GENERAL INFORMATION

Purpose. AIA Document B104™–2007 is a new standard form of agreement between Owner and Architect for building design and construction contract administration, for use where the Project is limited in scope. If the Project is for very small commercial or residential construction, consider using AIA Document B105™–2007, Standard Form of Agreement Between Owner and Architect for a Residential or Small Commercial Project. B104–2007 is an abbreviated version of AIA Document B101™–2007, Standard Form of Agreement Between Owner and Architect. This document may be used with a variety of compensation methods, including percentage of construction cost and stipulated sum.

B104–2007 assumes that the Architect will provide cost estimates and will design the Project to meet the Owner’s budget for the Cost of the Work. If the Owner will retain a third party to provide cost estimates, or if the Project will implement fast track, phased or accelerated scheduling, the parties should consider using AIA Document B103™–2007, Standard Form of Agreement Between Owner and Architect for a Large or Complex Project.

Related Documents. B104–2007 is intended to be used in conjunction with AIA Document A107™–2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope, which it incorporates by reference. B104–2007 also can be used with Architect-Consultant agreements such as AIA Document C401™–2007. Before transmitting Instruments of Service or other information in digital form, parties should establish protocols for that transmission and may use AIA Document E201™–2007, Digital Data Protocol Exhibit, for that purpose.

Dispute Resolution—Mediation and Arbitration. This document contains provisions for mediation and arbitration of claims and disputes. Mediation is a non-binding process, but is mandatory under the terms of this agreement. Arbitration may be mandatory under the terms of this agreement. Arbitration is binding in most states and under the Federal Arbitration Act. In a minority of states, arbitration provisions relating to future disputes are not enforceable but the parties may agree to arbitrate after the dispute arises. Even in those states, under certain circumstances (for example, in a transaction involving interstate commerce), arbitration provisions may be enforceable under the Federal Arbitration Act.

The AIA does not administer dispute resolution processes. To submit disputes to mediation or arbitration or to obtain copies of the applicable mediation or arbitration rules, call the American Arbitration Association at (800) 778-7879, or visit their Web site at www.adr.org.

Why Use AIA Contract Documents. AIA Contract Documents are the product of a consensus-building process aimed at balancing the interests of all parties on the construction project. The documents reflect actual industry practices, not theory. They are state-of-the-art legal documents, regularly revised to keep up with changes in law and the industry—yet they are written, as far as possible, in everyday language. Finally, AIA Contract Documents are flexible: they are intended to be modified to fit individual projects, but in such a way that modifications are easily distinguished from the original, printed language.

Use of Non-AIA Forms. If a combination of AIA documents and non-AIA documents is to be used, particular care must be taken to achieve consistency of language and intent among documents. Certain owners require the use of owner-architect agreements and other contract forms which they prepare. Such forms should be carefully compared to the standard AIA forms for which they are being substituted before execution of an agreement. If there are any significant omissions, additions or variances from the terms of the related standard AIA forms, both legal and insurance counsel should be consulted. Of particular concern is the need for consistency between the Owner-Architect Agreement and related documents and the anticipated General Conditions of the Contract for Construction in the delineation of the Architect’s construction contract administration services and responsibilities.

Letter Forms of Agreement. Letter forms of agreement are generally discouraged by the AIA, as is the performance of a part or the whole of professional services based on oral agreements or understandings. The AIA’s agreement forms have been developed through more than 100 years of experience and have been tested repeatedly in the courts. In addition, the standard forms have been carefully coordinated with other AIA documents.
Standard Forms. Most AIA documents published since 1906 have contained in their titles the words “Standard Form.” The term “standard” is not meant to imply that a uniform set of contractual requirements is mandatory for AIA members or others in the construction industry. Rather, the AIA standard documents are intended to be used as fair and balanced baselines from which the parties can negotiate their bargains. As such, the documents have won general acceptance within the construction industry and have been uniformly interpreted by the courts. Within an industry spanning 50 states—each of them free to adopt different, and perhaps contradictory, laws affecting that industry—they form the basis for a generally consistent body of construction law.

Use of Current Documents. Prior to using any AIA Contract Document, users should consult www.aia.org or a local AIA component to verify the most recent edition.

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Rights to reproduce the document may vary for users of AIA software. Licensed AIA software users should consult the End User License Agreement (EULA).

To report copyright violations of AIA Contract Documents, e-mail The American Institute of Architects’ legal counsel, copyright@aia.org.

SIGNIFICANT FEATURES

Services. AIA Document B104–2007 arranges the Architect’s services in terms of “Basic Services” and “Additional Services.” Basic Services are described within three phases of a Project: Design Phase Services, Construction Documents Phase Services, and Construction Phase Services. Additional Services consist of any services not described as Basic Services.

Standard of Care. B104–2007 contains a provision at Section 2.1 stating the applicable standard of care under which the Architect shall perform its services.

Environmentally Responsible Design. During Schematic Design, Section 3.2.2 requires the Architect to discuss with the Owner environmentally responsible design approaches. Such approaches may include decisions regarding material choices and building orientation. Section 3.2.3 requires the Architect to make such considerations consistent with the Owner’s program, schedule and budget for the Cost of the Work.

Copyright and Licensing of the Instruments of Services. In B104–2007, the Architect and the Architect’s consultants are deemed the authors and owners of their respective Instruments of Service, and they retain all common law and statutory rights, including copyright. The Owner receives a license to use the Instruments of Service solely and exclusively for constructing, using, maintaining, altering and adding to the Project. This license will only terminate if the Architect rightfully terminates the Agreement for cause due to the Owner’s default. In the absence of such a termination by the Architect, the Owner retains the license to use the Instruments of Service after completion of the Project or the Owner’s termination of the Agreement. If the Owner subsequently uses the Instruments of Services without retaining the author of the Instruments of Service, the Owner agrees to release and indemnify the Architect for such uses. If the Owner rightfully terminates the Agreement for cause, however, the Owner is not required to release and indemnify the Architect for its further use of the Instruments of Service. If the Owner terminates the Agreement for its convenience, or the Architect terminates the Agreement due to the Owner’s suspension of the Project, B104 provides at Section 11.9 for the Owner to pay a licensing fee to the Architect for the Owner’s continued use of the Architect’s Instruments of Service.

Binding Dispute Resolution. Mediation is a condition precedent to any form of binding dispute resolution, but binding arbitration is not mandatory for disputes that fail to settle in mediation. Instead, the parties are required to select at Section 8.2.3 from three choices of binding dispute resolution: (1) arbitration, (2) litigation or (3) another method that they must identify.
Modifications. Particularly with respect to professional or contractor licensing laws, building codes, taxes, monetary and interest charges, arbitration, indemnification, format and font size, AIA Contract Documents may require modification to comply with state or local laws. Users are encouraged to consult an attorney before completing or modifying a document.

In a purchased paper AIA Contract Document, necessary modifications may be accomplished by writing or typing the appropriate terms in the blank spaces provided on the document, or by attaching Supplementary Conditions, special conditions or referenced amendments.

Modifications directly to purchased paper AIA Contract Documents may also be achieved by striking out language. However, care must be taken in making these kinds of deletions. Under NO circumstances should standard language be struck out to render it illegible. For example, users should not apply blocking tape, correction fluid or Xs that would completely obscure text. Such practices may raise suspicion of fraudulent concealment, or suggest that the completed and signed document has been tampered with. Both parties should initial handwritten changes.

Using AIA software, modifications to insert information and revise the standard AIA text may be made as the software permits.

By reviewing properly made modifications to a standard AIA Contract Document, parties familiar with that document can quickly understand the essence of the proposed relationship. Commercial exchanges are greatly simplified and expedited, good faith dealing is encouraged, and otherwise latent clauses are exposed for scrutiny.

AIA Contract Documents may not be retyped or electronically scanned. Retyping can introduce typographic errors and cloud legal interpretation given to a standard clause. Furthermore, retyping and electronic scanning are not permitted under the user’s limited license for use of the document, constitute the creation of a derivative work and violate the AIA’s copyright.

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Date. The date represents the date the Agreement becomes effective. It may be the date that an oral agreement was reached, the date the Agreement was originally submitted to the other party, the date authorizing action was taken or the date of actual execution. Professional services should not be performed prior to the effective date of the Agreement.

Parties. Parties to this Agreement should be identified using the full legal name under which the Agreement is to be executed, including a designation of the legal status of both parties (sole proprietorship, partnership, joint venture, unincorporated association, limited partnership or corporation [general, limited liability, close or professional], etc.). Where appropriate, a copy of the resolution authorizing the individual to act on behalf of the firm or entity should be attached.

Project. The proposed Project should be described in sufficient detail to identify (1) the official name or title of the facility, (2) the location of the site, if known, (3) the proposed building usage, and (4) the size, capacity or scope of the Project, if known.

Article 1 Initial Information
The parties should take care to be as explicit and detailed as possible with respect to the relevant Initial Information.

Article 4 Additional Services
§ 4.1 The parties should review the list of potential Additional Services and determine if the Architect shall be required to provide any of the listed services. The Architect is not responsible for any listed service unless specifically so designated in this Section. For each service identified as the Architect’s responsibility, the parties should describe in detail the nature of the service or reference an exhibit setting forth such information.

§ 4.2.1 Insert an agreed-upon number in the space provided.

§ 4.2.3 Insert the number of months beyond which the Architect shall be entitled to compensation as Additional Services.

Article 8 Claims and Disputes
§ 8.2.3 Select from three choices of binding dispute resolution: (1) arbitration, (2) litigation or (3) another method that the parties must identify. Other types of dispute resolution include a dispute resolution board or a mini-trial. For
additional information about other methods of dispute resolution, refer to The Construction Industry’s Guide to Dispute Avoidance and Resolution free online at www.adr.org.

Article 11 Compensation
There are at least ten methods of computing compensation for architectural services. Four of these methods are time-based, reflecting in different ways the time spent by the Architect on the Project:

Multiple of Direct Salary Expense, in which direct salaries of designated personnel are multiplied by a factor representing benefits, overhead and profit.

Multiple of Direct Personnel Expense, in which the salaries plus benefits of designated personnel are multiplied by a factor representing overhead and profit.

Professional Fee Plus Expenses, in which the salaries, benefits and overhead of designated personnel are the expense and the fee may be a multiplier, percentage or lump sum representing profit.

Hourly Billing Rates, in which salaries, benefits, overhead and profit are included in the rate for designated personnel.

Other methods, while they may be indirectly related to time expended on the Project, do not use time as a factor in the calculation:

Stipulated Sum, in which compensation is listed as a dollar amount.

Percentage of Cost of the Work, in which compensation is calculated by applying an assumed percentage to the estimated or actual Cost of the Work, whichever is most certain at the time the calculation is made.

Multiple of Consultants’ Billing, in which Consultants’ bills are multiplied by a factor representing the Architect’s administrative costs, overhead and profit.

Square Footage, in which the square footage of the structure is multiplied by a pricing factor.

Unit Cost, in which the number of certain units such as rooms, acres, etc., is multiplied by a pricing factor.

Royalty, in which compensation is a share in the Owner’s income or profit derived from the built facility.

The AIA makes no recommendation as to the appropriateness of any of these methods of compensation on a particular project, nor does the AIA suggest that the foregoing list includes all methods that are possible, practical or in actual use. The use of any of the compensation methods described above, singly or in combination with other methods, is a business decision for the Architect and the Owner. Further, the AIA makes no recommendations and has no guidelines or schedules that specify the amount of compensation an architect should be paid.

§ 11.1 Insert the basis of compensation for the Architect’s Basic Services. Sample language is provided below for several of the most widely used methods of compensation.

If a Multiple of Direct Salary Expense is used, include multipliers using words and numerals in the following insert: “Compensation for services rendered by principals and employees shall be based on a multiple of ________ (__) times Direct Salary Expense, which shall be defined as the direct salaries of the Architect’s personnel engaged on the Project excluding any costs of mandatory or customary contributions and benefits. Compensation for services rendered by Consultants shall be based on a multiple of ________ (__) times the amounts billed by Consultants.”

If a Multiple of Direct Personnel Expense is used, include multipliers using words and numerals in the following insert: “Compensation for services rendered by principals and employees shall be based on a multiple of ________ (__) times Direct Personnel Expense. Compensation for services rendered by Consultants shall be based on a multiple of ________ (__) times the amounts billed by Consultants.”

If a Professional Fee Plus Expenses is to be used, include the dollar figure and the appropriate multipliers (using words and numerals) in the following insert: “Compensation shall be a Fixed Fee of ________ Dollars ($______) plus a
multiple of ________ (__) times Direct Personnel Expense. Compensation for services rendered by Consultants shall be based on a multiple of ________ (__) times the amounts billed by Consultants.”

Alternatively, the fee (representing profit) may be calculated as a multiplier or percentage.

If **Hourly Billing Rates** are used, include the cumulative amount for salary, benefits, overhead and profit to fix each rate using words and numerals in the following insert: “Compensation for services rendered by Principals and employees shall be based upon the hourly billing rates set forth below:

1. Principals’ time at the fixed rate of ________ Dollars ($______) per hour. For the purposes of this Agreement, the Principals are: (List Principals, such as owners, partners, corporate officers and participating associates.)

2. Supervisory time at the fixed rate of ________ Dollars ($______) per hour. For the purposes of this Agreement, supervisory personnel include: (List managerial personnel by name or job title, such as general manager, department head or project manager.)

3. Technical Level I time at the fixed rate of ________ Dollars ($______) per hour. For the purposes of this Agreement, Technical Level I personnel include: (List those personnel by name or job title who are highly skilled specialists, such as job captains, senior designers, senior drafters, senior planners, senior specifiers or senior construction administrators.)

4. Technical Level II time at the fixed rate of ________ Dollars ($______) per hour. For the purposes of this Agreement, Technical Level II personnel include: (List those personnel by name or job title who hold intermediate-level positions relative to Technical Level I, such as professionals awaiting licensure and managers of clerical staff.)

5. Technical Level III and clerical personnel time at the fixed rate of ________ Dollars ($______) per hour. For the purposes of this Agreement, Technical Level III and clerical personnel include: (List those personnel by name or job title who occupy junior-level positions, such as word processor or office assistant.)

6. Compensation for services rendered by Consultants shall be based on a multiple of ________ (__) times the amounts billed by Consultants.”

If a **Percentage of Cost of the Work** is to be used, insert the following:
“Compensation shall be ________ percent (___%) of the Cost of the Work, as defined in Section 6.1.”

If a **Stipulated Sum** is to be used, insert the sum in words and numerals in the following sample language:
“Compensation shall be a stipulated sum of ________ Dollars ($______).”

No sample language is provided for compensation based on square footage, unit cost or royalty. Parties choosing one or more of these methods should craft their own language based on the particulars of the Project.

§ 11.2 See methods of compensation shown above for Section 11.1.

§ 11.3 See methods of compensation shown above for Section 11.1.

§ 11.4 See methods of compensation shown above for Section 11.1, if other than a percentage of the invoiced amount.

**Article 12 Special Terms and Conditions**

Insert any modifications to the standard text of the document, if the modifications are not otherwise inserted elsewhere in the document. For more information about modifying the document, refer to the Modifications section of these Instructions.

**EXECUTING B104–2007**

The persons executing AIA Document B104–2007 should indicate the capacity in which they are acting (i.e., president, secretary, partner, etc.) and the authority under which they are executing the Agreement. Where appropriate, a copy of the resolution authorizing the individual to act on behalf of the firm or entity should be attached.