

SUMMARY COMPARISON OF INTEGRATED PROJECT DELIVERY AGREEMENTS

IPD CONCEPT	AIA C191 FAMILY (3 Party Agreement)	AIA C195 FAMILY (LLC formation + agreement governing LLC + 3 separate agreements)	CONSENSUS DOCS 300 (3-Party Agreement)	HANSON BRIDGETT LLP (3-Party Agreement)
Decision Making	<p>The Project Management Team (“PMT”) is responsible for the day to day management of the project and executes the decisions of the Project Executive Team (“PET”). Decisions must be unanimous and are binding unless reviewed by the PET, which also must act unanimously. The PMT does not have authority to make decisions that impact Target Cost or Contract Time.</p> <p>If the PMT is unable to reach consensus, any member may refer the matter to the PET for resolution. The PET has the sole authority to approve issues that result in a change to the Target Cost or the Contract Time.</p> <p>There is an option for an “Owner’s Directive,” which is similar to the Hanson Bridgett model.</p> <p>There is some tension and confusion between the roles and authority of the PMT and PET. The document says that PMT decisions are binding, unless the PET acts, which can create some uncertainty concerning PMT decisions.</p> <p>Adjustments to the Target Cost are through Modification, which includes Owner’s Directives and Change Orders.</p>	<p>Decisions for the LLC are made by a “Governance Board” consisting of an odd number (5 or more). Owner has majority with 1 more representative than the non-owner members. Chair person is one of the Owner’s representatives.</p> <p>Member has sole discretion to replace its representative at anytime and without approval of the Governance Board.</p> <p>Authorizations, approvals, or other actions require the unanimous vote of the Board unless specifically designated in the Agreement to be decided by majority vote.</p>	<p>The Project Management Group (“PMG”) has ultimate decision making authority. The PMG includes a representative from the Owner, the Designer, and the Constructor. It can also include other critical project participants by invitation, but with limited voting rights (e.g., items that directly concern that participant’s work) and they are subject to removal.</p> <p>The decision making process encourages consensus among PMG members but, if a consensus is not reached, the Owner decides, unless the decision implicates life, health, property and public welfare <u>and</u> is required to be made by a licensed design professional, in which case the Designer decides.</p> <p>The PMG receives most of its input from, and meets regularly with, the Collaborative Project Delivery Team (“CPD”), which includes the Owner, Designer, and Constructor, plus other design consultants and Subcontractors involved in the preconstruction phase that sign Joining Agreements.</p>	<p>Project decisions are made by the Project Management Team (“PMT”), which includes a representative for the Owner, Architect and Contractor. Decisions by the PMT must be unanimous. PMT decisions affecting design, cost, schedule or reallocation of the Work are confirmed through a PMT Directive.</p> <p>If the PMT is unable to reach consensus, the issue is referred to the “Senior Management Representative” level, which will first attempt to reach consensus but, if a consensus is not reached, will decide the issue by majority vote.</p> <p>The Owner can make unilateral decisions by issuing a written “Owner’s Directive,” but if the decision impacts cost of the project or Contract Time, the VTC and/or VTS will be adjusted.</p> <p>There is also a Project Implementation Team (“PIT”), which includes the PMT representatives and consultants, design-build subcontractors and others who may have a significant impact on the project outcome. The PMT actively seeks and considers input from the PIT.</p>
Target Cost	<p>The Target Cost is set before the conclusion of the Criteria Design Phase.</p> <p>Contractor and Architect develop the Target Criteria Proposal and if the Owner approves the Target Criteria Proposal, a Target Criteria Amendment is executed establishing the Target Cost, the Project Definition, the Project Goals, and the Project Schedule.</p> <p>If Owner rejects, the agreement is terminated and the owner pays the other parties the amount due and owing under the contract documents without reference to a specific provision. However, §4.2.3 allows a GMP on the cost of preparing a Target Criteria Proposal.</p>	<p>The Target Cost is set before the conclusion of the Criteria Design Phase. Construction Manager (“CM”) develops the Target Cost in consultation with Owner and Architect.</p> <p>After the CM and Architect reach a consensus, they present the Target Cost to the Owner and the Owner evaluates and either approves or disapproves.</p> <p>If Target Cost is approved, it may only be adjusted under limited circumstances through Change Order.</p> <p>If Owner rejects, then Architect, CM and Owner revise scope, schedule, value engineer, etc., to see if they can reach a consensus on Target Cost. If consensus not reached, new LLC is dissolved and</p>	<p>Project Target Cost Estimate (“PTCE”) is based on 100% Construction Documents and is binding after approval by the Project Management Group (“PMG”).</p> <p>The PTCE includes all design and construction costs including contingencies.</p> <p>Before PTCE is set, the Constructor provides ongoing cost modeling for all phases: preliminary, schematic, design development, and construction documents.</p> <p>If the proposed PTCE exceeds the Project Budget: (1) Owner can either increase the Project Budget or terminate the agreement; (2) PMG can authorize re-</p>	<p>Validated Target Cost (“VTC”) is set during the Conceptualization Phase and is used as a factor in determining the amount of Incentive Compensation Layer (“ICL”) paid to the Architect, Contractor, Cost Reimbursable Subcontractors (“CRS”), and Cost Reimbursable Consultants (“CRC”) after Final Completion.</p> <p>The VTC represents the amount that the PMT believes is sufficient to design and construct the project in accordance with the Validated Target Program (“VTP”) and within the Validated Target Schedule (“VTS”).</p> <p>The VTC, VTP, VTS and Incentive Compensation Layer (“ICL”) are part of the Project Objective,</p>

SUMMARY COMPARISON OF INTEGRATED PROJECT DELIVERY AGREEMENTS

IPD CONCEPT	AIA C191 FAMILY (3 Party Agreement)	AIA C195 FAMILY (LLC formation + agreement governing LLC + 3 separate agreements)	CONSENSUS DOCS 300 (3-Party Agreement)	HANSON BRIDGETT LLP (3-Party Agreement)
		the governing agreement is terminated.	bidding or renegotiating; (3) PMG may direct the CPD to provide value engineering and redesign to bring the PTCE in line with the Project Budget. The above process is similar to traditional preconstruction services and the PTCE is not set until design is complete.	which must be unanimously adopted by the PMT during the Conceptualization Phase. If a consensus is not reached, the Agreement will terminate and the Owner will pay the Architect and Contractor their respective "Allowable Costs" for Work performed. The VTC and VTS may be adjusted under limited circumstances by Change Order.
Compensation	<p>Profit is earned through: (1) "Goal Achievement Compensation," regardless of whether the Target Cost is exceeded; and (2) realized "Incentive Compensation" if actual costs are below the Target Cost at the end of construction.</p> <p>If the Target Cost is exceeded, the Owner will either continue to pay all Costs of the Work, which includes Architect's and Contractor's salaried employees; OR the Owner has a check the box option to not reimburse the C and A for any further Labor Costs but only continue to pay for material, equipment and subcontractor costs. (§4.2 and §4.2.4). 100% of the Architect's and Contractor's Fee is at risk. (§4.4.1)</p> <p>As noted above, the Owner still has the obligation to make all Goal Achievement Compensation payments that were earned regardless of whether or not the Target Cost has been exceeded.</p> <p>Note: Project Schedule is not directly tied into compensation. It may be part of the Goal Achievement Compensation but the agreement does not really discuss what happens if the Project Schedule is exceeded.</p>	<p>The A/CM and other Non-Owner Members of the LLC are reimbursed for direct costs and a percentage of indirect costs incurred during design and construction of the project.</p> <p>Profit is earned through: (1) "Goal Achievement" set in the Target Cost; and (2) realized "Incentive Compensation" if actual costs are below the Target Cost at the end of construction.</p> <p>Non-Owner Members forfeit the Goal Achievement if they fail to achieve a project goal, regardless of fault.</p> <p>Incentives are forfeited if Actual Costs exceed Target Cost regardless of fault.</p> <p>If the Target Cost is exceeded, Architect, CM and other non-Owner members will continue to perform their respective work without further compensation for direct or indirect costs. Therefore, the Target Cost essentially sets a guaranteed maximum price that the Owner will pay for design and construction of the project.</p> <p>The Owner also has the right to reject any recovery plans presented by the Architect and CM.</p>	<p>Designer's and Constructor's base compensation takes a traditional approach.</p> <p>Designer: Compensation for basic services is either based on actual costs or Fee. Fee is subject to adjustments for changes in design services caused by project delays provided Designer is not at fault. Fee may also be adjusted for Additional Services mutually agreed to by the PMG.</p> <p>Constructor: Compensation is broken down by Preconstruction and Construction services. Fee for Preconstruction may be based on stipulated sum, actual cost, or other basis. Compensation for the Construction is Cost of the Work plus Fee. Fee may be stipulated sum or other basis. Fee may be adjusted for change orders and delays not caused by Constructor.</p> <p>If the actual cost of the project is less than the PTCE, the parties share in savings on a percentage or other basis mutually agreed upon.</p> <p>If the PTCE is exceeded, either the Owner bears the entire cost or the extra cost is shared by the Parties based on mutually agreed percentages or another basis.</p> <p>If the losses are shared, the Parties will agree whether the Designer's and Constructor's Fees are, or are not, at risk, and, if so, whether the total amount of each Fee is, or is not, the limit of liability.</p>	<p>The Architect, Contractor, CRSs and CRCs are compensated for all "Allowable Costs" during design and construction of the project. Allowable Costs include all direct and indirect costs plus a portion of profit between 0 and X%. The remainder of profit is retained in the ICL until Final Completion.</p> <p>The ICL is established during the Conceptualization Phase along with the VTP, VTC, and VTS. The ICL fund is increased or decreased (risk pool) based on the project outcome and is distributed upon Final Completion based on participating parties' respective percentages for incentive and risk.</p> <p>Incentives are distributed from the ICL: (1) for achieving Final Completion under the VTC; and/or (2) achieving Substantial [Final] Completion before the date established in VTS; and, if there are funds left in the ICL, (3) for Quality Adjustment based on Quality Rating Criteria.</p> <p>The participating parties' percentage of profit retained in the ICL is at risk if the project is not delivered within the VTC and VTS. Once the VTC and VTS are exceeded, the funds in the ICL will be used to cover project Allowable Costs until the ICL is exhausted. The Owner has a percentage of shares in the risk pool once the VTC and VTS are exceeded and also is responsible for the remaining Allowable Costs once the ICL is exhausted. In other words, the Architect and Contractor are each putting a percentage of their respective profit at risk but will continue to be paid for all direct and indirect costs</p>

SUMMARY COMPARISON OF INTEGRATED PROJECT DELIVERY AGREEMENTS

IPD CONCEPT	AIA C191 FAMILY (3 Party Agreement)	AIA C195 FAMILY (LLC formation + agreement governing LLC + 3 separate agreements)	CONSENSUS DOCS 300 (3-Party Agreement)	HANSON BRIDGETT LLP (3-Party Agreement)
				through Final Completion of the project.
Changes & Contingency	<p>The Target Cost Breakdown is to identify all costs, fees and contingency amounts. The parties are to develop a risk matrix that identifies principle risks for planning, designing and constructing the project. The risk matrix will be used to establish the Target Cost contingencies.</p> <p>Target Cost may be only be amended for specific reasons: (1) Quantity variations where unit prices are used; (2) Cost variations from specified allowances; (3) Owner initiated changes in the Project Definition; (4) Owner initiated changes to the Project Schedule; (5) material defects in Owner supplied services and information; and (6) Force Majeure.</p> <p>Note: There is not a definition for what constitutes a Project delay, and does not appear to be any relief for schedule delays unless it is an Owner initiated change in the Project Schedule.</p>	<p>Target Cost includes a contingency for uncertainty in the scope of Work, risk, potential indemnity costs, market conditions, and other factors. Does not discuss how contingency is used.</p> <p>Target Cost cannot be adjusted except: (1) Owner-initiated changes in the “Project Definition” or Project Schedule; (2) Force Majeure events; (3) Reduction in Target Cost because project goal is not achieved and, Goal Achievement compensation is not awarded; or (4) other reasons upon unanimous, agreement of the Members.</p>	<p>Change Orders appear to only apply to the Constructor and follow a somewhat traditional process but are limited to the following conditions: (1) material change in scope of Work; (2) changes required by regulatory agencies; (3) differing site conditions; (4) a compensable delay; or (5) claims for which the Owner is found liable. Constructor can use contingency to cover costs that are not recovered through the change order process.</p> <p>Contractor can request, and Owner can order, a Change Order for changes in the Work, timing, or sequencing that impact the PTCE or the Contract Time.</p> <p>Change orders are resolved through negotiations between Owner and Constructor. The PMG performs a “root cause assessment” on a monthly basis to determine if Change Orders granted should result in an adjustment to the PTCE. The PMG’s decision on whether to increase the PTCE directly impacts whether the participants receive an incentive reward or potentially share in a loss.</p>	<p>Change Orders are used to document changes to the VTP, VTC, or the VTS. Change Order are limited to:</p> <p>(1) Permitted Delays, which are limited to: (i) delays in issuance of permits; (ii) “Adverse Weather;” (iii) “Force Majeure;” (iv) “Unforeseen & Differing Site Conditions;” (v) “PMT Directive” or (vi) “Owner Directive.”</p> <p>(2) PMT Directive for additional Work that is not reasonably necessary to meet the intent of the Project Objective or elimination of Work necessary to meet the Project Objective, and the VTC and VTS are affected.</p> <p>(3) Owner’s Directive to the extent it increases the VTC or impacts the VTS.</p> <p>All Change Order Requests are submitted to, and evaluated by, the PMT. If the PMT does not reach a consensus, the matter will be determined by the Senior Management Representatives.</p>
Risk Allocation	<p>Insurance: Has default normal insurance provisions with an assumption that it will be replaced by an OCIP, if available. (Similar to Hanson Bridgett model)</p> <p>Indemnity: Mutual comparative indemnity for personal injury and property damage.</p> <p>Liability Waiver: Complete waiver subject to 7 exceptions:</p> <ol style="list-style-type: none"> (1) Willful Misconduct; (2) Express Warranty; (3) Owner’s Payment; (4) Express Indemnification; (5) Failure to Procure Insurance; (6) Damages arising from liens, etc; and (7) Damages covered by insurance. 	<p>Insurance: Includes LLC controlled insurance program.</p> <p>Indemnity: Members are protected by the LLC and are indemnified by the LLC for claims arising from their acts or omissions, except for; (1) willful misconduct; and (2) obligations arising under the Member’s separate agreements with the LLC.</p> <p>The LLC provides indemnity to the Architect and CM under separate agreement for damages, losses and claims not covered by the CCIP except for the Architect’s and CM’s willful misconduct.</p> <p>Limited Liability: Separate A/C/O Agreements are to include clauses waiving all claims between Members other than claims and losses arising from a Member’s willful misconduct or insured risks.</p>	<p>Insurance: Parties provide traditional construction project insurance coverage -- Builder’s Risk, E & O, CGL, workers comp and auto. Agreement did not include waiver of subrogation language for Constructor’s and Designer’s insurance. There is a waiver of subrogation between Owner and Constructor for damages covered under the property insurance, except as to proceeds of the policy.</p> <p>Indemnity: The Owner, Architect and Constructor have separate indemnity obligations to each other for damages arising from bodily injury and property damage on a comparative fault basis: Meaning, the party is only responsible to the extent its act or omission caused the damage and will be reimbursed for defense costs paid in excess of indemnitee’s percentage of liability.</p>	<p>Insurance: The Agreement is drafted for traditional construction project insurance coverage because that presents more difficult liability issues. However, we recommend that the Parties procure a project controlled insurance program with separate E & O coverage for the Architect and Contractor. The Insurance Exhibit includes Builder’s Risk, E&O, CGL, workers comp and auto coverage and there is waiver of subrogation against any other Party on account of loss arising under the insurance maintained.</p> <p>Indemnity: The Owner, Architect have separate indemnity obligations to each other for damages arising from bodily injury and property damage on a comparative fault basis: Meaning, the party is only responsible to the extent its act or omission caused the damage and will be reimbursed for defense costs</p>

SUMMARY COMPARISON OF INTEGRATED PROJECT DELIVERY AGREEMENTS

IPD CONCEPT	AIA C191 FAMILY (3 Party Agreement)	AIA C195 FAMILY (LLC formation + agreement governing LLC + 3 separate agreements)	CONSENSUS DOCS 300 (3-Party Agreement)	HANSON BRIDGETT LLP (3-Party Agreement)
	<p>Note: Although there is a waiver of consequential Damages, the agreement allows for liquidated damages.</p>	<p>Owner’s Agreement limits LLC’s and Architect’s/CM’s liability to (1) amount of Incentive Compensation Layer; and (2) sums recovered from insurance required by governing agreement and separate A/C Agreements.</p> <p>However, under the compensation sections of the Architect and CM agreements, the Architect and CM have the ultimate risk for exceeding the Target Cost because they must continue to perform their respective work and service without further compensation for direct or indirect costs.</p>	<p>Limited Liability: Project Risk Allocation has two options - (1) “Safe Harbor Decisions” or (2) “Traditional Risk Allocation.” Regardless of the option selected, there is a mutual waiver of consequential damages.</p> <p>Under the Safe Harbor, the Parties waive liability against each other for acts, omissions, mistakes, or errors in judgment arising from joint decisions made in good faith by the PMG, unless the party is in willful default of an obligation under the Agreement.</p> <p>Under the Traditional Risk Allocation, each Party remains fully liable for its own negligence and breaches of contract and warranty but there is an option to cap Designer’s and Constructor’s liability to a specified amount for uninsurable risk.</p>	<p>paid in excess of indemnitee’s percentage of liability.</p> <p>Limited Liability. All liability between the Parties is waived except for “Excluded Claims” and “Willful Default.” Excluded Claims include:</p> <ul style="list-style-type: none"> (1) Warranty; (2) Project Performance; (3) Owner Non-Payment; (4) Enforcement of Indemnity Obligations; (5) Failure to procure proper insurance coverage; and (6) Enforcement of Dispute Resolution provisions, mechanics liens and stop notices
Document & Record Access	<p>Parties must maintain books and records for 3 years after final payment. Owner has the right to audit upon reasonable notice, except for previously agreed rates, unit prices and lump sum amounts.</p>	<p>The LLC must maintain accounting records. Any Member or its representatives may inspect the LLC’s accounting records, the Agreement, and the LLC’s Certificate of Formation, for any purpose reasonably related to the Member’s Interest in the LLC.</p> <p>The LLC has the right to audit Members’ accounts to verify direct and indirect costs per A/CM separate agreements.</p> <p>The Owner has right to audit LLC’s accounts per Owner’s separate agreement.</p>	<p>There is a high degree of transparency between the Owner, Designer and Constructor. The PMG has access to all costs models, accounting records and documents used in formulating the PTCE.</p> <p>Designer and Constructor must keep full and detailed accounts with respect to all costs for their respective portions of the project, which is subject to Owner’s audit.</p> <p>Owner’s accountants will substantiate Constructor’s final costs within 15 days of delivery to the PMG and before issuance of a final certificate for payment.</p>	<p>The PMT and PIT members have access to most project documents including, PMT Directives, Owner Directives, Implementation Documents, the BIM, submittals, etc. The PMT members have access to all project documents.</p> <p>The Owner may audit the Architect’s and Contractor’s financial information related to (i) direct costs, profit and overhead calculations provided in establishing the VTC, and/or (ii) any application for payment or calculation of amounts owed by Owner; and (iii) subcontractor and consultant costs submitted as Allowable Costs.</p>
Dispute Resolution	<p>After the PMT and PET levels, PET may refer a dispute to the Dispute Resolution Committee, which consists of senior representatives and a Project Neutral.</p> <p>The Project Neutral will endeavor to mediate the dispute within 15 days.</p> <p>If the matter is not resolved, and depending upon the check box option chosen, the matter will either be (1) Arbitrated by the Project Neutral; (2) Arbitrated</p>	<p>Members attempt to reach a mutual consensus on all disputes within 15 days notice of dispute. If consensus is reached, CM distributes all recorded resolutions to the appropriate parties.</p> <p>If Members fail to reach consensus, disputes are then presented to Governance Board who has 30 days from notice to reach a consensus.</p> <p>If a consensus is not reached, the matter is referred</p>	<p>Disputes not resolved through the dispute resolution proceedings are resolved either by binding arbitration or litigation, whichever option is selected by the Parties.</p> <p>Initial dispute resolution is through direct discussion between the Parties and, if the dispute is not resolved within 5 business days, the matter is referred to the PMG.</p>	<p>The PMT members will first attempt to amicably resolve all disputes between the Parties.</p> <p>If the PMT is unable to resolve the dispute, any Party may request Senior Management Representatives to meet with the PMT and attempt to resolve the dispute. If the Senior Management Representatives cannot reach a consensus, a Party may request mediation. Mediation is not mandatory. If all Parties agree to mediate, the mediation will be conducted by a third party neutral, who is acceptable</p>

SUMMARY COMPARISON OF INTEGRATED PROJECT DELIVERY AGREEMENTS

IPD CONCEPT	AIA C191 FAMILY (3 Party Agreement)	AIA C195 FAMILY (LLC formation + agreement governing LLC + 3 separate agreements)	CONSENSUS DOCS 300 (3-Party Agreement)	HANSON BRIDGETT LLP (3-Party Agreement)
	by the AAA; or (3) A party specified "other".	to arbitration through a "Dispute Resolution Committee," which includes one chief executive of each Member and a "Neutral" arbitrator, who is the chair. If mutual resolution is not achieved within 60 days, the Neutral decides the matter. The Neutral's decision is final and binding.	If not resolved by PMG, the parties can opt for non-binding "mitigation" measures: (1) project neutral; or (2) dispute review board. If mitigation measures are not selected, the Parties must mediate the dispute. Findings through "mitigation" measures may be introduced as evidence at a subsequent adjudication. Unresolved disputes will be submitted to binding arbitration or litigation.	to all PMT members. If the dispute is not resolved, through one of the above methods, the Parties will pursue binding arbitration. Disputes involving claims in excess of \$1,000,000 will be heard by a panel of 3 arbitrators. Claims under \$1,000,000 will use 1 arbitrator.

IPD Contract Comparison Spreadsheet