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Professional Practice 544

Office Management and Fee Calculation

Copyrights & Ownership of Drawings

Starting your Own Practice - Form Agreement

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FINANCIAL MANAGEMENT

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Small Office Production Cost (payroll):

1 Principal @ \$175,000	\$ 175,000
2 Associates @ \$75,000	150,000
1 Senior Architect @ 65,000	65,000
2 Junior Architects @ \$55,000	110,000
2 Beginners @ \$35,000	<u>70,000</u>
	\$ 570,000
Plus FICA	45,000
Health Insurance	<u>100,000</u>
	\$ 715,000

Billing 40hr/week @ 50 weeks = 2,000 hours

To bill 8 hours – work 10+ hrs/day

8 persons @ 2,000 hrs/year 16,000 hours

$\$715,000 \div 16,000 \text{ hours} = 44.69/\text{hour}$

Small Office Misc. Expenses (overhead):

Secretary	\$ 60,000
Receptionist	45,000
Rent	65,000
Professional Liability Insurance	70,000
Other insurance	15,000
3 cars (5 years)	25,000
Printing	15,000
Phone, Fax	10,000
Utilities, supplies	10,000
Legal	25,000
Accountant	10,000
Miscellaneous	<u>30,000</u>
	\$ 380,000

$\$380,000 \div 16,000 \text{ hours} = \$23.75/\text{hour}$

**Total w/o profit $\$44.69 + \$23.75 =$
 $\$68.44/\text{hour}$**

FINANCIAL MANAGEMENT

To Make A Profit

- Total w/o profit $\$44.69 + \$23.75 = \$68.44/\text{hour}$
- Goal of 20% of total: $\$68.44 \times .20 = \13.69

Rate \$ 68.44/hour

add: \$ 13.69/hour

- Average hourly billing with profit \$ 82.13/hour

Round up to \$ 85.00/hour

SUSTAINING OPERATION

FEES TO SUSTAIN OPERATION

Need to Stay in Business (without profit):

Production cost	\$ 715,000
Overhead	<u>380,000</u>
	<u>\$1,095,000</u> ÷ 12 Months = \$91,250/month

Need to Stay in Business (with profit):

If 20% profit is added – $\$1,095,000 \times 1.20 = \$1,314,000$

Total: \$1,314,000 ÷ 12 Months = \$109,500/month

If generating \$1,314,000 in architectural fees, the projects also will require consultants (equal about 35% of total fee):

Architect (65%):	\$1,314,000
Consultants (35%):	<u>707,500</u>
Total Fees Generated:	<u>\$2,021,500</u> fees per year**

If average fee an architect charges is 4% of construction cost, then \$2,021,500 in fees represents \$50,537,500 of construction volume per year in order to sustain an office of this size. In excess of \$50,000,000 in construction projects per year – every year!

** To look at it another way, you need to collect:

$\$2,021,500 \div 12 = \$168,458/\text{month}$
$\$2,021,500 \div 52 = \$38,875/\text{week}$
$\$2,021,500 \div 260 = \$7,775/\text{work day}$

WHAT TO CHARGE AND HOW TO STRUCTURE?

DETERMINING FEES

1. On the basis of % of the construction cost

- Are there any generally accepted percentages?
- The issue of the \$ “curve.” More cash up front as opposed to a smooth line of payment.
- Is the client secure with it?
- The ethical issues of overruns (or under).
- What is the “construction cost” and when is it determined?
 - At the time of bid?
 - Is a change order needed if the all-in cost is greater than the bid?
 - How do you bill for the increased fee when the construction cost goes up?

DETERMINING FEES

2. On the basis of lump sum

- Must know your costs very well!
 - Look to the previous analysis.
 - Assess your overhead and profit margins.
- What if scope changes?
- How to handle additive change orders?
- What about inflation?

3. On the basis of hourly compensation

- No limits?
- This method could reward inefficiency!
- Fixed rates vs. current rates?

DETERMINING FEES

Multiplier: 2.5% times “payroll”
 40% labor
 40% overhead
 20% profit

Payroll should include benefits.

Small vs. large office overhead (multiplier of 2.75 or 3?).

Fixed rates of hourly compensation with overhead and profit.

Principal	\$120
Project Manager	\$ 90
Job Captain	\$ 75
Architect	\$ 60
Drafter	\$ 35

Problems of averaging (at \$65?).

In all cases you must know production cost and overhead not to go bankrupt.

PAYMENT SCHEDULE

Assume a job with
Less consultants

\$600,000 total fee quoted to client
200,000 (about 1/3)
\$400,000 total architectural fee

Phase	Duration	Fee	Payment
SD (15%)	2 months	60,000	2 @ 30,000
DD (20%)	2 months	80,000	2 @ 40,000
CD (40%)	4 months	160,000	4 @ 40,000
BN (5%)	1 month	20,000	1 @ 20,000
CON (20%)	12 months	80,000	12 @ 6,666

Make a time chart showing phase durations, and intervals between phases (approximate). Then, insert realistic payments. (You must also always consider the time that will elapse between billing and receipt of payment).

FEE AND PRODUCTION COST

FEE AND PRODUCTION COSTS

Percent of Construction Cost Method

Assume a project that has approximately \$12,000,000 in construction costs (small apartment building) and a 4% design fee. How do you budget the amount of hours that may be spent to design and still remain profitable?

Architect's fee at 4% (\$12,000,000 x .04)	\$480,000
Structural Engineer (\pm 12.5%)	- 60,000
Mechanical/Electrical Engineer (\pm 22%)	-105,500
Specification Writer	- 4,000
<u>Coordinating the Engineers (10% of engineers' fees)</u>	<u>- 16,500</u>
<u>Profit (20%)</u>	<u>- 96,000</u>
Left to produce job:	\$198,000

$$\$198,000 \div 68.44/\text{hour} = 2,893 \text{ hours}$$

FEE AND PRODUCTION COSTS

SD	1 person	8 weeks	=	320 hours
DD	2 persons	8 weeks	=	640 hours
CD	3 persons	16 weeks	=	1,920 hours (120 hours/avg. sheet for 16 weeks. Is this enough?)
BN	1 person	4 weeks	=	160 hours
CON	¾ person,	52 weeks	=	<u>1,560 hours</u>
				4,600 hours required
				<u>-2,893 hours budgeted</u>
				1,707 hours (over budget!)
		Translation	=	1,707 x \$68.44 = \$116,827 loss to the business

FEE AND PRODUCTION COSTS

Try increasing the architectural fee to 6.5%

Architect's fee at 6% (\$12,000,000 x .065)	\$ 780,000
Structural Engineer (± 12.5%)	- 97,500
Mechanical/Electrical Engineer (± 22%)	- 171,600
Specification Writer	- 5,000
<u>Coordinating the Engineers (15% of engineers)</u>	<u>- 40,365</u>
<u>Profit</u>	<u>- 156,000</u>
Left to produce job:	\$ 309,535

$\$309,535 \div \$68.44 = 4,523$ hours budgeted (very close – can you make it)

- Enough with a cushion of 56 hours? But now the client may want to bargain.
- Try 6.75% or 7.00%.
- Will that cover you?
- Can you scale back on hours in your initial budget?
- Will the market support the rates?

MARKETING AND FEES

MARKETING AND FEES

Why would client select you as architect?

- Knows you
- Knows your work
- You were recommended

“Knows you . . .”

- Widen your circle of acquaintances.
- Belong to and become active in organizations.
- Be written up in articles, journals, trade magazines, etc.

“Knows your work . . .”

- In the beginning you take any promising job.
- Enter competitions for recognition.
- Increase professional activities (A.I.A., teaching, lectures, articles, etc.)
- Publicize whatever little you have (good presentation, relation with press, exhibits, agent? etc.)

MARKETING AND FEES

Difference between marketing and selling

1. Marketing: Cold calls, networking, conventions, professional press, RFQ-RFP, etc.
2. Selling: Presentation (visual material, verbalization), politics

Now you get the client!

- What fee to charge?
- How to get client to sign an agreement?

WHAT OTHER ISSUES?

OTHER ISSUES TO SETTLE

The Terms of the Deal:

- What is included and what is not included in fee?
- When is fee being paid?
- What to charge for Reimbursable Expenses?
- How do you define the Scope of Work?
- Special cases: Limiting field visits, re-use of drawings rights, etc.
- What is the form of the agreement (handshake, letter, formal contract)?

OTHER ISSUES TO SETTLE

Issue of Consultants:

- What do they charge? (The advantages of long term relationships)
- What do they include in service (how many visits)?
- What is their rate of pay? Must be same as yours.
- Same contract conditions as yours.
- Insurance
- Settle the terms in writing

COPYRIGHT OF DRAWINGS

COPYRIGHT OF DRAWINGS

- **The U.S. Copyright Act (and foreign equivalents)**
- **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”
 - Joint Ownership

COPYRIGHT OF DRAWINGS

- **“License” to use the drawings**
 - Contractual right, not formal certificate
 - Can be almost any conceivable combination of rights
 - Termination of license
 - Owner’s agreement to indemnify for non-project use

COPYRIGHT OF DRAWINGS

- **Notice and registration of copyright**
- **Infringement**
 - Intentional Infringement
 - Need access to the work
 - Original expression of the work
- **Damages for Infringement**
 - Court injunction
 - Money damages:
 - Lost profits
 - Actual damages
 - Statutory damages

COPYRIGHT OF DRAWINGS

- **Exceptions**

- Fair Use

- 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**

- Parody/Political/Quotes or Illustration for Clarity
- Expiration of the Copyright
 - Life of author plus 70 years
 - If corporate, anonymous or “work for hire” shorter of 95 years from publication or 120 years in total

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:

1a. 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
- 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

1b. 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 1 of the Project.

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.

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.

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.

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.

III. PROFESSIONAL FEES

1. 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

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
 - 1.1 Architectural Survey: 10% charged on an hourly, no-cap basis. The
 - 2.0 Schematic Design: 20% Architect will work closely with the
 - 3.0 Estimate of Cost and Schedule 5% Client to monitor these fees as the project progresses.

 - 4.0 Design Development: 10% This portion of the Professional Fee is
 - 5.0 Construction Documents: 25% based on 8% of the total cost of
 - 6.0 Bidding / Permitting: 10% construction including any changes in
 - 7.0 Construction Administration: 15% scope.

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.

5. ADDITIONAL SERVICES:

- Client may request or it may become necessary for the Architect to perform Additional Services in order 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

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.

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.

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.

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.

- **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.

- 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.

- **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.

- **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.
- “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."

- **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.

- **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 as indicated below that you understand and accept the terms to this Proposal. 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