

AIA DOCUMENT B151-1997
Abbreviated Standard Form of Agreement Between Owner and Architect

ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

- 1.1 The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated *herein. The Architect shall be responsible for the Architect's negligent acts or omissions, as well as its contractual obligations hereunder.*
- 1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which may be adjusted, *except where delay is the fault of the Architect,* as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.
- 1.3 The Architect shall designate a representative authorized to act on behalf of the Architect with respect to the Project.

1.4 —

ARTICLE 2 SCOPE OF ARCHITECT'S BASIC SERVICES

2.1 DEFINITION

The Architect's Basic Services consist of those described in Paragraphs 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal structural, mechanical and electrical engineering services.

2.2 SCHEMATIC DESIGN PHASE

- 2.2.1 The Architect shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

- 2.2.2 The Architect shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other
- 2.2.3 The Architect shall review with the Owner alternative approaches to design and construction of the Project.
- 2.2.4 Based on Mutually agreed-upon program, schedule and construction budget requirements, the Architect shall prepare, ***for submission to and review by the Owner***, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project Components; ***provided, that the Owner's review of the Architect's design documents shall not be for the purpose of determining the accuracy, adequacy or completeness of such documents and shall not alter the Architect's responsibilities hereunder with respect to such documents.***
- 2.2.5 The Architect shall submit to the Owner a preliminary estimate of Construction Cost based on current area, volume or similar conceptual estimating techniques.

2.3 DESIGN DEVELOPMENT

- 2.3.1 Based on the Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or construction budget, the Architect shall prepare, for ***submission to and review*** by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate; ***provided, that the Owner's review of the Architect's design documents shall not be for the purpose of determining the accuracy, adequacy or completeness of such documents and shall not alter the Architect's responsibilities hereunder with respect to such documents.***
- 2.3.2 The Architect shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost.

2.4 CONSTRUCTION DOCUMENTS PHASE

- 2.4.1 Based on the Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare, for ***submission to and review*** by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirement for the construction of the Project; ***provided, that the Owner's review of the Architect's design documents shall not be for the purpose of determining the accuracy, adequacy or completeness of such documents and shall not alter the Architect's responsibilities hereunder with respect to such documents.***

- 2.4.2 The Architect shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.
- 2.4.3 The Architect shall advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.
- 2.4.4 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

2.5 BIDDING OR NEGOTIATION PHASE

The Architect shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.

2.6 CONSTRUCTION PHASE – ADMINISTRATION OF THE CONSTRUCTION CONTRACT

- 2.6.1 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the initial Contract for Construction and terminates at the issuance to the Owner of an acceptable final certificate for Payment.
- 2.6.2 The Architect shall provide administration of the Contract for Construction as set forth below and in the *modified 1997* edition of AIA Document A201, General Conditions of the Contract for Construction, *attached hereto as Exhibit A*. *Further modifications* made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect.
- 2.6.3 Duties, responsibilities and limitations of authority of the Architect under this Paragraph 2.6 shall not be restricted, modified or extended without written agreement of the Owner and Architect.

- 2.6.4 The Architect shall be a representative of and shall advise and consult with the Owner during the administration of the Contract for Construction. The Architect shall have authority to act on behalf of the Owner only to the extent provided in the Agreement unless otherwise modified by written amendment.
- 2.6.5 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Architect in Article 12, (1) to become familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine ~~in general~~ if the Work is being performed in accordance with the Contract Documents.
- 2.6.6 The Architect shall report to the Owner *in writing* known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor.
- 2.6.7 The Architect shall at all times have access to the Work wherever it is in preparation or progress.
- 2.6.8 Except as otherwise provided in this Agreement, *the Owner shall initially* endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

2.6.9 CERTIFICATES FOR PAYMENT

- 2.6.9.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts.

- 2.6.9.2 The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in subparagraph 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. ***The foregoing representations are subject to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified.***
- 2.6.9.3 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.
- 2.6.10 The Architect shall reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Document, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect ***or the Owner*** to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.
- 2.6.11 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawing, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgement to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. the Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

- 2.6.12 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Architect shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.
- 2.6.13 The Architect shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Architect as provided in Subparagraphs 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents, and may, ***with the prior written approval of the Owner***, authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents.
- 2.6.14 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive from the Contractor and forward to the Owner, for the Owner's review and record, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the contract Documents.
- 2.6.15 The Architect shall ***initially*** interpret and decide matters concerning performance of the Owner and Contractor under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such request shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.
- 2.6.16 ***Initial interpretations*** or decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such ***initial*** interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of ***initial*** interpretations or decisions so rendered in good faith.
- 2.6.17 The Architect shall render on claims, disputes or other matters in question between the Owner and Contractor as provided in the contract Documents. However, the Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.
- 2.6.18 The Architect's initial ***recommendations*** on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic

effect as provided in Subparagraph 2.7.11 shall be subject to mediation - *and, if necessary, litigation*, as provided in this Agreement and in the Contract Documents.

ARTICLE 3 ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 12, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Paragraphs 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Paragraph 3.3 are required due to circumstances beyond the Architect's control, the Architect shall notify the Owner prior to commencing such services. If the Owner deems that such services described under Paragraph 3.3 are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services.

3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

3.2.1 If more extensive representation at the site than is described in Subparagraph 2.6.5 is required, the Architect shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

3.2.2 Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefor as agreed by the Owner and Architect. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in the edition of AIA Document B352 current as of the date of this Agreement, unless otherwise agreed.

- 3.2.3 Through the presence at the site of such Project Representatives, the Architect shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work.

3.3 CONTINGENT ADDITIONAL SERVICES

- 3.3.1 Making revisions in drawings, specifications or other documents when such revisions are:
- .1 inconsistent with *information* or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
 - .2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
 - .3 due to changes required *solely* as a result of the Owner's failure to render decisions in a timely manner.
- 3.3.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Subparagraph 5.2.5.
- 3.3.3 Preparing Drawings, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives-, ***provided that such services are not required due to negligent acts or omissions of the Architect.***
- 3.3.4 Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawing, Specifications and other documentation resulting therefrom.
- 3.3.5 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work-, ***provided that such consultation or services, or both, are not required due to negligent acts or omissions of the Architect.***
- 3.3.6 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction-, ***provided that such services are not required due to negligent acts or omissions of the Architect.***
- 3.3.7 Providing services in evaluating a n extensive number of claims submitted by the Contractor or others in connection with the Work-, ***provided that such services are not required due to negligent acts or omissions of the Architect.***

- 3.3.8 Providing services in connection with a public hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto: *or is alleged to have committed a wrongful act or omission which is a subject of such hearing or proceeding.*
- 3.3.9 Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase.

3.4 OPTIONAL ADDITIONAL SERVICES

- 3.4.1 Providing analyses of the Owner's needs and programming the requirements of the Project.
- 3.4.2 Providing financial feasibility or other special studies.
- 3.4.3 Providing planning surveys, site evaluations or comparative studies of prospective sites.
- 3.4.4 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the project.
- 3.4.5 Providing services relative to future facilities, systems and equipment.
- 3.4.6 Providing services to investigate existing conditions or facilities or to make measured drawings thereof.
- 3.4.7 Providing services to verify the accuracy of drawings or other information furnished by the Owner.
- 3.4.8 Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.
- 3.4.9 Providing services in connection with the work of a construction manager or separate consultants retained by the Owner.
- 3.4.10 Providing detailed estimates of construction Cost.
- 3.4.11 Providing detailed quantity surveys or inventories of material, equipment and labor.
- 3.4.12 Providing analyses of owning and operating costs.

- 3.4.13 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.
- 3.4.14 Providing services for planning tenant or rental spaces.
- 3.4.15 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.
- 3.4.16 Preparing a set of reproducible record drawings showing significant changes in the work made during construction based on Marked-up prints, drawings and other data furnished by the Contractor to the Architect.
- 3.4.17 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultations during operation.
- 3.4.18 ***Providing services after issuance to the Owner of an acceptable final Certificate for Payment.***
- 3.4.19 Providing services of consultants for other than architectural, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.
- 3.4.20 Providing any other services not otherwise included in this Agreement ~~or~~ **and** not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE 4 OWNER'S RESPONSIBILITIES

- 4.1 ***The Owner shall provide such timely information as may be reasonably necessary for the Architect to perform Architect's services.***
- 4.2 The Owner shall establish and periodically update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.
- 4.3 The Owner shall designate a representative authorized to ***represent the Owner*** with respect to the Project. The Owner or such designated representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.
- 4.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal

description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

- 4.5 The Owner shall furnish the services of geotechnical engineers when such services are ***reasonably necessary and*** requested by the Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.
- 4.6 The Owner shall furnish the services of consultants other than those designated in ***Paragraphs 2.1 and*** 4.5 when such services are requested by the Architect and are reasonably required by the scope of the Project.
- 4.7 The Owner shall furnish and chemical tests; tests for air and water pollution; tests for hazardous materials; and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.
- 4.8 The Owner shall furnish all legal, accounting and insurance services that may be necessary at any time for the Project to meet the Owner's needs and interests. Such services shall include auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.
- 4.9 The services, information, surveys and reports ***referenced*** by Paragraphs 4.4 through 4.8 shall be furnished at the Owner's expense, and ***unless the Architect has knowledge to the contrary***, the Architect shall be entitled to rely upon the accuracy and completeness thereof. ***While the Architect has no affirmative duty to become aware of same, the Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any errors, omissions or inconsistencies in such services, information, surveys and reports.***
- 4.10 ***While the Owner has no affirmative duty to become aware of same, the Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any errors, omissions or inconsistencies in the Architect's drawings, specifications or other documents.***

ARTICLE 5 CONSTRUCTION COST

5.1 DEFINITION

- 5.1.1 The Construction Cost shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect.
- 5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.
- 5.1.3 Construction Cost does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner.

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

- 5.2.1 Evaluations of the Owner's Project budget, the preliminary estimate of Construction Cost and detailed estimates of Construction Cost, prepared by the Architect, represent the Architect's *best* judgment as a design professional familiar with the construction industry. It is recognized, however that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary somewhat from the Owner's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Architect. The Architect does warrant and represent that there will be no substantial variation.
- 5.2.2 No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget, unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, the Architect shall be permitted to include *reasonable* contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction *acceptable to Owner* are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project *acceptable to Owner* and to include in the Contract Documents alternate bids *acceptable to Owner* as may be necessary to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of an increase in the Contract Sum *not attributable to the wrongful acts or omissions of the Architect and* occurring after execution of the Contract for Construction.

- 5.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, any Project Budget or fixed limit of Construction Cost shall be **reviewed and, if necessary**, adjusted to reflect changes in the general level of prices in the construction industry.
- 5.2.4 If a fixed limit of construction Cost (adjusted as provided in Subparagraph 5.2.3) is exceeded by the lowest bona fide bid or negotiated proposal, the Owner may:
- .1 give written approval of an increase in such fixed limit;
 - .2 authorize rebidding or renegotiating of the Project within a reasonable time;
 - .3 terminate in accordance with Paragraph 8.5; and/o r
 - .4 cooperate in revising the Project scope and quality as required to reduce the Construction Cost.
- 5.2.5 If the Owner chooses to proceed under Clause 5.2.4.4, the Architect, without additional compensation, shall modify the documents for which the Architect is responsible under this Agreement as necessary to comply with the fixed limit, if established as a condition of this Agreement. The modification of such documents without cost to the Owner shall be the limit of the Architect's responsibility under this Subparagraph 5.2.5. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

**ARTICLE 6 ~~USE OF ARCHITECT'S INSTRUMENTS OF SERVICE~~
DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS**

- 6.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are for use solely with respect to this Project. *Any other use, unless by written agreement with the Architect, shall be at the Owner's sole risk and without liability to the Architect or the Architect's consultants. Unless Owner fails hereunder to pay Architect therefore, Owner shall be deemed the Owner of such drawings, specifications and other documents and shall have and retain all rights therein. In the event the Owner is adjudged to have failed hereunder to pay Architect for such drawings, specifications or other documents, ownership thereof, and all rights therein, shall revert to the Architect.*

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ARTICLE 7 DISPUTE RESOLUTION

7.1 MEDIATION

- 7.1.1 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 the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice of filing deadlines prior to resolution of the matter by mediation.
- 7.1.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a *civil action* but, in such event, mediation shall proceed in advance of legal or equitable proceeding, *which may 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.
- 7.1.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

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ARTICLE 8 TERMINATION OR SUSPENSION

- 8.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, ***the Architect having performed the Architect's obligations hereunder***, such failure shall be considered substantial nonperformance and, upon seven days written notice, cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. In the event of a ***proper*** suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any ~~expenses~~ ***direct expenses reasonably*** incurred in the interruption and resumption of the Architect's services.
- 8.2 If the Project is suspended by the Owner for more than 30 consecutive days, ***through no fault of the Architect***, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for ~~expenses~~ ***direct expenses reasonably*** incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.
- 8.3 If, ***through no fault of the Architect***, the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.
- 8.4 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.
- 8.5 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

- 8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Paragraph 8.7. Architect shall not be entitled to anticipated profit on services not performed or to consequential damages.
- 8.7 Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which the Architect is not otherwise compensated.---

ARTICLE 9 MISCELLANEOUS PROVISIONS

- 9.1 *This Agreement shall be governed by the law of the State where the Project is located.*
- 9.2 Terms in this Agreement shall have the same meaning as those in the **1997** edition of AIA Document A201, General Conditions of the Contract for Construction, *as modified (see Exhibit A hereto).*
- 9.3
- 9.4 To the extent damages are covered by property insurance during construction, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in **Exhibit A.**
- 9.5 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project or to a bona fide purchaser of the Project. In such event, the lender or purchaser shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.
- 9.6 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.
- 9.7 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 Architect.

9.8 Unless otherwise provided in this Agreement, the Architect and Architect's consultants 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.

- 9.9 ***Subject to the Owner's prior review and written approval thereof, the*** Architect shall have the right to include photographic or artistic representation of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner ~~shall~~ ***may, in its sole discretion,*** provide professional credit for the Architect in the Owner's promotional materials for the Project.
- 9.10 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this agreement.

ARTICLE 10 PAYMENTS TO THE ARCHITECT

10.1.1 DIRECT PERSONNEL EXPENSE

10.2.1 Direct Personnel Expense is defined as the direct salaries of the Architect's personnel to the extent engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment tax and other statutory employee benefits, insurance, sick leave, holidays, ***vacations and employment retirement plans.***

10.1.2 REIMBURSABLE EXPENSES

- 10.2.1 Reimbursable Expenses ***shall mean reasonable*** expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified in the following Clauses:
- .1 transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
 - .2 fees paid for securing approval of authorities having jurisdiction over the Project;
 - .3 reproductions, plots, standard form documents, postage, handling and delivery of ***drawings, specifications and other documents;***
 - .4 expense of overtime work requiring higher than regular rates if authorized ***in writing*** in advance by the Owner;
 - .5 renderings, models and mock-ups requested by the Owner;
 - .6 expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested

by the Owner in excess of that normally carried by the Architect and the Architect's consultants;

.7 reimbursable expenses as designated in Article 12;

.8 *any other expenses directly related to the Project and reasonably incurred after first receiving written approval of the Owner.*

10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

~~10.3.1~~

10.3.2 *Payments* for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in **Subparagraph 11.1.1**.

10.3.3 If and to the extent that the time initially established in Subparagraph 11.3.2 of this Agreement is exceeded or extended through no fault of the Architect, compensation for any services rendered during the additional period off time shall be *subject to equitable adjustment*.

10.3.4 When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Subparagraph 11.2.2, based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly *within ___ days after* presentation of the Architect's *properly submitted and documented* statement of services rendered or expenses incurred.

10.5 PAYMENTS WITHHELD

No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes or delays in the Work other than those for which the Architect *is responsible*.

10.6 ARCHITECT'S ACCOUNTING RECORDS

Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of hourly rates or a multiple of

Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

ARTICLE 11 BASIS OF COMPENSATION

11.2 BASIC COMPENSATION

11.2.1 For Basic Services, as described in Article 2, and any other services included in Article 12 as part of Basic Services, Basic Compensation shall be computed as follows:

(Insert basis of compensation, including stipulated sums, multiples or percentages, and identify phases to which particular methods of compensation apply, if necessary.)

11.2.2 Where compensation is based on a stipulated sum or percentage of Construction Cost, progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable:

(Insert additional phases as appropriate.)

Schematic Design Phase:	percent (%)
Design Development Phase:	percent (%)
Construction Documents Phase:	percent (%)
Bidding or Negotiation Phase:	percent (%)
Construction Phase:	percent (%)

Total Basic Compensation: one hundred percent (100%)

11.3 COMPENSATION FOR ADDITIONAL SERVICES

11.3.1 For Project Representation Beyond Basic Services, as described in Paragraph 3.2, *or elsewhere herein*, compensation shall be computed as follows:

11.3.2 For additional services of the Architect, as described in Articles 3 and 12 *or elsewhere herein*, other than (1) Additional Project Representations, as described in Paragraph 3.2, and (2) services included in ~~Article 12~~ as part of Basic Services, but excluding services of consultants, compensation shall be computed as follows:

(Insert basis of compensation, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply, if necessary.)

11.3.3 For additional Services of Consultants, including additional structural, mechanical and electrical engineering services and those provided under Subparagraph 3.4.19 or identified in Article 12 as part of Additional Services, a multiple of () times the amounts **properly** billed to the Architect for such services.

(Identify specific types of consultants in Article 12, if required)

11.4 REIMBURSABLE EXPENSES

For Reimbursable Expenses, the expenses properly incurred by the Architect, the Architect's employees and consultants directly related to the Project at cost.

11.5 ADDITIONAL PROVISIONS

11.5.1 If the Basic Services covered by this Agreement have not been completed within () months of the date hereof, through no fault of the Architect, ***compensation for*** the Architect's services beyond that time shall be ***subject to equitable adjustment.***

11.5.2 Amounts ***due and*** unpaid () days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the ***place of the Project.*** (*Insert rate of interest agreed upon.*)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Architect's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletions or modification, and also regarding requirements such as written disclosures or waivers.)

11.5.3 The rates and multiples set forth for Additional Services shall be adjusted in accordance with the normal salary review practices of the Architect.

ARTICLE 12 OTHER CONDITIONS OR SERVICES

(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Agreement.)

This Agreement entered into as of the day and year first written above.

OWNER *(Signature)*

ARCHITECT *(Signature)*

(Printed name and title)

(Printed name and title)