

AIA[®] Document C727[™] – 1992

Standard Form of Agreement Between Architect and Consultant for Special Services

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

BETWEEN the Architect:
(Name and address)

HKS Architects, Inc. FL. Lic. No. AA F000119
1919 McKinney Avenue
Dallas, Texas 75201

and the Consultant:
(Name and address)

The Architect has made an agreement dated with the Owner:

For the following Project:
(Include detailed description of Project, location, address and scope.)

~~The agreement between the Architect and the Owner is not incorporated in this Agreement by this reference. Unless specifically adopted, none of the terms of the agreement between the Architect and the Owner are incorporated in this Agreement. The Architect and Consultant agree as set forth below.~~

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

Recommended for use with the current editions of standard AIA agreement forms and documents.

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ARTICLE 1 CONSULTANT'S SERVICES

(Here list those services to be provided by the Consultant under the Terms and Conditions of this Agreement. Note under each service listed the method and means of compensation to be used, if applicable, as provided in Article 9, and the dates by which such services are to be completed.)

Service to be provided	Method and means of compensation	Completion date

The Consultant shall provide the following services as shown in Exhibit B, attached hereto and incorporated herein for the purposes described in Paragraph 10.1 of this Agreement: services. The part of the Project for which the Consultant is to provide services is hereinafter called This Part of the Project. Except as set forth herein, the Consultant shall not have any duties or responsibilities for any other part of the Project.

ARTICLE 2 CONSULTANT'S RESPONSIBILITIES

§ 2.1 The Consultant is an independent contractor, is responsible for methods and means used in performing the Consultant's services under this Agreement, and is not an employee, agent or partner of the Architect.

§ 2.2 The Consultant shall designate a representative authorized to act on the Consultant's behalf.

§ 2.3 The Consultant shall recommend to the Architect that appropriate investigations, surveys, tests, analyses and reports be obtained as necessary for the proper execution of the Consultant's services.

§ 2.4 The Consultant shall coordinate the Consultant's services with those of the Architect and the Architect's other consultants for the Project, and shall provide progress copies of drawings, reports, specifications and other necessary information to the Architect and the Architect's other consultants for coordination and review. ~~All aspects of the Work~~ The Consultant shall provide copies of drawings, reports, specifications and other necessary information, called Instruments of Services in this Agreement, to the Architect and other consultants for review during the course of the Project. All aspects of the Project designed by the Consultant shall be coordinated by the Consultant, and the Consultant shall also become familiar with the ~~Work~~ Parts of the Project designed by the Architect and the Architect's other consultants as necessary for the proper coordination of the Consultant's services.

§ 2.5 The Consultant shall not be responsible for the acts or omissions of the Architect, Architect's other consultants, Contractor, Subcontractors, their agents or employees, or other persons performing services related to the Project.

§ 2.6 The Consultant's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work.

§ 2.7 The Consultant warrants that it is qualified to conduct business and is lawfully authorized and licensed as necessary to provide the services described in this Agreement in the jurisdiction of the location of the Project. The Consultant agrees as a material term of this Agreement that it will not enter into any agreement to provide professional services related to this Project under contract with the Owner or any contractor engaged to provide construction services. A breach of any requirement of this Paragraph 2.7 shall be cause for termination of this Agreement and for forfeiture of all compensation earned or paid to the Consultant.

ARTICLE 3 ARCHITECT'S RESPONSIBILITIES

§ 3.1 The Architect shall be the general administrator of the professional services for the Project, and shall facilitate the exchange of information among the consultants retained by the Architect.

Architect; however, it shall be the Consultant's responsibility to coordinate its Instruments of Service with those of the Architect, other consultants, and architectural and engineering requirement for the Project that are affected by the services of the Consultant.

§ 3.2 The Architect shall designate a representative authorized to act on the Architect's behalf.

§ 3.3 Prompt written notice shall be given by the Architect to the Consultant if the Architect observes or otherwise becomes aware of any fault or defect with respect to the Consultant's services for the Project.

ARTICLE 4 PAYMENTS TO THE CONSULTANT

§ 4.1 DIRECT PERSONNEL EXPENSE

§ 4.1.1 Direct Personnel Expense is defined as the direct salaries of the Consultant'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, pensions and similar contributions and benefits.

§ 4.2 REIMBURSABLE EXPENSES

§ 4.2.1 Reimbursable Expenses are in addition to compensation for the Consultant's Services and include expenses incurred by the Consultant and the Consultant's employees in the interest of the Project as identified in the following Clauses 4.2.1.1 through 4.2.1.3. Prime Agreement.

~~§ 4.2.1.1 Expense of transportation in connection with the Project; expenses in connection with authorized out-of-town travel; long distance communications; and fees paid for securing approvals of authorities having jurisdiction over the Project.~~

~~§ 4.2.1.2 Expense of reproductions and postage and handling of documents.~~

~~§ 4.2.1.3 If authorized in advance by the Architect, expense of overtime work requiring higher than regular rates.~~

§ 4.3 PAYMENTS ON ACCOUNT OF SERVICES

§ 4.3.1 Payments for the Consultant's services and for Reimbursable Expenses shall be made on the basis set forth in ~~Article 9.~~ Articles 9 and 10.2.

§ 4.3.2 The Consultant shall submit invoices for the Consultant's services and Reimbursable Expenses. The Architect shall review such invoices and, if they are considered incorrect or untimely, the Architect shall review the matter with the Consultant and confirm in writing to the Consultant within ten days from receipt of the Consultant's billing the Architect's understanding of the disposition of the issue.

§ 4.4 CONSULTANT'S ACCOUNTING RECORDS

§ 4.4.1 Records of Reimbursable Expenses and expenses pertaining to services performed on the basis of a Multiple of Direct Personnel Expense shall be available to the Architect or Architect's authorized representative at mutually convenient times.

ARTICLE 5 INTENTIONALLY DELETED

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~~ARTICLE 5 USE OF CONSULTANT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS~~

~~§ 5.1 Except for reference and coordination purposes, documents prepared by the Consultant are instruments of the Consultant's service for use solely with respect to this Project and, unless otherwise provided, the Consultant shall be deemed the author of these documents and shall retain all common law, statutory and other rights, including the copyright. The Architect shall be permitted to retain copies, including reproducible copies, of the Consultant's documents for information and reference. The Consultant's documents shall not be used by the Architect or others on other projects, or for completion of this Project by others, unless the Consultant is adjudged to be in default under this Agreement, except by agreement in writing and with appropriate compensation to the Consultant.~~

~~§ 5.2 The Architect and Consultant shall not make changes in each other's documents without written consent of the other party.~~

~~§ 5.3 Submission or distribution of Consultant's documents 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 Consultant's reserved rights.~~

ARTICLE 6 – ARBITRATION

~~§ 6.1 Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise.~~

~~§ 6.2 Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand 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 statutes of limitations.~~

~~§ 6.3 An arbitration between the Architect and Consultant may be joined with an arbitration between the Architect and any person or entity with whom the Architect has a contractual obligation to arbitrate disputes if the arbitrations involve common questions of fact or law. No other arbitration arising out of or relating to this Agreement shall include, by consolidation, 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 Architect, Consultant and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity, other than a person or entity with whom the Architect has a contractual obligation to arbitrate disputes, 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 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 the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 6.4 The 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 thereof.~~

ARTICLE 7 MISCELLANEOUS PROVISIONS

~~§ 7.1 Unless otherwise provided, provided in the Prime Agreement, this Agreement shall be governed by the law of the principal place of business of the Architect.~~

~~§ 7.2 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 the date final payment is due the Consultant pursuant to Article 4. The Architect and Consultant, 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. The Consultant shall not assign this Agreement without the written consent of the Architect. The Owner shall be an intended third party beneficiary of this Agreement.~~

~~§ 7.3 The Architect and Consultant, 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 Architect nor Consultant shall assign this Agreement without the written consent of the other. This Agreement represents the entire and integrated agreement for the Project between the Architect and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Architect and Consultant. In the event any term or condition of this Agreement is determined to be invalid by a court of competent jurisdiction, such terms and this Agreement shall be reformed so as to be enforceable to the greatest extent possible under applicable law.~~

~~§ 7.4 This Agreement represents the entire and integrated agreement for the Project between the Architect and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Architect and Consultant.~~

ARTICLE 8 TERMINATION OF AGREEMENT

§ 8.1 This Agreement is terminated if and when the Project is suspended or abandoned, or if the Architect's involvement with the Project is suspended or terminated. The Architect shall promptly notify the Consultant of such termination.

~~§ 8.2 This Agreement may be terminated by either party upon seven days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.~~

~~§ 8.3 In the event of termination not the fault of the Consultant, the Consultant shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.~~

ARTICLE 9 BASIS OF COMPENSATION

The Architect shall compensate the Consultant for the services provided, in accordance with Article 4, Payments to the Consultant, and the other Terms and Conditions of this Agreement, as follows:

§ 9.1 COMPENSATION FOR THE CONSULTANT'S SERVICES, as described in Article 1, Consultant's Services, shall be computed as follows:

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

Service(s) to be compensated

Basis of compensation

. payable in accordance with the phases of services or payment schedule shown in the Prime Agreement.

§ 9.2 FOR REIMBURSABLE EXPENSES, as described in Article 4, and any other items included in Article 10 as Reimbursable Expenses, a multiple of one (1.0) times the expenses incurred by the Consultant, the Consultant's employees and subconsultants in the interest of the Project.

§ 9.3 IF THE SCOPE of the Consultant's services is changed materially, the amounts of compensation shall be equitably adjusted.

§ 9.4 INSURANCE COVERAGES

(After consultation with insurance counsel for the Architect and Consultant, insert the minimum limits of insurance required for each type of insurance required.)

Type of insurance

Minimum limit (\$ 0.00)

The Consultant shall purchase and maintain at all times such insurance as will protect it from the claims set forth below which may arise out of or result from the Consultant's services under this Agreement whether such services be performed by the Consultant or by its subconsultants or by anyone employed by any of them, or by anyone for whose acts any of them may be liable:

9.4.1 The Consultant's Workers' Compensation insurance shall be written for not less than Statutory Limits, if any, of the Workers' Compensation Laws of the applicable State(s), but in no event less than \$500,000 per accident or injury. Such Workers' Compensation insurance shall provide coverage for the following:

(a) Claims under worker's compensation, disability benefit and other similar employee benefit acts which are applicable to the work to be performed.

(b) Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees and under any applicable employer's liability law with customary limits.

(c) Claims for damages because of bodily injury, or death of any person other than his employees.

(d) Claims for damages insured by usual personal injury liability coverage which are sustained (i) by any person as a result of an occurrence directly or indirectly related to the employment of such person by the Consultant; or (ii) by any other person.

9.4.2 The Consultant's Employer Liability coverage shall be written for not less than the limits of liability as follows:

\$500,000 per accident for Bodily Injury by accident, \$500,000 per accident for Bodily Injury by disease, and \$500,000 policy limit Bodily Injury by disease.

9.4.3 The Consultant's Automobile Liability Insurance shall provide coverage for claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any other vehicle, owned, non-owned and hired and be written for not less than limits of liability as follows:

Comprehensive Automobile Liability - \$1,000,000 combined single limit for bodily injury and property damages

9.4.4 The Consultant's Commercial General Liability coverage shall be written for not less than limits of liability as follows:

\$1,000,000 general aggregate limit

\$1,000,000 aggregate products and completed operations

9.4.5 The Consultant shall provide to the Architect and Owner certificates of insurance evidencing that the Consultant has insurance coverage and limits meeting the requirements of this Agreement. The certificates of insurance shall provide that the insurers issuing said policies shall give Architect and Owner not less than thirty (30) calendar days prior written notice in the event of cancellation or reduction in coverage thereunder.

9.4.6 Each insurance policy to be maintained under Paragraphs 9.4.3 and 9.4.4 shall be endorsed to name the Owner and Architect, and all other interests as may be reasonably required by Owner, as an additional insured. The coverage afforded the additional insureds under these policies shall be primary insurance. If the additional insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis and apply to the additional insureds only. The amount of the Consultant's insurance shall not be reduced by the existence of such other insurance.

9.4.7 The Consultant shall require all policies of insurance that are in any way related to the services to be provided by the Consultant and that are secured and maintained by Consultant to include clauses providing that each underwriter shall waive all of its rights of recovery, under subrogation or otherwise, against the Owner and Architect. In addition, the Consultant waives all rights of recovery against Architect and Owner it may have or acquire because of deductible clauses in or inadequacy of limits of any policies of insurance that are in any way related to the services to be provided by the Consultant and that are secured and maintained by Consultant.

9.4.8 The Consultant shall purchase and maintain Professional Liability Insurance insuring claims arising from the Consultant's services provided in connection with the design and construction of the Project; and, shall furnish Architect and Owner an appropriate certificate of insurance, including any endorsements directly relating to this Project, identifying the Consultant's Professional Liability Insurance Coverage, which shall be in an amount at least equal to \$2,000,000 per claim and \$4,000,000 annual aggregate, together with all other coverage, required of the Architect under the Prime Agreement, and stipulating amounts of coverage, deductible, and that the policy includes an endorsement for prior acts coverage. Such certificate(s) shall indicate that coverage will not be canceled or not renewed, or reduced by endorsement until at least thirty (30) calendar days prior written notice has been given to the Architect and Owner. If the Owner on review of the policy stipulations, including monetary limits, requires the Consultant to modify the current terms or limits so as to expand coverage or increase limits, the premium increase, if any, caused by the change shall be deemed a Reimbursable Expense, but only as it relates to premiums attributable to this Agreement. The Consultant agrees to maintain all required coverage, including without limitation, the Professional Liability Insurance herein required, for no less than four (4) years following Substantial Completion of the Project.

ARTICLE 10 OTHER CONDITIONS OR SERVICES

INCORPORATION OF PRIME AGREEMENT

10.1 The Consultant shall perform its services with the skill and care of other persons with the same or similar qualifications performing the same or similar services and the accepted standard of care for the location of the Project. The Prime Agreement between Architect and Owner is attached to this Agreement and its terms are incorporated herein as if set forth verbatim. The Consultant shall perform its services in accordance with applicable provisions of the Prime Agreement that provides the responsibilities of the Architect and/or its Consultants; and, the Consultant shall assume toward the Architect all of the obligations and responsibilities applicable to the Consultant's scope of services which the Architect by the Prime Agreement assumes toward the Owner, and the Consultant shall be bound to the Architect to the same extent as the Architect is bound to the Owner. The Consultant consents to the assignment by the Architect of all its rights under this Agreement to the Owner, together with any and all extensions, modifications and addenda. To the extent of any conflict between the terms and conditions of this Agreement and the Prime Agreement, regarding Consultant's scope of service or requirements of performance, including legal and insurance requirements, the Prime Agreement shall govern the relationship of Architect and Consultant. All Basic and Additional Services undertaken during the course of the Project shall be subject to the terms of this Agreement which terms shall not be waived, limited, or modified in any way unless such terms are specifically referenced in a subsequent written modification to this Agreement executed by the Architect and Consultant.

PAYMENT TO THE CONSULTANT

10.2 The Consultant shall submit its invoices to the Architect no later than sixty (60) days after the last day of the month in which the services are provided. Invoices submitted after sixty (60) days will not be paid. Payments of compensation on account of services rendered and for Reimbursable Expenses incurred shall be made in accordance with the payment protocol for payments to the Architect shown in the Prime Agreement; however, the Architect having been paid by the Owner for the portion of the compensation and expenses of the Consultant is a condition precedent to when the Architect shall pay the Consultant such compensation and expenses. The Architect shall pay the Consultant for the portion of such fees and expenses due the Consultant within ten (10) days of receipt of payment by the Architect from the Owner for such fees and expense. The conditions of payment by the Architect to the Consultant shall not be construed to limit, waive, affect, or impair any rights of the Consultant to file or enforce any mechanic's lien arising from non-payment of any compensation earned or Reimbursable Expenses incurred by the Consultant, that remain unpaid to the Consultant upon termination of this Agreement or completion of the Project.

OWNERSHIP AND USE OF CONSULTANT'S INSTRUMENTS OF SERVICE

10.3 The Architect shall have the same rights of ownership, license to use and/or use of the Consultant's Instruments of Service as the Owner has under the Prime Agreement of the Architect's Instruments of Service. The Architect shall, in its sole discretion, have the exclusive right to transfer or assign to the Owner any of the foregoing rights granted herein in the event that the Prime Agreement serves to transfer the intellectual property rights in the Instruments of Service of the Architect and the Consultant to the Owner. The Consultant transfers all intellectual property rights in and to its Instruments of Service to the Architect in order to make the transfer to the Owner in the Prime Agreement effective.

DISPUTE RESOLUTION

10.4 If the Consultant cannot, by the terms and conditions of this Agreement and/or of the Prime Agreement, be compelled to participate in any dispute resolution proceeding involving the Architect, then the Consultant agrees to voluntarily participate in such dispute resolution proceeding provided the issues in dispute concern, in whole or in part, the scope of services of the Consultant. Unless arbitration is specifically required by the provisions of the Prime Agreement as a dispute resolution procedure between the Owner and the Architect, arbitration shall not be considered a dispute resolution procedure applicable to this Agreement. The Architect and the Consultant agree to attempt to resolve all disputes, involving issues that may arise solely between themselves, by mediation prior to the filing of any legal or equitable actions or proceedings.

INDEMNIFICATION

10. The Consultant agrees to INDEMNIFY AND HOLD HARMLESS THE ARCHITECT AND THE OWNER, THEIR DIRECTORS, OFFICERS, AND EMPLOYEES, HEREIN CALLED "INDEMNITEES", FROM AND AGAINST ALL THIRD PARTY CLAIMS DAMAGES, EXPENSES AND COSTS INCLUDING BUT NOT LIMITED TO INDEMNITEES' REASONABLE AND NECESSARY ATTORNEYS' FEES AND COSTS, AND COSTS OF LITIGATION OR ARBITRATION, CALLED "CLAIM(S)" HEREIN, TO THE EXTENT SAID CLAIMS, DAMAGES, EXPENSES AND COSTS ARISE FROM OR ARE CAUSED BY ANY NEGLIGENT ACT, OR OMISSION OF THE CONSULTANT, OR BY BREACH OF THIS AGREEMENT BY THE CONSULTANT, ON A COMPARATIVE BASIS ACCORDING TO THE CONSULTANTS PERCENTAGE OF RESPONSIBILITY OR FAULT, AND IN ACCORDANCE WITH APPLICABLE LAW FOR THE JURISDICTION GOVERNING THE PERFORMANCE OF THE SERVICES DESCRIBED BY THIS AGREEMENT AND THE COMPARATIVE RESPONSIBILITY OF THE ARCHITECT AND THE CONSULTANT. IN THE EVENT A CLAIM IS MADE AGAINST THE ARCHITECT THAT IS BASED SOLELY UPON AND ARISES SOLELY FROM SERVICES PROVIDED BY THE CONSULTANT, THE CONSULTANT SHALL RESPOND TO ANY CLAIMS, SHALL ALSO DEFEND SUCH CLAIMS, AND IF NECESSARY SHALL RETAIN COUNSEL TO DEFEND SUCH CLAIMS AND THE ARCHITECT. In the event a finder of fact determines that the Architect shares responsibility for any Claim, the Architect shall indemnify the Consultant for the Architect's share of liability as determined by the finder of fact. The Consultant acknowledges that one hundred dollars (\$100.00) of its fee has been designated as consideration for this indemnification. This indemnification provision by the specific Agreement of the Architect and the Consultant shall apply to any worker's compensation claims made by employees of the Consultant. The limit of the consultant's indemnity obligation shall be \$10,000,000, which amount the Consultant agrees bears a reasonable commercial relationship to the contract.

CONSULTANT'S PROPOSAL

10.6 This Agreement represents the entire and integrated agreement between the Architect and the Consultant. The Consultant's proposal, if any, is attached hereto for information regarding the description of the Consultant's scope of services only and shall not be considered for any purpose to vary, supplement, amend, contradict, interpret, or modify the terms and conditions of this Agreement, which supersede the proposal and all prior negotiations, representations, promises, or agreements, either written or oral. This Agreement may be supplemented or amended only by written instrument signed by both the Architect and the Consultant. The terms of this Agreement shall apply to all subsequent amendments and agreements for Additional Services regardless of and notwithstanding any terms contained in subsequent proposals submitted by the Consultant for additional Basic Services or Additional Services, whether or not services are provided by the Consultant pursuant to such proposals prior to execution by the Architect and Consultant of an appropriate written instrument applicable to such services.

TERMINATION FOR CONVENIENCE

10.7 This Agreement may be terminated by the Architect for convenience and without cause upon written notice to the Consultant in the event that continuation of the Consultant's services for This Part of the Project is not required by the Architect. On termination of this Agreement as provided by this Paragraph, the Architect shall pay the Consultant for all services performed and expenses incurred by the Consultant and for which payment is actually due and owing from the Architect as provided in this Agreement on the day the written notice is received by the Consultant, plus the reasonable value of all services performed by the Consultant up to the time such notice is received by the Consultant, not yet due and payable under this Agreement.

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

ARCHITECT

CONSULTANT

(Signature)

R. Craig Williams, AIA
Principal and Senior Vice President

(Printed name and title)

Executed this day of , 2008

(Signature)

[Redacted Signature]

(Printed name and title)

Executed this day of , 2008

