

**AIA Document B141 – 1997**  
**Standard Form of Architect's Services:**  
**Design and Contract Administration**

Article 3

**3.1 Request for Payment.** On or before noon of the first Monday of each month during the performance of the services, Architect shall submit to Owner for its approval a request for payment ("Request for Payment") in form and substance satisfactory to Owner. Each Request for Payment shall set forth the amount due for Services rendered, a detailed breakdown of the amount and the sum of all prior payments. Owner shall review each such Request for Payment and may make such exceptions as Owner reasonably deems necessary or appropriate under the circumstances then existing. About five (5) working days after the Owner's governing body meets approving such payment, the Owner shall make payment to Architect in the amount approved as aforesaid subject to Section 3.3, below.

**3.2 Final Payment.** After final completion of the work and acceptance thereof by Owner, Architect shall submit a final request ("Final Request") which shall set forth all amounts due and remaining unpaid to Architect and upon approval thereof by Owner, Owner shall pay to Architect the amount due ("Final Payment") under such Final Request in accordance with the provisions of 3.1.

The Final Request for Payment shall not be made until Architect delivers to Owner an affidavit that so far as Architect has knowledge or information all materials and services over which Architect has control have been paid.

**3.3 Qualifications on Obligations to Pay.** Any provision hereof to the contrary notwithstanding, Owner shall not be obligated to make any payment (whether a payment under Article 3.1 hereof or Final Payment) to Architect hereunder if any one or more of the following conditions precedent exist:

(1) Architect is in default of any of its obligations hereunder or otherwise is in default under this Agreement or any of the Contract documents;

(2) Any part of such payment is attributable to Services which are not performed in accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to Services which were performed in accordance with this Agreement;

(3) Architect has failed to make payments promptly to consultants or other third parties used in connection with the Services for which Owner has made payments to Architect;

(4) If Owner, in its good faith judgment, determines that the portion of the compensation then remaining unpaid will not be sufficient to complete the Services in accordance with this Agreement, no additional payments will be due Architect hereunder unless and until Architect, at its sole cost, performs a sufficient portion of the Services so that such portion of the compensation then remaining unpaid is determined by Owner to be sufficient to so complete the Services.

3.4 No partial payment made hereunder shall be or construed to be final acceptance or approval of that part of the Services to which such partial payment relates or relieves Architect of any obligations hereunder with respect thereto.

3.5 Architect shall promptly pay all bills for labor and material performed and furnished by others in connection with the performance of the Services.

3.6 **Waiver.** The making of the Final Payment shall constitute a waiver of all claims by the Owner except those arising from (1) faulty or defective Services appearing after completion of the Work, (2) failure of the Services to comply with the requirements of this Agreement or the Contract documents or (3) terms of any special warranties required by this Agreement or provided at law or in equity. The acceptance of Final Payment shall constitute a waiver of all claims by the Architect except those previously made in writing and identified by the Architect as unsettled at the time of the Final Request for Payment.

3.7 In the event of a conflict between the provisions of this Article 3, and those of Articles 1 and 2 of this Agreement, the provisions of this Article 3 shall control.

## **ARTICLE 4**

### **OTHER CONDITIONS OR SERVICES**

4.1 Notwithstanding anything to the contrary contained in this Agreement, Owner and Architect agree and acknowledge that Owner is entering into this Agreement in reliance on Architect's experience and abilities with respect to performing the Services. The Architect accepts the relationship of trust and confidence established between it and the Owner by this Agreement. Architect covenants with Owner to use its best efforts, skill, judgment and abilities to design the Project and to further the interests of Owner in accordance with Owner's requirements and procedures, in accordance with the American Institute of Architects' professional standards, and in compliance with all applicable national, federal, state and municipal laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. Prior to the commencement of construction, Architect shall certify in writing to Owner that the Drawings and Specifications and all drawings and the improvements when built in accordance therewith conform to all applicable governmental regulations, statutes and ordinances then in effect. Architect represents, covenants and agrees that there are no obligations, commitments or impediments of any kind that will limit or prevent performance of the Services.

4.2 The Architect represents, covenants and agrees that all of the Services to be furnished by the Architect under or pursuant to this Agreement, from the inception of the Agreement until the Project has been fully completed, shall be of the standard and quality which prevail among architects of similar experience, knowledge, skill and ability engaged in architectural practice throughout Texas under the same or similar

circumstances involving the design and construction of a project as the Project with all the amenities as set forth in the Drawings and Specifications.

4.3 The Architect represents, covenants and agrees that its special talent, training and experience cause it to be the prime professional on the Project and that because of such talent and training, Architect envisions the construction of the Project in its entirety and possess the special skills which enable it to recognize dangerous conditions that a reasonable, prudent Architect having such special skills could anticipate may arise from the proper use of the Project after accepted by the Owner; as the design professional, it has knowledge which will enable it to recognize specific dangers that may arise from the proper use of the Project after accepted by the Owner; and, it recognized that any management, employees, and agents of the Owner, plus guests and visitors are within a class of foreseeable persons who will be relying on the Project being designed in a professional and safe manner.

4.4 Architect represents, covenants and agrees that its Project Drawings and Specifications will be accurate and free from any material errors and the shop drawings that it must approve will be accurate and free from any material errors relating to design intent. Architect additionally represents, covenants and agrees to the following: the design of the Project will conform to its foreseeable use as a project with all the amenities as set forth in the Drawings and Specifications; the result of the Drawings and Specifications, if built in accordance therewith, will be suitable for purposes for which the Project is designed; the result of Architect's inspection of the Project will be designed and the construction will be inspected in a workmanlike, professional manner and will be suitable for human occupancy and use. The Architect's responsibilities as set forth herein shall at no time be in any way diminished by reason of any approval by the Owner of the Drawings and Specifications nor shall the Architect be released from any liability by reason of such approval by the Owner, it being understood that the Owner at all times is ultimately relying upon the Architect's skill and knowledge in preparing the Drawings and Specifications.

4.5 The Architect represents, covenants and agrees that the person directly in charge of the professional architectural work is duly registered under Texas Revised Civil Statutes, Annotated, Article, 249(a), as amended.

4.6 **Indemnifications.** To the fullest extent permitted by applicable law, the Architect and its agents, partners, and consultants (collectively "Indemnitors") shall and do agree to indemnify, protect, and hold harmless the Owner, Owner's respective Trustees, employees and agents (collectively "Indemnitees") from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses, including attorney fees, of any nature, kind or description (collectively "Liabilities") of any person or entity whomsoever arising out of, caused by or resulting from the performance of the Services or any part thereof provided that any such Liabilities (1) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to the injury to or destruction of tangible personal property including the loss of use and consequential damages resulting therefrom, and (2) are caused in whole or in part by any negligent act or omission of the Architect, anyone directly or indirectly employed by it or anyone for whose acts it may be legally liable. In this connection, it is agreed and understood that Architect shall not be responsible for any portion of the liability proximately caused by Owner's negligence.

**4.7 Joint and Several Liability.** In the event more than one of the Indemnitors are connected with an accident or occurrence covered by the indemnification in Article 4.6 hereof, then each of such Indemnitors shall be jointly and severally responsible to the Indemnitees for indemnification and the ultimate responsibility among such Indemnitors for the loss and expense of any such indemnifications shall be settled by separate proceedings and without jeopardy to any Indemnitee. The provisions of this Article shall not be construed to eliminate or reduce any other indemnifications or right which Owner or any of the Indemnitees has by law.

4.8 Notwithstanding any provisions herein to the contrary, it is agreed that if the Architect's final written estimate of construction cost is less than the low bona fide bid for construction and such low bid is not accepted by the Owner, the Architect, at his expense, will make all necessary revisions to the plans and specifications to lower the construction to an amount acceptable to Owner.

4.9 The Owner agrees to give the Architect the latitude to make the required changes to plans and specifications to achieve the required reduction in construction cost; however, the Architect shall consult with the Owner on all necessary changes.

4.10 Architect covenants with Owner to obtain separate bids and/or contracts for the following phases of the construction of the Project:

1. General Construction;

4.11 The final written estimate of construction cost will be reviewed and approved by the governing body of Owner prior to authorizing the Architect to issue plans and specifications for bidding.

**4.12 SCHEDULE OF REQUIRED INSURANCE COVERAGES**

Architect or Consultant (and each consultant as indicated) shall maintain the insurance coverages specified herein at all times during the term of this Agreement or such later date specified herein. All required insurance shall be:

- (i) written by an insurance company or companies satisfactory to owner and licensed to do business in Texas, with a rating of not less than B+ in the last available Best's Rating guide;
- (ii) include clauses whereby each underwriter agrees to waive its rights of subrogation against Owner; and
- (iii) include a provision stating that coverages afforded under the policies will not be terminated, materially modified, or allowed to expire until at least 30 days prior written notice has been given to Owner.

Certificates of insurance evidencing all required insurance hereunder shall be filed with Owner upon execution of this Agreement by Architect and prior to commencement of the Services for the Project. All insurance policies and certificates required hereunder shall be in form and content satisfactory to Owner.

(1) Commercial General Liability Insurance.

- (a) \$1,000,000 Bodily Injury and Property Damage for Each Occurrence
- (b) \$1,000,000 Products/Completed Operations Aggregate
- (c) \$3,000,000 General Aggregate
- (d) \$1,000,000 Personal and Advertising Injury
  
- (e) \$50,000 Fire Damage
- (f) \$5,000 Medical Expense
- (g) Coverage shall include the following:
  - (i) Occurrence Basis;
  - (ii) Premises operations;
  - (iii) contractual Liability;
  - (iv) Products/Completed Operations;
  - (v) Broad Form Property Damage; and
  - (vi) Independent Contractors.
  - (vii) Such policy shall include all of the coverages which may be included in coverages A, B and C contained in the Standard Texas Form Commercial General Liability Policy, without deletion. Such policy must be issued upon an "occurrence," as distinguished from a "claims made," basis and shall be continued for a period of one (1) year after the completion of the Services for the Project.

(2) Automobile Liability Insurance. Comprehensive Automobile Liability Insurance to cover all vehicles owned by, hired by, or used on behalf of Architect, with minimum combined single limit in the amount of not less than \$1,000,000 per occurrence. Owner and its trustees, officers, representatives, agents and employees shall be endorsed as Additional Insureds, ATIMA (As Their Interest May Appear).

(3) Workers' Compensation and Employer's Liability Insurance. Statutory Limits with All States endorsement and minimum Employer's Liability Limits will be provided as follows:

- (a) \$500,000 Bodily Injury with Accident – Each Accident;
- (b) \$500,000 Bodily Injury by Disease – Policy Limit; and
- (c) \$500,000 Bodily Injury by Disease – Each Employee.

(4) Excess (Umbrella) Insurance.

- (a) Limits of Liability: minimum of \$1,000,000.00

(5) Consultant's Insurance Limits.

- (a) Workers' Compensations: Statutory Limits

Employer's Liability:

- (i) \$100,000 Bodily Injury each Accident
- (ii) \$100,000 Bodily Injury by Disease – Policy Limit
- (iii) \$100,000 Bodily Injury by Disease – Each Employee

- (b) Commercial General Liability Insurance:

- (i) \$500,000 bodily Injury and Property Damage for Each Occurrence

- (ii) \$500,000 Products/Completed Operations Aggregate
- (iii) \$500,000 General Aggregate
- (iv) \$500,000 Personal and Advertising Injury
- (v) Such policy shall include all of the coverages which may be included in coverage A, B and C contained in the Standard Texas Form Commercial General Liability Policy, without deletion. Such policy must be issued upon an "occurrence" as distinguished from a "claims made" basis and shall be continued for a period of one (1) year after the completion of the Services for the Project.

(c) Comprehensive Automobile Liability Insurance.

- (i) \$250,000 Per Person/Accident

(d) Professional Liability Insurance.

- (i) Program Limits, if applicable; or
- (ii) Not less than \$1,000,000.00

4.13 In the event of a conflict between the provisions of this Article 4, and those of Articles 1 and 2 of this Agreement, the provisions of Article 4 shall control.