

Modifications to AIA A101 and AIA A201

AIA Document A101-1997 Standard Form of Agreement Between Owner and Contractor shall be modified as follows:

5.1.4 In the fifth line, add “Owner and the” before “Architect” the first time it appears, and, add “Owner or the” before “Architect” the second time it appears.

AIA Document A201-1997 General Conditions of the Contract for Construction shall be modified as follows:

2.2.3. Add “The exactness of grades, elevations, dimensions or locations given on any Drawings issued by the Architect or the work installed by a separate contractor, are not guaranteed by the Owner or the Architect. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions and locations.”

2.2.5 Strike everything after “charge” and add “one copy of the Contract Documents.”

2.3.1. Delete “persistently”.

2.4.1. Delete the second to the last sentence, which starts “Such action”.

Add 2.5 as follows: “The rights of the Owner stated in this Article 2 and anywhere else in the Contract Documents are cumulative and not in limitation of any rights of the Owner under the Contract Documents, at law, or in equity.”

Add 3.2.4, as follows: “Execution of the Contract by the Contractor is a representation that the Contractor has visited the site and become generally familiar with local conditions under which the Work is to be performed. During the period that the Contractor is in care, custody, and control of the Project site or portion thereof, the Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. During execution of the Work, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Contractor must comply with all applicable federal, state and local laws governing safety, health, and sanitation. The Contractor is responsible for assuring that all safeguards, safety devices, and protective equipment are provided. The Contractor will take all other reasonable actions necessary to protect the life and health of persons performing the Work or on the Project site and the safety of the public, and to protect property in connection with the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section.”

Add 3.19: "The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State’s Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor’s and Contractor Parties’ plants and places of business which, in any way, are related to, or involved in, the performance of this Contract. The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties’ Records available at all reasonable hours for audit and inspection by the State and its agents. The State shall make all requests

for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspections date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice. All audits and inspections shall be at the State's expense. The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Agreement, or (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If and Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved. The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference. **The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.** Records shall include, without limitation, all working papers and such other information and materials as may have been accumulated by the Contractor or Subcontractors in performing the Work, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries, and correspondence, kept or stored in any form, including electronically. This requirement shall be passed to all subcontractors and their suppliers.

3.3.1: Add "and not the Owner" in the second sentence after "The Contractor". In the last sentence, delete "solely" and delete "any" and add to the end of the sentence, "arising from those Owner-required means, methods, techniques, sequences or procedures."

3.4.2: Add "in the Owner's sole discretion" after "consent of the Owner".

Add 3.4.4: "The Contractor shall ensure that sufficient personnel are working at the Project site in order to complete the Project in accordance with the construction schedule and in accordance with the Owner's objectives as to cost and quality."

Add 3.4.5: "The Contractor shall be and remain in compliance with the Americans with Disabilities Act of 1990, to the extent applicable, during the term of the Contract. The Owner may terminate the Contract with cause pursuant to Section 14.2 of these General Conditions if the Contractor fails to comply with that Act."

Add 3.4.6: "The Contractor agrees to comply with the Affirmative Action and Sexual Harassment Policies of the State of Connecticut Department of Energy and Environmental Protection, which are available on the website of the State of Connecticut Department of Energy and Environmental Protection and upon request of that Department. The Owner may terminate the Contract with cause pursuant to Section 14.2 of these General Conditions if the Contractor fails to comply with those Policies."

Add 3.5.2: "The Contractor guarantees that it shall perform the Work in accordance with the Contract Documents, furnish adequate protection from damage for all Work, repair any damage of any kind for which the Contractor, any of its Subcontractors, Sub-subcontractors or material or equipment suppliers or any of their contractors, employees, or agents are responsible, whether to the premises or equipment, to the Contractor's own work or to the work of any other. The Contractor further guarantees that it shall pay for all permits, licenses, and fees, and give all notices and comply with all laws, ordinances, rules and regulations of the Town of Old Lyme and of the State of Connecticut."

Add 3.6.2: "The Contractor must adhere to Section 12-430(7) of the Connecticut General Statutes. The Contractor must obtain verification that any nonresident subcontractor has registered with the State of

Connecticut Department of Revenue Services and is qualified as a verified nonresident contractor in accordance with Connecticut law. The Contractor must hold back an amount equal to 5% of the payments required to be made to any unverified nonresident subcontractor and provide notice of that requirement to such subcontractor not later than the time of commencement of the Work. Such hold back is in addition to retainage. Amounts held back shall only be released to the unverified nonresident subcontractor(s) or remitted to the State of Connecticut Department of Revenue Services in accordance with Connecticut law.”

3.13.1: After “permits” add “,regulations, lawful orders of public authorities,”.

Add 3.13.2: “Protection of materials and equipment from weather, damage, and theft is solely the responsibility of the Contractor.”

3.15.1: After “The Contractor shall” add “on a daily basis”. Add a final sentence, “Removal and proper disposal of all waste material and rubbish is included in the Contract Sum.”

Add 3.18.3: “The Contractor shall indemnify, defend and hold harmless the State of Connecticut (the “State”) and the Town of Old Lyme (the “Town”) and any of their officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) claims arising, directly or indirectly, in connection with the Contract or the Work, including the acts of commission or omission of the Contractor or its subcontractors or sub-subcontractors or suppliers; and (2) liabilities, damages, losses, costs and expenses, including but not limited to attorneys’ and other professionals’ fees, arising, directly or indirectly, in connection with any claims, acts of commission or omission of the Contractor or its subcontractors or sub-subcontractors or suppliers, the Contract or the Work. The Contractor shall use counsel reasonably acceptable to the State and the Town in carrying out its obligations under this section. The Contractor’s obligations under this section to indemnify, defend and hold harmless all claims includes claims concerning confidentiality of any part of or all of the Contractor’s bid, proposal, or any records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles, or appliances furnished or used in the performance of the Contract or the Work. The Contractor shall not be responsible for indemnifying or holding harmless the State from any liability arising due to the negligence of the State or of any person or entity acting under the direct control or supervision of the State. The Contractor shall reimburse the Town or the State for any and all damages to the real or personal property of the Town or the State caused by the Contractor or its subcontractors or sub-subcontractors or suppliers or anyone working for or under the control of the Contractor or its subcontractors or sub-subcontractors or suppliers, upon reasonable notice from the Town or the State. The Contractor’s duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract Documents, without being lessened or compromised in any way, even where the Contractor is alleged or found to have merely contributed in part to the acts giving rise to the claims and/or where the Town and/or the State are alleged or found to have contributed to the acts giving rise to the claims. The Contractor shall carry and maintain at all times during the term of the Contract adequate insurance to satisfy its obligations under this section. The rights provided in this section for the benefit of the Town and the State shall encompass the recovery of attorneys’ and other professionals’ fees expended in pursuing a claim against a third party. This section will survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.”

4.1.2: Strike the section.

4.1.3: Strike “against whom the Contractor has no reasonable objection and”

4.3.2: Add “Failure by the Contractor to provide notice within the 21 days specified will prejudice the Owner and the Contractor’s failure to submit proper and timely notice shall constitute a waiver and abandonment of such Claim.”

4.3.10: Add “Liquidated Damages in the amount of \$100 per day will be assessed for failure to meet certain Project Milestone Dates, as follows: 31 Oct 16 Boat Bays Ready for Rack Installation; 14 Nov 16 2 Boat Bays Ready for Use by Owner.”

5.2.4: Add “Upon request, and as may be requested from time to time, the Contractor shall supply the Owner with a list of names and addresses of all Subcontractors and material suppliers.”

5.3.1: Strike “Where appropriate”.

5.4.2: Change 30 to 60.

6.1.4: Strike 6.1.4.

8.3.1: Add “a wrongful” between “Work by” and “act or neglect” and strike the “a”. Add “unforeseeable” before “labor disputes”. In the last line add “the Owner or” before “Architect may determine.”

Add 8.3.4: “The Contractor’s sole remedy for delays excusable under Section 8.3.1 is an extension of time as provided herein, direct field personnel expenses, general conditions, Subcontractor’s actual field costs, and a reasonable allowance for direct overhead. The Contractor waives all home office overhead damages for delays and allocated portions of indirect or general overhead expenses incurred by it or anyone claiming through it. The Contractor shall not be entitled to costs for delay to any early completion date elected by the Contractor or any subcontractor.”

9.2.1: Add “and Owner” after “Architect” in the first line. Add “or Owner” after “Architect” in the third and fourth lines.

9.3.1: Add “Interest shall not accrue or be payable on retainage. The Contractor’s Applications for Payment shall specifically indicate that all applicable taxes are included, and the Contractor shall require the same of its subcontractors.”

Add 9.6.8: “Notwithstanding anything in this section or the Contract Documents to the contrary, payments to the Contractor shall be made only to the extent of and after receipt by the Owner of payment from the State of Connecticut Department of Energy and Environmental Protection (the “DEEP”) pursuant to Town of Old Lyme STEAP Grant STEAP 2014-03. The Contractor agrees that the Owner shall be under no obligation to pay the Contractor for any Work until the Owner has been paid by the DEEP. The payment provisions of this Contract are subject to the condition that the Owner receives good funds from the DEEP. The Contractor expressly acknowledges and agrees that payments to it are contingent upon the Owner receiving payment from the DEEP. The Contractor expressly accepts the risk that it will not be paid for Work performed by it if the Owner, for whatever reason or no reason, does not receive funds from the DEEP.”

9.8.4: Strike “shall establish...Completion”

9.8.5: Strike “Upon such acceptance...Documents.”

9.10.2: Add after “Architect” and before “(1)”: “and Owner evidence of compliance with all requirements of the Contract Documents, including, but not limited to”. In last sentence after “refund to the Owner” add “and indemnify, defend and hold the Owner harmless for”.

10.1.1 Add: “The Contractor shall be exclusively responsible for managing, directing, and overseeing the conduct of persons and entities performing the Work. The Contractor shall provide all facilities and follow all procedures required by the Occupational Safety and Health Act and shall be responsible for complying with all applicable safety laws. The Contractor must comply with all applicable federal, state and local laws governing safety, health, and sanitation. The Contractor is responsible for assuring that all safeguards, safety devices, and protective equipment are provided. The Contractor will take all other reasonable actions necessary to protect the life and health of persons performing the Work or on the Project site and the safety of the public, and to protect property in connection with the performance of the Work.”

14.1.1: Strike .3 and .4

14.1.3: Strike “and for proven loss...machinery” and strike “and damages.” Replace with “including reasonable overhead and profit on completed Work only, said costs being the limit of Owner’s liability.”

14.1.4: Replace “stopped” with “suspended by the Owner”. Strike “because the Owner...the Work”.

Add 14.2.5: “is declared bankrupt, files for bankruptcy protection, or has a petition in bankruptcy filed against it; or”

Add 14.2.6: “causes or threatens to cause or create labor unrest, picketing, slowdowns, work stoppages, or strike.”

Add 14.2.7: “Owner may terminate the Contract if the State of Connecticut Department of Energy and Environmental Protection terminates the Town of Old Lyme STEAP Grant STEAP 2014-03.”

14.2.2: Strike “upon certification...such action”.

14.2.4: Strike “The amount to be paid...upon application, and”.

Add 14.2.5: “In the event that it shall be determined by an arbitration panel or a court of competent jurisdiction that a termination under this paragraph 14.2 was wrongful or not justified, such termination shall be conclusively deemed to be a termination for convenience by the Owner under paragraph 14.4 hereof and the sole right, remedy and recourse of the Contractor against the Owner shall be governed and determined by Paragraph 14.4.”