

---

# **Commentary on AIA Document B141-1997**

## **Table of Contents**

---

This commentary was prepared by  
the American Institute of Architects  
with the assistance of Howard G.  
Goldberg, Esq., Hon. AIA.

## Introduction

B141 has long been considered the “flagship” document among the owner-architect agreements published by The American Institute of Architects. AIA Document B141-1997 represents a fundamental departure from earlier editions of B141. The 1997 Edition was drafted in response to ongoing changes in the profession and the industry, changes that have mandated a flexible and responsive contracting system. Now, the architect must be able to identify, package and communicate the value of services appropriate for each individual client and project, and the owner-architect agreement must facilitate, not impede, this process.

AIA Document B141-1997, Standard Form of Agreement Between Owner and Architect with Standard Form of Architect’s Services, reflects these new realities of architectural practice. It incorporates input from AIA members, owners and attorneys representing both groups. Additional input came in the form of AIA’s Practice and Prosperity Initiative, which mandates that architects be provided with tools to better convey to clients the breadth and value of the services they offer. The result is a document that is more complex but vastly more flexible, and readily adaptable to a wide variety of project types.

### Format

B141-1997 is really two standard forms. The agreement form, entitled Standard Form of Agreement Between Owner and Architect, contains provisions and spaces for information applicable to projects of most types. The services form is the Standard Form of Architect’s Services: Design and Contract Administration, which defines the scope of the architect’s services reflected in its title. In the coming years, the AIA will publish other services forms for use with other groupings of services.

B141-1997 can also be used in conjunction with AIA Document B352, Duties, Responsibilities and Limitations of Authority of the Architect’s Project Representative, which would be referenced in Subparagraph 1.4.1.3 and Paragraph 2.8.3. B352 is not a new document, but the “reference document” concept it represents will be expanded under B141-1997 to include other service enhancements. In the coming years, the AIA will develop and publish additional reference documents that coordinate with B141-1997.

The new, multipart format makes B141-1997 much more flexible than its predecessors. By breaking the services out in a separate form, the drafters of B141-1997 have created an agreement form that can be used for many different types of projects. This includes those that are not strictly “building projects,” such as feasibility studies, program management and other specialized undertakings. As noted above, the AIA will develop additional services forms that reflect a range of practice styles. Architects and owners also have the option of drafting their own services forms for use with the B141-1997 agreement form.

## **The Agreement Form**

Highlighted below are some of the new features of the first part of B141-1997, the Standard Form of Agreement Between Owner and Architect.

### **Initial Information**

Article 1.1, containing prompting statements and fill-in blanks, is intended to stimulate a dialogue between the owner and architect and ensure a detailed exchange of information at the outset of the project. The parties are asked to identify the physical, legal, financial and time parameters and to designate key project personnel. By establishing a baseline of information and assumptions about the project, the owner and architect can form realistic expectations and avoid surprises and misunderstandings.

### **Responsibilities of the Parties**

The overall responsibilities of the owner and architect are set out in Article 1.2, which begins with a statement of mutual cooperation between the parties. The architect's responsibilities, which reference the article incorporating the services form, also include maintaining the confidentiality of the client's information, disclosing conflicts of interests and responding to applicable laws, codes and regulations in the design of the project. Architects commonly do these things, but the new provisions underscore the professional character of the architect's relationship to the owner.

### **Terms and Conditions**

Article 1.3 contains the "ground rules" of B141, and embodies a number of notable changes from earlier editions. One such change involves the architect's drawings, specifications and other documents, now defined as "Instruments of Service," which term specifically includes documents in electronic form. The owner's right to the use of such documents (and the architect's consultants' rights in documents they have prepared) have been clarified by means of nonexclusive licenses. In place of "basic" and "additional" services, circumstances are identified that may give rise to a change in the architect's services, thereby entitling the architect to additional compensation or additional time for performance. Provisions for dispute resolution now include mediation. Provisions for dispute avoidance include a waiver of consequential damages. The waiver is intended to prevent the escalation of disputes by limiting parties to direct damages resulting from a breach. Finally, grounds for termination are clarified, and the owner is given the right to terminate for convenience.

### **Scope of Services and Other Special Terms and Conditions**

Article 1.4 provides space in which all documents comprising the Owner-Architect Agreement should be listed. Note that Subparagraph 1.4.1.2 incorporates the Standard Form of Architect's Services: Design and Contract Administration by reference unless the parties designate another scope of services document.

### **Compensation**

Earlier editions of B141 tended to reinforce the inaccurate assumption that the architect's compensation must be calculated using a single method for the whole project. In fact, different methods of compensation might be appropriate for different categories of architectural services.

To correct this misimpression, Article 1.5 was redrafted to avoid the implication that one compensation method should be preferred over another. To decide which compensation arrangement is best suited to the project, the owner and architect must assess their particular circumstances and requirements. After careful consideration of these, the parties may find that an arrangement using more than one compensation method is appropriate. It should be noted that the Instructions accompanying B141-1997 provide further illustrations and sample language that can assist the parties in selecting the appropriate calculation methods for the architect's compensation.

### **The Services Form**

The second part of B141-1997 is the Standard Form of Architect's Services: Design and Contract Administration. This is the first of several services forms the AIA will publish for use with the B141-1997 agreement form. Like the agreement form, the design and contract administration services form contains numerous changes intended to foster enhanced communication and understanding between the parties.

### **Characterization of Services**

Two ways of characterizing the architect's services have been eliminated from B141-1997. The first is the distinction between "basic" and "additional" services. Instead, services are either included or not, and changes in services (entitling the architect to an adjustment in time, compensation or both) are triggered by certain circumstances described in the agreement and services forms. Second, services under B141-1997 are no longer grouped in phases. That arrangement implied a linear model of service delivery that has limited applicability to today's projects. Instead, services are grouped by type or category, which helps the architect acquaint the client with the full spectrum of possible services, thereby assisting the client in deciding which services are desirable for the project. Services are grouped into six primary categories: project administration, planning and evaluation, design, construction procurement, contract administration, and facility operation. The level of services varies from category to category, but generally approximates the level of services in the 1987 edition of B141. The narrative descriptions of individual services are more explicit, however, in order to better convey what the client should expect from the architect.

### **Responsibility for Cost Estimates and for Meeting the Owner's Budget**

Article 2.1 deals with general project administration, and includes services relating to cost estimates. An important change relates to the architect's obligations in the event the lowest responsive bid or negotiated proposal exceeds the owner's budget (which would ordinarily be the amount stated in response to Clause 1.1.2.5.2). In this situation, at the owner's option, the architect is required to modify the drawings and specifications without additional compensation. Earlier editions only required redesign if a fixed limit of construction cost had previously been agreed to. In effect, the fixed limit (and correspondingly greater control by the architect over design and procurement) now constitute the default mode.

### **Construction Contract Procurement**

The architect's responsibilities during construction contract procurement, including both the bidding and negotiation processes, are spelled out in great detail. Few of the services described will

be new to architects. The descriptions are presented to assist the owner in understanding the value the architect brings to these processes.

### **Construction Contract Administration**

A number of minor changes have been made in the provisions governing the architect's role in construction contract administration. These include new requirements that the architect maintain records with respect to submittals, applications for payment and changes in the Work, and procedures for processing the contractor's requests for information. The 1987 provision dealing with contractor's certifications has been expanded, and now requires that the architect specify criteria that design services provided by the contractor must satisfy.

### **Facility Operation Meetings**

B141-1997 continues the owner-architect relationship well past the date of substantial completion of the project. The architect for the first time is contractually required to meet with the owner (1) promptly after the date of substantial completion to review the need for facility operation services and (2) within one year from the date of substantial completion to receive comments and feedback on the performance of the building and to offer the owner appropriate recommendations. These meetings give the owner a continued source of professional insight into the functioning of the completed building, and allow the architect the opportunity to return to the project to enhance client satisfaction.

### **Schedule of Services**

Another new feature of B141-1997 is a section in which the parties can specify the number of site visits, individual submittal reviews, and inspections for substantial completion and final completion to be performed by the architect. Actions taken beyond the prescribed number may entitle the architect to a change in services. In Paragraph 2.8.3, other services may be agreed to and described.

### **Completing B141-1997**

To complete B141-1997, the parties must identify and record a substantial amount of information. In the agreement form alone there are a total of 35 blanks to be filled in, excluding signatures. The accompanying services form contains 59 blanks: most of these are in Paragraph 2.8.3, however, and may be left blank. A listing is given below of the various blanks and their subject matter.

<b>Location</b>	<b>Description</b>
cover sheet	date, identification of the owner and the architect, description of the project
1.1.2.1	project objective or use
1.1.2.2	physical parameters
1.1.2.3	owner's program

1.1.2.4	legal parameters
1.1.2.5.1	overall project budget
1.1.2.5.2	budget for the cost of the work
1.1.2.6	time parameters
1.1.2.7	proposed procurement or delivery method
1.1.2.8	other parameters
1.1.3.1	owner's designated representative
1.1.3.2	other persons reviewing architect's submittals
1.1.3.3	owner's other consultants and contractors
1.1.3.4	architect's designated representative
1.1.3.5	architect's consultants
1.1.4	other initial information
1.1.5	general conditions of the contract for construction (if other than A201)
1.4.1.2	architect's scope of services (if other than Standard Form of Architect's Services: Design and Contract Administration)
1.4.1.3	other documents forming the agreement
1.4.2	special terms and conditions

1.5.1	compensation for architect's services
1.5.2	compensation for change in services of the architect
1.5.3	compensation for change in services of the architect's consultants
1.5.4	reimbursable expenses multiple
1.5.5	other reimbursable expenses
1.5.7	amount of initial payment
1.5.8	payment dates and interest on unpaid amounts
1.5.9	time for completion of services signature lines
2.8.1.1	number of reviews of individual submittals
2.8.1.2	number of site visits
2.8.1.3	number of inspections for substantial completion
2.8.1.4	number of inspections for final completion
2.8.3.1 - 2.8.3.25	listing and description of other included services
2.9.1	modifications to the scope of services
signature lines	

## **Modifying B141-1997**

### **Reasons to Modify**

B141-1997 will usually require some modification to adapt it to individual projects. As flexible as this document is, it is still a standard form: it cannot contain all of the terms needed on all projects, and some of its terms may be undesirable on some projects. In addition, such matters as insurance coverages and legal and regulatory requirements may require additional provisions or the deletion of existing provisions.

In modifying B141-1997, however, its advantages as a standard form should be kept in mind. This document embodies terms and conditions commonly accepted in the construction industry. Much of the language is derived from earlier editions, and has been tested repeatedly in court. Many of the provisions are linked by common definitions, parallel phrasing and other means with one another, and with other AIA documents that may be used on the same project. For these reasons, modifications should be made carefully, with a view to their effect on the agreement as a whole and on other contractual relationships on the project. Change for the sake of change, or to accommodate a personal preference for certain phraseology, is definitely not recommended. Modifications should be limited to those needed to adapt the standard document to the project at hand.

### **How to Modify**

There are many ways to modify AIA contract documents, and some work better than others. Some increase the likelihood of errors, misunderstandings and other problems. A particularly bad modification practice is the wholesale retyping of amended portions of the document, which can introduce transcription errors.

The preferred means of modifying a printed AIA standard form document like B141-1997 is to attach separate written amendments. These amendments should then refer back to the numerical sequence of the provisions in the document.

### **Electronic Documents**

The AIA offers its form documents in both printed and electronic versions. The licensed software that creates the electronic versions allows users to insert modifications directly into the standard language of the documents. As modifications are made, the software automatically underscores language that is added and strikes through language being deleted. The result is that modifications are clearly shown against the baseline of standard language, combining the benefits of standard documents with the ease of modification characteristic of the electronic format.

### **Other AIA Standard Form Owner-Architect Agreements**

Although considered the “flagship” AIA owner-architect agreement, B141 is only one of many owner-architect agreements published by the AIA. Other AIA owner-architect agreements are described briefly below.

### **B151-1997**

B151-1997, Abbreviated Standard Form of Agreement Between Owner and Architect, incorporates many of the revisions made in B141-1997. These include mediation, a mutual waiver of



consequential damages and other changes made to parallel A201-1997, General Conditions of the Contract for Construction. Generally, B151-1997 is similar to B141-1997 except that it retains the five phases of services and the characterization of services as either “Basic” or “Additional.”

### **B163**

First published in 1993, AIA Document B163, Standard Form of Agreement Between Owner and Architect for Designated Services, is a comprehensive, three-part owner-architect agreement that allows the parties to select up to 83 different services divided among nine phases, covering pre-design through supplemental services. Part One of the document deals with variables typical of many owner-architect agreements, such as compensation and scope of services. The scope of services is delimited through use of a matrix that permits the parties to designate their agreed-upon services. Part Two contains descriptions of the specific services found in Part One’s matrix. Part Three contains general descriptions of the parties’ duties and responsibilities for those services selected from Part Two.

### **B155**

AIA Document B155, Standard Form of Agreement Between Owner and Architect for a Small Project, is an owner-architect agreement intended solely for use with other Small Project documents, specifically AIA Document A105, Standard Form of Agreement Between Owner and Contractor for a Small Project, and AIA Document A205, General Conditions of the Contract for a Small Project. The small project family of documents was published to address the need for simple, straightforward documents for projects that are brief in duration (i.e., significantly less than one year) and modest in size and complexity. Ideally, the parties should have a past course of dealing with one another, and the contracts should be negotiated rather than competitively bid.

### **B727**

AIA Document B727, Standard Form of Agreement Between Owner and Architect for Special Services, is the most flexible of the AIA owner-architect agreements, in that the description of services is left entirely up to the parties. It contains basic terms and conditions covering such matters as use of the architect’s documents, arbitration, termination or suspension, payments to the architect and basis of compensation. B727 is often used for planning, feasibility studies and other specialized undertakings. Note that if extensive services are contemplated, particularly those relating to construction contract administration, the parties may wish to consider other AIA owner-architect agreements.

### **B171 and B177**

The AIA publishes two owner-architect agreements expressly for interior design services: B171, Standard Form of Agreement Between Owner and Architect for Interior Design Services, and B177, Abbreviated Form of Agreement for Interior Design Services. These documents are intended for use on projects where the architect agrees to provide an owner with design and administrative services for the procurement of interior furniture, furnishings and equipment. Both documents are coordinated with AIA Document A271, General Conditions of the Contract for Furniture, Furnishings and Equipment.

**B181**

AIA Document B181, Standard Form of Agreement Between Owner and Architect for Housing Services, is an owner-architect agreement intended for use on projects where the owner assumes responsibility for providing cost-estimating services. B181 is primarily intended for use on publicly-funded, single and multi-family housing projects, and is coordinated for use with AIA Document A201.

**B188**

A unique owner-architect agreement, B188, Standard Form of Agreement Between Owner and Architect for Limited Architectural Services for Housing Projects, anticipates that the owner will have extensive control over the management of the project, acting in a capacity similar to that of a developer or speculative builder. It does not coordinate with any other AIA standard form agreement or general conditions document.

**B141/CMa and B801/CMa**

These documents are intended for use on projects involving a separate construction manager acting as an independent adviser to the owner. AIA Document B141/CMa, Standard Form of Agreement Between Owner and Architect, Construction Manager-Adviser Edition, is coordinated for use with other Construction Manager-Adviser edition forms, including B801/CMa, Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is not a Constructor. Note that an architect acting solely in the capacity of a construction manager-adviser on a project, and having no design role, may choose B801/CMa as the basis for its agreement with the owner.

**General Principles Underlying AIA Forms**

AIA form documents are intended to benefit all who participate in the design and construction process. This includes, above all, the public, whose members are the ultimate users of the built environment. They are, in fact, the focus of the AIA's commitment to "coordinate the building industry and the profession of architecture to insure the advancement of the living standards of our people through their improved environment" as stated in AIA Bylaws. To ensure the acceptance of its standard form contracts by the construction industry, the AIA relies on a consensus-building process aimed at balancing the interests of all participants through a reasonable apportionment of risks and responsibilities. No one party's interests are allowed to dominate, including those of the architect. This is the basis for the reputation of fairness and balance that AIA forms have gained in over a century and a half of use. To learn more about the AIA's approach to drafting contract documents, write to obtain a copy of AIA Document M120, Document Drafting Principles.

## DOCUMENT TEXT

## COMMENTS

### STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ARCHITECT

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

If the two parties are using this standard form document for the first time, the assistance of legal counsel is encouraged with respect to completion of the numerous fill-in blanks or for project-specific modifications.

Copyright 1917, 1926, 1948, 1951, 1953, 1958, 1961, 1963, 1966, 1967, 1970, 1974, 1977, 1987, © 1997 by The American Institute of Architects. Reproduction of the material herein or substantial quotation of its provisions without written permission of the AIA violates the copyright laws of the United States and will subject the violator to legal prosecution.

The first AIA owner-architect agreement was published in 1917.

WARNING: Unlicensed photocopying violates U.S. copyright laws and will subject the violator to legal prosecution.

AGREEMENT made as of the  
day of  
in the year  
*(In words, indicate day, month and year)*

This date should precede or coincide with the date when performance of each party's obligations are to actually commence.

BETWEEN the Architect's client identified as the Owner:  
*(Name, address and other information)*

The term *owner* is used to designate the architect's client. That individual or entity may be a tenant, for example, and may or may not actually have an ownership interest in the premises for which the project is commissioned.

Use the full legal name of the corporation, partnership or individual who will be expected to pay for the architect's services and who will be liable for performing the owner's obligations under this agreement.

**COMMENTS**

The term *architect* may only be used by a person who is properly licensed to practice architecture by the appropriate state governing board. Licensing protects the public.

The inclusion of a detailed description of the project is critically important for mutual understanding and for protection of both parties' interests. The project is generally the outcome of the parties' mutual efforts, and it may or may not be a building.

Although some of the information called for in Article 1.1 may not be readily available when the parties start discussing their agreement, such information as is known at the time of signing should be incorporated into the document. If the space allotted is insufficient, information may be included on an attachment signed or initialed by both parties and referenced in the agreement (for example, "See Attachment A"). Such an attachment is legally enforceable as part of the agreement so long as the reference is clear and definitive.

A description of the owner's purpose or goals for the project is often helpful to give a clear focus to the mutual understanding of the parties. A building's intended use may often be described by its classification under the applicable building code or zoning ordinance.

Descriptions of the size of the site, if any, and its location are necessary for a building project, but may not be needed for a non-building project, such as a feasibility study.

**DOCUMENT TEXT**

and the Architect:  
*(Name, address and other information)*

For the following Project:  
*(Include detailed description of Project)*

The Owner and Architect agree as follows.

**ARTICLE 1.1 INITIAL INFORMATION**

**1.1.1 This Agreement is based on the following information and assumptions.**

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

**1.1.2 PROJECT PARAMETERS**

**1.1.2.1 The objective or use is:**

*(Identify or describe, if appropriate, proposed use or goals.)*

**1.1.2.2 The physical parameters are:**

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports about the site.)*

## **DOCUMENT TEXT**

## **COMMENTS**

1.1.2.3 The Owner's Program is:  
*(Identify documentation or state the manner in which the program will be developed.)*

A program is a written statement setting forth design objectives, constraints and criteria for a project. It is essential for any project as it elaborates on the owner's objectives or use stated in Subparagraph 1.1.2.1. A program includes space requirements and relationships, flexibility and expandability, special equipment and systems, and site requirements. If a comprehensive program is not available at the outset of the project, the owner may obtain the architect's assistance in developing one as an expansion of services.

1.1.2.4 The legal parameters are:  
*(Identify pertinent legal information, including, if appropriate, land surveys and legal descriptions and restrictions of the site.)*

When a project involves real property, the legal description of the property must be given to the architect. This may prevent future conflicts involving the architect's design and adjacent facilities. When the owner does not have full title to the real property (for example, if the owner is a tenant), this should be disclosed along with any constraints or restrictions on allowable improvements.

1.1.2.5 The financial parameters are as follows.

.1 Amount of the Owner's overall budget for the Project, including the Architect's compensation, is:

Fiscal responsibility begins with the owner's disclosure of an overall budget for the project. The budget may range from a single dollar figure to a detailed breakdown of anticipated line item expenses.

.2 Amount of the Owner's budget for the Cost of the Work, excluding the Architect's compensation, is:

Setting a budget for the cost of the work may require the mutual collaboration of the owner and architect. This function should not be confused with the architect's subsequent cost estimates that are based upon drawings, specifications and other documentation developed later on during the project.

## COMMENTS

Time parameters almost always impact cost. For the owner, time may be more important than money. For the architect, an inflexible time frame, such as that used for fast-track scheduling, often requires substantial expenditures of staff overtime. Thus, this information is likely to impact the calculation of the architect's compensation under this agreement.

As with other parameters, the proposed procurement method may impact project cost. Delaying or changing a decision on these methods may disrupt the timing of the architect's services.

Each project has its special characteristics and unique needs that may be listed here.

This designated representative is authorized to act on behalf of, and to bind, the owner. When the owner is an individual, that person will often serve as the designated representative. When the owner is a corporation or governmental entity, it can only act through agents. In those situations, it is very important to designate one person, such as the corporation's president or the school board's chairman, who has final authority to make firm decisions. Confusion over decision-making authority can lead to needless delays and wasted effort (e.g., redesign).

With the proliferation of review boards, internal staff committees and other oversight groups, many owners need to inform their architect about who should be expected to review the architect's submittals. By obtaining this information in advance, the architect can plan time schedules that more realistically reflect the approved process.

## DOCUMENT TEXT

1.1.2.6 The time parameters are:  
*(Identify, if appropriate, milestone dates, durations or fast track scheduling.)*

1.1.2.7 The proposed procurement or delivery method for the Project is:  
*(Identify method such as competitive bid, negotiated contract, or construction management.)*

1.1.2.8 Other parameters are:  
*(Identify special characteristics or needs of the Project such as energy, environmental or historic preservation requirements.)*

### 1.1.3 PROJECT TEAM

1.1.3.1 The Owner's Designated Representative is:  
*(List name/ address and other information.)*

1.1.3.2 The persons or entities, in addition to the Owner's Designated Representative, who are required to review the Architect's submittals to the Owner are:  
*(List name, address and other information.)*

## **DOCUMENT TEXT**

1.1.3.3 The Owner's other consultants and contractors are:  
*(List discipline and, if known, identify them by name and address.)*

1.1.3.4 The Architect's Designated Representative is:  
*(List name, address and other information.)*

1.1.3.5 The consultants retained at the Architect's expense are:  
*(List discipline and, if known, identify them by name and address.)*

1.1.4 Other important initial information is:

## **COMMENTS**

Sometimes an owner has made arrangements with other consultants or contractors whom the owner wishes to use on the project. These persons or entities should be listed here to inform the architect of their involvement. The architect can then appropriately coordinate the architect's activities with them.

This designated representative is authorized to act on behalf of, and to bind, the architect. If the architect is a sole proprietor, that person will be the designated representative. If the architect is a partnership, one of the partners will be the designated representative. If a professional corporation or limited liability company is involved, however, the designated representative may be merely an agent of such an entity. Here again, it is very important to designate one person, such as the corporation's president, who has final authority to make firm decisions. Confusion over decision-making authority can lead to needless delays and wasted effort.

Depending upon the scope of services, the architect may need to retain specialized consultants whose services will be coordinated by the architect. If the expenses from any of the architect's consultants are to be directly reimbursed by the owner, this should be noted in the provisions on compensation.

Other relevant information may be identified through discussions regarding the rest of the document and its scope of services. For instance, in Subparagraph 1.2.3.5, the architect is required to disclose any conflicts of interest to the owner. This is a good place to document that information.

## COMMENTS

Selection of the specific general conditions for the project's construction may impact the architect's scope of services. This document assumes that AIA Document A201-1997 will be used.

Most of the parameters elicited by Article 1.1 impact the further development of the project. A change in a parameter that seems insignificant to one party may have serious consequences for the other party.

Today, the complexity of most projects is such that the active, mutual participation of the owner and architect is needed to maintain a working relationship among the multitude of players whose cooperation is vital for the project's success.

An essential function of the owner is to provide a written program detailing the requirements for and limitations on the project. That program will be referenced in Subparagraph 1.1.2.3, or it may be subsequently developed after the signing of this agreement.

In some states, the architect may assert a lien on real property to secure payment of the architect's compensation. Upon the architect's request, the owner must provide relevant information to enable the architect to enforce lien rights.

Note that the "budget for the Project" can

## DOCUMENT TEXT

1.1.5 When the services under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be the edition of AIA Document A201 current as of the date of this Agreement, or as follows:

1.1.6 The information contained in this Article 1.1 may be reasonably relied upon by the Owner and Architect in determining the Architect's compensation. Both parties, however, recognize that such information may change and, in that event, the Owner and the Architect shall negotiate appropriate adjustments in schedule, compensation and Change in Services in accordance with Paragraph 1.3.3.

### ARTICLE 1.2 RESPONSIBILITIES OF THE PARTIES 1.2.1

The Owner and the Architect shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project team.

### 1.2.2 OWNER

1.2.2.1 Unless otherwise provided under this Agreement, the Owner shall provide full information in a timely manner regarding requirements for and limitations on the Project. The Owner shall furnish to the Architect, within 15 days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.



## DOCUMENT TEXT

## COMMENTS

1.2.2.2 The Owner shall periodically update the budget for the Project, including that portion allocated for the Cost of the Work. The Owner shall not significantly increase or decrease the overall budget, the portion of the budget allocated for the Cost of the Work, or contingencies included in the overall budget or a portion of the budget, without the agreement of the Architect to a corresponding change in the Project scope and quality.

include many categories of expenses in addition to the cost of the work and the architect's compensation. Budgetary information required in Article 1.1 will need to be compared to the architect's subsequent estimates for the cost of the work.

1.2.2.3 The Owner's Designated Representative identified in Paragraph 1.1.3 shall be authorized to act on the Owner's behalf with respect to the Project. The Owner or the Owner's Designated Representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

The owner's designated representative must be clearly identified. Information must also be provided to enable the architect to contact that individual quickly and easily, otherwise, the decision-making process may be interrupted at critical times during the project.

The amount of time given for the owner's designated representative's various reviews of the architect's documents should be included in the time schedule for the project.

1.2.2.4 The Owner shall furnish the services of consultants other than those designated in Paragraph 1.1.3 or authorize the Architect to furnish them as a Change in Services when such services are requested by the Architect and are reasonably required by the scope of the Project.

1.2.2.5 Unless otherwise provided in this Agreement, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

1.2.2.6 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the

Neither the owner nor architect is assumed to have the expertise needed to address the project's legal, accounting or insurance needs. If questions arise during the project's development that pertain to the owner's needs and interests, the owner is expected to furnish the individuals who can give the appropriate advice. If, for example, the contractor is to be compensated on the basis of the cost of the work plus a fee, the AIA owner-contractor documents give the owner the right to audit the contractor's books. This is usually done by the owner's accountant.

## **COMMENTS**

The owner's obligations under this provision do not relieve the architect of the responsibility to perform services properly. However, if the owner becomes aware of a problem, the owner is obliged to notify the architect (see the companion provision in Subparagraph 1.2.3.7).

Expeditious performance is the best that any professional can promise when dealing with matters of indeterminate nature. Requiring the architect to meet absolute time limitations by using such terms as "time is of the essence" with this contract can adversely affect the quality of the architect's services. Typically, the architect is depending upon other people's input or decisions, including the owner's, to accomplish the milestone objectives. A written schedule usually helps, but it must be adjustable when delays or factors beyond the owner's or architect's control intervene.

With the use of professional corporations and limited liability companies, it is important to designate a particular individual whom the owner can rely on to bind the architect.

## **DOCUMENT TEXT**

Owner's needs and interests.

1.2.2.7 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service.

### 1.2.3 ARCHITECT

1.2.3.1 The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated in Article 1.4.

1.2.3.2 The Architect's services shall be performed as expeditious-ly as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which initially shall be consistent with the time periods established in Subparagraph 1.1.2.6 and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

1.2.3.3 The Architect's Designated Representative identified in Paragraph 1.1.3 shall be authorized to act on the Architect's behalf with respect to the Project.

## **DOCUMENT TEXT**

## **COMMENTS**

1.2.3.4 The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

An essential element of a professional-client relationship is trust and the sharing of confidences. Subparagraph 1.2.3.4 establishes that the architect will not disclose the owner's confidential information unless certain enumerated exceptions apply.

1.2.3.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

Subparagraph 1.2.3.5 deals with situations where the architect must disclose a conflict of interest to the owner. Parallel requirements to these obligations can be found in most professional licensing regulations and in the AIA's Code of Professional Conduct.

1.2.3.6 The Architect shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

A professional is expected to take into account the codes, regulations and laws that impact the performance of the professional's services. Since codes, regulations and laws may be subject to differing interpretations, architects will ordinarily consult at an early stage with governmental officials having jurisdiction over the project.

1.2.3.7 The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any errors, omissions or inconsistencies in such services or information.

This provision is the companion to Subparagraph 1.2.2.7.

## **COMMENTS**

As the project develops from ideas into reality, various elements of cost will inevitably change and become more certain. The definition of cost of the work takes these changes into consideration. During design, for example, the barometer of cost will be the architect's estimates. Once a contractor's bid or proposal is accepted, this supersedes the architect's most recent estimate. Next, the cost of the work is as defined in the owner-contractor agreement as revised by contract modification during construction. When final completion is achieved, the cost will be the total cost paid by the owner for the work.

The definition of cost of the work is important for purposes of the owner's budget, which the architect is required to meet under Paragraph 2.1.7. It will also affect the architect's compensation if compensation is based on a percentage of the cost of the work.

Unless the definition of cost includes owner-furnished elements, an architect whose compensation is based on a percentage of the cost of the work could be unfairly penalized by certain cost saving measures employed by the owner. For example, a church might use volunteer help or a construction manager for its construction, or a hospital might receive donations of complex and costly equipment. The cost of such volunteered or donated elements should be included in the cost of the work at current market rates. In such situations, the architect is still expected to provide the professional services needed for the design, specification and contract administration using those volunteered or donated elements.

## **DOCUMENT TEXT**

### ARTICLE 1.3 TERMS AND CONDITIONS

#### 1.3.1 COST OF THE WORK

1.3.1.1 The Cost of the Work shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

1.3.1.2 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

## DOCUMENT TEXT

## COMMENTS

1.3.1.3 The Cost of the Work does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner.

Excluding the architect's compensation from the cost of the work avoids a situation where the architect would be paid a percentage on the architect's own services. Also excluded are items that are not direct construction costs.

### 1.3.2 INSTRUMENTS OF SERVICE

1.3.2.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights.

Technological advances, such as computer-aided design, have and will continue to have an impact on the architect's services and the manner in which they are provided. The architect's services are reflected in instruments of service, such as drawings, specifications, electronic data and interpretive sketches which help the owner to reach the final result, a building project. Because the use or misuse of the architect's instruments of service affects specific rights and obligations of the owner, the construction team and the public, the architect as a licensed professional retains ownership of, control over and responsibility for these documents.

1.3.2.2 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Any termination of this Agreement prior to completion of the Project shall terminate this license. Upon such termination, the Owner shall refrain from making further reproductions of Instruments of Service and shall return to the Architect within seven days of termination all originals and reproductions in the Owner's posses-

The owner's nonexclusive license permits the use and reproduction of the instruments of service for purposes of constructing, using and maintaining the project. An owner who receives an exclusive license or transference of ownership in the documents or their copyrights has the unfettered power to limit the architect's future creative uses of similar motifs or stylistic devices expressed in the documents.

*Caution:* Serious consequences may result if Paragraph 1.3.2 is changed to give the owner broad rights with regard to the architect's instruments of service and no change is made in Subparagraph 1.3.8.5 to eliminate the right to terminate the architect at the owner's convenience.

If the architect is adjudged in default by an

## COMMENTS

arbitrator or court of law, the owner not only receives the right to copy and use the documents, but also to authorize another architect to change or correct them to complete the project.

Commercial lenders providing project financing will occasionally request the owner to assign all rights in the project to the lender as a condition of the financing, in order to protect against a default on the loan. This sentence makes such assignment ineffective as to the owner's license to use the architect's drawings unless the architect has agreed to the assignment.

## DOCUMENT TEXT

sion or control. If and upon the date the Architect is adjudged in default of this Agreement, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

1.3.2.3 Except for the licenses granted in Subparagraph 1.3.2.2, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. However, the Owner shall be permitted to authorize the Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service appropriate to and for use in their execution of the Work by license granted in Subparagraph 1.3.2.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. The Owner shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the Owner obtains the prior written agreement of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's

**DOCUMENT TEXT**

**COMMENTS**

consultants.

1.3.2.4 Prior to the Architect providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Architect any electronic data for incorporation into the Instruments of Service, the Owner and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

Given the rapid pace of technological change, it is not practical to address all the varieties of electronic documentation in a standard form document. The parties may wish to develop a separate, written agreement on how to deal with the electronic formats they may use.

1.3.3 CHANGE IN SERVICES

1.3.3.1 Change in Services of the Architect, including services required of the Architect's consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the Architect's control, or if the Architect's services are affected as described in Subparagraph 1.3.3.2. In the absence of mutual agreement in writing, the Architect shall notify the Owner prior to providing such services. If the Owner deems that all or a part of such Change in Services is not required, the Owner shall give prompt written notice to the Architect, and the Architect shall have no obligation to provide those services. Except for a change due to the fault of the Architect, Change in Services of the Architect shall entitle the Architect to an adjustment in compensation pursuant to Paragraph 1.5.2, and to any Reimbursable Expenses described in Subparagraph 1.3.9.2 and Paragraph 1.5.5.

Few projects proceed from conception to completion without changes. By necessity, a mechanism is required to provide for adjustments in the architect's services and compensation during the course of the project.

The architect is not permitted to benefit from events that are the architect's fault.

The owner ultimately has the power to stop a change in services by notifying the architect.

1.3.3.2 If any of the following circumstances affect the Architect's services for the Project, the Architect shall be entitled to an appropriate adjustment

## COMMENTS

Introduced in the American Arbitration Association's (AAA) rules in 1978, formal mediation is relatively new to the construction industry. The AIA began incorporating mediation into its standard documents in 1991 with the publication of its construction manager-constructor documents.

## DOCUMENT TEXT

in the Architect's schedule and compensation:

- .1 change in the instructions or approvals given by the Owner that necessitate revisions in Instruments of Service;
- .2 enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;
- .3 decisions of the Owner not rendered in a timely manner;
- .4 significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget, or procurement method;
- .5 failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .6 preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto;
- .7 change in the information contained in Article 1.1.

### 1.3.4 MEDIATION

1.3.4.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.



## **DOCUMENT TEXT**

1.3.4.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

1.3.4.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### **1.3.5 ARBITRATION**

1.3.5.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Paragraph 1.3.4.

1.3.5.2 Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance

## **COMMENTS**

In mediation, a third party neutral is used to facilitate and assist the parties in the negotiation of a settlement of a dispute. The mediator does not make any binding decisions regarding the issues. The parties themselves create the solution to their problem in accordance with preset rules of mediation. If the parties cannot arrive at a negotiated resolution, they proceed to arbitration. However, past experience has shown mediation to be highly successful in resolving a large percentage of disputes.

The AAA's rules for construction industry mediation and arbitration are available from AAA's regional offices or from its national headquarters. The address of the latter is given in the instructions to most AIA documents.

Since 1888, arbitration provisions have been included in AIA documents. Arbitration is a formal, binding process for resolving disputes outside of litigation. It requires the selection of one or more arbiters who have judge-like powers to hear the parties' dispute and make decisions that are enforceable by a court of law. Arbitrations in the construction industry are private, and arbiters are required to be knowledgeable about the construction industry. The arbiters are usually building owners, architects, engineers, contractors or lawyers practicing in the construction industry.

The AIA takes the position that selection of a method of dispute resolution such as arbitration is essentially a business decision. Although arbitration is intended to be quicker, less complex and more convenient than litigation, each case has unique factors that may negate some or all of these benefits.

**COMMENTS**

**DOCUMENT TEXT**

with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

1.3.5.3A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

Disputes involving the owner, architect and contractor are not uncommon. In a court of law, however, the architect and contractor would be held to different standards of performance. This is one reason why separate arbitrations are favored. Another reason involves the greatly increased cost and time required to resolve multi-party arbitrations.

1.3.5.4No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

Like court decisions, arbitration awards are fully enforceable in a court of law.

1.3.5.5The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction

## DOCUMENT TEXT

## COMMENTS

thereof.

### 1.3.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Architect and the Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Paragraph 1.3.8.

In contrast to direct damages for breach of contract, consequential damages are indirect and include loss of reputation, loss of business profits and loss of the ability to proceed with other projects. By mutually waiving claims for such unanticipated and even remote damages, the parties remove a source of inflated claims and needless litigation.

### 1.3.7 MISCELLANEOUS PROVISIONS

1.3.7.1 This Agreement shall be governed by the law of the principal place of business of the Architect, unless otherwise provided in Paragraph 1.4.2.

The law in the state where the architect's principal office is located will be used in interpreting this agreement and evaluating the performance of the parties.

1.3.7.2 Terms in this Agreement shall have the same meaning as those in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement.

By this cross-reference, the parties agree to adopt the terminology found in AIA Document A201-1997, including such terms as work, contract documents, drawings, contractor and substantial completion. Terms with specialized meanings are generally defined and capitalized in AIA documents.

1.3.7.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.

One of the purposes of standard form documents is to provide uniformity of expectations wherever used. State laws having to do with statutes of limitations, however, are diverse, particularly as to the beginning dates for the running of such statutes. This provision uses the dates of substantial completion by the contractor and final payment to the contractor as commencement dates for statutes of limitations that apply to the agreement. Because this is a private agreement, this provision will only apply to the owner and architect and not to claims by third parties.

## **COMMENTS**

The owner-architect agreement must be coordinated with the owner-contractor contract, which often is executed after the signing of this agreement. For this reason, AIA Document B141-1997 is linked in several ways to AIA Document A201-1997, General Conditions of the Contract for Construction. Subparagraph 1.3.7.4 provides for a waiver of damages that are covered by property insurance *if* such insurance has been purchased and applied to such damages as a requirement of the owner-contractor contract. In the insurance industry this is known as waiver of subrogation. This provision is derived from a parallel provision found in Subparagraph 11.4.7 of AIA Document A201-1997, which requires the owner to obtain such waivers from its consultants. The waivers of subrogation prevent the insurance company from suing any of the principal participants on the project to recover what it has paid out to another principal participant for an insured loss. The owner benefits in two ways: first, disputes are avoided on the project and second, only one property insurance policy is needed to protect all principal participants on the project, including contractors, architects, subcontractors, engineers, sub-subcontractors and consultants. This saves the owner money and time, and promotes harmony on the project.

This agreement obligates the parties only to each other and not to others, such as lenders, contractors, construction workers or sureties.

Hazardous materials may require special handling and licensing procedures. Unless the owner and architect agree that the architect will deal with these matters, the architect has no responsibility for them.

## **DOCUMENT TEXT**

1.3.7.4 To the extent damages are covered by property insurance during construction, the Owner and the Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

1.3.7.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

1.3.7.6 Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

## DOCUMENT TEXT

1.3.7.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

1.3.7.8 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

## COMMENTS

Unless an owner informs the architect that such matters are confidential, the architect has the right to photograph and to show the results of the design to the public and to future clients.

A request for the architect's certificate often occurs because of the owner's dealings with other entities that have indirect interests in the project, such as financial institutions and governmental authorities. For example, the owner may be required by the lender to submit an architect's certificate at the loan closing. This can result in substantial pressure on the architect to submit the certificate, even though there may be no specific contractual obligation to do so.

Note, however, that if construction contract administration services are to be provided under AIA Document A201-1997, the architect is obliged to certify the contractor's payment requests, date of substantial completion and causes permitting termination of the contractor (see AIA Document G702, Application and Certificate for Payment, for example). The language provided by some banks for such certificates may impose unwarranted liability on the architect. This provision gives the architect time to review such language with legal counsel and to suggest modifications. See AIA Document B511, Guide for Amendments to AIA Owner-Architect Agreements, for suggested language for use on such certificates.

## COMMENTS

Because the architect's professional services are often unique to that individual or firm, assignment of this agreement to third parties is only permitted with the architect's agreement. The only exception involves an assignment to the owner's lender who is providing financing for the project.

The owner-architect agreement represents a business transaction. In exchange for the owner's receipt of the benefit of the architect's services, the architect expects the benefit of timely payment of the agreed-upon compensation. Thus, nonpayment is a serious matter and may be treated as justification for suspension or even termination of services.

## DOCUMENT TEXT

1.3.7.9 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.

### 1.3.8 TERMINATION OR SUSPENSION

1.3.8.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, prior to suspension of services, the Architect shall give seven days' written notice to the Owner. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

## DOCUMENT TEXT

1.3.8.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

1.3.8.3 If the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

1.3.8.4 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

1.3.8.5 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

1.3.8.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Subparagraph 1.3.8.7.

1.3.8.7 Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated

## COMMENTS

For any number of reasons, the owner may need to suspend the project. Typically, the architect has predicated staffing and timing of services based upon a continuous process. Unless the agreement and the initial project schedule anticipated a suspension, an equitable adjustment in compensation and time schedule may be appropriate.

The owner's right to terminate for convenience is a right that should be exercised cautiously, since there are consequences for both the owner and architect. The architect will be entitled to termination expenses, since termination for the owner's convenience is not the fault of the architect. In addition, the owner forfeits the right to use the architect's documents under Subparagraph 1.3.2.2, unless some other agreement is reached.

*Caution:* If Subparagraph 1.3.2.2 is changed to give the owner broad rights in the architect's instruments of service, a corresponding change in Subparagraph 1.3.8.5 may be necessary to re-balance the rights of the parties by eliminating or abridging the owner's right to terminate the architect at the owner's convenience.

The architect's termination expenses may include the costs of terminating consultants' contracts, reducing staff and even terminating leases on office space and equipment. In addition, the architect's inducement for entering the agreement, which is profit, is expected to be paid in full.

## COMMENTS

This provision will have to be modified if payments are to be made based upon the stage of the project's progress or based upon a time period other than that of one month.

The percentage method of compensation is especially prone to abuse when deductions are made to the cost of the work due to such things as damages caused by the contractor. No deductions in payment to the architect are allowed in such situations. If a percentage method of compensation is to be used, page 14 of the instructions contains optional text to further deal with complexities that may be caused by deductions or deletions in the project's scope which, if not foreseen, may in turn lead to unfair deductions in the architect's compensation even though services were performed on the deleted portions of the project.

The costs that fall into the reimbursable expenses category are largely outside of the architect's ability to estimate with any accuracy at the beginning of a project. Such an estimate, with a large contingency to reflect the uncertainties involved, would have to be made if these costs were included in the architect's compensation. Thus, an owner would likely pay more under such an arrangement than by reimbursing the architect for these costs as they are incurred. The list of expenses described in the agreement may be modified by addition, deduction or even placement of a limit on them. A general limitation on all of these expenses is that they must be "directly related to the project," and thus are not part of the architect's overhead costs.

## DOCUMENT TEXT

profit on the value of the services not performed by the Architect.

### 1.3.9 PAYMENTS TO THE ARCHITECT

1.3.9.1 Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly upon presentation of the Architect's statement of services. No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable.

1.3.9.2 Reimbursable Expenses are in addition to compensation for the Architect's services and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified in the following Clauses:

- .1 transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
- .2 fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- .4 expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .5 renderings, models and mock-ups requested by the Owner;
- .6 expense of professional liability insurance dedicated exclusively to this Project or the expense of additional



## DOCUMENT TEXT

## COMMENTS

insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;

.7 reimbursable expenses as designated in Paragraph 1.5.5;

.8 other similar direct Project-related expenditures.

1.3.9.3 Records of Reimbursable Expenses, of expenses pertaining to a Change in Services, and of services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

Because reimbursable expenses, hourly rates and direct personnel expenses are direct costs, the owner has the right to examine the architect's records with regard to them. This permission, however, does not include the right to examine other records of the architect.

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

If different cost-based methods are used to calculate payments to the architect, such as an hourly rate or direct salary expense, these other methods may also need to be defined. The instructions to AIA Document B141-1997 contain example text for such purposes on page 14.

### ARTICLE 1.4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS

1.4.1 Enumeration of Parts of the Agreement. This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect. This Agreement comprises the documents listed below.

Note that amendments to this agreement must be made in writing.

1.4.1.1 Standard Form of Agreement Between Owner and Architect, AIA

## COMMENTS

Unless otherwise indicated, the scope of services for this agreement is for design and contract administration services.

An architect may be compensated using various methods. The instructions to AIA Document B141-1997 enumerate ten distinct methods of compensation and provide model text for six of them. In some situations, a combination of compensation methods may be chosen by the parties. Again, refer to the instructions for AIA Document B141-1997, which also contain worksheets for calculating compensation.

The AIA makes no representation as to the appropriateness of any of these compensation methods for a particular project. The choice of a compensation method is a business decision for the owner and architect. The AIA makes no recommendations and has no guidelines or schedules that specify the amount of compensation an architect should be paid.

As with compensation under Paragraph 1.5.1, the method of adjustment for change in services is left to the parties. Establishing such a method in the agreement removes a potential cause of disagreement.

## DOCUMENT TEXT

Document B141-1997.

1.4.1.2 Standard Form of Architect's Services: Design and Contract Administration, AIA Document B 141-1997, or as follows: *(List other documents, if any, delineating Architect's scope of services.)*

1.4.1.3 Other documents as follows: *(List other documents, if any, forming part of the Agreement.)*

1.4.2 Special Terms and Conditions. Special terms and conditions that modify this Agreement are as follows:

### ARTICLE 1.5 COMPENSATION

1.5.1 For the Architect's services as described under Article 1.4, compensation shall be computed as follows:

1.5.2 If the services of the Architect are changed as described in Subparagraph 1.3.3.1, the Architect's compensation shall be adjusted. Such adjustment shall be calculated as described below or, if no method of adjustment is indicated in this Paragraph 1.5.2, in an equitable manner.

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

**DOCUMENT TEXT**

**COMMENTS**

1.5.3 For a Change in Services of the Architect's consultants, compensation shall be computed as a multiple of ( ) times the amounts billed to the Architect for such services.

The application of a multiplier to direct cost is sometimes used as a formula to compensate the architect for overhead, profit or both.

1.5.4 For Reimbursable Expenses as described in Subparagraph 1.3.9.2, and any other items included in Paragraph 1.5.5 as Reimbursable Expenses, the compensation shall be computed as a multiple of ( ) times the expenses incurred by the Architect, and the Architect's employees and consultants.

A multiple applied to reimbursable expenses covers, among other things, the costs of advancing money on the owner's behalf and the costs of processing the bills.

1.5.5 Other Reimbursable Expenses, if any, are as follows:

Other reimbursable expenses are a matter of negotiation between the parties and may include the cost of special consultants, permitting fees, licenses, etc.

1.5.6 The rates and multiples for services of the Architect and the Architect's consultants as set forth in this Agreement shall be adjusted in accordance with their normal salary review practices.

1.5.7 An initial payment of Dollars (\$ ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account at final payment. Subsequent payments for services shall be made monthly, and where applicable, shall be in proportion to services performed on the basis set forth in this Agreement.

The project's circumstances and the architect's past relationship with the owner may influence the amount, if any, of the initial payment. Remember that the owner has the right to terminate for convenience, which can be exercised before the first month has passed after the agreement was signed. Under Subparagraph 1.3.8.6, the architect is entitled to termination expenses, but may still experience difficulty in getting paid.

1.5.8 Payments are due and payable ( ) days from the date of the Architect's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

This rate is established by state statute and varies from state to state.

**COMMENTS**

**DOCUMENT TEXT**

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

If the completion of the project is delayed beyond the time frame anticipated when the agreement was signed, this provision requires the architect's compensation to be adjusted as it would be for a change in services.

1.5.9 If the services covered by this Agreement have not been completed within ( ) months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Paragraph 1.5.2.

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

The authorized representatives of both parties should sign, indicating their official capacity to bind the owner or architect. For corporations and governmental entities, a document showing proof of their authority should be attached.

OWNER (Signature)

(Printed name and title)

ARCHITECT (Signature)

(Printed name and title)

## DOCUMENT TEXT

## COMMENTS

Standard Form of Architect's Services: Design and Contract Administration

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Copyright 1917, 1926, 1948, 1951, 1953, 1958, 1961, 1963, 1966, 1967, 1970, 1974, 1977, 1987, ©1997 by The American Institute of Architects. Reproduction of the material herein or substantial quotation of its provisions without written permission of the AIA violates the copyright laws of the United States and will subject the violator to legal prosecution. WARNING: Unlicensed photocopying violates U.S. copyright laws and will subject the violator to legal prosecution.

ARTICLE 2.1 PROJECT ADMINISTRATION SERVICES  
2.1.1 The Architect shall manage the Architect's services and administer the Project. The Architect shall consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and issue progress reports. ~~The Architect shall coordinate the services provided by the Architect and the Architect's consultants with those services provided by the Owner and the Owner's consultants.~~

A continuing dialogue with the owner regarding the development of the design and the construction effort is encouraged to avoid failed expectations and to minimize disputes.

The determination of the applicable design criteria is one of the most important, but least appreciated of the architect's services. Review of these criteria with the owner provides the owner with insight into the value added by the architect's participation in the project.

Progress reports can consist of memoranda detailing the progress of the project, copies of correspondence, minutes of meetings or any other writings that keep the owner advised as to the progress of the project.

The architect is required under Paragraph 2.4.1 to furnish normal structural, mechanical and electrical engineering services. The architect may choose to retain outside consultants to provide those services. The architect must coordinate the design services of the consultants with those of the architect's design services and with those provided by others, such as consultants of the owner.

## COMMENTS

The project schedule should not be confused with the construction schedule, which is prepared by the contractor. The project schedule identifies the periods for design and construction, allows time for approvals and may include pre-design and facility operation activities. On the other hand, the construction schedule covers the period between the date of commencement of construction and the proposed date for substantial completion. Except for identification of items needing long-lead time for their procurement, the details of the construction period are generally left to the contractor.

The identification of important milestone dates serves a dual purpose. It alerts the owner to the fact that timely completion of the project requires timely decision-making by the owner, and it enables the architect to measure the effect of delayed decisions on the overall timing of the architect's services.

The architect should alert the owner to the fact that these dates are estimates. They are not guaranteed because they are based on assumptions that may change during the course of the project.

This provision alerts the owner to a service that often goes unmentioned, but which is commonly performed by architects as part of design. Later changes, including substitutions, suggested by contractors, construction managers and others do not diminish the value of this service, but simply extend a process of analysis initiated by the architect.

A presentation can be formal or informal and may be part of an ongoing process of discussions with the owner's representatives. If multiple presentations are required, the architect can provide these as a change in services.

The timing of these submissions typically is

## DOCUMENT TEXT

2.1.2 When Project requirements have been sufficiently identified, the Architect shall prepare, and periodically update, a Project schedule that shall identify milestone dates for decisions required of the Owner, design services furnished by the Architect, completion of documentation provided by the Architect, commencement of construction and Substantial Completion of the Work.

2.1.3 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.

2.1.4 Upon request of the Owner, the Architect shall make a presentation to explain the design of the Project to representatives of the Owner.

## DOCUMENT TEXT

## COMMENTS

2.1.5 The Architect shall submit design documents to the Owner at intervals appropriate to the design process for purposes of evaluation and approval by the Owner. The Architect shall be entitled to rely on approvals received from the Owner in the further development of the design.

controlled by the schedule prepared in accordance with Paragraph 2.1.2 and submitted for the owner's approval under Subparagraph 1.2.3.2. The owner's approvals of schematic, design development and construction documents are important milestones that an architect must achieve before proceeding to the next step in the development of the design. Failing to timely approve or revoking prior approvals can seriously impact and delay the design process, which may then require a change in services to adjust the schedule and the architect's compensation. By approving submissions, however, the owner does not become a guarantor of the architect's services. The architect remains fully responsible for the professional quality of the architectural services.

2.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

This general statement covers many issues that will have to be fleshed out in more detail for each individual project. For example, the owner may obtain the building permit in some jurisdictions through a designated contractor or architect. How will that process be handled and by whom? Often, questions like this are answered by a detailed supplement to this provision that assigns to the owner or architect specific tasks and procedures involving governmental authorities in the place where the project is located.

### 2.1.7 EVALUATION OF BUDGET AND COST OF THE WORK

2.1.7.1 When the Project requirements have been sufficiently identified, the Architect shall prepare a preliminary estimate of the Cost of the Work. This estimate may be based on current area, volume or similar conceptual estimating techniques. As the design process progresses through the end of the preparation of the

The architect's cost-estimating services are ongoing and begin with the identification of project requirements. The estimated cost should be compared to the owner's budget provided in Clause 1.1.2.5.2 so that discrepancies between the two can be discussed and resolved at an early date. As design progresses, the cost estimate should be updated and refined.

Under AIA Document B141-1997, the architect is required to advise the owner and

## COMMENTS

make appropriate recommendations if the architect's estimate exceeds the owner's budget for the cost of the work—that is, the amount stated in Clause 1.1.2.5.2.

If the architect becomes aware of adjustments to the preliminary estimate of the cost of the work (based on current area, volume or similar conceptual estimating techniques), the architect should inform the owner.

Even if the schematic design estimate is unchanged, the architect may wish to confirm this, in writing, with the owner.

The architect's estimate of the cost of the work represents the architect's judgment as to the price likely to be changed by another—the contractor. The architect has no control over that price and cannot guarantee it. It is particularly difficult to estimate costs on renovation projects, unusual designs and building types with which the architect is not normally involved. If greater specificity is required, detailed cost estimating services may be retained under Paragraph 2.8.3. Alternatively, the owner may wish to retain a cost consultant.

Alternate bid packages allow the architect and owner to include in the bidding docu-

## DOCUMENT TEXT

Construction Documents, the Architect shall update and refine the preliminary estimate of the Cost of the Work. The Architect shall advise the Owner of any adjustments to previous estimates of the Cost of the Work indicated by changes in Project requirements or general market conditions. If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.

2.1.7.2 Evaluations of the Owner's budget for the Project, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Project or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.



## DOCUMENT TEXT

2.1.7.3 In preparing estimates of the Cost of the Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. If an increase in the Contract Sum occurring after execution of the Contract between the Owner and the Contractor causes the budget for the Cost of the Work to be exceeded, that budget shall be increased accordingly.

2.1.7.4 If bidding or negotiation has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the construction industry.

2.1.7.5 If the budget for the Cost of the Work is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall:

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Subparagraph 1.3.8.5; or
- .4 cooperate in revising the Project scope and quality as required to reduce the Cost of the Work.

## COMMENTS

ments separate items which, were they all part of a single package, might cause all bids to exceed the owner's budget. In that case, the only fair result would be the elimination of those items and the complete rebidding of the work. By use of a base bid and a separate bid on alternates, the owner and architect can compare the base bid to the owner's budget and then accept only those alternates which do not result in the total contract price exceeding the owner's budget.

Even a relatively short delay can have a significant impact on construction prices. A 90-day grace period is specified here, but a shorter or longer period may be appropriate depending upon the circumstances.

If bids or proposals come in over budget and the owner chooses to cooperate with

## COMMENTS

the architect in revising the scope and quality of the project, the architect is obligated to redesign for no additional compensation.

A well-thought out program is essential for a successful start to a project. It is one of the first tasks along with establishing a budget that an owner needs to perform. Unfortunately, very few owners fully understand the discipline and detail that is involved in the development of a professional program. In many cases, the owner and architect may decide to share this task, and commission the architect to assist or actually provide the services for developing the program.

An architect will ordinarily rely on surveying services furnished by the owner, since architects seldom have surveyors on staff to verify the accuracy and completeness of such services. The architect can nevertheless assist the owner in obtaining or even coordinating such services, if the owner and architect agree to expand the role of the architect in these matters.

The architect may wish to suggest AIA Document G601, Land Survey Agreement, for the owner's review.

## DOCUMENT TEXT

2.1.7.6 If the Owner chooses to proceed under Clause 2.1.7.5.4, the Architect, without additional compensation, shall modify the documents for which the Architect is responsible under this Agreement as necessary to comply with the budget for the Cost of the Work. The modification of such documents shall be the limit of the Architect's responsibility under this Paragraph 2.1.7. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not construction is commenced.

### ARTICLE 2.2 SUPPORTING SERVICES

2.2.1 Unless specifically designated in Paragraph 2.8.3, the services in this Article 2.2 shall be provided by the Owner or the Owner's consultants and contractors.

2.2.1.1 The Owner shall furnish a program setting forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, special equipment, systems and site requirements.

2.2.1.2 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and

## DOCUMENT TEXT

private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

2.2.1.3 The Owner shall furnish services of geotechnical engineers which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.

### ARTICLE 2.3 EVALUATION AND PLANNING SERVICES

2.3.1 The Architect shall provide a preliminary evaluation of the information furnished by the Owner under this Agreement, including the Owner's program and schedule requirements and budget for the Cost of the Work, each in terms of the other. The Architect shall review such information to ascertain that it is consistent with the requirements of the Project and shall notify the Owner of any other information or consultant services that may be reasonably needed for the Project.

2.3.2 The Architect shall provide a preliminary evaluation of the Owner's site for the Project based on the information provided by the Owner of site conditions, and the Owner's program, schedule and budget for the Cost of the Work.

## COMMENTS

Geotechnical services are ordinarily provided by the owner, though often with the administration and assistance of the architect. The architect is entitled to rely on the accuracy and completeness of such services furnished by the owner. The architect also has the option of offering geotechnical services under Paragraph 2.8.3.

The architect may wish to suggest AIA Document G602, Geotechnical Services Agreement, for the owner's review.

Quality, cost and time are the three key factors that must be balanced again and again during the development of the project. The owner and architect will discuss these factors in completing Article 1.1, but often the parties may be uncertain about one or more of these factors at that time. As the project begins, the architect is required under Paragraph 2.3.1 to once again analyze the balance and to make recommendations to the owner on any corrections or the need for other consultant services.

Every site is unique, and as such, must be evaluated against the desired quality, time and cost for the project. The site and siting of a proposed building can have a significant impact on the project's feasibility. For example, a one-story 200,000 square foot warehouse can be built on high or low ground, on a plain or a hill, and on soil or rock, but cost, delivery time and quality will vary considerably depending upon the choice of site.

Decisions such as whether to retain a construction manager, whether multiple prime

## **COMMENTS**

contracts will be issued and whether the project will be “fast-tracked” can all affect the financial and time requirements of the project and the architect’s services. These decisions will be important in developing a project schedule, in determining the sequence of the architect’s design services and in evaluating cost. This review may be used by the architect to acquaint the owner with other services the architect can offer during construction.

Initially conceived by the owner, a project is given shape through the talents of the architect who uses the schematic design documents to show the project’s principal themes expressed in concrete terms, even though on paper, in cardboard modeling or by other representations in CAD. This is a collaborative process between the owner and architect. It is formalized in the agreement through Paragraph 2.1.5, which requires the architect to submit these design documents for the owner’s approval. An owner is not obliged to approve the scheme if it fails to match the agreed-upon program, budget or time frame for delivery. However, the owner must act in good faith and not arbitrarily reject scheme after scheme. By approving the schematic design documents, the owner does not become the guarantor of the architect’s services. The architect remains fully responsible for the professional quality of those services.

Through the design development documents, the architect further refines the concepts contained in the approved schematic

## **DOCUMENT TEXT**

2.3.3 The Architect shall review the Owner's proposed method of contracting for construction services and shall notify the Owner of anticipated impacts that such method may have on the Owner's program, financial and time requirements, and the scope of the Project.

### **ARTICLE 2.4 DESIGN SERVICES**

2.4.1 The Architect's design services shall include normal structural, mechanical and electrical engineering services.

#### **2.4.2 SCHEMATIC DESIGN DOCUMENTS**

2.4.2.1 The Architect shall provide Schematic Design Documents based on the mutually agreed-upon program, schedule, and budget for the Cost of the Work. The documents shall establish the conceptual design of the Project illustrating the scale and relationship of the Project components. The Schematic Design Documents shall include a conceptual site plan, if appropriate, and preliminary building plans, sections and elevations. At the Architect's option, the Schematic Design Documents may include study models, perspective sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

## **DOCUMENT TEXT**

### **2.4.3 DESIGN DEVELOPMENT DOCUMENTS**

**2.4.3.1** The Architect shall provide Design Development Documents based on the approved Schematic Design Documents and updated budget for the Cost of the Work. The Design Development Documents shall illustrate and describe the refinement of the design of the Project, establishing the scope, relationships, forms, size and appearance of the Project by means of plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents shall include specifications that identify major materials and systems and establish in general their quality levels.

### **2.4.4 CONSTRUCTION DOCUMENTS**

**2.4.4.1** The Architect shall provide Construction Documents based on the approved Design Development Documents and updated budget for the Cost of the Work. The Construction Documents shall set forth in detail the requirements for construction of the Project. The Construction Documents shall include Drawings and Specifications that establish in detail the quality levels of materials and systems required for the Project.

**2.4.4.2** During the development of the

## **COMMENTS**

design documents by adding general information about the structural, mechanical and electrical systems of the building. Although the typical design development documents in some aspects may appear refined, they are still not specific enough from which to build the building. However, they often contain sufficient information to obtain a negotiated price from a contractor (but not sufficient for competitive bidding). For that reason, fast-track construction contracts or construction manager arrangements will often initially reference design development documents as part of the contract documents. This is done in combination with a provision that mandates their continued development into construction documents which, if properly done, are then later ratified by the owner and contractor to supersede the design development documents. See AIA Document B511 for provisions that deal with fast-track construction.

In accordance with Paragraph 2.1.5, the owner's approval of the design development documents is a precondition that must be achieved before the architect begins work on the construction documents. When the construction documents are completed, the project documentation will have evolved to a yet higher degree of detail. The architect's construction documents need to contain sufficient detail to obtain responsive competitive bids and to communicate to the trades and workers the actual result the owner wants to achieve.

The architect is not party to the owner-contractor agreement and should not attempt to act as the owner's lawyer. The architect can

## **COMMENTS**

inform the owner about customary practices of the construction industry, and may provide AIA documents for the owner's review. However, the owner should understand that the architect is not providing legal advice.

The architect is a limited agent for the owner while performing these services, within the scope of the authority defined by the owner-architect agreement.

The architect may prepare a checklist for the owner to assist in the selection of an appropriately qualified contractor. Since the architect is not a party to the contract between owner and contractor, the owner must make the ultimate selection of the contractor. See AIA Document A305, Contractor's Qualification Statement, for a checklist of questions for screening potential contractors.

The determination as to whether a particular bid is responsive or a particular bidder responsible is often a legal matter which should be referred by the owner to the owner's legal counsel.

## **DOCUMENT TEXT**

Construction Documents, the Architect shall assist the Owner in the development and preparation of: (1) bidding and procurement information which describes the time, place and conditions of bidding; bidding or proposal forms; and the form of agreement between the Owner and the Contractor; and (2) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect also shall compile the Project Manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

### ARTICLE 2.5 CONSTRUCTION PROCUREMENT SERVICES

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

2.5.2 The Architect shall assist the Owner in establishing a list of prospective bidders or contractors.

2.5.3 The Architect shall assist the Owner in bid validation or proposal evaluation and determination of the successful bid or proposal, if any. If requested by the Owner, the Architect shall notify all prospective bidders or contractors of the bid or proposal results.

### 2.5.4 COMPETITIVE BIDDING

## DOCUMENT TEXT

## COMMENTS

2.5.4.1 Bidding Documents shall consist of bidding requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings.

2.5.4.2 If requested by the Owner, the Architect shall arrange for procuring the reproduction of Bidding Documents for distribution to prospective bidders. The Owner shall pay directly for the cost of reproduction or shall reimburse the Architect for such expenses.

2.5.4.3 If requested by the Owner, the Architect shall distribute the Bidding Documents to prospective bidders and request their return upon completion of the bidding process. The Architect shall maintain a log of distribution and retrieval, and the amounts of deposits, if any, received from and returned to prospective bidders.

2.5.4.4 The Architect shall consider requests for substitutions, if permitted by the Bidding Documents, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

2.5.4.5 The Architect shall participate in or, at the Owner's direction, shall organize and conduct a pre-bid conference for prospective bidders.

2.5.4.6 The Architect shall prepare responses to questions from prospective bidders and provide clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda.

2.5.4.7 The Architect shall participate in or, at the Owner's direction, shall organize and conduct the opening of the bids. The Architect shall subsequently document and distribute the

Prospective bidders may suggest substitutions in order to provide a competitive price. If the architect concludes that a particular substitution is appropriate, an addendum to the bidding documents should be issued to all prospective bidders. This gives all of them the opportunity to consider the allowed substitution in determining their respective proposed bids.

Addenda may be in written or graphic form, and may modify or interpret the bidding documents by means of additions, deletions, clarifications or corrections. Addenda should not be confused with modifications, which are issued after the contract is executed.

## COMMENTS

If, as a result of negotiations between the owner and contractor, changes are agreed upon to the scope or details of the project, the architect may have to issue an addendum revising the construction documents to reflect those changes.

Proposed contractors may suggest substitutions in order to provide a competitive price. If the architect concludes that a particular substitution is appropriate, an addendum to the bidding documents should be issued to all prospective contractors. This gives all of them the opportunity to consider the allowed substitution in determining their respective proposals. Before approval, the owner and architect need to strike a reasonable balance between the cost and quality of a proposed substitution.

## DOCUMENT TEXT

bidding results, as directed by the Owner.

### 2.5.5 NEGOTIATED PROPOSALS

2.5.5.1 Proposal Documents shall consist of proposal requirements, proposed contract forms, General Conditions and Supplementary Conditions, Specifications and Drawings.

2.5.5.2 If requested by the Owner, the Architect shall arrange for procuring the reproduction of Proposal Documents for distribution to prospective contractors. The Owner shall pay directly for the cost of reproduction or shall reimburse the Architect for such expenses.

2.5.5.3 If requested by the Owner, the Architect shall organize and participate in selection interviews with prospective contractors.

2.5.5.4 The Architect shall consider requests for substitutions, if permitted by the Proposal Documents, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

2.5.5.5 If requested by the Owner, the Architect shall assist the Owner during negotiations with prospective contractors. The Architect shall subsequently prepare a summary report of the negotiation results, as directed by the Owner.



## **DOCUMENT TEXT**

### ARTICLE 2.6 CONTRACT ADMINISTRATION SERVICES

#### 2.6.1 GENERAL ADMINISTRATION

2.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date of this Agreement. Modifications made to the General Conditions, when adopted as part of the Contract Documents, shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect.

2.6.1.2 The Architect's responsibility to provide the Contract Administration Services under this Agreement commences with the award of the initial Contract for Construction and terminates at the issuance to the Owner of the final Certificate for Payment. However, the Architect shall be entitled to a Change in Services in accordance with Paragraph 2.8.2 when Contract Administration Services extend 60 days after the date of Substantial Completion of the Work.

2.6.1.3 The Architect shall be a representative of and shall advise and consult with the Owner during the provision of the Contract Administration Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written amendment.

2.6.1.4 Duties, responsibilities and limitations of authority of the

## **COMMENTS**

On a project involving contract administration, a major factor influencing the architect's compensation proposal will be the general conditions, which establish the ground rules under which the architect must operate to administer the contract. Here, use of AIA Document A201-1997, General Conditions of the Contract for Construction, is presumed.

Use of general conditions other than AIA Document A201-1997 may create conflicts and may make it difficult for the architect to perform the obligations enumerated in Article 2.6. If the owner insists on using other general conditions and this was not indicated in response to Paragraph 1.1.5, the architect would be entitled to a change in services.

The architect's obligation to administer the contract for construction is subject to the time limits stated here. These time limits do not affect the architect's obligations under Article 2.7, however, or other post-construction services that might be agreed to under Paragraph 2.8.3.

## COMMENTS

During construction, the contractor may be confronted with ambiguities, omissions or conflicts within the drawings and specifications. The contractor is then obliged to bring these matters to the attention of the architect. The procedure outlined here enables the parties to address these issues in a timely fashion and avoid additional costs.

Note that Subparagraph 2.8.2.2 entitles the architect to a change in services for responding to unnecessary requests for information.

Although the architect's response may include issuance of revised drawings or specifications, no particular form of response is required. In appropriate circumstances, the architect's response may consist of selecting among alternatives presented by the contractor or a single letter specifying the design requirements. If the contractor believes that the architect's response affects the contract sum or contract time, the contractor can initiate a request for change order.

## DOCUMENT TEXT

Architect under this Article 2.6 shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractor, which consent will not be unreasonably withheld.

2.6.1.5 The Architect shall review properly prepared, timely requests by the Contractor for additional information about the Contract Documents. A properly prepared request for additional information about the Contract Documents shall be in a form prepared or approved by the Architect and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.

2.6.1.6 If deemed appropriate by the Architect, the Architect shall on the Owner's behalf prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.

2.6.1.7 The Architect shall interpret and decide matters concerning performance of the Owner and Contractor under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

## DOCUMENT TEXT

## COMMENTS

2.6.1.8 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for the results of interpretations or decisions so rendered in good faith.

When making decisions under Article 4 of AIA Document A201-1997, the architect is entitled to the same immunity afforded to judges and other arbiters so long as the architect's decisions are made in good faith.

2.6.1.9 The Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents. However, the Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

The architect is the initial decider of disputes between the owner and contractor. Procedures and time limits are set out in Article 4 of AIA Document A201-1997.

It is not enough for an interpretation or decision to comply with the architect's design intent in developing the contract documents. The interpretation or decision must be reasonably inferable from the documents themselves. Intentions of the architect that are not reflected in the contract documents do not bind the contractor, and may give rise to a change order if the contractor is required to perform work not reasonably contemplated at the time the agreement with the owner was executed.

## COMMENTS

The architect's role is to represent, advise and consult with the owner to the extent authorized in this agreement.

This is different from "periodic" visits, a term that implies definite and equal time intervals between visits regardless of project requirements. Sound professional judgment should determine the timing and number of visits to the site in accordance with the type and nature of the project and other contractual commitments. If the parties so choose, they may designate the number of visits under the schedule of services in Article 2.8.

The architect cannot detect every deviation from the contract documents regardless of the frequency of the architect's site visits. However, the architect is required to report deviations that are discovered to the owner.

Problems can arise when site visits are limited without regard to project requirements. As a general matter, it is in the best interest of both parties for the architect to be retained and compensated to make what is, in the architect's judgment, an adequate number of site visits.

The architect has no duty to be at the site full-time (unless full-time project representation is specifically contracted for), to make detailed inspections (unless special inspections of subsystems are mandated by the agreement) or to direct the contractor's workers. An important goal of the architect's services during construction is to represent the owner's interests by reviewing the contractor's efforts with due professional care and reporting what has been observed. This enables the owner to enforce the owner's rights under the contract for construction.

## DOCUMENT TEXT

### 2.6.2 EVALUATIONS OF THE WORK

2.6.2.1 The Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Architect in Article 2.8, (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**DOCUMENT TEXT**

**COMMENTS**

2.6.2.2 The Architect shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

The architect would be well-advised to prepare written reports of site visits and give copies to the owner and, as necessary, the contractor.

This helps establish the dividing line between the architect's responsibilities and those of the contractor. This clear allocation of responsibility will help a court or arbiter assess legal responsibility for accidents or construction deficiencies, thus protecting the interests of all participants on the project.

2.6.2.3 The Architect shall at all times have access to the Work wherever it is in preparation or progress.

2.6.2.4 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect.

Clear channels of communication greatly facilitate contract administration. The owner should not give instructions to the contractor without getting the architect's advice on the consequences these instructions may have on the design, time and cost. Similarly, the owner and contractor should not communicate directly with the architect's consultants without the architect's knowledge and permission.

## COMMENTS

While the architect has the express authority to reject non-conforming work, the architect does not have the authority to accept such work. Only the owner has the authority to change the contract requirements by accepting non-conforming work. If the owner chooses to accept non-conforming work, that decision should either be documented as a change order or noted at the time of final payment to avoid later misunderstandings as to the nature and scope of the acceptance.

For example, additional testing of concrete core samples, roof plug samples or any other items may be critical to implementing the intent of the contract documents.

Because the architect cannot inspect every facet of the contractor's work, it often becomes desirable to test work which has been covered or enclosed without previous inspection. The ability to order inspections includes the ability to require that work be removed to allow for inspection. The decision whether the owner or contractor is to bear the expense for the testing or inspection is determined by the results.

It is not the architect's responsibility to instruct the contractor with regard to means, methods, techniques, sequences or procedures. The architect's focus is on the results (or probable results) of the contractor's efforts rather than on the contractor's way of achieving them.

## DOCUMENT TEXT

2.6.2.5 The Architect shall have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

## DOCUMENT TEXT

2.6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR  
2.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue Certificates for Payment in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Paragraph 2.6.2 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

2.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

2.6.3.3 The Architect shall maintain a record of the Contractor's Applications

## COMMENTS

This certification is based upon the architect's professional judgment. In exercising that judgment, the architect may consider the extent of completion, the quality of the work and the architect's evaluations of the contractor's application for payment.

The certificates required here are qualified as described in this subparagraph (i.e., "to the best of the Architect's knowledge, information and belief") and in the language found in AIA Document G702, Application and Certificate for Payment. This language is quite explicit about what the certificate does and does not cover. See AIA Document B511 for model text for a variety of certificates.

If the work is later found not to conform to the requirements of the contract documents, the architect may withdraw or revise a previous certificate as necessary to reflect the current status of that work.

In a parallel provision in AIA Document A201-1997, the word is *all*. In AIA Document B141-1997, the word *appropriate* is used because other consultants retained by the owner may be involved in specifying these criteria.

## COMMENTS

If shop drawings meet the requirements expressed here, it is appropriate for the architect to approve them in those same terms. Under AIA Document A201-1997, the contractor must obtain such approval before performing the work. Many fabricators and manufacturers refuse to proceed without the architect's approval.

Note that this approval is limited. Also note the requirements in AIA Document A201-1997 requiring the contractor to review and approve shop drawings before submitting them to the architect. The word *approve*, when used in this carefully defined context, is appropriate. For the architect, the key to managing liability in this context is to perform the architect's duties carefully and to require that the contractor perform the contractor's duties just as carefully.

Paragraph 3.12 of AIA Document A201-1997 deals with shop drawings, product data and samples. A more detailed treatment of this very complex subject can be found in the Architect's Handbook of Professional Practice. The Handbook discussion includes sample language for the architect's shop drawing stamp.

The architect must act promptly and diligently, but is not expected to act under duress or to pass on matters without sufficient time for professional review.

## DOCUMENT TEXT

for Payment.

### 2.6.4 SUBMITTALS

2.6.4.1 The Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.6.4.2 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.



## DOCUMENT TEXT

2.6.4.3 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Architect shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

## COMMENTS

These certifications may be required when parts of the project are being provided by the contractor on a design/build basis. To cite two examples, mechanical systems and pre-engineered roof trusses are often provided in this fashion. This sentence makes it clear that once the contractor has submitted proper professional certificates to the effect that performance criteria are being met, the architect can rely on these certifications.

In AIA Document A201-1997, the word is *all*. In the context of AIA Document B141-1997, however, it is recognized that the owner may have retained other consultants whose efforts must be taken into consideration and included in the design and performance criteria given to the contractor.

## 2.6.5 CHANGES IN THE WORK

2.6.5.1 The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. The Architect may authorize minor changes in the Work not involving an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents. If necessary, the Architect shall prepare, reproduce and distribute Drawings and Specifications to describe Work to be added, deleted or modified, as provided in Paragraph 2.8.2.

Preparing the actual change order or construction change directive form is part of the architect's typical administrative services. However, supporting documentation and data (such as new or revised drawings or specifications) may constitute a change in services under Subparagraph 2.8.2.3.

It is generally preferable to have a written agreement from the owner, stating agreement with the intended order, and a similar written agreement from the contractor to the effect that no change in contract sum or contract time is required.

2.6.5.2 The Architect shall review properly prepared, timely requests by the Owner or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A properly prepared request for a change in the Work shall be accompanied by sufficient supporting data and information to permit the Architect to make a reasonable determination without

## COMMENTS

When the owner and contractor do not agree on the adjustment to the contract sum or contract time, the owner and architect may either abandon the proposed change or issue a construction change directive. The adjustment to the contract sum or contract time will be calculated based upon the actual additional time or cost incurred by the contractor in carrying out the work required.

Unless otherwise specified, the architect makes only two inspections—one to determine the date of substantial completion and one to determine the date of final completion of the project.

## DOCUMENT TEXT

extensive investigation or preparation of additional drawings or specifications. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied.

2.6.5.3 If the Architect determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contractor, if any, the Architect shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the Architect. With the Owner's approval, the Architect shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Contractor.

2.6.5.4 The Architect shall maintain records relative to changes in the Work.

### 2.6.6 PROJECT COMPLETION

2.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a

**DOCUMENT TEXT**

**COMMENTS**

final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

Inspections are more thorough and comprehensive than the services provided during normal site visits. The word *inspection* does not inherently create liability problems, but it does imply a more detailed evaluation. Inspections of special components or sub-systems have become more common as the complexity of such items has increased.

2.6.6.2 The Architect's inspection shall be conducted with the Owner's Designated Representative to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

Note that this list, sometimes called a "punchlist," is prepared by the contractor and is only supplemented by the architect.

2.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including any amounts needed to pay for final completion or correction of the Work.

Such amounts do not become due at substantial completion. Ordinarily, they become due at final completion.

2.6.6.4 The Architect shall receive from the Contractor and forward to the Owner: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens.

Under Subparagraph 9.10.2 of AIA Document A201-1997, the architect is entitled to receive these documents from the contractor. The contractor is responsible for obtaining the documents from the originators of them.

**ARTICLE 2.7 FACILITY OPERATION SERVICES**

2.7.1 The Architect shall meet with the Owner or the Owner's Designated Representative promptly after Substantial Completion to review the need for facility operation services.

Often the architect can play an important role in the owner's actual use or operation of the facility comprising the project. The communication inherent in this service may lead to a decision by the owner to retain the architect to provide post-occupancy services in addition to those described in Paragraph 2.7.2.

2.7.2 Upon request of the Owner, and

## COMMENTS

No design can contemplate every conceivable problem inherent in the actual use or operation of the facility. Often the architect can address operational difficulties by suggesting minor design or construction changes that will enhance the owner's satisfaction with the project. Here again, the recommendations may lead to other services which may be offered by the architect.

Experience has shown that certain contract administration services are a potential drain on the architect's resources. Limiting the number of these services can permit more accurate pricing of these services for the benefit of both parties. If the architect is required by conditions outside of the architect's control to provide more frequent services than listed, the architect is entitled to a change in services. Specifying the frequency of services eliminates the need to include contingencies in the architect's compensation.

Architects often incur extra expense when required submittals are not furnished by the contractor in the agreed-upon sequence.

## DOCUMENT TEXT

prior to the expiration of one year from the date of Substantial Completion, the Architect shall conduct a meeting with the Owner and the Owner's Designated Representative to review the facility operations and performance and to make appropriate recommendations to the Owner.

### ARTICLE 2.8 SCHEDULE OF SERVICES

2.8.1 Design and Contract Administration Services beyond the following limits shall be provided by the Architect as a Change in Services in accordance with Paragraph 1.3.3:

.1 up to ( ) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor.

.2 up to ( ) visits to the site by the Architect over the duration of the Project during construction.

.3 up to ( ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents.

.4 up to ( ) inspections for any portion of the Work to determine final completion.

2.8.2 The following Design and Contract Administration Services shall be provided by the Architect as a Change in Services in accordance with Paragraph 1.3.3:

.1 review of a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;

.2 responses to the Contractor's requests for information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other

**DOCUMENT TEXT**

**COMMENTS**

Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;

.3 Change Orders and Construction Change Directives requiring evaluation of proposals, including the preparation or revision of Instruments of Service;

.4 providing consultation concerning replacement of Work resulting from fire or other cause during construction;

.5 evaluation of an extensive number of claims submitted by the Owner's consultants, the Contractor or others in connection with the Work;

.6 evaluation of substitutions proposed by the Owner's consultants or contractors and making subsequent revisions to Instruments of Service resulting therefrom;

.7 preparation of design and documentation for alternate bid or proposal requests proposed by the Owner; or

.8 Contract Administration Services provided 60 days after the date of Substantial Completion of the Work.

2.8.3 The Architect shall furnish or provide the following services only if specifically designated:

<u>Services</u>	<u>Responsibility</u> (Architect, Owner or Not Provided)	<u>Location of Service</u> <u>Description</u>
-----------------	---	--

- .1 Programming
- .2 Land Survey Services
- .3 Geotechnical Services
- .4 Space Schematics/Flow Diagrams
- .5 Existing Facilities Surveys
- .6 Economic Feasibility Studies
- .7 Site Analysis and Selection
- .8 Environmental Studies and Reports
- .9 Owner-Supplied Data Coordination
- .10 Schedule Development and

Many services related to change orders and construction change directives, including preparation of additional drawings, specifications and other data, are typically required due to circumstances beyond the architect's control. These services represent an additional demand on the architect's resources. Therefore, except for preparation of the actual change order or construction change directive, they are treated as a change in services, entitling the architect to additional compensation.

This subparagraph reinforces the second sentence in Subparagraph 2.6.1.2: after this point, contract administration services are to be compensated as a change in services if authorized or confirmed in writing by the owner.

It is generally in everyone's best interest to have the architect remain involved with the project until final completion.

## COMMENTS

## DOCUMENT TEXT

Monitoring  
.11 Civil Design  
.12 Landscape Design  
.13 Interior Design  
.14 Special Bidding or Negotiation  
.15 Value Analysis  
.16 Detailed Cost Estimating  
.17 On-Site Project Representation  
.18 Construction Management  
.19 Start-Up Assistance  
.20 Record Drawings  
.21 Post-Contract Evaluation  
.22 Tenant-Related Services  
.23  
.24  
.25

Description of Services.  
*(Insert descriptions of the services designated.)*

### ARTICLE 2.9 MODIFICATIONS

2.9.1 Modifications to this Standard Form of Architect's Services: Design and Contract Administration, if any, are as follows:

By its execution, this Standard Form of Architect's Services: Design and Contract Administration and modifications hereto are incorporated into the Standard Form of Agreement Between the Owner and Architect, AIA Document B141-1997, that was entered into by the parties as of the date:

OWNER (Signature)  
(Printed name and title)

ARCHITECT (Signature)  
(Printed name and title)

CAUTION: You should sign an original AIA document or a licensed reproduction. Originals contain the AIA logo printed in red; licensed reproductions are those produced in accordance with the Instructions to this document.

All commentary contained herein is copyright © 1999 by The American Institute of Architects. All rights reserved. Printed in the United States of America. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of The American Institute of Architects.

AIA Document B141 is copyright 1917, 1926, 1948, 1951, 1953, 1958, 1961, 1963, 1966, 1967, 1970, 1974, 1977, 1987, © 1997 by The American Institute of Architects. Reproduction of the material herein or substantial quotation of its provisions without written permission of the AIA violates the copyright laws of the United States and will subject the violator to legal prosecution.

This publication should not be understood to offer legal or other professional service. If legal advice or other expert assistance is required, the services of a competent professional person should be sought.

The American Institute of Architects, 1735 New York Ave., N.W., Washington, D.C. 20006.