

PROFESSIONAL PRACTICE 544

COPYRIGHTS; OWNERSHIP OF DRAWINGS; AI IN ARCHITECTURE;
STARTING YOUR OWN PRACTICE

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COPYRIGHT OF DRAWINGS

Copyright of Drawings

The U.S. Copyright Act (and foreign equivalents)

17 U.S.C. Section 102(a)

Copyright protection subsists, in accordance with this title, in **original works of authorship fixed in any tangible medium of expression**, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, **either directly or with the aid of a machine or device**.

Copyright of Drawings

- ▶ **It is an Intellectual Property Right (not real property)**
- ▶ **Federal Law – Federal Courts**
- ▶ **Only the specific expression of an idea can be copyrighted**
- ▶ **Classifications of ownership:**
 - ▶ Default position: Architect owns the drawings
 - ▶ “Instruments of Service”
 - ▶ “Works for Hire” or “Work Made for Hire”
 - ▶ Joint Ownership

Copyright of Drawings

- ▶ **“License” to use the drawings**
 - ▶ Contractual right – not a formal document labeled “license” or “certificate”
 - ▶ Can be almost any conceivable combination of rights
 - ▶ Exclusive / non-exclusive
 - ▶ World-wide
 - ▶ Limited / Unlimited
 - ▶ Elements carved out
 - ▶ Termination of License
 - ▶ Owner’s agreement to indemnify for non-project use

Copyright of Drawings

- ▶ **Notice and registration of copyright**
- ▶ **Elements of infringement**
 - ▶ Infringement must be intentional – not an accidental infringement
 - ▶ Requires access to the copyrighted work
 - ▶ Original expression of the work
- ▶ **Damages/Remedies for infringement**
 - ▶ Court injunction
 - ▶ Preliminary injunction
 - ▶ Likelihood Success on Merits; Irreparable Harm; Balance of Equities/Hardships; Public Interest
 - ▶ Permanent injunction
 - ▶ Money damages
 - ▶ Lost profits
 - ▶ Actual damages
 - ▶ Statutory damages

Copyright of Drawings

- ▶ **Exceptions to Infringement**
 - ▶ Fair Use Doctrine
 - ▶ Is the use for commercial or non-profit / educational in nature
 - ▶ The nature of the copyrighted work
 - ▶ The amount and substantiality of the work used in proportion to the copyrighted work as a whole
 - ▶ Effect on the potential market of the copyrighted work

Copyright of Drawings

- ▶ **Exceptions to Infringement**
 - ▶ Parody/Political/Quotes or Illustration for Clarity
 - ▶ Expiration of the copyright
 - ▶ Life of the author plus 70 years
 - ▶ If a corporation owns the copyright, if the owner is anonymous, or if the copyright is owned by an entity because it was a “work made for hire”
 - ▶ Shorter of 95 years from publication, or 120 years in total

The background is a deep blue gradient with a subtle, abstract pattern of curved lines and a faint grid. The lines curve from the left towards the right, creating a sense of depth and movement. The grid pattern is most visible in the center and right side, appearing as a series of thin, light blue lines that form a perspective view of a grid receding into the distance.

AI IN ARCHITECTURE

AI Applications in Architecture

- ▶ Design Automation and Generative Design
- ▶ Project Management and Scheduling
- ▶ AI-Powered Rendering and Visualizations
- ▶ Different AI “Tools” for Different Phases of the Services
 - ▶ Concept & early design
 - ▶ Schematic & development
 - ▶ Production & Construction

AI Reshaping Workflows for the Practicing Architect

“AI accelerates the cognitive loop, enabling us to explore more within the same time and shift repetitive work toward high-value decision making.”

Zhang Ye (Gensler)

- ▶ The senior designer with one type of AI tool can create multiple designs with the client to arrive at the “end product” faster, only to then reverse engineer the design once the decisions are made.
- ▶ Younger designers will be tasked with using AI to help in the reverse engineering process and work toward the more detailed design process.
- ▶ The use of AI within a design team and with clients, however, is beneficial for accelerating design decisions, and not final construction renderings.

AI Reshaping Workflows for the Practicing Architect

- ▶ Training in prompt writing
- ▶ Text-to-image generating skills
- ▶ There is value in the prompt and the way you “speak” / “communicate” with AI
- ▶ Is the in-house system open or closed, and what type of learning is the AI doing in order to better enhance your company/brand
 - ▶ Open source
 - ▶ No guardrails/safeguards – it is open to the general public and subject to changes and unmonitored information/input
 - ▶ Closed source
 - ▶ May be protected – or maybe not
 - ▶ Can you protect what other people in your firm are using with closed-source information

AI and Intellectual Property Rights

17 U.S.C. Section 102(a)

Copyright protection subsists, in accordance with this title, in **original works of authorship fixed in any tangible medium of expression**, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, **either directly or with the aid of a machine or device**.

AI and Intellectual Property Rights

- ▶ **Human authorship is required – analyzed on a case-by-case basis**
 - ▶ “whether the ‘work’ is basically one of human authorship, with a computer [or other device] merely being an assisting instrument,” OR
 - ▶ whether the traditional elements of authorship in the work (literary, artistic, or musical expression or elements of selection, arrangement, etc.) were actually conceived and executed not by [a human] but by a machine.”
- ▶ **Example where AI-generated materials may contain sufficient human authorship**
 - ▶ Human has selected or arranges AI-generated materials in a sufficiently creative way, but protection would not extend outside of the compilation
 - ▶ Human modifies AI-generated materials in an original, creative way

AI and Intellectual Property Rights

- ▶ **Prompts alone are not sufficient based on today's technology to create a copyrightable work**
 - ▶ Prompts do not adequately determine expressive elements or control as the system translates them into an output, as AI is filling the gap
- ▶ **The same prompt can generate entirely different outputs**
- ▶ **The prompt itself may be copyrightable. However, that still results in different creations within the same prompt**
 - ▶ So what really is being copyrighted, if the same prompt results in different "creations"
- ▶ **What is actually being copyrighted?**
 - ▶ More importantly, what is being protected for you or your client

AI and Intellectual Property Rights

▶ **Safeguards**

- ▶ Closed systems
- ▶ Company rules and regulations
- ▶ Contractual language
- ▶ Setting up systems designed to safeguard certain information

AI Risks In Architecture

- ▶ How should architects balance the use of AI-generated ideas or documentation with our legal and ethical responsibility for accuracy, code compliance, and life-safety?

Errors and Omissions

1. Risks of AI-Generated Errors
2. Hallucinations for Engineering Solutions
3. As often as 27% of the time

Regulatory Compliance

1. Building Codes
2. Local Requirements
3. Hallucinations in what is required
4. Will AI be reviewing submitted drawings and specifications

SAMPLE LETTER AGREEMENT

Proposal Letter for Architectural Design

The following represents the agreement entered into by XYZ Architects Ltd. ("Architect" or "Design Professional") and Client Name ("Client"). We are pleased to provide the following services in connection with your property at:

- Street Address
- City, State, Zip

I. SCOPE OF WORK AND ANTICIPATED BUDGET

Provide detailed Scope description. Should include proposed square footage and initial budget target. If Renovation project, describe which rooms to be renovated and work to be done. If new house, describe goals for house in terms of rooms, features, and aesthetics. If the scope is not fully known, use hourly contract to determine scope and budget as described below.

II. ARCHITECTURAL DESIGN PROCESS AND SERVICES

A description of the architectural design process by phase is as follows:

Ia. PROGRAMMING / CODE REVIEW

Architect begins with an extensive 'get acquainted' interview to identify:

- Client's stylistic desires and intent, project scope, and requested image and level of finish
- Anticipated room functions
- Any additional Client design ideas or requests
- Client's desired Budget and Schedule

Proposal Letter for Architectural Design

Architect will then:

- Establish program based on Client interview
- Begin Zoning and Building code analysis
- Help Client procure a digital survey of the property
- Begin to establish the proposed design team, which will consist of Client's representative (if applicable), potential General Contractor (if applicable) and any Consultants whom Architect or Client may consider essential during this Phase

Ib. ARCHITECTURAL SURVEY

This phase occurs concurrently with *Programming / Code Review*. Architect will:

- Document existing conditions
- Inspect site conditions
- Inspect architectural spaces
- Review existing drawings, if any
- Measure existing spaces as required
- Photograph existing structure and interior spaces as required
- Draw existing floor plans and elevations as required

Client approval, in writing, of program, preliminary Client anticipated budget, and schedule will constitute completion of Phase I of the Project.

Proposal Letter for Architectural Design

2. SCHEMATIC DESIGN

After the Architect has prepared a design based on the approved Project Program, a sequence of meetings occurs in which sketch plans and elevations are presented to the Client as required to illustrate the Architect's design concepts and in which Client accepts or revises design concepts.

Client approval, in writing, of final schematic design will constitute completion of Phase 2 of the Project.

3. ESTIMATE OF COST AND SCHEDULE

The Architect's office will coordinate with a Cost Consultant (either Client's selected General Contractor or an independent Cost Estimator) to provide adequate information for Cost Consultant to prepare a budget estimate. The Estimating procedure is as follows:

- Architect prepares Outline Architectural Specification to describe significant products and finishes.
- Client approves Outline Architectural Specification.
- Designs Drawings and Outline Architectural Specifications are submitted to Cost Consultant for preliminary estimate.
- Estimates are received and reviewed by Architect with Client.

Client approval, in writing, of the estimate of total construction budget will constitute completion of Phase 3 of the Project.

Proposal Letter for Architectural Design

4. DESIGN DEVELOPMENT

Architectural Drawings and preliminary Specifications are developed to the next level of detail, further spelling out the scope and quality of work to be done. Consultant(s) provide initial analysis or engineering. The Architect:

- assists the Client to hire necessary Consultants (structural, mechanical, electrical, etc.), if required.
- sends drawings to Consultants and coordinates work.
- meets with Client for design review to verify scope and design intent.
- continues selection details and materials with Client.

During this phase, Architect will coordinate with Cost Consultant, to ensure that designs and selections are within budget estimates and notify Client if any designs and selections result in a budget increase.

Client approval, in writing, of any budget increases will be required, as well as written approval of the final design development documents to constitute completion of Phase 4 of the Project.

5. CONSTRUCTION DOCUMENTS

Based upon approved developed designs and budgets, the Architect continues with drawings and specifications to communicate designs in sufficient detail for permitting, bidding and construction. The Architect:

- produces Construction Drawings.
- produces Architectural Specifications and Project Manual.
- provides Client and General Contractor, if pre-selected, with final Construction Drawings and Architectural Specifications.
- determines that documentation is complete and sufficient to proceed with the subsequent phases.
- reviews Construction Documents with Client.

Client approval, in writing, of final construction documents will constitute completion of Phase 5 of the Project.

Proposal Letter for Architectural Design

6. BIDDING/PERMITTING

Construction documents are used to procure a building permit and bids.

- Construction documents are sent to a maximum of three bidding General Contractors.
- Architect reviews bids with Client.
- If the bids exceed the current established Client Budget by 10% or more, Architect will work with Client to provide one additional revision to Construction Documents at no charge to bring the project into budget. If additional revisions are requested by the Client, the additional revisions will be charged as Additional Services.
- Client accepts bid and gives written approval of Bid and Total Construction Budget.
- Client selects General Contractor, if not pre-selected.
- General Contractor submits project for permit.
- Architect coordinates any necessary permit questions or issues.
- Architect makes any necessary changes as required by permitting official(s).
- Permit is issued.

Client approval, in writing, of the bid for total the construction budget will constitute completion of Phase 6 of the Project.

Proposal Letter for Architectural Design

7. CONTRACT ADMINISTRATION

Construction commences and the Architect's contract administration role begins. See also "Architect's Role During Construction" in the **GENERAL CONDITIONS** section below. The Architect:

- processes Submittals, Shop Drawings, and Requests for Information (RFI).
- processes Change Orders, subject to approval by Client.
- observes construction on an as needed basis, typically once a week.
- processes Payout Requests from Contractor to Client.
- participates in final punch list and project closeout when construction is completed.
- determines final Total Construction Cost, including Change Orders.

8. INTERIOR DESIGN

Complete Interior Design services are also available through XYZ Architect Ltd under a separate Agreement. In the absence of an Interior Design Services agreement, the Architect will provide as Additional Services on an hourly basis, sketch plans to demonstrate the use of the spaces, finishes, paint selection and other services requested by Client.

Proposal Letter for Architectural Design

III. PROFESSIONAL FEES

I. **ARCHITECTURE HOURLY FEE** – smaller projects, projects w/no definable or unknown scope.

Services will be billed on an hourly basis with no cap. The design services will be provided on a “time and materials” basis plus Reimbursable Expenses. The Architect will discuss estimated professional fees with the Client and will work closely with the Client to monitor these fees as the project progresses.

The Client will receive monthly statements detailing services performed and time expended plus Reimbursable Expenses. The hourly billing rates are:

Principal	\$250 per hour
Associate	\$115 per hour
Architectural staff	\$85 per hour
Clerical and Administrative staff	\$65 per hour

Proposal Letter for Architectural Design

2. ARCHITECTURE FEE - all other projects.

With renovation, remodeling, or new construction projects, the scope of work and budget are often uncertain until a design has been explored and finalized. Through the Estimating Phase design services will be provided on an hourly basis without a cap. The Architect will work closely with the Client to monitor these fees as the project progresses. During the hourly portion of the project the Client will receive monthly statements detailing services performed and time expended plus Reimbursable Expenses. The hourly billing rates are:

- Principal \$250 per hour
- Associate \$115 per hour
- Architectural staff \$85 per hour
- Clerical and Administrative staff \$65 per hour

When the Client approves a schematic design (a fixed scope of work) and accepts an estimate (a preliminary budget), the Architect will then determine a fixed Professional Fee. The fee is based on 8% of the total cost of construction, including any changes in scope, and is for the prospective services only.

Client will receive monthly invoices for Professional Fees and Reimbursable Expenses due for the portion of the current Phase(s) of Work completed that month.

The total Professional Fee is divided into sub-budgets for the Phases of Work (see Design Process.)

- | | | | |
|-------|-------------------------------|-----|--|
| - 1.0 | Programming / Code Review: | 5% | This portion of the Professional Fee is charged on an hourly, no-cap basis. The Architect will work closely with the Client monitors fees as the project progresses. |
| - 1.1 | Architectural Survey: | 10% | |
| - 2.0 | Schematic Design: | 20% | |
| - 3.0 | Estimate of Cost and Schedule | 5% | |
| - 4.0 | Design Development: | 10% | This portion of the Professional Fee is based on 8% of the total cost of construction including any changes in scope. |
| - 5.0 | Construction Documents: | 25% | |
| - 6.0 | Bidding / Permitting: | 10% | |
| - 7.0 | Construction Administration: | 15% | |

Proposal Letter for Architectural Design

3. **RETAINER:**

To begin work, Architect requires a retainer of \$_____. The retainer will be held as deposit and will be applied to Client's final invoice for Professional Fees. If the final invoice is less than the amount of the retainer, the difference will be refunded.

4. **REIMBURSABLE EXPENSES:**

The following reimbursable expenses will be invoiced to you at 1.15 times cost:

- Production costs for photographs of buildings, furniture and equipment, if applicable.
- Document preparation materials and printing services.
- Messenger, delivery, and postal service.
- Travel time, domestic and foreign, beyond one hour each way at the half the Architect's hourly rate.
- Cost of airlines, auto rental, hotel accommodations and meals for project beyond the Chicago area. Overseas transportation in business class is reimbursable at cost.
- Obtaining an out of state Architectural License and maintaining it for the duration of the project is reimbursable at cost.

Proposal Letter for Architectural Design

5. ADDITIONAL SERVICES:

Client may request or it may become necessary for the Architect to perform Additional Services to further Client's objectives. The Architect shall notify the Client in advance of the Architect's intention to perform a particular Additional Service and will proceed unless receiving contrary instructions from the Client in writing.

Services that are available to you on a time and material basis and that are not included in the Professional Fee include:

- Design of architectural millwork and cabinetry, other than stock base, casing and crown.
- Preparation of perspective drawings and renderings.
- Preparation or supervision of models and mock-ups of various design elements for review and approval, including computer modeling.
- Consultation and coordination with audio/video and security consultants.
- All time spent and material expense on Building Department Variance Application, if required.
- Consultation with relevant authority and follow-up to meet requirements for Historic Preservation and/or Appearance Review committees.
- Procuring more than three Cost Bids in the Bids Phase.
- Revisions to drawings in the Design Development and Construction Document Phase.
- Services necessitated because of an error, omission, or inaccuracy in any drawings or information supplied by the Client, any third party, or consultant.
- Other services not included in Sections 1.0 through 7.0 above.

Additional Services will be billed at the hourly billing rates of:

- | | |
|-------------------------------------|----------------|
| - Principal | \$250 per hour |
| - Associate | \$115 per hour |
| - Architectural staff | \$85 per hour |
| - Clerical and Administrative staff | \$65 per hour |

Proposal Letter for Architectural Design

6. CHANGES IN PROJECT SCOPE:

There are three primary factors that will cause a change in the Scope of Work that would modify the Professional Fee: Size, Quality, and Time. All of these changes are attributed to the reality that the Architect is selling time and expertise. The amount of time and expertise required to design, prepare documents and drawings, coordinate and manage the complexity of a project is directly impacted by significant changes in these three primary factors. The Professional Fee is adjusted to recognize that reality in an equitable manner.

SIZE: If the project expands beyond the description in the Scope of Work as determined by total cost of construction, the Professional Fee increases proportionally.

QUALITY: If a client accepts an estimate or bid for the construction cost after the Estimating Phase or Bid Phase that is more than the stated budget prior to those Phases, the Professional Fee will be increased proportionally.

If during the Construction Administration Phase, Client originated Change Orders (design, material, or product changes) and/or Contractor originated Change Orders (errors or omissions) increase the project cost, the Professional Fee will increase proportionally. If the Change Orders are due to Architect originated clarifications, omissions, or errors, these Change Orders would not have an impact on the Professional Fee.

TIME: If the project does not complete the Bidding/Permitting Phase within one year, or the project needs to be placed on hold for an extended period of time, the Professional Fee will be placed on hold and a monthly fee of \$500.00 will be instituted until the project is ready to proceed. Client/Architect agreement, in writing, will activate this phase of the project.

Proposal Letter for Architectural Design

7. INVOICING AND PAYMENT TERMS:

Invoices will be issued monthly and payment is due before the end of the month. The Architect may suspend services if any invoice is due and unpaid for more than 30 days. Invoices not paid when due will accrue simple interest at the rate of 1.5% per month on the unpaid balance.

The Client agrees to inspect or evaluate the services for which payment is sought in each invoice within 15 days of the date on the invoice, and any claim regarding the accuracy of the invoice or the satisfactoriness or appropriateness of the services shall be deemed waived if not made within this fifteen day period. The Architect will be happy to discuss and attempt to negotiate these issues with the Client.

The Architect shall be entitled to recover all costs and expenses, including attorney's fees, incurred in enforcing payment under agreements between the Architect and the Client.

Proposal Letter for Architectural Design

IV. CONSULTANTS

Architects sometimes depend upon other professionals for specialized advice, beginning with evaluation of existing systems and continuing through all phases of a project. These Consultants might include, but are not necessarily limited to, the following:

- Civil, Structural, Mechanical, and Electrical Engineers
- Interior Designers
- Landscape Architects
- Cost Consultants
- Construction Managers
- Low Voltage and Security System Consultants

Consultant(s) are to be retained and paid directly by the Client. The Architect will advise and assist Client with the selection and hiring of Consultant(s), if applicable. Any engineering, subcontractor or other consultant services required will be carried out by a licensed design professional retained by the Client.

The Architect shall be entitled to rely upon the accuracy of any drawings or other information supplied to it by Client or any third party, and any services necessitated because of an error or omission in any such drawing or information supplied by others shall be an Additional Service.

Proposal Letter for Architectural Design

V. GENERAL CONDITIONS

The following items are “the fine print,” containing important information about how we are to work together. While striving to keep this agreement as simple as possible, the following items ensure that all the important potential issues are covered.

A. Client's Rights and Responsibilities. Client shall provide full information regarding requirements for the Project, including a program which shall set forth Client's objectives, schedule, constraints and criteria, including space requirements in relationships, flexibility, expandability, special equipment, systems, site requirements and a Project budget with reasonable allowance for contingencies. When Client decisions are required, Client shall make them promptly so as not to delay the Project. Client shall have the right to use for this Project only the drawings, specifications and any other documents, samples, prototypes or other materials prepared by the Architect. However, these documents are instruments of Architect's service for use solely with respect to this Project, and Architect shall be deemed the author of these documents, retaining all common law, statutory and other reserved rights. Client will indemnify Architect against any claim which may result from Client's use of these documents, or any part of same, on any building project other than the one for which they were executed.

While it is expected that most invoicing issues will be solved between the Architect and Client, In the event that Client disputes Architect's entitlement to all or any portion of sums invoiced, the Client shall place a sum equal to the disputed amount in an escrow account, reasonably satisfactory to both parties with instructions specifying that the escrow agent shall distribute the escrowed sum between the parties in accordance with any mediation award or agreement of the parties resolving the dispute. If Client fails to deposit the appropriate sum in the escrow account within one (1) week after being requested to do so by Architect, Client shall be conclusively deemed to have waived any objection to payment.

Proposal Letter for Architectural Design

B. Pricing estimates. Architect's evaluations of the Client's budget and/or estimated construction costs represent the Architect's best judgment as a design professional familiar with architecture. It is recognized, however, that neither the Architect nor the Client has any control over the costs of labor, materials, equipment, or Contractors' methods of determining bid prices; or over competitive bidding, market or negotiation conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Architect's estimates or the project budget. Client may retain its own cost consultant, who shall be solely responsible for the accuracy and preparation of cost estimates at each appropriate stage of the design process, and the Architect will cooperate and work closely with the cost consultant to help ensure that the Project can be constructed within the Project budget.

C. Time of performance. Architect will use its best efforts to perform its services with reasonable professional promptness and in accordance with any deadlines or schedules mutually established and agreed to. If Architect is delayed, hindered or prevented from performing its services for any reason beyond Architect's control, including but not limited to war, riots or insurrection; strikes, lockouts or other labor troubles; flood, fire, storm or other natural disaster; death or illness; power or computer failure; or any act or omission of Client, manufacturers, suppliers or other third parties; Architect shall be granted an extension of time equivalent to the period of delay in which to complete Architect's services.

D. Architect's role during construction. Construction Contractors shall be directly responsible to the Client ~~not the Architect~~. The Architect shall visit the construction site at regular intervals appropriate to the stage of construction, unless otherwise specified in the proposal, to become generally familiar with the progress and quality of the construction work and to determine in general if it is proceeding so that when completed it will be in accordance with the plans and specifications. Architect shall not be responsible for any defects or deficiencies in the work of any Contractor. The Client shall have no direct claim against the Architect on account of the Contractors' work, for the acts or omissions of any Contractor or any other persons performing the construction work, or for the failure of any of them to carry out the work in accordance with the plans and specifications. Architect's review and approval of Shop Drawings, Product Data and Samples shall be conditional upon their prior review by the Contractor. Architect's review of the Contractors' applications for payment shall be made to the best of its knowledge, information and belief based on the Architect's regular limited observation of the construction work, and the Architect shall be entitled to rely on documentation submitted by the Contractor(s) which is not inconsistent with the Architect's own observations.

Proposal Letter for Architectural Design

It is intended that the Architect shall have no responsibility for job site safety on the Project. Contractor shall have full and sole authority for all safety programs and precautions in connection with the Work. When the Architect is present at the site, such presence shall be only for the purpose of endeavoring to protect the Client against any deviations or defects in the completed construction work, and the Architect shall have no authority to take any action whatsoever on the site regarding safety precautions or procedures. Specifically, the Client and the Architect acknowledge the following:

1. The Architect shall not supervise or control the Work.
2. The Architect does not retain the right to supervise or control the Work.
3. The Architect shall not regularly or constantly participate in the ongoing activities at the construction site.
4. The Architect shall not supervise or coordinate the Subcontractors.
5. The Architect shall not have or take responsibility for safety precautions at the job site.
6. The Architect shall not have authority to issue Change Orders except at the explicit direction of the Client.
7. The Architect shall not have the right to stop the Work.
8. The Architect shall not own any construction equipment at the job site.
9. The Architect is not familiar with construction customs and practices with regard to job site safety or means, methods and procedures of performing the Work.
10. The Architect is not in a position to assure worker safety or to alleviate equipment deficiencies or improper work habits.

Proposal Letter for Architectural Design

E. Claims and insurance. Client, and any person or entity claiming through Client, agrees to limit Design Professional's liability for any negligence or breach of this agreement to the sum of the professional fees that Client pays to Design Professional under this agreement. Except for any claim initiated by the Design Professional for collection of fees or other monies, any and all claims arising out of or relating to this agreement or the breach thereof shall be initially submitted to mediation in accordance with the Construction Mediation Rules of the American Arbitration Association, or Endispute of Chicago, or any other mutually agreeable mediation firm. Provided that the mediation process has not resolved the Controversy within thirty (30) days of the submission of the matter to mediation, and except for any claim initiated by the Design Professional for collection of fees or other monies, all Controversies shall be decided by expedited arbitration in Chicago, Illinois in accordance with the Construction Industry Expedited Arbitration Rules of the American Arbitration Association then obtaining. The arbitrator shall be a design professional reasonably satisfactory to both parties. This agreement to arbitrate shall be specifically enforceable under prevailing arbitration law, any award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Design Professional and Client waive all rights against each other and their agents and employees for damages to the extent covered by property insurance. Client shall name Design Professional as an additional insured under its owner's liability insurance and any other fire or builder's risk insurance covering the project, and shall use his / her best effort to ensure that the construction contract names Design Professional as a third party beneficiary and that the Client and the Architect are named as Additional Insured parties on the Contractor's general liability policy. Design Professional shall cause an appropriate indemnity clause, protecting both Design Professional and Client, to be included in the specifications, and Client agrees not to modify or delete it or other business provisions which Design Professional includes in the construction documents.

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F . Indemnity. Architect will cause the following clause to be inserted in the construction contract(s) and Client shall not permit it to be modified or deleted

“To the fullest extent permitted by law, the Contractor shall waive any right of contribution and shall indemnify and hold harmless the Client, the Architect and their agents and employees and consultants from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees and economic or consequential damages, arising out of or resulting from or in connection with the performance of the Work, provided that any such claim, damage, loss or expense is caused in whole or in part by any negligent act or omission of any Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Agreement.

“In any and all claims against the Client or the Architect or any of their agents or employees and consultants by any employee of the Contractor or any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefits acts.

Proposal Letter for Architectural Design

F . Indemnity (cont.). Architect will cause the following clause to be inserted in the construction contract(s) and Client shall not permit it to be modified or deleted

“‘Claims, damages, losses and expenses’ as these words are used in this Agreement shall be construed to include, but not be limited to (1) injury or damage consequent upon the failure of or use or misuse by Contractor, its Subcontractors, agents, servants or employees, of any hoist, rigging, blocking, scaffolding, or any and all other kinds of items of equipment, whether or not the same be owned, furnished or loaned by the Client; (2) all attorneys’ fees and costs incurred in bringing an action to enforce the provisions of this indemnity or any other indemnity contained in the General Conditions, as modified by the Supplementary General Conditions; and (3) time expended by the party being indemnified and their employees, at their usual rates plus costs of travel, long distance telephone and reproduction of document.”

"Only to the extent necessary to prevent this provision from being void under 740 ILCS 35/1 entitled "Indemnification of person from person's own negligence-Effect-Enforcement", this indemnity agreement shall not require the Contractor to indemnify the Owner, Design Professional, their consultants, agents or employees against their own negligence."

Proposal Letter for Architectural Design

G. Assignment. Neither party may assign, sublet, or transfer any rights under or interest in this agreement without the written consent of the other. Unless specifically stated to the contrary in any written consent to assignment, no assignment will release or discharge the assignor from any duty or responsibility under this agreement.

For the Architect to consent to any assignment to a lender, the lender shall assume the Client's rights and obligations under this agreement, including the obligation to cure a default by the Client in payments for professional services and reimbursable expenses. Lender and/or Assignee also agrees that Architect's instruments of service cannot be used without Architect's continued participation in the project through the Contract Administration Phase, without providing Architect a release and indemnification agreement such as that described above in the *Contract Administration* section when Architect is not involved in this Phase.

H. Termination and acceptance. Either party may terminate any contract between them upon at least seven days' advance written notice to the other. In the event that the Client terminates their agreement, all provisions establishing the parties' legal rights and liabilities shall survive and the Client shall compensate the Architect for all services provided to the date of receipt of the notice of termination plus any expenses incurred by the Architect due to premature termination of the project, including prorated profit and overhead.

Client may accept this agreement either by signature, by oral assent, by authorizing the Architect to commence providing services or by making any payments to the Architect in consideration of future services, and any of these modes of acceptance shall be deemed to incorporate these General Conditions into the contract thereby formed between the parties. If the Client consists of more than one individual, the obligations of the Client under this Proposal Letter and the General Conditions of the Design Contract are the joint and several obligations of each individual Client.

Proposal Letter for Architectural Design

I. License. Client hereby grants Architect an irrevocable license permitting Design Professional to photograph the project and any and all items furnished therefor and to use the photographs for publication and other promotional purposes. Architect shall use all reasonable efforts to minimize any intrusion or disruption to the Client and shall not utilize or otherwise publish the Client's name or address without the Client's prior consent. Client shall cooperate with the Architect to facilitate the photography and shall sign any reasonable waiver/release forms requested by the Architect or publisher. Client agrees, and will obtain a similar agreement from the Contractor, to the effect that the Architect will be properly identified and will be given appropriate credit on all signs, press releases and other forms of publicity for the Project. Client will permit the Architect to photograph and make other reasonable use of the Project for promotional purposes.

J. Miscellaneous. This agreement is binding on the parties hereto and their heirs, executors, administrators, partners and assigns. Mr. and Mr.Y are licensed Architects and will supervise all work which requires the attention of a licensed professional.

All notices or other communications described in this agreement shall be deemed effective upon receipt and may be sent in any reasonable manner, including first class mail, or personal or messenger delivery. This agreement shall be governed by the laws of the State of Illinois and contains the parties' integrated agreement, superseding any prior representations or agreements, written or oral. No person or entity other than Client and Architect is intended to be a beneficiary of this agreement.

We trust that this proposal meets with your approval and look forward to working with you. Please sign below indicating you understand and accept the Proposal terms. Upon receipt of this document and the retainer check, we will commence work.

Very truly yours,

John Smith, President
XYZ Architect, Ltd.

Accepted:

Client / Date



QUESTIONS