AIA B103-2017 Owner / Architect Complex project—Suggested Revisions:

Architect Retaining Consultants:

If the Owner requests the Architect to retain atypical Consultants pursuant to Articles 1.1.12.1 and 1.1.12.2, add the following provision:

Article
1.1.12.3:   "In consideration of the Owner's request that the Architect directly retain the services of Consultants as detailed in Article 1.1.12, the Owner agrees to defend, indemnify and hold the Architect harmless from and against all claims, losses, liabilities and damages arising out of the performance of services by such Consultants. In addition, the Owner agrees to pursue recovery of and assert any claims based upon its losses, expenses and/or damages solely and directly against those Consultants. In consideration of such indemnity and waiver, the Architect agrees to assign its rights and/or claims against those Consultants pursuant to the Consultants' agreements with the Architect to the Owner."

Standard of Care:

Article 2.2:   At the end of this provision, add "The Architect makes no other representations or warranties, whether expressed or implied, with respect to the services rendered hereunder."

Substitutions:

Article 3.1.5:   At the end of this provision, add "The Owner shall defend, indemnify and hold the Architect harmless from any claims or demands arising out of the acceptance of non-conforming Work or a directive or substitution made against the Architect's advice."

Sustainable Design:

Article 3.2.5.1: In line 1, delete "consider" and replace with "discuss with the Owner".

If the Owner decides to incorporate sustainable design in the Project, add the following provisions to Article 12:

Article 12.1:   "The LEED Green Building Rating System or similar environmental guidelines ("LEED") utilizes certain design, construction and usage criteria in order to promote environmentally friendly building. The Owner acknowledges and understands that LEED is subject to interpretation, and achieving levels of compliance involves factors beyond the control of the Architect, including, but not limited to, the Owner's use, operation and maintenance of the completed project. In addressing LEED, the Architect shall perform its services in a manner consistent with that degree of skill and care ordinarily exercised by design professionals performing similar services in the same locality, and under the same or similar circumstances and conditions. The Architect will use reasonable care consistent with the foregoing standard in interpreting LEED and designing in accordance with LEED. However, the Architect does not warrant or represent that the Project will actually achieve LEED certification or realize any particular energy savings. The Architect shall not be responsible for any environmental or energy issues arising out of the Owner's use and operation of the completed project."

Article 12.1.1: "Neither the Owner nor the Architect shall be liable to the other or shall make any claim for
any incidental, indirect or consequential damages arising out of, or connected in any way

to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty."

Fast Track:

Article 5.3.1: At the end of the provision, add "Furthermore, if the Owner elects to utilize the fast track basis, the Owner acknowledges that there is a greater likelihood of errors, omissions, inconsistencies, ambiguities and lack of coordination in design and other work product produced by the Architect and its consultants which could result in additional design and construction costs, the occurrence of which is inherent in the fast track approach and for which neither the Architect nor its consultants may be held legally responsible."

Owner's budget for Cost of Work at conclusion of Construction Documents Phase Services is exceeded by the lowest bid or proposal:

Article 6.6: At the end of this provision, add "If the Architect is required to make revisions to the Contract Documents, the Architect shall be entitled to compensation, as an Additional Service for changes to Contract Documents that result from (1) scope changes directed by the Owner that materially impact costs, (2) market fluctuation in the price of construction goods and services that could not have been reasonably anticipated by Architect, (3) revisions to the Contract Documents directed by the Owner that resulted in an increase in the Construction Budget, or (4) matters beyond the reasonable control of Architect."

Copyrights and Licenses:

Article 7.3.1: In line 1, after "Instruments of Service" delete "without retaining" and replace with "(including without limitation any future additions or alterations to the Project) without retaining and maintaining the retention of". In line 3, after "agrees to indemnify" insert "defend".

Architect Indemnity Obligation to Owner:

Article 8.1.3: At the end of the provision, add "In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by an applicable statute of repose or statute of limitations."

Dispute Resolution:

Article 8.3: We generally recommend avoiding the inclusion of any provisions relating to arbitration in agreements of this kind. There are numerous drawbacks to arbitration, such as the fact that the joinder of additional parties is generally not permitted, discovery proceedings are generally not allowed, rules of evidence are not followed and the application of legal principles is not required.

Note: if the Owner insists on arbitration as the "binding dispute resolution" mechanism, we recommend requiring limited discovery and adherence to the rules of evidence and limiting the scope of arbitration and providing that claims submitted to arbitration must not exceed $100,000, inclusive of interest and attorney's fees.

Consolidation or Joinder:

The consolidation and joinder revisions are necessary only if arbitration is selected as the "binding dispute resolution" mechanism.

Article 8.3.4.1: At the beginning of this provision, insert "Provided both the Architect and Owner agree to the consolidation,". In line 1, delete "at its sole discretion".

Article 8.3.4.2: At the beginning of this provision, insert "Provided both the Architect and Owner agree to the joinder,". In line 1, delete "at its sole discretion".

Article 8.3.4.3: At the end of this provision, add "Accordingly, any future consolidation and/or joinder proposed by a person or entity made a party to an arbitration is contingent upon both Owner and Architect consent to such consolidation and/or joinder."

Assignment:

Article 10.3:   At the end of this provision, add "The Architect shall not, in connection with any such assignment by the Owner, be required to execute any documents that in any way might, in the sole judgment of the Architect, increase the Architect's contractual or legal obligations or risks, or the availability or costs of its professional or general liability insurance."

Hazardous Materials:

Article 10.6:   At the end of this provision, add "In the event that the Architect or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that certain materials may be present at the job site or any adjacent areas that may affect the performance of the Architect's services, the Architect may, at its option and without liability for consequential or any other damages, suspend performance of service on the Project until the Owner retains appropriate specialist consultant's or contractor's to identify, abate and/or remove the asbestos or hazardous or toxic material, and warrant that the job site is in full compliance with applicable laws and regulations."

Confidentiality:

Article 10.8.1: In line 4, after "defend itself in any dispute" insert "or if the information in whatever form comes into the public domain".