

RONALD F. AVERY

*
*
*
*
*
*

IN THE DISTRICT COURT

VS.

GUADALUPE COUNTY, TEXAS

DYLAN BADDOUR;
HEARST COMMUNICATIONS, INC.

2nd 25TH JUDICIAL DISTRICT

PLAINTIFF'S MOTION FOR RECUSAL

A. GROUNDS

1. Pursuant to Texas Rule of Civil Procedure (TRCP) 18a, the Plaintiff, Ronald F. Avery, files this his Motion to Disqualify the 2nd 25th District Judge, W. C. (Bud) Kirkendall, from hearing this case based upon Plaintiff's knowledge and belief that the said Judge has previously acted unjustly in regard to a letter of suspicion that Plaintiff sent to W. C. Kirkendall when he was the District Attorney for the 25th District of Texas in 1989.
2. Plaintiff has verified this Motion with the attached Plaintiff's Affidavit in Support of His Motion For Recusal based upon a personal bias or prejudice Judge Kirkendall has concerning the Plaintiff, Ronald F. Avery, as grounds for disqualification as provided by TRCP 18b(2).
3. On January 4, 2016, Plaintiff learned the Defendant's Motion to Dismiss was scheduled to be heard by Judge Kirkendall and files this Motion For Recusal within ten days and more than ten days prior to the said hearing scheduled for February 4, 2016.
4. The affidavit of Plaintiff shows evidence that in 1989 Judge Kirkendall, District Attorney at the time, sent Plaintiff's letter (**Affidavit Exhibit A**) questioning the

activities of the Seguin City Council, Seguin City Planner and Seguin Parks and Recreation Director in 1989 without the Plaintiff's permission or knowledge.

5. The said affidavit also shows evidence that Judge Kirkendall, without consulting Plaintiff at any time, sent Plaintiff's ten page letter, with Plaintiff's name and signature, to the City of Seguin resulting in a letter from Seguin Attorney, Phil Steven Kosub (**Affidavit Exhibit B**).
6. The evidence in the Plaintiff's affidavit will show that Plaintiff only learned of this inappropriate, unusual and unethical means of investigating the questions submitted to a District Attorney for investigation after Seguin City Councilmen, Roger Weyel called Plaintiff to show him the letter from the attorney. What investigator reveals the name of those who complain to all those complained of?
7. Plaintiff's affidavit also shows evidence that Plaintiff's letter was circulated throughout Seguin City Hall without Plaintiff's knowledge or permission. The evidence will show that Kirkendall never talked to the Plaintiff regarding his questions about the actions of Seguin City Hall.
8. The evidence will also show that what Plaintiff complained of was in fact against the law. The architect that was hired by the City of Seguin to provide architectural design for the Seguin Wave Pool was not a registered architect and could not lawfully offer architectural services on an American Institute of Architects B141 Contract (**Affidavit Exhibit C**).
9. Plaintiff's **Affidavit Exhibit D** clearly shows that the City of Seguin knowingly hired a company to perform architectural services that was not licensed to provide architectural services in the State of Texas.

10. Plaintiff's affidavit also shows that the architect that was hired by the landscape architect, unlawfully offering architectural services, obviously knew that the landscape architect was not licensed to perform the services offered and did not report that to the Texas Board of Architectural Examiners as required by law.
11. The evidence in Plaintiff's affidavit shows that the City of Seguin knowingly entered into a contract for architectural design with someone they knew was not licensed to provide that service for some reason that is obviously unethical, to say the least.
12. Also Plaintiff's evidence shows that Judge W. C. (Bud) Kirkendall was in the position as District Attorney at the time to use the information supplied to him by the Plaintiff to discover the unethical actions of the City of Seguin and pursue the violations of Texas statutes governing the practice of architecture under Title 6 of Texas Occupations Code and determine why the City of Seguin was knowingly involved in that violation.
13. The City of Seguin may not have been required by law to seek bids to perform professional services but they are required to seek any needed professional services from those who are licensed to perform them. What city would hire a landscape architect as their city attorney to advise it on legal matters even if the landscape architect hired an attorney to help them? Maybe Seguin, Texas.


CONCLUSION

14. The Plaintiff asserts that even dogcatchers are ethical enough not to tell the owner the name of the neighbor that made a complaint about their dog running free all over the neighborhood.

15. The Plaintiff, knowing this history of how Kirkendall handled Plaintiff's just concerns with regard to other violations of the law, cannot believe he will get a fair hearing on Defendant's Motion to Dismiss or any other matter in this case or any other matter of any kind involving the Plaintiff.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, Ronald F. Avery, prays that 2nd 25th District Judge, W. C. (Bud) Kirkendall, recues himself from serving in any capacity as Judge in Plaintiff's Cause against Baddour and Hearst Communications, Inc.

Respectfully submitted,




Ronald F. Avery, Pro Se
1933 Montclair Drive
Seguin, Texas 78155
Home phone: 830/372-5534
Email: taphouse@sbcglobal.net

CERTIFICATE OF SERVICE

I certify that on January 8, 2016, I served a copy of Plaintiff's Motion For Recusal on the parties listed below by Certified Mail RRR 7009 0960 0000 7721 9506:

Jonathan R. Donnellan
300 W. 57th Street, 40th Floor
New York, NY 10019
(212) 841-7000

Attorneys for Defendants:
Dylan Baddour and Hearst Communications, Inc.



Ronald F. Avery, Pro Se

AFFIDAVIT OF RONALD F. AVERY
IN SUPPORT OF HIS MOTION FOR RECUSAL

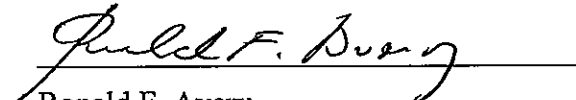
STATE OF TEXAS §
GUADALUPE COUNTY §

Before me, the undersigned notary, on this day personally appeared Ronald F. Avery, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

1. "My name is Ronald Franklin Avery. I am over 18 years of age, of sound mind, and capable of making this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.
2. "I have been an architect for 32 years and live in Seguin, Texas. I put together a team of architects and wave pool specialists to bid on a wave pool project in Seguin that was in a planning stage for about three years beginning in 1987.
3. "In the course of observing the City of Seguin and reading the local newspaper about the wave pool project and citizen views I became aware of suspicious activity, some of which I thought to be unlawful.
4. "I wrote a ten page letter, dated January 24, 1989, (**Exhibit A**) containing a list of these suspicions with exhibits including contracts offering services by one not licensed to offer such services. I mailed the letter and exhibits, one of which was **Exhibit C**, to W. C. (Bud) Kirkendall, the 25th District Attorney at the time.
5. "Kirkendall was in my Sunday school class at First Methodist around this period and I had read a newspaper article about him investigating the use of drugs on the high school campus with undercover informants that would blend-in like students. I thought he would be a great investigator of suspicious activity at City Hall as well.
6. "I did not hear a word from Kirkendall. But my City Councilmen, Roger Weyel called me to his office to show me something. When I arrived he showed me a copy of a letter written by the City Attorney, Phil Steven Kosub, and addressed to Kirkendall responding to my listed items of suspicion using my name. I was shocked out of my mind.
7. "Roger Weyel told me that my letter to Kirkendall and the City Attorney response was circulated all over City Hall. I was shocked to see that this was how Kirkendall would investigate my suspicions. I thought even a dogcatcher knew not to divulge the name of the complainer when confronting the dog owner. I thought this to be highly irregular, unethical and irresponsible as a District Attorney. It certainly was a glaring contrast to how he investigated suspected crime at the high school. I could not believe a District Attorney would send such a letter with the signature of the submitter to everyone he complained of and others.

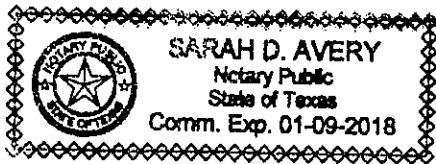
8. "I later received a letter from Kirkendall, dated February 8, 1989, (Exhibit B) with an attached copy of the letter he received from the City Attorney, which Roger Weyel had shown me in his office. The letter stated that there were no requirements for the City of Seguin to advertise for competitive bids for professional services and there was no evidence of anyone benefiting from the award of the bid that there could not be any wrong doing and closed the file.
9. "However, my suspicion list included the offer by the landscape architect, Richardson Verdoorn, Inc., to perform architectural services contained in an AIA B141 Contract with the City of Seguin (Exhibit C). This very exhibit was included in my submission to Kirkendall.
10. "My suspicion list also questioned why the City of Seguin would execute a contract for professional services with someone they knew was not licensed in Texas to perform them.
11. "I later got confirmation from the Texas Board of Architectural Examiners by letter dated February 9, 1990, (Exhibit D) that Richardson Verdoorn, Inc., were not licensed to offer the services they contracted to perform with the City of Seguin. I did later report that and filed a complaint with the TBAE as is required by law that I do.
12. "My list of suspicions also included the fact that an architect was hired as a consultant by the landscape architect reversing the intended order, authority and leadership in the standard AIA contracts. I questioned why the architect would have knowingly done such a thing unless there was something known by all these players that was not right. What did they know to cause them all to participate in a violation of the Occupations Code known to them all?
13. "It is required by law that any architect learning of someone offering architectural services without a license be reported to the Texas Board of Architectural Examiners Title 6 Subtitle B Article 1 Subchapter J Sec. 1051.501. Therefore, the Consultant architect JonesKell Architects should have reported the violation to the TBAE. I questioned why they would go along with something like this.
14. "Had Kirkendall done an investigation of my suspicions rather than turning my name over to all those doing the suspicious activity he could have voided an unlawful contract between the City of Seguin and Richardson Verdoorn to design the wave pool.
15. "Had Kirkendall done his job he could have had Richardson Verdoorn disciplined for knowingly offering professional services they were not licensed to offer on the face of the contract.
16. "Had Kirkendall done his job he could have had JonesKell Architects disciplined for not reporting the offer of architectural services by someone who was not licensed to perform them.
17. "And obviously if Kirkendall would have done his job with respect to my itemized suspicions he could have uncovered what was really going on that caused all those violations of the Texas Occupations Code and possibly the existence of benefits coming to some parties in City Hall.

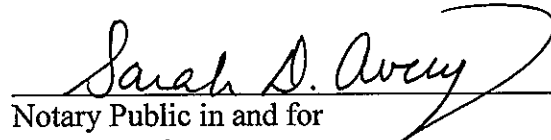
18. "Having personally reviewed the submission of the Texas Parks and Wildlife Grant Proposal, it was obvious to me that the award of contracts were not based upon superior skill and talent or even the lowest bid. So why was all that going on? We will never know now!
19. "With this history of Kirkendall's handling of my complaints, I cannot believe that Judge Kirkendall can render a just ruling in my libel cause against Defendants Baddour and Hearst Communications, Inc.
20. "I have most certainly forgiven Kirkendall for how he handled my suspicions years ago. I am also called to be "harmless as a dove and wise as a serpent." If I don't complain now about his hearing of my case, I could easily consider myself to be less than wise in a potential prejudice against me that I could have avoided with a Motion to Recues."



Ronald F. Avery

Sworn to and subscribed before me by Ronald F. Avery on January 8, 2016





Notary Public in and for
The State of Texas

My commission expires: 1.09.2018



1/24/89

Mr. W. C. (Bud) Kirkendall
District Attorney
25th Judicial District
113 S. River St.
Seguin, Texas 78155

Dear Mr. Kirkendall,

I would like for you to review the matters that I have attached to determine if there is enough evidence to pursue an investigation of the actions of the City of Seguin staff and any others involved in the wave pool project.

I do not know if these matters are illegal or if they are provable but they are matters that on the surface seem to be detrimental to the general public.

Due to the past and present uncooperative and evasive spirit of the city staff and parks board to meet with citizens to discuss and set parameters for the design of such a facility that the citizen will pay for, I respectfully submit these recorded events for your analysis.

Sincerely Yours,

Ronald F. Avery
Ronald F. Avery

1955 Mt. Vernon
Seguin, Texas 78155

xc:

Mr. Dale Tapp
Mr. Roger Weyel

OUTLINE OF EVENTS
SURROUNDING THE SEGUIN
WAVEPOOL PROJECT

- 1.0 On Oct. 21, 1986 I was asked by Mr. Nathan Kiser to assist in the study and remodel plans for an existing bath house in Seguin's Max Starcke Park. Mr. Williams, the present Parks Director, wanted the bath house converted to a Parks Office. I completed the preliminary plan in Dec. 1986.
- 2.0 It was decided by the Parks Board that the city needed a new bath house and a new swimming pool.
- 3.0 I asked Mr. Reggie Williams if I could be of any further assistance. He later in March asked me to make a preliminary plan of the remodel of the existing Golf Club in the same Park opposite the existing swimming pool from the Bath house I had worked on earlier. I completed it on 3/29/87.
- 4.0 I became interested in the swimming pool project after this period of time when I knew the park better and began to see that the Parks Board was going to make plenty of mistakes in the design of the new facility and the location they were considering. They began by ignoring all of the existing assets of the park and doing so with no professional guidance.
- 5.0 On March 23, 1987 I sent them a letter of interest in the project as they had requested to other or any Architects. In this letter I outlined my thinking as a local citizen and Architect that knew something of the Park.
- 6.0 I began to follow their progress in the news paper and knew that they were designing it themselves with little or no help from professionals. I began to try and second guess them and be prepared for the interview if I were short listed.
- 7.0 On 9/11/87 I mailed the City Planner and the Parks Board Director a 20 page book containing 6 options and a rough cost of each one complete with preliminary layouts of pool concepts to scale. In the same book I included construction drawings of the wavepool I recommended that I had received from a leader in the wavepool field whom I had included in my team.
- 8.0 Some three weeks passed without a word when I decided to give them a call. I talked to Mr. Krauskopt and he said "We are not looking for much design work on this project, we are just looking for someone with experience with pool accessories. We are looking at a firm in Austin that has a lot of experience in pool accessories." I said that my firm would leave all of the technological work of the wavepool to the experts we had on our team.

8.0 cont'd.

He continued "We don't see any opportunity for much design on this project". This really made me upset to know that a city staff member inexperienced in design could make such decisions for the City of Seguin citizens on a 1.5 million dollar project!

9.0 On 11/4/87 I received a letter from Mr. Jake Krauskopt asking us to submit a proposal for "Lead Consultant services - Land Planner or Landscape Architect". See attached Letter of Invitation. I thought it strange at the time that He would ask for a Land Planner or a Landscape Architect instead of an Architect? My partner and I went to Houston and got an associate Architectural firm (McGinty and Partners) to join us in the project. We turned in our proposal and went to the interview. Mr. McGinty is past President of the American Institute of Architects. Therefore, our team consisted of top notch Architects and the best Wavepool designers in the country, Aquatic Amusements Associates, of Albany, New York.

10.0 The Landscape Architectural firm of Richardson Verdoorn of Austin, Texas was the low bidder. Our team was second low bidder as reported in the news paper.

10.1 I received a phone call from the City Planner shortly after the interviews but prior to the announcement of the selected consultants. The City Planner said that he was instructed to call all the bidders and ask if they would consider doing the public hearing and Grant Application for nothing? He further stated that Lippe and Dorbandt had proposed to do the Grant Application work for nothing with the stipulation that if the City went with another consultant after the grant receipt that the City would owe him 15,000 dollars.

10.2 My response to this question was that My team would be "negotiable". I felt that to do this project right would require a lot of work up front in the grant application and public hearing to include the will of the people in the design and felt that we should be paid for this activity. Our team also understood that a properly prepared professional schematic design was required by the Texas Department of Parks and Wildlife and that is part of standard AIA contractual basic services. See AIA B141 contract attached paragraph 2.2! We also understood that this work specified under paragraph 2.2 of AIA B141 would be required at the Public Hearing, as did other firms - SWA architects of Houston bid \$24,000 for the grant and hearing portion. Others wanted hourly rates for this regardless of outcome.

- 10.3 Apparently the selected Austin firm had wanted a fee for the Grant Application but had to be instructed by someone on the inside to not only do it for nothing, but beat Lippe and Dorbandt by offering to do it for nothing regardless of outcome.
- 10.4 This is bid manipulation and coaching of the bidders after receipt of bids in order to assure their pre-selected consultants get the award.
- 10.5 It is unethical in the AIA to lower the price of required work to the point that good service cannot be performed and that certainly is the case here for the selected consultants did a terrible job on the grant and cheated the people out of an opportunity to see what the consultants concepts were and express their opinions of the project. The work specified under 2.2 of AIA B141 should have been prepared properly for the public hearing and Grant Application! It was not and therefore I believe the FIRM to be in breach of an "understood agreement"! I and other firms understood that this was the requirement and even the selected firm stated themselves that they were in doubt (see item 13.0) that they could complete the work by the deadline! So with the help of the city staff they broke the intent of the agreement and cheated the people and the Federal Government requirement of a full public hearing in good faith prior to Grant Application!
- 10.6 The City's selection of Richardson Verdoorn was based on their agreement to do the Grant and Hearing for nothing and then they turn around and require a maximum of 2 hours of work. This is a deception of the public!
- 10.7 If the selection was based on low bid alone as was indicated in the newspaper than by all rights the award of contract should have gone to Lippe and Dorbandt but the bids were tampered with both prior to and after receipt in order to award pre-selected consultants. I believe it could be proved as indicated by the City Planners own words that "they were looking at an Austin Firm" that they visited with them several times prior to bidding and coached them. No one from the City or Parks or Pool committee ever met with me outside the one interview at city hall.
- 10.8 I think it could be proved that the City Planner and the Parks Director talked with Richardson Verdoorn and discussed how they were going to handle the whole project from Public Hearings and Grant Applications right through Construction. They figured the lowest bid of 5% because they were going to have the cooperation of the city staff. The city staff would run interference for the consultants to do the minimum type of design service and preventing a real quality and profitable project from developing at the public's expense.

10.8 cont'd.

This is why all public input on this project is thwarted and evaded because it would hurt the consultants bid and the city's promised smooth sailing.

10.9 None of the other firms were given this advantage and opportunity of discussion prior to bidding! A good provable case of this type of action is the Park Pavilions. The same group of Parks People and City Staff went to one contractor and discussed the deal at length then went out for bids and selected their pre-visited contractor. The City Attorney backed this all the way!!!

11.0 Roger Weyel was not happy about the selection of a Landscape Architectural firm as opposed to an Architectural firm. So, the City Planner and the Parks Director said they would negotiate all these concerns to the satisfaction of both parties. See attached newspaper.

12.0 At the next Council meeting the Contract was to be submitted and a member of the selected firm was present and talked about the team he represented (mostly academic from Austin).

13.0 A deadline had to be met on Jan. 31, 1988 to be considered for a Texas Parks and Wildlife Grant which included the holding of a public hearing prior to the submission. When the Council asked the firm's representative if they could make that deadline He said, "I don't think so - if we are not hired tonight".

14.0 They were not hired that night and they later failed to be present at the public hearing that was held in great haste by the City. There were no drawings present and no consultants to talk about the project. Total breach of what everyone involved had implied and assumed was required.

14.1 We were led quite naturally to believe that there was considerable work to be done to prepare for hearings and grant applications - very little was done - to the damage of the citizens of Seguin who there by have waived their rights to discuss and give ideas for a project they are going to pay for, granted by the FEDERAL GOVERNMENT'S REQUIREMENTS. You would have to be on the inside to be comfortable with no charge for this activity!

15.0 I also spoke at the beginning of that Council Meeting and presented a revised bid on the part of my team. Since the City was in a negotiating stage I also submitted a revised bid. I also stated verbally and in writing that the Landscape Firm was not in a position to hold hearings and meet a deadline of Jan. 31. I flatly stated verbally and in writing that my team was ready and had drawings present to prove it.

- 16.0 As stated in item 15, the public hearing was held with out the consultants present nor any supporting drawings. The City Planner and Parks Director and Parks Board rapidly produced a very biased and "puffy" application to the Texas Parks and Wildlife and hand delivered it in Austin the day of the deadline.
- 17.0 I bought a copy as soon as it was available. The drawings in this document are the worst I have seen in my professional career. Grossly out of scale, no thought or concept provided, pieces of other projects copied and scribbled over. Absolutely terrible. I will attack even my first proposal against this trash. I was surprised when they claimed it later in the paper when they said "it was very preliminary". It wasn't even preliminary it was premature and unusable for this project! Please see attached copies of the drawings submitted in the grant application. These drawings are not bad copies they are good copies of just how they appear in the original???
- 17.1 I maintain that if one consultant was hired over another, for nothing, to do a job that was expected, and they do not do a reasonable and professional job, than that is a breach of contract and a deception, regardless of whether it was later necessary to get the Grant.
- 18.0 Immediately following the hoax of a hearing several other individuals and myself complained to the city and wrote letters to the editor. We later obtained over 100 names petitioning the City of Seguin to hold another hearing which the city never did. I sent this information to the TP&W and they disregarded it.
- 19.0 I was told on the phone by Mr. Steve Bosak at TP&W that we could discuss any and everything at a public hearing. I told him the Mayor said we could only discuss this project in terms of its effect on the wet lands - and that is recorded in the paper.
- 19.1 I was sent a letter from Tim Hogsett Chief of Grants in Aid with a carbon copy to the City Planner telling me to lay-off basically - that the TP&W had received a Grant Application that went "well beyond the requirements". I know that is garbage. The drawings are the worst I have seen in my professional life and know for a fact that there were no concepts or design time given this project. The rest of the Grant Application was a bunch of paper full of peripheral information. But the essence of the project is missing to this day. Further the Grant Application contained no negative newspaper stories that had already been written regarding the questionable activity of the City. This was a biased and over stuffed pile of extraneous paper.

- 20.0 This brings up another question. Why did the TP&W accept a very evidently foul bunch of junky drawings as a complete grant application and send a letter stating their complete satisfaction with the grant application to me and a carbon copy to the City Planner? This I believe is because the City Planner and Parks Director had visited the TP&W several times and gotten to be good friends with all of them and told them Mr. Avery, a sore loser, was giving them a hard time about the Public Hearing.
- 21.0 Later Lloyd Lippe came to my office and said he had information that we never had a chance, that the consultants were picked and helped before the bidding by the City Planner who was friends with one of them at the chosen firm. Mr. Lippe told me that he and Mr. Roger Weyel (a member of the Select Pool Committee and City Council) reviewed the proposals and found that part of Lippe's contract proposal was missing - that someone had tampered with his proposal before letting the Pool Committee review them.
- 22.0 I also talked to Mark Stautzenberger, another member of the City Council and the Select Pool Committee, and He also confirmed this notion that the bidding was closed for the same reason - that the City Planner had friends in the selected firm in Austin.
- 23.0 In November 1988 the TP&W approved a matching grant for the wave pool up to \$600,000. On Jan. 3, 1989 the City Council passed a motion to put a notice in the paper of their intent to issue Certificates of Obligation for the city's matching share.
- 24.0 I had a friendly visit with the City Planner on Dec. 1, 1988. I discussed with him what he thought was the next step in the pool project. I also expressed to him what the Chisholm Historical Society was trying to do on the Walnut Creek and how our two projects could relate. I asked what the potential was for public input into the pool project? He was not encouraging and proposed no method. He did however confess that the selected consultants knew nothing about Seguin or the Parks.
- 24.1 As of 1/19/89 the local newspaper has run the two required notices of the City's intent to issue Certificates of Obligation for the financing of the wave pool. On 2/7/89 the Council will be asked to pass an ordinance to issue the Certificates.
- 24.2 I later sent the City Planner a letter (1/6/89) requesting a meeting where the Chisholm Historical Society and some other civic groups could meet to set up a channel of citizen input into the wave pool project on 1/6/89. We have not heard any response. We also indicated that if we could not get input we would fight the issue of Certificates.

- 25.0 I then requested the City Manager to copy and release to me ALL the Design Contracts for the wave pool project. He waited 8 days then sent one contract. I later had to call and ask for the Prime Contract. I talked to him several times on the phone and finally had to hand carry another letter to them, copied to Roger Weyel and Mark Stautzenberger. I got it copied and on the front desk and hour later. It took me from 1/6/89 till 1/19/89 to get these two contracts.
- 26.0 The results of my study of the contracts reveals that a good project in virtually impossible by the organization of the contracts. See two city contracts attached.
- 26.1 The Landscape Architectural firm of Richardson Verdoorn has signed a Prime AIA B141 contract to be signed by the City.
- 26.2 This firm cannot legally sign the document without declaring in writing at the time of the offering of services who in their office is a registered Architect who will be responsible for the work under the contract. This name is absent, and Mr. Richardson who signed the contract is not a registered Architect in the State of Texas.
- 26.3 The Landscape firm changed the term "Architect" to "Landscape Architect" with an added clause. However this does not change the essence of how a Prime AIA B141 contract is constructed and how it relates to other AIA contracts. It also does not change the type of services being offered in this contract.
- 26.4 The services being offered in this contract are those which only licensed Architects are trained and tested and authorized to offer by the State of Texas. What would prevent a shoe sales man from signing the contract and changing the term "Architect" to "Shoe Salesman"? Where is common sense?
- 26.5 The Architect who should use the AIA B141 PRIME contract with the City is hired by the Landscape Architect using an AIA C141 Consultant form. This Consultant Contract AIA C141 is constructed to provide sub system components such as Mechanical, Electrical, Plumbing, Structural, acoustic and Landscape services etc...
- 26.6 The problem with the contracts lies in the fact that Architects are trained to provide comprehensive and general services. The contracts are designed to place the ARCHITECT LICENSED TO PRACTICE in the "lead consultant" role.

26.7 Architects are generalist, trained at providing client and user programming and the coordination of subcontractors engineering into the construction documents. Landscape Architects are TYPICALLY sub contractors under the AIA contracts. Further, there is nothing in the wave pool project that would merit this very strange approach to designing this facility.

26.8 There is no way the concerns of Roger Weyel can be satisfied by the changing of one term in the complex interrelated structure of AIA STANDARD contracts. The only way this can be resolved is in a traditional manner - by the City to hire the Prime Contractor (architect) using the Prime contract (AIA B141). And the Prime Contractor (architect) to hire the subcontractor (Landscape architect) with a Consultant contract (AIA C141).

27.0 The City should be asked - What is so different about this project that it would require such an upside-down design approach? Why should a Landscape Architect be the Lead Consultant? What is wrong with the Architect using their own contracts to place them in the lead as is normal and specified in the AIA documents?

Questions? or Evidence?

- 1.0 Why were only Landscape Architects and Land Planners mentioned in the Letter of Invitation when they were also sent to Architects? See attached letter.
- 2.0 Why was I told by the City Planner they were looking at an Austin Firm long before the bidding began?
- 3.0 Why didn't Lippe and Dorbandt get the job immediately upon their offer to do the Grant Application for nothing? When every other firm wanted some form of compensation? This would have indeed made them the low bidder!

ANSWER:

- 1.0 A Landscape Architect is traditionally a subcontractor to an Architect and could not have bid directly on the project If the letter of invitation had been addressed to Architects. Also the standard AIA contract documents are written to place the Architect in the lead position.

Therefore, the Letter of Invitation was written to Landscape Architects so the pre-selected bidders could win the job.

2.0 I was told (as in item 8) in a candid phone conversation with the City Planner they were looking at an Austin Firm and they (the city staff) were not looking for DESIGN in an attempt to discourage my attempts to get the job because they had already selected the designer and they knew I might have ideas about how to design the project when they wanted to remain the designers.

The "Lead Consultant" a "Landscape Architectural firm from Austin, Texas" was privately pre-selected by insiders. The insiders told them they had to do the Grant Application and Public Hearing for nothing regardless in order to beat Lippe.

There are just too many problems with this project to mention and the future product too ridiculous to overlook any further. Someone has to protect the environment, public lands, public money and the rights of citizens. It is time to stop City Staff and employees from running this town like it was their private corporation without respect for its citizens.

Privately selected consultants - privately designed without professional help - phoney public hearing - sloppy unprofessional drawings - damaged bidders - damaged citizens paying the bill - continuing unresponsive abuse of public lands - Buddy buddy with TP&W. Out of order, reversed and unlicensed contracts - continuous rejection of public input.

What kind of Architect would I be to let all of this happen without at least saying something about it? It is not only my right but a civic duty and responsibility to speak up. What is my alternative but to appeal to the the District Attorney?

END



District Attorney

25TH JUDICIAL DISTRICT OF TEXAS
COLORADO, GONZALES, GUADALUPE
AND LAVACA COUNTIES

113 SOUTH RIVER, SUITE 205
SEGUIN, TEXAS 78155
(512) 372-3540

W.C. KIRKENDALL
DISTRICT ATTORNEY
DWIGHT E. PESCHEL
ASSISTANT DISTRICT ATTORNEY
W.A. HOBBS
INVESTIGATOR

February 8, 1989

Ronald F. Avery
1955 Mt. Vernon
Seguin, Texas 78155

RE: WAVE POOL PROJECT

Dear Mr. Avery:

I have reviewed the letter and the attachments which you sent to me and I have received a response from the City, a copy of which is enclosed.

Under section 252.022 of the Local Government Code, the City is not required to extend bids for professional services. The only criminal penalties which are contained in the bidding statutes covering municipalities makes it a criminal penalty if a municipal officer or employee authorizes a purchase "in order to avoid compliance with the competitive bidding requirements of this chapter." Because they are not required to extend bids for professional services, they could not be in violation of the statute.

There is no evidence or hint of evidence that any City employee or officer received any personal benefit from the award of this bid. Thus no other offense would lie.

Based upon that, I have decided to close my file on your complaint and will not recommend any further investigation in the matter.

Please let me know if this office can be of service to you in any other matter.

Sincerely yours,

A handwritten signature in black ink, appearing to read "W.C. Kirkendall".

W.C. Kirkendall
District Attorney
25th Judicial District

WCK/saw
Enclosure

RECEIVED FEB 03 1989

LAW OFFICE OF
PHIL STEVEN KOSUB
9848 LORENE
SAN ANTONIO, TEXAS 78216
(512) 377-3171
February 3, 1989

Mr. W. C. Kirkendall
District Attorney
25th Judicial District
113 South River Street
Seguin, Texas 78155

RE: Request for Information

Dear Bud:

You have provided the City of Seguin with a copy of a letter dated January 24, 1989 from Mr. Ronald F. Avery and accompanying outline of events with regard to the City of Seguin wave pool project. You have asked the city to comment on the various statements set forth in that letter and outline.

The City Manager has asked me to respond to your request on behalf of the city staff and officials. It is my understanding that this information is provided as a courtesy to your office and that criminal charges are neither pending nor contemplated in connection with Mr. Avery's remarks.

Renovation or replacement of the city swimming pool at Max Starke Park has been a regular subject of discussion by the City of Seguin Parks Board since at least March 4, 1985. In January 1987, this discussion took on new focus with the appointment by the city council of a select subcommittee for the development of an aquatic complex. That subcommittee consisted of two city council members, two parks board members, and two members of the city staff. Throughout most of 1987, members of the city staff (primarily the City Planner, Mr. Jake Krauskopf, and the City Parks and Recreation Director, Mr. Reggie Williams), undertook extensive investigation throughout the state on the subject of aquatic complexes. This investigation consisted of on-site visitation to similar municipal facilities as well as discussions with a variety of architects and pool consultants, including Mr. Avery.

On November 4, 1987, at the direction of the select subcommittee, Mr. Krauskopf mailed a formal Request for Proposals to five planning or architectural firms that had previously expressed an interest in this project. Those firms were as follows:

Lloyd K. Lippe Associates of Seguin
Schrickel, Rollins and Associates Inc. of Arlington
Mr. Ron Avery of Seguin
Richardson Verdoorn of Austin
The SWA Group of Houston

Mr. W. C. Kirkendall

-2-

February 3, 1989

A copy of the Request for Proposals is enclosed for your information.

All of these firms had communicated with the city staff at some time during the year preceding the request. Mr. Krauskopf was familiar with each of these firms by professional reputation. As is customary and indeed necessary on any project of this scope, all of these firms communicated with the city staff for clarification of the request prior to submitting their proposals to the city. None of these firms received instructions from the city staff on what their proposal should be.

As you are aware, Texas law does not require solicitation of proposals for professional services. If the staff had pre-selected a consultant, or desired to do so, it would not have been necessary to undertake the proposal process at all. All proposals were received by November 17, 1987, in accordance with the request. The proposals were reviewed by the city staff between November 18th and November 20th. Each of the five interested consultants was interviewed by the select subcommittee between November 23 and November 25, 1987. On November 30, 1987, the select subcommittee voted to recommend to the city council that the Austin firm of Richardson Verdoorn be awarded a contract for design of a new aquatic complex. As noted by Mr. Avery, Richardson Verdoorn offered the proposal most favorable to the city. In the opinion of the city staff, the select subcommittee and the Parks Board, the firm was well qualified to undertake the project.

On January 5, 1988, Mr. Avery presented a revised proposal for architectural services directly to the city council at its regular meeting. Mr. Avery incorrectly notes in paragraph 15 of his outline of events that the city was "in a negotiating stage" at this time. As noted above, the closing date for receipt of proposals was November 17, 1987. At the regular meeting on January 5, 1988, the city council heard the presentation of the select pool committee and its recommendation that the city construct a new wave pool and that it proceed with application for a Texas Parks and Wildlife Department matching funds grant. The city council approved this recommendation. The city council also heard the recommendation of the select subcommittee and the city staff that the firm of Richardson Verdoorn Inc. be awarded the contract for architectural services for the project. The city council accepted this recommendation by a vote of six ayes, one nay, and one abstention.

February 3, 1989

It is my hope that the above information responds as fully as possible to the allegations set forth in paragraphs 8, 10.3, 10.4, 10.6, 10.7, 10.8, 10.9, and 15 of Mr. Avery's outline of events. Two additional paragraphs warrant specific response.

In paragraph 20, Mr. Avery asserts that Mr. Krauskopf and Mr. Williams have become good friends with members of the Texas Parks and Wildlife Department staff. In fact, the city staff has communicated with the Texas Parks and Wildlife Department staff only to the extent necessary to complete the grant application process in the most professional manner possible. The work of Mr. Krauskopf, Mr. Williams, and Richardson Verdoorn has resulted in award to the City of Seguin of a \$600,000.00 matching funds grant from the Texas Parks and Wildlife Department.

With regard to paragraph 25 of Mr. Avery's outline, the city received a written request from Mr. Avery on January 6, 1989, for copies of its design contracts for the wave pool project. On January 13, 1989, Mr. Avery was advised by telephone that the contracts were available for his inspection and copying in city hall. At his request, a copy of the consultant contract AIAC141 was mailed to him on January 13, 1989. That mailing inadvertently excluded a copy of the prime contract between the city and Richardson Verdoorn, which was provided to Mr. Avery on January 16, 1989.

The following paragraphs in Mr. Avery's outline of events are for the most part factual in nature and require no response:

Paragraphs 2, 10, 10.1, 12, 13, 23, 24.1, 26.1, and 26.3.

The following paragraphs in Mr. Avery's outline of events consist of Mr. Avery's own opinions, recollections, and conclusions:

Paragraphs 1, 3, 4, 5, 6, 7, 9, 10.2, 10.5, 11, 14, 14.1, 15, 16, 17, 17.1, 18, 19, 19.1, 20, 21, 22, 24, 24.2, 26, 26.2, 26.4, 26.5, 26.6, 26.7, 26.8, and 27.

We strongly disagree with all of the comments in these paragraphs that denigrate the integrity or professionalism of the city council, the city parks board, the select subcommittee, the city staff, the Texas Parks and Wildlife Department, or Richardson Verdoorn Inc. We hope and believe

Mr. W. C. Kirkendall

-4-

February 3, 1989

that all proceedings relating to the development of this exciting new aquatic complex have been performed in full compliance with the law and with respect for the public interest.

I hope this information is helpful. Please call if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to be 'Phil Steven Kosub', written in a cursive style.

Phil Steven Kosub

PSK/lbl

Enclosure

cc: Mayor Betty Jean Jones
Mr. Terry K. Roberts
Mr. Jake Krauskopf



AIA Document B141

Standard Form of Agreement Between Owner and Architect

1987 EDITION

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.

AGREEMENT

[Signature]

[Signature]

made as of the Twenty-second day of November in the year of Nineteen Hundred and eighty-eight

BETWEEN the Owner:
(Name and address)

City of Seguin
Seguin, Texas

and the Architect:

(Name and address) Richardson Verdoorn, Inc.
801 Congress Ave., Suite 300
Austin, Texas 78701

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

Seguin Aquatic Complex in Seguin, Texas, consisting of a wave pool; concession, rest room, changing, first aid building; deck area; parking; site work including grading, excavation, sewer and water, electrical, sound and lighting; landscaping, irrigation, fencing and signage; fill and compact existing pool, install piers and flooring, cover with lighted, pre-engineered building with architectural enhancement; stabilize existing bathhouse and install public restrooms; make adjustments to existing facilities to accommodate new pool.

The Owner and Architect agree as set forth below.

Copyright 1917, 1926, 1948, 1951, 1953, 1958, 1961, 1963, 1966, 1967, 1970, 1974, 1977, ©1987 by The American Institute of Architects, 1735 New York Avenue, N.W., Washington, D.C. 20006. 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 be subject to legal prosecution.

TERMS AND CONDITIONS OF AGREEMENT BETWEEN OWNER AND ARCHITECT

ARTICLE 1

ARCHITECT'S RESPONSIBILITIES

1.1 ARCHITECT'S SERVICES

1.1.1 The Architect's services consist of those services performed by the Architect, Architect's employees and Architect's consultants as enumerated in Articles 2 and 3 of this Agreement and any other services included in Article 12.

1.1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of the Owner, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's review 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.

1.1.3 The services covered by this Agreement are subject to the time limitations contained in Subparagraph 11.5.1.

ARTICLE 2

SCOPE OF ARCHITECT'S BASIC SERVICES

2.1 DEFINITION

2.1.1 The Architect's Basic Services consist of those described in Paragraphs 2.2 through 2.6 and any other services identified in Article 12 as part of Basic Services, and include normal structural, mechanical and electrical engineering services.

2.2 SCHEMATIC DESIGN PHASE

2.2.1 The Architect shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

2.2.2 The Architect shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 5.2.1.

2.2.3 The Architect shall review with the Owner alternative approaches to design and construction of the Project.

2.2.4 Based on the mutually agreed-upon program, schedule and construction budget requirements, the Architect shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

2.2.5 The Architect shall submit to the Owner a preliminary estimate of Construction Cost based on current area, volume or other unit costs.

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program,

schedule or construction budget, the Architect shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

2.3.2 The Architect shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost.

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, the Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

2.4.2 The Architect shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and Contractor.

2.4.3 The Architect shall advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions.

2.4.4 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.

2.5 BIDDING OR NEGOTIATION PHASE

2.5.1 The Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction.

2.6 CONSTRUCTION PHASE—ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates at the earlier of the issuance to the Owner of the final Certificate for Payment or 60 days after the date of Substantial Completion of the Work, unless extended under the terms of Subparagraph 10.3.3.

2.6.2 The Architect shall provide administration of the Contract for Construction 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, unless otherwise provided in this Agreement.

2.6.3 Duties, responsibilities and limitations of authority of the Architect shall not be restricted, modified or extended without written agreement of the Owner and Architect with consent of the Contractor, which consent shall not be unreasonably withheld.

2.6.4 The Architect shall be a representative of and shall advise and consult with the Owner (1) during construction until final payment to the Contractor is due, and (2) as an Additional Service at the Owner's direction from time to time during the correction period described in the Contract for Construction. 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 instrument.

2.6.5 The Architect shall visit the site at intervals appropriate to the stage of construction or as otherwise agreed by the Owner and Architect in writing to become generally familiar with the progress and quality of the Work completed and to determine in general if the Work is being performed in a manner indicating that the Work when 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. On the basis of on-site observations as an architect, the Architect shall keep the Owner informed of the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work. *(More extensive site representation may be agreed to as an Additional Service, as described in Paragraph 3.2.)*

2.6.6 The Architect shall not have control over or charge of and shall not be responsible for 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 responsibility under the Contract for Construction. The Architect shall not be responsible for the Contractor's schedules or failure to carry out the Work in accordance with the Contract Documents. The Architect shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

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

2.6.8 Except as may otherwise be provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate through the Architect. Communications by and with the Architect's consultants shall be through the Architect.

2.6.9 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect shall review and certify the amounts due the Contractor.

2.6.10 The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's observations at the site as provided in Subparagraph 2.6.5 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, quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment shall further constitute a representation that the Contractor is entitled to payment in the amount certified. However, 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.

2.6.11 The Architect shall have authority to reject Work which does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority to require additional 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 performing portions of the Work.

2.6.12 The Architect shall review and approve or take other appropriate action upon 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 construction of the Owner or of 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 designed by the Contractor, all of which remain the responsibility of the Contractor to the extent 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 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. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Architect shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

2.6.13 The Architect shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Architect as provided in Subparagraphs 3.1.1 and 3.3.3, for the Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

2.6.14 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, shall receive 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 final Certificate for Payment upon compliance with the requirements of the Contract Documents.

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

2.6.16 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 results of interpretations or decisions so rendered in good faith.

2.6.17 The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

2.6.18 The Architect shall render written decisions within a reasonable time on all claims, disputes or other matters in question between the Owner and Contractor relating to the execution or progress of the Work as provided in the Contract Documents.

2.6.19 The Architect's decisions on claims, disputes or other matters, including those in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in Subparagraph 2.6.17, shall be subject to arbitration as provided in this Agreement and in the Contract Documents.

ARTICLE 3

ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 12, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Paragraphs 3.2 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Paragraph 3.3 are required due to circumstances beyond the Architect's control, the Architect shall notify the Owner prior to commencing such services. If the Owner deems that such services described under Paragraph 3.3 are not required, the Owner shall give prompt written notice to the Architect. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, the Architect shall have no obligation to provide those services.

3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

3.2.1 If more extensive representation at the site than is described in Subparagraph 2.6.5 is required, the Architect shall provide one or more Project Representatives to assist in carrying out such additional on-site responsibilities.

3.2.2 Project Representatives shall be selected, employed and directed by the Architect, and the Architect shall be compensated therefor as agreed by the Owner and Architect. The duties, responsibilities and limitations of authority of Project Representatives shall be as described in the edition of AIA Document B352 current as of the date of this Agreement, unless otherwise agreed.

3.2.3 Through the observations by such Project Representatives, the Architect shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect as described elsewhere in this Agreement.

3.3 CONTINGENT ADDITIONAL SERVICES

3.3.1 Making revisions in Drawings, Specifications or other documents when such revisions are:

- .1 inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or Project budget;
- .2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
- .3 due to changes required as a result of the Owner's failure to render decisions in a timely manner.

3.3.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Subparagraph 5.2.5.

3.3.3 Preparing Drawings, Specifications and other documentation and supporting data, evaluating Contractor's proposals, and providing other services in connection with Change Orders and Construction Change Directives.

3.3.4 Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

3.3.5 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

3.3.6 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction.

3.3.7 Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work.

3.3.8 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the Architect is party thereto.

3.3.9 Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase.

3.4 OPTIONAL ADDITIONAL SERVICES

3.4.1 Providing analyses of the Owner's needs and programming the requirements of the Project.

3.4.2 Providing financial feasibility or other special studies.

3.4.3 Providing planning surveys, site evaluations or comparative studies of prospective sites.

3.4.4 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

3.4.5 Providing services relative to future facilities, systems and equipment.

3.4.6 Providing services to investigate existing conditions or facilities or to make measured drawings thereof.

3.4.7 Providing services to verify the accuracy of drawings or other information furnished by the Owner.

3.4.8 Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.

3.4.9 Providing services in connection with the work of a construction manager or separate consultants retained by the Owner.

3.4.10 Providing detailed estimates of Construction Cost.

3.4.11 Providing detailed quantity surveys or inventories of material, equipment and labor.

3.4.12 Providing analyses of owning and operating costs.

3.4.13 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

3.4.14 Providing services for planning tenant or rental spaces.

3.4.15 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

3.4.16 Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.

3.4.17 Providing assistance in the utilization of equipment or systems such as testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

3.4.18 Providing services after issuance to the Owner of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than 60 days after the date of Substantial Completion of the Work.

3.4.19 Providing services of consultants for other than architectural, structural, mechanical and electrical engineering portions of the Project provided as a part of Basic Services.

3.4.20 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

ARTICLE 4

OWNER'S RESPONSIBILITIES

4.1 The Owner shall provide full information regarding requirements for the Project, including a program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

4.2 The Owner shall establish and update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs.

4.3 If requested by the Architect, the Owner shall furnish evidence that financial arrangements have been made to fulfill the Owner's obligations under this Agreement.

4.4 The Owner shall designate a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized 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.

4.5 The Owner shall furnish surveys describing 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 pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a project benchmark.

4.6 The Owner shall furnish the services of geotechnical engineers when such services are requested by the Architect. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating sub-soil conditions, with reports and appropriate professional recommendations.

4.6.1 The Owner shall furnish the services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Architect.

4.7 The Owner shall furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

4.8 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including auditing services the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of the Owner.

4.9 The services, information, surveys and reports required by Paragraphs 4.5 through 4.8 shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

4.10 Prompt written notice shall be given by the Owner to the Architect if the Owner becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents.

4.11 The proposed language of certificates or certifications requested of the Architect or Architect's consultants shall be submitted to the Architect for review and approval at least 14 days prior to execution. The Owner shall not request certifications that would require knowledge or services beyond the scope of this Agreement.

ARTICLE 5

CONSTRUCTION COST

5.1 DEFINITION

5.1.1 The Construction Cost shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Architect.

5.1.2 The Construction Cost 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, plus a reasonable allowance for the Contractor's 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 during construction.

5.1.3 Construction Cost does not include the compensation of the Architect and Architect's consultants, the costs of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 4.

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

5.2.1 Evaluations of the Owner's Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Architect, represent the Architect's best 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 methods of determining bid prices, or over 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 Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Architect.

5.2.2 No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget, unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit has been established, 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 to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction.

5.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought.

5.2.4 If a fixed limit of Construction Cost (adjusted as provided in Subparagraph 5.2.3) is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall:

- .1 give written approval of an increase in such fixed limit;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;

- .3 if the Project is abandoned, terminate in accordance with Paragraph 8.3; or
- .4 cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

5.2.5 If the Owner chooses to proceed under Clause 5.2.4.4, the Architect, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit, if established as a condition of this Agreement. The modification of Contract Documents shall be the limit of the Architect's responsibility arising out of the establishment of a fixed limit. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

ARTICLE 6

USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

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

6.2 Submission or distribution of 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 Architect's reserved rights.

ARTICLE 7

ARBITRATION

7.1 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.

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

7.3 No 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 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 the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

7.4 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 8

TERMINATION, SUSPENSION OR ABANDONMENT

8.1 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.

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's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services.

8.3 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect in the event that the Project is permanently abandoned. If the Project is abandoned by the Owner for more than 90 consecutive days, the Architect may terminate this Agreement by giving written notice.

8.4 Failure of the Owner to make payments to the Architect in accordance with this Agreement shall be considered substantial nonperformance and cause for termination.

8.5 If the Owner fails to make payment when due the Architect for services and expenses, the Architect may, upon seven days' written notice to the Owner, suspend performance of services under this Agreement. Unless payment in full is received by the Architect within seven days of the date of the notice, the suspension shall take effect without further notice. 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.

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 Paragraph 8.7.

8.7 Termination Expenses are in addition to compensation for Basic and Additional Services, and include expenses which are directly attributable to termination. Termination Expenses shall be computed as a percentage of the total compensation for Basic Services and Additional Services earned to the time of termination, as follows:

- .1** Twenty percent of the total compensation for Basic and Additional Services earned to date if termination occurs before or during the pre-design, site analysis, or Schematic Design Phases; or

- .2** Ten percent of the total compensation for Basic and Additional Services earned to date if termination occurs during the Design Development Phase; or
- .3** Five percent of the total compensation for Basic and Additional Services earned to date if termination occurs during any subsequent phase.

ARTICLE 9

MISCELLANEOUS PROVISIONS

9.1 Unless otherwise provided, this Agreement shall be governed by the law of the principal place of business of the Architect.

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

9.3 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.

9.4 The Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by property insurance during construction, 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 and Architect each shall require similar waivers from their contractors, consultants and agents.

9.5 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 Owner nor Architect shall assign this Agreement without the written consent of the other.

9.6 This Agreement represents the entire and integrated agreement between the Owner and 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.

9.7 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.

9.8 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 in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

9.9 The Architect shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Architect's promotional and professional materials. 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 on the construction sign and in the promotional materials for the Project.

ARTICLE 10

PAYMENTS TO THE ARCHITECT

10.1 DIRECT PERSONNEL EXPENSE

10.1.1 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, pensions and similar contributions and benefits.

10.2 REIMBURSABLE EXPENSES

10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and Architect's employees and consultants in the interest of the Project, as identified in the following Clauses.

10.2.1.1 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 approval of authorities having jurisdiction over the Project.

10.2.1.2 Expense of reproductions, postage and handling of Drawings, Specifications and other documents.

10.2.1.3 If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates.

10.2.1.4 Expense of renderings, models and mock-ups requested by the Owner.

10.2.1.5 Expense of additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of that normally carried by the Architect and Architect's consultants.

10.2.1.6 Expense of computer-aided design and drafting equipment time when used in connection with the Project.

10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

10.3.1 An initial payment as set forth in Paragraph 11.1 is the minimum payment under this Agreement.

10.3.2 Subsequent payments for Basic Services shall be made monthly and, where applicable, shall be in proportion to services performed within each phase of service, on the basis set forth in Subparagraph 11.2.2.

10.3.3 If and to the extent that the time initially established in Subparagraph 11.5.1 of this Agreement is exceeded or extended through no fault of the Architect, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in Subparagraph 11.3.2.

10.3.4 When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Subparagraph 11.2.2, based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

10.4.1 Payments on account of the Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Architect's statement of services rendered or expenses incurred.

10.5 PAYMENTS WITHHELD

10.5.1 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 found to be liable.

10.6 ARCHITECT'S ACCOUNTING RECORDS

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

ARTICLE 11

BASIS OF COMPENSATION

The Owner shall compensate the Architect as follows:

11.1 AN INITIAL PAYMENT of _____ Dollars (\$) shall be made upon execution of this Agreement and credited to the Owner's account at final payment.

11.2 BASIC COMPENSATION

11.2.1 FOR BASIC SERVICES, as described in Article 2, and any other services included in Article 12 as part of Basic Services, Basic Compensation shall be computed as follows:

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

Compensation shall be stipulated per Article 12.

11.2.2 Where compensation is based on a stipulated sum or percentage of Construction Cost, progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable:

(Insert additional phases as appropriate.)

Schematic Design Phase:	percent (20 %)
Design Development Phase:	percent (15 %)
Construction Documents Phase:	percent (40 %)
Bidding or Negotiation Phase:	percent (5 %)
Construction Phase:	percent (20 %)
<hr/>	
Total Basic Compensation:	one hundred percent (100%)

11.3 COMPENSATION FOR ADDITIONAL SERVICES

11.3.1 FOR PROJECT REPRESENTATION BEYOND BASIC SERVICES, as described in Paragraph 3.2, compensation shall be computed as follows:

Principals' employees' and professional consultant's team at a multiple of two and one-half (2 1/2) times their Direct Personnel Expense as defined by AIA publication "Compensation Guidelines for A/E Services".

11.3.2 FOR ADDITIONAL SERVICES OF THE ARCHITECT, as described in Articles 3 and 12, other than (1) Additional Project Representation, as described in Paragraph 3.2, and (2) services included in Article 12 as part of Additional Services, but excluding services of consultants, compensation shall be computed as follows:

(Insert basis of compensation, including rates and/or 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, if necessary.)

Principals' and employees' time at a multiple of two and one-half (2 1/2) times their Direct Personnel Expense as defined by AIA publication "Compensation Guidelines for A/E Services".

11.3.3 FOR ADDITIONAL SERVICES OF CONSULTANTS, including additional structural, mechanical and electrical engineering services and those provided under Subparagraph 3.4.19 or identified in Article 12 as part of Additional Services, a multiple of

one & one-tenth (1.1) times the amounts billed to the Architect for such services.
(Identify specific types of consultants in Article 12, if required.)

11.4 REIMBURSABLE EXPENSES

11.4.1 FOR REIMBURSABLE EXPENSES, as described in Paragraph 10.2, and any other items included in Article 12 as Reimbursable Expenses, a multiple of one (1.0) times the expenses incurred by the Architect, the Architect's employees and consultants in the interest of the Project.

11.5 ADDITIONAL PROVISIONS

11.5.1 IF THE BASIC SERVICES covered by this Agreement have not been completed within eighteen (18) 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 Subparagraphs 10.3.3 and 11.3.2.

11.5.2 Payments are due and payable thirty (30) days from the date of the Architect's invoice. Amounts unpaid sixty (60) 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.

(Insert rate of interest agreed upon.)

one and one-half (1 1/2%)

(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.)

11.5.3 The rates and multiples set forth for Additional Services shall be annually adjusted in accordance with normal salary review practices of the Architect.

ARTICLE 12
OTHER CONDITIONS OR SERVICES

(Insert descriptions of other services, identify Additional Services included within Basic Compensation and modifications to the payment and compensation terms included in this Agreement.)

12.1 Compensation shall be based on the following schedule:

12.1.1 New facility construction: 5%

This percentage assumes and is predicated upon a Project scope of \$1,000,000.00 or more as set forth in the City's Request for Proposals dated November 4, 1987.

New construction as defined:

- | | |
|----------------------------|------------------------------------------|
| Swimming pool | Fencing |
| Pool buildings | Signage |
| Walkways and deck | Lighted pavilion |
| Site work | Adjusting facilities to accommodate pool |
| Parking | |
| Landscaping and irrigation | |

12.1.2 Old facility construction:

Any amount - 8%

Old construction is defined as:

- Filling and compacting pool
- Installing piers and flooring
- Soil tests
- Bathhouse foundation, roof and electrical repair
- Bathhouse restrooms
- Renovation of any existing facility

12.2 Whereas the designation "Architect" appears herein, substitute the designation "Landscape Architect" for the purposes of this Prime Agreement.

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

OWNER

ARCHITECT

(Signature)



(Signature)

(Printed name and title)

G. Robert Richardson, President

(Printed name and title)

The TEXAS BOARD of ARCHITECTURAL EXAMINERS



ARCHITECTURE
512-458-1363
LANDSCAPE ARCHITECTURE
512-458-4126

February 9, 1990

Mr. Ronald F. Avery
1955 Mt. Vernon
Seguin, TX 78155

RICHARDSON VERDOORN, INC.

Mr. Avery, in response to your Certified Mail received February 7, 1990 requesting confirmation of the "required affidavits, assumed name certificates or corporate resolutions permitting the Landscape Architecture firm of Richardson Verdoorn, Inc., to offer architectural services in Texas," I can confirm the following:

ROBERT RICHARDSON, III, 320 Congress Avenue, Suite 100, Austin, Texas 78701 is currently registered by this Board as Landscape Architect #481.

JOE T. VERDOORN, 320 Congress Avenue, Suite 100, Austin, Texas 78701 is also currently registered by this Board as Landscape Architect #464.

The firm RICHARDSON VERDOORN, INC., 320 Congress Avenue, Suite 100, Austin, Texas 78701 has a current Assumed Name Certificate properly recorded in accordance with the requirements of Chapter VII of the Rules and Regulations of the Board-Landscape Architects Division.

Please note that landscape architect registration authorizes an individual to entitle himself/herself as a "landscape architect" in this state; it does not authorize the entitlement "architect" or the offering or performing of "architectural" services as implied in the question stated in your letter. If we can provide additional information please let us know.

A handwritten signature in black ink, appearing to read "Robert H. Norris".

ROBERT H. NORRIS, AIA, EXECUTIVE DIRECTOR

jf

P.S. Enclosed is a Complaint Form.

