

AIA B105-2017 Standard Short Form of Agreement Between Owner and Architect – Suggested Revisions:

Standard of Care:

Article 1: In paragraph 1, line 4, after “progress of the Project.” insert “The Architect makes no other representations or warranties, whether expressed or implied, with respect to the services rendered hereunder.”

Contract Administration Phase Services:

Article 1: At the end of the 3rd paragraph, add “Architect shall not supervise, direct, or have control over Contractor’s work. Architect shall not have authority over or responsibility for the construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the work of the Contractor. Architect does not guarantee the performance of the construction contract by the Contractor and does not assume responsibility for the Contractor’s failure to furnish and perform its work in accordance with the Contract Documents. Any review by the Architect of Contractor’s submittals shall not include review of the accuracy or the completeness of details, such as quantities, dimensions, weights or gauges, fabrication process, construction of means, coordination of the work with other trades, substantiating instructions for installation or performance of equipment or systems, or construction safety precautions, all of which are the sole responsibility of the Contractor.”

Use of Documents:

Article 3: In line 6, after “agrees to” insert “defend and”. In line 7, 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”.

Assignment:

Article 5: At the end of the 1st paragraph, 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 5: At the end of the 3rd paragraph, 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.”

Agreed Remedy:

ADD

Article 7.1: “To the fullest extent permitted by law, the total liability, in the aggregate, of Architect and Architect’s officers, directors, employees, agents, and consultants to Owner and anyone claiming by, through or under Owner, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to Architect’s services, the Project or this Agreement, from any cause or causes whatsoever, including but not limited to, negligence, strict liability, breach of contract or breach of warranty shall not exceed the total compensation received by Architect under this Agreement, or the total amount of \$ _____, whichever is greater.”

Dispute Resolution:

ADD

Article 7.2: “The Owner and Architect agree to submit all claims and disputes arising out of this Agreement to non-binding mediation prior to the initiation of legal proceedings. This provision shall survive completion or termination of this Agreement; however, neither party shall seek mediation of any claim or dispute arising out of this Agreement beyond the period of time that would bar the initiation of legal proceedings to litigate such claim or dispute under the applicable law.”

Waiver of Consequential Damages:

ADD

Article 7.3: “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.”

Sustainable Design:

If the Owner decides to incorporate sustainable design in the Project, add the following provisions to Article 7:

Article 7.4: “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 7.4.1: "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."