

Client Connection Plus 12-09 Newsletter

“Solely Designed with HPPIB Clients In-Mind”

NAVIGATING GREEN DESIGN LANDMINES

SUSTAINABLE DESIGN PROJECT AGREEMENT

The Agreement Language proposed below represents a suggestions to considering Sustainable Design Project Agreement contact provisions from a risk management and professional liability perspective. There could be specific issues under the applicable law governing interpretation and enforcement of the contract for which you may want to seek the assistance of a local attorney.

SAMPLE AGREEMENT

Sub-Article 1.1:

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 Client acknowledges and understands that LEED is subject to interpretation, and achieving levels of compliance involves factors beyond the control of the Design Professional, including, but not limited to, the Owner’s use, operation and maintenance of the completed project. In addressing LEED, the Design Professional 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 Design Professional will use reasonable care consistent with the foregoing standard in interpreting LEED and designing in accordance with LEED. However, the Design Professional does not warrant or represent that the Project will actually achieve LEED certification or realize any particular energy savings. The Design Professional shall not be responsible for any environmental or energy issues arising out of the Client’s use and operation of the completed project.

Sub-Article 1.2:

Neither the Client nor the Design Professional 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.