parties are at liberty to add an attachment to the contract specifying the obligations of bonding and insurance.

The AIA provides model Performance and Payment Bond forms. These are known as AIA Documents A312-2010 Performance and Payment Bonds and are commonly used on public and private projects. However, before employing these bond forms on public projects, both Owners and Contractors should be aware that these documents must be modified prior to use. States typically regulate bonds by statute.

The A312 Performance Bond is a simple document. Typically, the amount of the bond is the Contract Price. Via the Bond, the Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated by reference. Paragraph 1. Some state courts have held that the incorporation by reference clause incorporates the entire Construction Contract into the bond. See Travelers Casualty and Surety Company v. Long Bay Management Company, 58 Mass. App. Ct. 786, 789-90 (2003). If the Contractor does not complete the Contract, both the Surety and Contractor are liable to the Owner. Conversely, if the Contractor performs the Contract, the Contractor and Surety are not responsible to the Owner, except to participate in conferences. Paragraph 2. As an initial matter, if the Owner is in default, the Surety's obligations under the Bond do not arise. Paragraph 3; see also Enterprise Capital, Inc. v. San-Gra Corporation, 284 F. Supp. 2d 166, 175-78 (2003) (releasing surety from liability

under bond where Owner was in material breach under construction contract). However, if there is no Owner default, the Surety's obligations under the performance bond arise after:

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

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

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

Paragraph 3. Once the conditions of Paragraph 3 have been satisfied, the Surety, promptly and at its own expense, must do one of the following:

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

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

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

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

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

.2 Deny liability in whole or in part and notify the Owner, citing the reasons there for.

Paragraph 4. If the Surety fails to proceed as required under paragraph 4, the Surety shall be deemed to have defaulted under the Bond fifteen (15) days after receipt of an additional written notice from the Owner to the Surety demanding that it perform its obligations, and the Owner shall be entitled to enforce any available remedy. Paragraph 5. Additionally, if the Surety proceeds under Subparagraph 4.4 and the Owner refuses the payment tendered or the Surety has denied liability, the Owner shall be entitled to enforce any available remedy without further notice.

It is crucial that an Owner comply with these provisions of the performance bond. An Owner who fails to follow the notification provisions of the bond and/or fails to give the Surety its choice of options to complete the Project risks releasing the Surety from its obligations under the bond. See Seaboard Surety Company v. Town of Greenfield, 266 F.Supp.2d 189, 195-198 (D. Mass. 2003), aff'd, 370 F.2d 215 (2004) (town deprived right of surety to complete project by hiring replacement contractor; town committed material breach of bond when it foreclosed surety's opportunity to complete project, rendering bond null and void discharging surety from all liability under bond); Enterprise Capital, 284 F.Supp.2d at 179-181 (failure to meet obligations under paragraph 3 of the bond relieves surety of obligations).

If the Surety elects to act under Subparagraphs 4.1, 4.2 or 4.3, the responsibilities of the Surety to the Owner are no greater than those of the Contractor under the Construction Contract; likewise, the Owner's responsibilities to the Surety are no greater than those of the Owner's responsibilities to the Contractor. Paragraph 6. The Surety is obligated to pay: 1) the costs to correct defective work and complete the Contract; 2) additional legal, design and delay costs resulting from the default; and 3) liquidated damages or actual damages caused by delayed

performance or non-performance of the Construction Contract to the limit of the Bond, and subject to the Owner's commitment to credit the balance of the Contract Price to the Surety in mitigation of costs and damages. Paragraph 6.

Because consent of the Surety is typically required before a Contract is modified, the Surety agrees to waive notice of any change, including changes of time, to the Construction Contract in the bond. Paragraph 8. The default statute of limitations for bringing an action upon the bond is two (2) years after the Contractor defaulted or within two (2) years after the Contractor ceased working or within two (2) years after the Surety refuses or fails to perform its obligations under the Bond, whichever occurs first. Paragraph 9. Paragraph 11 is a savings paragraph in that it states if the Bond is given to comply with a statutory or other legal requirement, any provision in the Bond conflicting with the statutory or legal requirement is deemed to be deleted and provisions complying with the statutory or legal requirement are deemed to be incorporated therein and, as such, is construed as a statutory rather than common law bond. Paragraph 11.

The A312-2010 payment bond is very similar to the performance bond. The amount of the bond is also typically the Contract Price. Via the Bond, the Contractor and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is herein incorporated by reference. Paragraph 1. With respect to the Owner, the obligation is null and void if the Contractor: 1) promptly makes payment, directly or indirectly, for all sums due Claimants; and 2) defends, indemnifies and holds harmless the Owner from all claims, demands, liens or suits by any entity whose claim is for the payment of labor, materials or equipment furnished for use in the performance of the Construction Contract,

provided that the Owner has promptly notified the Contractor and Surety of any claims and tendered the defense of such claims to the Contractor and Surety, and provided that there is no Owner Default. Paragraph 2. Similarly, as to Claimants, the obligation is void in the event that the Contractor promptly makes payment for all sums due.

Under the A312 Payment Bond, claimants are required to comply with a number of obligations. Those claimants having a direct contract with the Contractor must give notice to the Surety and Owner stating that it is making a claim under the Bond and stating the amount of the claim. Subparagraph 4.1. A claimant not having a direct contract with the Contractor must: 1) have furnished written notice to the Contractor and sent a copy to the Owner within ninety (90) days of last performing labor or furnishing materials or equipment stating the amount owed and to whom the labor was performed and/or materials and equipment supplied; 2) received a rejection in whole or in part from the Contractor or not received a response within thirty (30) days of furnishing the notice; 3) send a notice to the Surety and Owner stating that a claim is being made under the Bond. Subparagraph 4.2. When a claimant has complied with Paragraph 4, the Surety must promptly send an answer to the claimant, sending a copy to the Owner within forty- five (45) days after receipt of the claim stating the undisputed amounts and the basis for challenging any amounts due; and pay any undisputed amounts. Paragraph 6.

The Surety's liability is limited to the amount of the Bond. Paragraph 7. The statute of limitations under the bond is one (1) year from the date upon which the claimant gave notice or the last date upon which labor was performed or materials and equipment supplied by anyone under the Construction Contract, whichever first occurs. Paragraph 11. Similar to the performance bond, Paragraph 13 is a savings paragraph in that it states if the Bond is given to comply with a statutory or other legal requirement, any provision in the Bond conflicting with

the statutory or legal requirement is deemed to be deleted and provisions complying with the statutory or legal requirement are deemed to be incorporated therein and, as such, is construed as a statutory rather than common law bond. Paragraph 11.

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