



AIA[®] Document B106[™] – 2010

Standard Form of Agreement Between Owner and Architect for Pro Bono Services

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

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

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

and the Architect:
(Name, legal status, address and other information)

for the following Project:
(Name, location and detailed description)

The Owner and Architect agree as follows.

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

§ 1.1.1 The Architect will provide Pro Bono Services for the Project as defined in Section 3.1 and as specified in Section 3.2.

§ 1.1.2 The Owner's program for the Project:
(Identify documentation or state the manner in which the program will be developed.)

§ 1.1.3 The Project's physical characteristics:
(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

§ 1.1.4 The Owner's budget for the Project, including, if applicable, the Cost of the Work as defined in Section 6.1:
(Provide total, and if known, a line-item break down.)

§ 1.1.5 The Owner's funding sources for the Project and any deadlines for funding, including those that are dependent on the Architect's Pro Bono Services, are as follows:

(Identify the Owner's funding sources and dates for submitting grant applications or other funding requests, and provide details of any funding deadlines, including those that are dependent upon the Architect's Pro Bono Services.)

§ 1.1.6 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

.1 Commencement of construction date:

.2 Substantial Completion date:

§ 1.1.7 The Owner's other anticipated scheduling information not provided in Sections 1.1.5 or 1.1.6:

(Insert any Project milestones—e.g., Board meetings, public hearings.)

§ 1.1.8 The Owner intends the following procurement or delivery method for the Project:

(Identify method such as competitive bid, negotiated contract, or construction management.)

§ 1.1.9 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

§ 1.1.10 The Owner identifies the following representative in accordance with Section 5.3:

(List name, address and other information.)

§ 1.1.11 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address and other information.)

§ 1.1.12 The Owner will retain the following consultants and contractors:
(List discipline and, if known, identify them by name and address.)

§ 1.1.13 The Architect will retain the following consultants, if any:
(List discipline and, if known, identify them by name and address.)

§ 1.1.14 Other Initial Information on which the Agreement is based:
(Provide other Initial Information, if applicable.)

§ 1.2 The Owner and the Architect may rely upon the Initial Information. The Owner and Architect agree that the Initial Information provided by the Owner shall not materially change and, in the event that it does, the parties shall renegotiate the Agreement, or the Owner or Architect may terminate this Agreement in accordance with the provisions of Article 9.

§ 1.3 If the Architect's Pro Bono Services have not been completed within () months of the date of this Agreement, through no fault of the Architect, the Architect may terminate this agreement in accordance with the provisions of Article 9.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

ARTICLE 3 SCOPE OF ARCHITECT'S PRO BONO SERVICES

§ 3.1 The Architect's Pro Bono Services consist of those described in this Article 3. For the purposes of this Agreement, "Pro Bono Services" are professional services for which the Architect expects to receive no financial compensation, other than compensation for Reimbursable Expenses pursuant to Section 11.4.

§ 3.1.1 The Architect shall manage the Architect's Pro Bono Services, attend meetings in accordance with Sections 3.2 and 3.3, consult with the Owner, research applicable design criteria, communicate with the members of the Project team listed in Sections 1.1.10, 1.1.12, and 1.1.13, and report progress to the Owner's representative listed in Section 1.1.10.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's Pro Bono Services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made without the Architect's approval.

§ 3.1.5 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.

§ 3.1.6 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2 Pro Bono Services to be Provided

The Architect's Pro Bono Services, and the maximum number of hours to be provided by the Architect for each of the Architect's Pro Bono Services, are designated in the table below as the Architect's responsibility. The Owner shall compensate the Architect for the Architect's Pro Bono Services as provided in Section 11.1.

(Designate the Pro Bono Services the Architect shall provide in the first column of the table below. In the second column, indicate the maximum number of hours to be provided by the Architect for each Pro Bono Service. In the third column, indicate whether the service description is located in Section 3.3 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Pro Bono Services	Responsibility (Architect, Owner, or Not Provided)	Hours (Maximum Number of Hours for Architect's services to be Provided)	Location of Service Description (Section 3.3 below or in an exhibit attached to this document and identified below)
§ 3.2.1 Pre-design services			
§ 3.2.2 Project management services			
§ 3.2.3 Program management services			
§ 3.2.4 Measured drawings			
§ 3.2.5 Existing facilities surveys			
§ 3.2.6 Community-based charrette workshops			
§ 3.2.7 Programming Services (B202™-2009)			
§ 3.2.8 Marketing studies			

Pro Bono Services	Responsibility (Architect, Owner, or Not Provided)	Hours (Maximum Number of Hours for Architect's services to be Provided)	Location of Service Description (Section 3.3 below or in an exhibit attached to this document and identified below)
§ 3.2.9	Economic feasibility studies		
§ 3.2.10	Assistance in obtaining project financing		
§ 3.2.11	Fundraising and public relations		
§ 3.2.12	Site Evaluation and Planning (B203™-2007)		
§ 3.2.13	Schematic design phase services		
§ 3.2.14	Design development phase services		
§ 3.2.15	Construction documents		
§ 3.2.16	Bidding or negotiating assistance		
§ 3.2.17	Construction phase services		
§ 3.2.18	Design and Construction Contract Administration (B201™-2007), all five phases in Sections 3.2.13 to 3.2.17		
§ 3.2.19	Building Information Modeling (E202™-2008)		
§ 3.2.20	Architectural Interior Design (B252™-2007)		
§ 3.2.21	Value Analysis (B204™-2007)		
§ 3.2.22	On-site Project Representation (B207™-2008)		
§ 3.2.23	Conformed construction documents		
§ 3.2.24	As-designed Record Drawings		
§ 3.2.25	As-constructed Record Drawings		
§ 3.2.26	Post-occupancy evaluation		
§ 3.2.27	Facility Support Services (B210™-2007)		
§ 3.2.28	Tenant-related services		
§ 3.2.29	Coordination of Owner's consultants		
§ 3.2.30	Telecommunications/data design		
§ 3.2.31	Security Evaluation and Planning (B206™-2007)		
§ 3.2.32	Commissioning (B211™-2007)		
§ 3.2.33	Extensive environmentally responsible design		
§ 3.2.34	LEED® Certification (B214™-2007)		
§ 3.2.35	Fast-track design services		
§ 3.2.36	Historic Preservation (B205™-2007)		
§ 3.2.37	Furniture, Finishings, and Equipment Design (B253™-2007)		

§ 3.3 Insert a description of each Pro Bono Service designated in Section 3.2 as the Architect's responsibility, if not further described in an exhibit attached to this document. Include in the description the associated number of meetings the Architect may attend in connection with those Pro Bono Services. If the Architect is providing Construction Phase Services pursuant to Section 3.2.17 or 3.2.18, those services will be provided in accordance with AIA Document A201™–2007, General Conditions of the Contract for Construction, unless otherwise specifically provided for by the parties. The Owner shall be responsible for coordinating the Architect's duties and responsibilities pursuant to Section 5.12. If the Owner and Contractor modify A201–2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.4 If the limitation of hours set forth in Section 3.2 for any Pro Bono Service is exceeded, or if the Architect notifies the Owner that it anticipates the number of hours designated in Section 3.2 for any Pro Bono Service will be exceeded, then the Owner and Architect shall

- .1 execute AIA Document B101™–2007, Standard Form of Agreement Between Owner and Architect, or other appropriate Owner-Architect Agreement to provide compensation to the Architect for those additional hours;
- .2 renegotiate the maximum number of pro bono hours the Architect will provide for that Pro Bono Service; or
- .3 terminate this Agreement, at the option of either the Owner or the Architect, in accordance with Section 9.4.

ARTICLE 4 ADDITIONAL SERVICES

Additional Services may be provided after execution of this Agreement without invalidating the Agreement. Additional Services to be provided by the Architect on a pro bono basis shall be set forth in an amendment to this Agreement by using AIA Document G802™–2007, Amendment to the Professional Services Agreement. Additional services for which the Architect is to be compensated shall be set forth in a separate agreement executed by the Owner and Architect.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written 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. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish a budget for the Project that meets the Project requirements including, if applicable, the budget for the Cost of the Work as defined in Section 6.1. If the Owner significantly increases or decreases the Owner's budget for the Project or for the Cost of the Work, the Owner shall notify the Architect.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services. Communications between the Owner and the Architect shall be through the Owner's representative.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, a written legal description of the site, and services of geotechnical engineers or other consultants when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project.

§ 5.5 The Owner shall furnish services of consultants requested by the Architect that are required for the Architect to perform its Pro Bono Services, including but not limited to detailed cost-estimating; landscape design; and civil, structural, mechanical, and electrical engineering. If the Owner provides cost-estimating, then the Architect shall be entitled to rely on those estimates. The Owner shall require each of its consultants to provide estimates of the Cost of the Work designed by that consultant, and the Architect shall be entitled to rely on those estimates.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall be responsible for purchasing and maintaining commercial general liability insurance and shall include the Architect and the Architect's Consultants, if any, as additional insureds for claims caused in whole or in part by the Owner's negligent acts or omissions during the course of the Project.

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

§ 5.11 The Owner shall endeavor to communicate with the Contractor through the Architect about matters arising out of or relating to the Contract Documents.

§ 5.12 Before executing any Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.13 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, structural, mechanical or electrical engineering consultants, or other consultants retained pursuant to Section 5.5, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work and any preliminary or updated estimates to the Cost of the Work prepared by the Architect represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 If preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time an estimate of the Cost of the Work prepared by the Architect exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work,
- .2 implement any other mutually acceptable alternative, or
- .3 terminate in accordance with Section 9.4.

§ 6.7 In addition to the options available in Section 6.6, if the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by _____ percent (_____ %), the Owner may

- .1 authorize rebidding or renegotiating of the Project within a reasonable time, or
- .2 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work.

§ 6.8 If the Owner chooses to proceed under Section 6.7.2, and the Owner's budget was exceeded for causes within the Architect's reasonable control, the Architect shall, as a Pro Bono Service, modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 Drawings, specifications and other documents prepared by the Architect are instruments of the Architect's service and are for the Owner's use solely with respect to this Project. The Architect shall retain all common law, statutory and other reserved rights, including the copyright. Upon completion of the Project, or termination of this Agreement by the Architect for cause as specified in Article 9, the Owner's right to use the instruments of service shall cease. In the event the Owner terminates this Agreement for cause, or in the event the Owner or the Architect terminates this Agreement for convenience, the Architect grants the Owner a non-exclusive license to subsequently use the Architect's Instruments of Service solely for the purpose of completing the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement, and subject to the conditions set forth in Section 7.1.2.

§ 7.1.1 When transmitting copyright-protected information for use on the Project, the transmitting party represents that it is either the copyright owner of the information, or has permission from the copyright owner to transmit the information for its use on the Project.

§ 7.1.2 In the event the Owner or the Architect terminates this Agreement for convenience, or in the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.1.2. The terms of this Section 7.1.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.2 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than six years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of

the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.6.

§ 8.1.4 The Owner shall indemnify and hold the Architect and the Architect's officers, employees and consultants harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are not directly caused by the Architect's gross negligence or willful misconduct.

§ 8.1.5 Neither the Architect, Architect's consultants, nor their agents or employees shall be jointly, severally or individually liable to the Owner in excess of (\$ _____), by reason of any act or omission, including breach of contract or negligence not amounting to willful misconduct.

§ 8.2 Meet and Confer

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to a meet and confer session as a condition precedent to mediation. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by the meet and confer session, mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question during the meet and confer session. The meet and confer session shall be attended by the Owner and Architect or their authorized representatives who shall have the authority to bind the parties. The meet and confer session shall take place within thirty (30) days after a request by either party, unless the parties mutually agree otherwise. Prior to any meetings between the parties, the parties shall exchange relevant information that will assist the parties in resolving the claim, dispute or controversy.

§ 8.2.3 If the parties reach a mutually acceptable resolution, then they shall prepare appropriate documentation memorializing such understanding. If the parties cannot reach a mutually acceptable resolution, they shall proceed to mediation in accordance with Section 8.3.

§ 8.3 Mediation

§ 8.3.1 Any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by the meet and confer session, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 8.3.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

§ 8.3.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.3, the method of binding dispute resolution shall be the following:
(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

- Arbitration pursuant to Section 8.4 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: (Specify)

§ 8.4 Arbitration

§ 8.4.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 8.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

§ 8.4.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 8.4.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.4.4 No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, Architect, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all compensation due pursuant to Article 11 prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's compensation for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated as described in Article 11 for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's compensation for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 Either party may terminate this Agreement 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.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice to the other party for convenience and without cause.

§ 9.5 In the event of termination not the fault of the Architect, the Architect shall be compensated for Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.6.

§ 9.6 Termination Expenses are in addition to compensation included in Article 11, including expenses directly attributable to termination for which the Architect is not otherwise compensated.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.4.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other.

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

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

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

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

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Pro Bono Services described under Article 3, the Owner shall compensate the Architect as follows:

- .1 The Owner shall assess the monetary value of the Architect's donation as the number of hours of Pro Bono Services provided by the Architect and the Architect's consultants multiplied by the billing rates set forth in Section 11.3. The Owner shall provide the Architect all benefits and forms of recognition entitled to any donor of that amount.
- .2 The Owner shall provide recognition for the Architect's work in both design form and built form, as follows: *(Insert the type of recognition and the format it shall be provided.)*

- .3 The Owner shall provide the following additional forms of compensation:
(List additional forms of compensation—e.g., the Architect’s presentation to the appropriate Board of Directors or Board of Trustees.)

§ 11.2 The Architect shall be entitled to compensation for its Pro Bono Services in accordance with this Agreement whether or not the Agreement is terminated by either party.

§ 11.3 For the purposes of Section 11.1.1, the hourly billing rates for services of the Architect and the Architect’s consultants, are set forth below. The rates shall be adjusted in accordance with the Architect’s and Architect’s consultants’ normal review practices.
(Attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate
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§ 11.4 Compensation for Reimbursable Expenses

§ 11.4.1 Reimbursable Expenses are in addition to compensation for Pro Bono Services and include expenses incurred by the Architect and the Architect’s consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect or Architect’s Consultant’s expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect or Architect’s consultants;
- .9 All taxes levied on professional services and on Reimbursable Expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.4.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect’s consultants, plus _____ percent (_____ %) of the expenses incurred.

§ 11.5 Payments to the Architect

§ 11.5.1 Unless otherwise agreed, the Architect shall submit monthly invoices for Pro Bono Services performed to provide a record of the value of the Architect’s Pro Bono Services that have been donated. The invoice shall also list amounts due for Reimbursable Expenses. Payments, if any, are due and payable upon presentation of the Architect’s invoice. Amounts unpaid (_____) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

(Insert rate of monthly or annual interest agreed upon.)

§ 11.5.2 The Owner shall not withhold monetary amounts, or other items of compensation to which the Architect is entitled, from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees.

§ 11.5.3 Records of Reimbursable Expenses shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

ARTICLE 13 SCOPE OF THE AGREEMENT

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

§ 13.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document B106™–2010, Standard Form Agreement Between Owner and Architect
- .2 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

- .3 Other documents:
(List other documents, if any, and additional scopes of service, if any, forming part of the Agreement.)

§ 13.3 The terms, conditions and compensation provisions of this agreement supersede the terms, conditions and compensation provisions of any attached scope of services documents.

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

OWNER *(Signature)*

ARCHITECT *(Signature)*

(Printed name and title)

(Printed name and title)