



# AIA® Document B105® – 2017

## Standard Short Form of Agreement Between Owner and Architect

**AGREEMENT** made as of the Eleventh day of May in the year Two Thousand Twenty-three  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:  
(Name, legal status, address and other information)

New Berlin C.U.S.D. 16  
600 Cedar Street  
New Berlin, IL 62670  
Telephone Number: 217-488-2040

and the Engineer:  
(Name, legal status, address and other information)

Ideal Environmental Engineering, Inc.  
2904 Tractor Lane  
Bloomington, IL 61704  
Telephone Number: 309-828-4259

for the following Project:  
(Name, location and detailed description)

**Environmental Professional Services for New Berlin Jr./Sr. High School Remodel  
and Addition**

New Berlin Jr/Sr. High School  
300 W. Ellis Street New Berlin  
New Berlin, IL 62670

The Owner and Engineer agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

*(Paragraphs deleted)*

## **ARTICLE 1 ENGINEER'S RESPONSIBILITIES**

The Engineer shall provide Environmental Professional Services for the Project as described in this Agreement. The Engineer shall perform its services consistent with the professional skill and care ordinarily provided by engineers practicing in the same or similar locality under the same or similar circumstances. The Engineer shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the entire New Berlin Jr./Sr. High School Remodel and Addition project.

The Engineer represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement.

The Engineer's Environmental Professional Services include and may not be limited to the following: Consulting regarding the abatement of asbestos hazards, asbestos inspection prior to building renovations and demolition, asbestos abatement engineering cost estimating, design and monitoring services for any asbestos containing materials which require abatement to facilitate Project.

Services provided in accord with:

EPA AHERA Asbestos Containing Materials in Schools Rule (40CFR Part 763, Subpart E), IDPH Part 855 Asbestos Abatement for Public and Private Schools and Commercial and Public Buildings in Illinois & EPA NESHAP 40CFR Part 61, Subpart M regulations. Hereafter referred to as Regulatory Obligations.

### **Consulting and Abatement Design Services:**

Engineer will provide asbestos abatement consulting, pre-design services, design development, specifications, bidding/negotiation and contract administration. The Engineer will administer the Contract between the Owner and Asbestos Contractor (Contractor). The extent of the Engineer's authority and responsibility during asbestos abatement is described in AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor. Owner and Contractor shall not modify AIA Document A101-2017, without authorization from the Engineer, as modifications may affect the Engineer's services under this Agreement.

During the Consulting and Abatement Design Phase, the Engineer shall discuss the entire New Berlin Jr./Sr. High School Remodel and Addition project variables with the Owner and/or Owner's Representative(s) to reach an understanding of the Project requirements and develop the scope of any necessary abatement and abatement schedules for compliance with Owner's Regulatory Obligations.

The Engineer's services will be coordinated with the Owner and/or Owner's Representative.

### **Asbestos Inspection Services:**

Engineer will complete necessary asbestos inspection services to facilitate the entire New Berlin Jr./Sr. High School Remodel and Addition project to meet the Owner's Regulatory Obligations. Engineer will thoroughly inspect for accessible suspect asbestos containing materials and sample materials found. Polarized Light Microscopy (PLM), the industry standard method of analysis, to determine asbestos content of a building material will be used. Transmission Electron Microscopy (TEM) may also be used to confirm asbestos content in which no asbestos is detected by PLM or it is detected at low quantities. Remediation recommendations and/or proposals may be based on PLM results. Additional TEM analysis is always an option.

For the purposes of this Agreement, "accessible" materials, spaces, or areas mean those materials, spaces, or areas for which nothing is required to be removed to access the material, space or area (i.e., no walls, ceilings, floors, outlet covers, etc. are required to be removed). Inaccessible materials, spaces, or areas mean those materials, spaces, or areas for which something is required to be removed to access the material, space or area (i.e., a wall, ceiling, floor, outlet cover, etc. is required to be removed).

### **Onsite Project Monitoring and Air Sampling Services:**

Engineer will provide onsite project monitoring and air sampling for asbestos abatement work. When required, clearance air sampling will be provided.

## **ARTICLE 2 OWNER'S RESPONSIBILITIES**

The Owner shall provide full information about the objectives, schedule, constraints, and existing conditions of the building(s) for the entire New Berlin Jr./Sr. High School Remodel and Addition project. Owner shall establish a budget that includes reasonable contingencies to meet the Project's Regulatory Obligations. The Owner shall provide decisions and furnish required information as expeditiously as necessary for the orderly progress of the Project. The Engineer shall be entitled to rely on the accuracy and completeness of the Owner's and/or Owner's Representative(s) information and have access to the site as necessary to perform work in a timely manner.

With exception of hazardous materials or accessible utilities for which their identification is part of Engineer's Work, Owner represents and warrants that it will advise Engineer of any known or suspected hazardous materials, utility lines, confined space entry areas and pollutants at any site at which Engineer is to do Work.

### **Communications, Coordination and Third Parties:**

The entire New Berlin Jr./Sr. High School Remodel and Addition project's architect (A/E) is BLDD Architects and Construction Manager (CM) is Core Construction. The Owner shall ensure A/E and CM are immediately notified that Engineer is contracted with the Owner to act as Owner's Environmental Professional to ensure the Project's Regulatory obligations noted above are met.

Owner shall inform A/E and CM of strict obligations to keep the Engineer abreast of renovation and demolition plans and any changes to those plans to ensure that Engineer has opportunity to review plans/changes in a timely manner to ensure that Owner's Regulatory Obligations are met.

The results of environmental inspections and necessary hazard abatement prior to renovation and demolition can greatly affect the entire New Berlin Jr./Sr. High School Remodel and Addition project's timeline. Engineer cannot ensure that work under this Project can be done in timelines established by others, when Engineer is not involved in the Project timelines established by others.

## **ARTICLE 3 USE OF DOCUMENTS**

Drawings, specifications, and other documents prepared by the Engineer are the Engineer's Instruments of Service and are for the Owner's use solely with respect to constructing the Project. The Engineer shall retain all common law, statutory and other reserved rights, including the copyright. Upon completion of the Project, provided that the Owner substantially performs its obligations under this Agreement, the Engineer grants to the Owner permission of use the Engineer's Instruments of Service as a reference for maintaining, altering, and adding to the Project. When transmitting copyright-protected information for use on the Project, the transmitting party represents that it is either the copyright owner of the information or has permission from the copyright owner to transmit the information for its use on the Project. Engineer's reports shall not be reproduced except in full, without the written consent of Engineer. Record retention by Engineer is not guaranteed.

## **ARTICLE 4 TERMINATION, SUSPENSION OR ABANDONMENT**

In the event of termination, suspension or abandonment of the Project by the Owner, the Engineer shall be compensated for services performed. The Owner's failure to make payments in accordance with this Agreement shall be considered substantial nonperformance and sufficient cause for the Engineer to suspend or terminate services. Either the Engineer or the Owner may terminate this Agreement after giving no less than seven days' written notice if the Project is suspended for more than 90 days, or if the other party substantially fails to perform in accordance with the terms of this Agreement, including Owner's refusal to comply with Regulatory Obligations or at any time for any reason. Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

If Agreement is cancelled after the completion of the Inspection Service and prior to any necessary Abatement Design Service, Engineer may invoice at least 10% of the estimated Abatement Contractor's fee or \$6500 whichever is greater as a cancellation fee.

Neither party will be held liable for failure to fulfill its obligations hereunder if such failure is due to a Force Majeure Event. A "Force Majeure Event" means, but is not limited to, an act of war; domestic and/or international terrorism; civil riots or rebellions; quarantines, embargoes and other similar unusual governmental actions; pandemics, epidemics, local disease outbreaks, public health emergencies; extraordinary elements of nature or acts of God; or generalized lack of availability of raw materials, labor or energy; provided that such Force Majeure Event is beyond

the excused Party's reasonable control, occurs without the excused Party's fault or negligence, is not caused directly or indirectly by the excused Party and could not have been prevented or avoided by the excused Party's diligence.

## ARTICLE 5 MISCELLANEOUS PROVISIONS

This Agreement shall be governed by the law of the place where the Project is located. Terms in this Agreement shall have the same meaning as those in AIA Document A105-2017, Standard Short Form of Agreement Between Owner and Contractor. Neither party to this Agreement shall assign the contract as a whole without written consent of the other.

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or the Engineer.

The Engineer shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site with exception of the environmental services covered in this Agreement.

*(Paragraphs deleted)*

## ARTICLE 6 PAYMENTS AND COMPENSATION TO THE ENGINEER

### Inspection Services:

EPA-AHERA Accredited, IDPH-licensed Inspector \$125/hr.  
PLM Bulk Sample Analysis \$20 ea.  
TEM Bulk Sample Analysis \$75 ea.

### Consulting and Design Services:

Consulting begins at the time the Engineer is requested to consult on environmental hazards or to provide cost estimating for abatement. All time and mobilization(s) prior to abatement design service is consulting. Asbestos abatement design service begins when Engineer starts the design. Consulting services will be invoiced on time incurred and required skills for this Project. A design fee minimum value applies. Design fee will not be greater than the Basic Services Fee Compensation Range as provided in the State of Illinois A/E Rate Table dated 12/11/2012. Design services will be calculated based on the adjusted average of the abatement contractors' bids (throwing out the low and high bids) and Engineer's estimate(s), when provided. Engineer shall be paid per this Agreement and regardless of whether the actual sum of the Contractor's fee and Engineer's services exceed any OPC provided.

Professional Engineer and Environmental Consulting: \$150.00/labor hour

### Onsite Project Monitoring Service:

EPA-AHERA Accredited, IDPH-licensed Professional\* \$125/hr.  
\*Air Sampling Professional (ASP), Asbestos Project Manager (APM)  
TEM Air Samples Analysis \$250 ea.  
PCM Air Sample Analysis \$25 ea.

A full shift rate applies to each ASP and/or APM specified. A shift is 8 hours. Analysis of all area PCM air samples are included in the shift rate. Mobilization and any hotel/per diem are invoiced as incurred. Background check cost including labor and mobilization may be billed as additional services. Any opinion of probable cost presented is an estimate. Actual abatement contractor's fee is determined during bidding. Overtime is time and one half for all work weeks exceeding 40 hours. Second shift and Saturday work is time and one half. Sunday and Holiday work is double time. All analysis fees are based on standard turn-around-time. Engineer has provided a general list of services typical for this type of project. Due to the complexity of the Project other costs may arise and will be provided as additional service(s).

Any consulting due to unforeseen circumstances and due to additional meetings outside the typical for a project of similar scope and size will be invoiced as additional services at \$150 /hr.

Environmental Professional Services begin at the time the Agreement is authorized whether verbally or written.

Payments are due and payable upon receipt of the Engineer's invoices. Amounts unpaid thirty (30) days after the invoice date shall bear interest from the date payment is due at the rate of three percent (3%), or in the absence thereof, at the legal rate prevailing at the principal place of business of the Engineer.

The Engineer shall provide additional services not included in Article 1 at the request of the Owner.

#### **ARTICLE 7 OTHER PROVISIONS**

The scope of abatement will be based on a thorough inspection for asbestos prior to building demolition and renovation. Suspect asbestos-containing materials may be discovered during demolition.

Engineer is not responsible for weather intrusion, vandalism, injury or any other issues caused due to the removal of any building material.

Engineer's Work shall not include supervising, implementing, or determining the means, methods, techniques, sequencing, or procedures of construction of any contractor or third party, other than what is addressed in an abatement design. Engineer's work or failure to perform shall not in any way excuse any contractor, subcontractor, supplier or other third party from performance of its work in accordance with any Contract Documents. Engineer has no right to issue a stop work order to a third party's work unless such ability is provided in writing by Owner. Engineer has no duty or responsibility relative to a Contractor certificates of insurance or performance and payment bonds other than acting as facilitator of the exchange of documents from the Contractor to the Owner.

#### **ARTICLE 8 INSURANCE**

Engineer will maintain insurance as reflected on Certificate of Insurance throughout the duration of the Project. Owner and Owner's Representative will be listed as an additional insured. The insurance policies shall incorporate a provision requiring written notice to the Owner at least thirty days prior to any cancellation, nonrenewal, or material modification of a policy. No claims for loss, damage or injury shall be brought against Engineer by Owner or any third party unless all tests and inspections have been so performed and unless Engineer's recommendations have been followed.

- .1 The limits for Worker's Compensation and Employers' Liability is as follows:  
\$1,000,000.00 Each Accident  
\$1,000,000.00 Disease Each Employee  
\$1,000,000.00 Disease Policy Limit
- .2 The limits for Commercial General Liability insurance, including asbestos operations and contractor's pollution are as follows:  
\$1,000,000.00 Each Occurrence  
\$1,000,000.00 General Aggregate  
\$1,000,000.00 Personal and Advertising Injury  
\$1,000,000.00 Products-Completed Operations Aggregate
- .3 Automobile Liability insurance (owned, non-owned and hired vehicles) for bodily injury and property damage are as follows:  
\$1,000,000.00 Each Accident
- .4 Umbrella or Excess of Loss Coverage is as follows:  
\$4,000,000.00 Each Occurrence  
\$4,000,000.00 Aggregate
- .5 Professional Liability is as follows:  
Included Commercial General Liability insurance

The Engineer shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Engineer, its employees and its consultants in the performance of professional services under this Agreement. The

Engineer's obligation to indemnify and hold the Owner and the Owner's officers and employees harmless does not include a duty to defend. The Engineer's duty to indemnify the Owner shall be limited to the available proceeds of the insurance coverage as noted above.

#### **ARTICLE 9 DISPUTE RESOLUTION**

Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. The Owner and Engineer shall endeavor to resolve claims, disputes, and other matters in question between them by mediation with a mutually agreed upon party.

A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If the parties do not resolve a dispute through mediation, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction.

The Owner recognizes that Regulatory Obligations governing this Project may change and that Engineer's training and licensing fees, professional liability insurance and other operating costs continue to increase. To account for such increases, Engineer may periodically increase the cost noted in the Services and Compensation section without voiding this Agreement.

By signing this Agreement, you state you have the authority to allow Engineer to perform work for this Project. Changes in the Owner's administration does not negate the authorizing signature on this Agreement. The Agreement shall be enforceable once signed by both parties. Engineer's signature shall be binding as if from an officer licensed Engineer.

This Agreement represents the entire Agreement between the parties and supersedes all prior agreements, negotiations, proposals, and representations, either written or oral. This Agreement may be amended only by written instrument signed by both parties. The parties have entered into this Agreement in good faith, and it is the specific intent of the parties that the terms of these General Conditions be enforced as written. In the event any of the provisions of these General Conditions are found to be unenforceable, it will be stricken, and the remaining provisions shall be enforceable. This Agreement shall be governed by the laws of the State of Illinois. This Agreement entered as of the day and year first written above.

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**OWNER** *(Signature)*

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Ms. Jill Larson, Superintendent  
*(Printed name and title)*

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**ENGINEER** *(Signature)*

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Mrs. Janelle Weber, Director of Operations  
*(Printed name, title, and license number, if required)*