



# AIA<sup>®</sup> Document B143<sup>™</sup> – 2004

## *Standard Form of Agreement Between Design-Builder and Architect*

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

BETWEEN the Design-Builder:  
*(Name, address and other information)*

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

The Design-Builder has made a Design-Build Contract with the Owner dated:

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

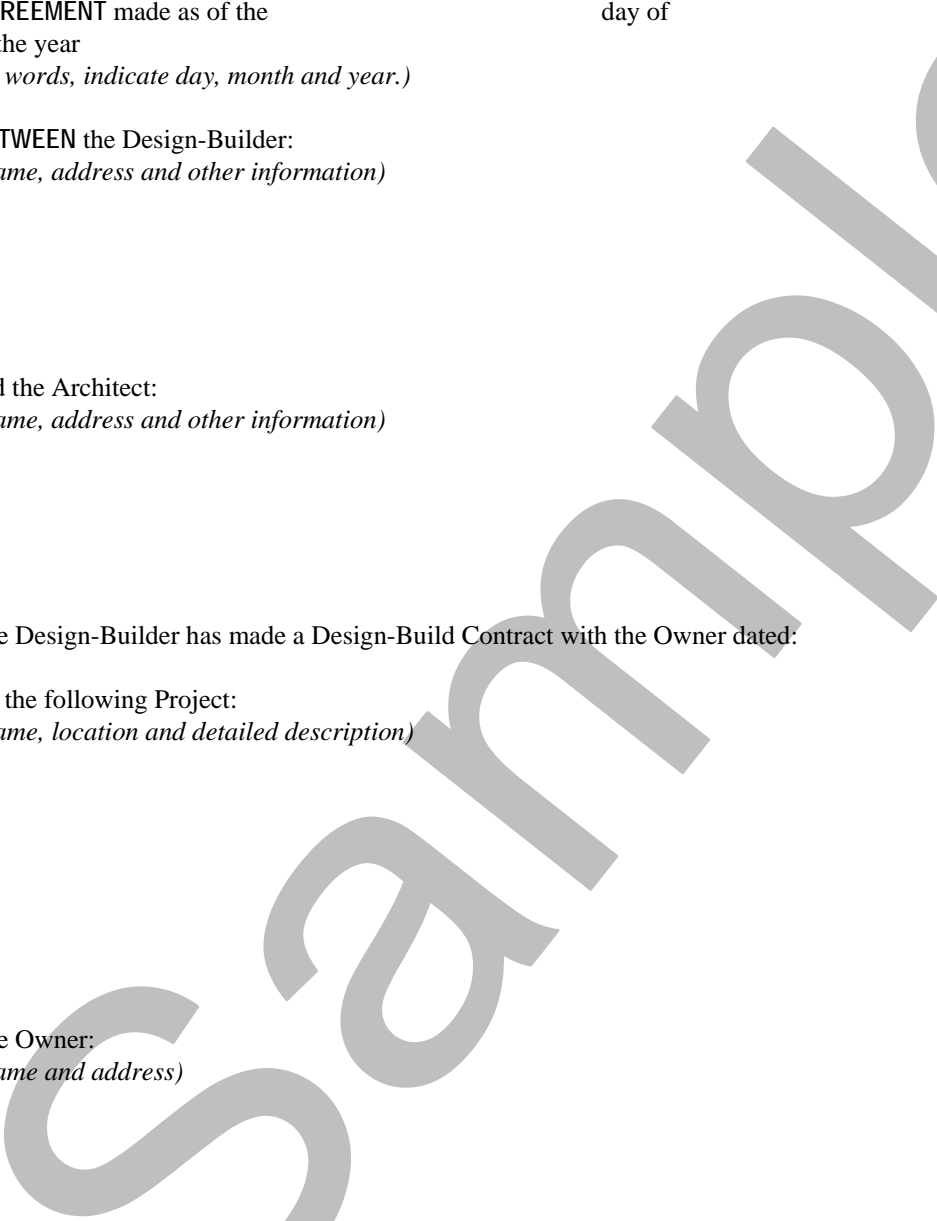
The Owner:  
*(Name and address)*

The Architect's Portion of the Project is as follows:  
*(Identify the Portion of the Project for which the Architect shall provide services under this Agreement.)*

The Design-Builder and Architect agree as follows:

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.



## TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 RESPONSIBILITIES OF THE PARTIES
- 3 TERMS AND CONDITIONS
- 4 SCOPE OF AGREEMENT
- 5 COMPENSATION

## TABLE OF EXHIBITS

- A INITIAL INFORMATION
- B ARCHITECT'S SERVICES

### ARTICLE 1 INITIAL INFORMATION

This Agreement is based on the information and assumptions contained in Exhibit A of this Agreement.

### ARTICLE 2 RESPONSIBILITIES OF THE PARTIES

§ 2.1 The Design-Builder and the Architect shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project Team.

#### § 2.2 Design-Builder

§ 2.2.1 The Design-Builder's Designated Representative is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 2.2.2 The Design-Builder shall provide full and timely information regarding requirements for and limitations on the Project, including Project Criteria, as defined in AIA Document A141™-2004, Standard Form of Agreement Between Owner and Design-Builder, Exhibit A, and shall render decisions in a timely manner so as to avoid unreasonable delay in the orderly and sequential progress of the Architect's performance of its services.

§ 2.2.3 The Design-Builder shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

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

§ 2.2.5 The Design-Builder shall periodically review and, if appropriate, update the overall budget for the Project, including that portion allocated to the Cost of the Work for the Architect's Portion of the Project, and shall promptly notify the Architect thereof in writing. If the overall budget, or that portion allocated to the Cost of the Work for the Architect's Portion of the Project, including any contingencies included therein, is materially increased or decreased, then the Design-Builder and Architect shall agree upon, as appropriate, corresponding changes in the Project scope, quality, and schedule.

§ 2.2.6 The Design-Builder shall furnish the services of consultants, other than those designated as being furnished by the Architect in Exhibit A of this Agreement, or shall authorize the Architect to furnish them as a Change in Services when such services are requested by the Architect and are reasonably required by the scope of the Project.

§ 2.2.7 The Design-Builder shall provide prompt written notice to the Architect if the Design-Builder becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service or in the services or information furnished by the Design-Builder.

§ 2.2.8 In contracts with its consultants, the Design-Builder shall require that the consultant's services, whether performed directly by a consultant or by its sub-consultants, shall be performed by qualified professionals licensed as may be required by applicable law to perform such services in the jurisdiction where the Project is located.

§ 2.2.9 Unless otherwise provided in this Agreement, the Design-Builder shall furnish tests, inspections and reports required by law or the Contract Documents, addressing such issues as structural, mechanical, chemical, air and water pollution, and hazardous materials.

§ 2.2.10 The Design-Builder shall furnish, or cause to be furnished, all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project or to meet the Design-Builder's obligations to the Owner.

§ 2.2.11 The Design-Builder shall furnish to the Architect the Project Criteria, and other Project requirements established by the Design-Builder.

§ 2.2.12 The Design-Builder shall furnish to the Architect, within 15 days after receipt of a written request, information necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 2.2.13 The Design-Builder shall comply with legal and code requirements to the extent they affect the Architect's performance of this Agreement.

### § 2.3 Architect

§ 2.3.1 The Architect's Designated Representative is authorized to act on the Architect's behalf with respect to the Project.

§ 2.3.2 The services the Architect and its consultants shall provide are designated in Exhibit B of this Agreement.

§ 2.3.3 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. When applicable law requires that services be performed by licensed professionals, the Architect shall provide those services through the performance of persons or entities duly licensed to practice their professions.

§ 2.3.4 The Architect shall submit for the Design-Builder's approval a schedule for the performance of the Architect's services which initially shall be consistent with the time periods established in Exhibit A and which shall be adjusted, as necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's and Design-Builder's review, for the performance of the Owner's and Design-Builder's consultants and, if applicable, for approval of authorities having jurisdiction over the Project. Time limits established by this schedule, and any adjustments thereto, approved by the Design-Builder shall not, except for reasonable cause, be exceeded by the Architect.

§ 2.3.5 The Architect shall maintain the confidentiality of information specifically designated by the Design-Builder in writing as confidential, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require similar agreements from its consultants.

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

§ 2.3.7 Unless the Architect is required as part of the Architect's services to verify the accuracy and completeness of services and information provided by the Design-Builder, the Architect shall be entitled to rely on the accuracy, timeliness and completeness of such services and information. The Architect shall provide prompt written notice to the Design-Builder if the Architect becomes aware of any errors, omissions or inconsistencies in such services or information.

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

§ 2.3.9 Services, performed by the Architect and the Architect's consultants shall be undertaken and performed by the Architect in the sole interest and for the exclusive benefit of the Design-Builder.

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

§ 2.3.11 If the Design-Builder requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review and negotiation at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement. With respect to such certifications, the Architect and the Architect's consultants shall certify that to the best of their knowledge, information and belief the documents or services to which such certifications pertain (a) are consistent with the Project Criteria provided to the Architect by the Design-Builder except to the extent specifically identified in such certificate, (b) comply with applicable professional practice standards, and (c) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project. The Design-Builder shall be entitled to rely upon the representations and statements contained in such certifications.

§ 2.3.12 The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Architect's Portion of the Project, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 2.3.13 If the Architect is to review Shop Drawings and other submittals related to the Architect's Portion of the Project, designed or certified by a design professional, other than design professionals retained by the Architect, the Design-Builder shall require that such submittals shall bear such design professional's written approval when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

### ARTICLE 3 TERMS AND CONDITIONS

#### § 3.1 Cost of the Work for the Architect's Portion of the Project

§ 3.1.1 The Cost of the Work for the Architect's Portion of the Project shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Design-Builder of all elements of the Project designed or specified by the Architect. The Cost of the Work for the Architect's Portion of the Project shall also include the cost, at current market rates, of labor and materials furnished by the Design-Builder and equipment designed, specified, selected or specially provided for by the Architect, including the costs of management or supervision of construction or installation thereof, plus a reasonable allowance for overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions and for changes in the Architect's Portion of the Project.

§ 3.1.2 The Cost of the Work for the Architect's Portion of the Project excludes the Design-Builder's fee, costs of tests, evaluations and reports required for the execution of the Work, and all fees and expenses of all design professionals, including the Architect and its consultants, retained by the Design-Builder, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Design-Builder or Owner.

§ 3.1.3 If the Architect performs budget evaluation or cost estimating services, the following conditions shall apply:

§ 3.1.3.1 Such services shall represent the Architect's judgment as a design professional familiar with the construction industry. It is recognized, however, that the Architect does not have control over the cost of labor, materials or equipment, over 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 budget for the Project or from the Architect's estimate of the Cost of the Work for the Architect's Portion of the Project or evaluation thereof.

§ 3.1.3.2 The Architect shall be permitted to include contingencies for design, bidding and price escalation; to consult with the Design-Builder regarding materials, equipment, component systems and types of construction to be included in

the Contract Documents; to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work for the Architect's Portion of the Project. If at any time the Design-Builder's estimate of the Cost of the Work for the Architect's Portion of the Project exceeds the Design-Builder's budget for the Architect's Portion of the Project, the Architect shall make appropriate recommendations to the Design-Builder to adjust the Project's size, quality or budget and the Design-Builder shall cooperate with the Architect in making such adjustments. If an increase in the Contract Sum occurring after execution of the Contract between the Design-Builder and the Contractor causes the budget for the Cost of the Work for the Architect's Portion of the Project to be exceeded, that budget shall be increased accordingly and the Design-Builder shall cooperate with the Architect in making such adjustments.

§ 3.1.3.3 If the construction contract(s) for the Architect's Portion of the Project has(have) not been awarded within 90 days after the Architect submits the construction documents to the Design-Builder, the budget for the Cost of the Work for the Architect's Portion of the Project shall be adjusted to reflect changes in the general level of prices in the construction industry.

§ 3.1.3.4 If the budget for the Cost of the Work for the Architect's Portion of the Project is exceeded by the lowest bona fide bid or negotiated proposal, the Design-Builder shall

- .1 give written approval of an increase in the budget for the Cost of the Work for the Architect's Portion of the Project;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 3.7.5; or
- .4 cooperate in revising the Project scope and quality as required to reduce the Cost of the Work for the Architect's Portion of the Project.

§ 3.1.3.5 If the Design-Builder chooses to proceed under Section 3.1.3.4.4, the Architect, without additional compensation, shall modify the documents for which the Architect is responsible under this Agreement as directed by the Design-Builder to comply with the budget for the Cost of the Work for the Architect's Portion of the Project. The modification of such documents shall be the limit of the Architect's responsibility under this Section 3.1.3 and the Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not construction is commenced.

## § 3.2 Instruments of Service

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

§ 3.2.2 Upon execution of this Agreement, the Architect grants to the Design-Builder a nonexclusive license to reproduce the Architect's Instruments of Service solely for purposes of constructing, using and maintaining the Project, provided that the Design-Builder shall comply with all obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. Except as provided in Sections 3.2.3 and 3.2.4, termination of this Agreement prior to completion of the Architect's services to be performed under this Agreement shall terminate this license.

§ 3.2.3 In the event that this Agreement is terminated prior to completion of the Architect's services, the license provided in Section 3.2.2 shall terminate, the Design-Builder shall not make further reproductions of Instruments of Service and the Design-Builder shall return to the Architect within seven (7) days of termination all originals and reproductions in the Design-Builder's possession or control, except as follows:

§ 3.2.3.1 In the event the Design-Builder terminates the Architect for cause pursuant to Section 3.7.4, the foregoing license shall be deemed terminated and replaced by a second, nonexclusive license permitting the Design-Builder to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using and maintaining the Project.

§ 3.2.3.2 In the event the Architect terminates the Design-Builder for cause pursuant to Sections 3.7.1 or 3.7.4, the Architect shall assign the license provided under Section 3.2.2 to the Owner in accordance with the same conditions stated in Section 3.2.4 of this Agreement.

§ 3.2.4 If the agreement between the Owner and Design-Builder is terminated for any reason other than the default of the Owner, the Architect shall convey and shall require its consultants to convey to the Owner a nonexclusive license to use the Architect's Instruments of Service for the completion, use and maintenance of the Project, conditioned upon (1) payment to the Architect of all amounts due to the Architect and the Architect's consultants, and (2) the Architect's receipt of the Owner's written notice to the Architect of the Owner's assumption of the Design-Builder's duties and obligations under this Agreement; or if the Owner fails to provide such written notice, (1) payment to the Architect of all amounts due to the Architect and the Architect's consultants, and (2) the Architect's receipt of the Owner's written agreement to indemnify and hold harmless the Architect and the Architect's consultants from all claims, as well as any expense, including legal fees, which the Architect and its consultants may thereafter incur by reason of the Owner's use of such Instruments of Service. The Architect shall incorporate the requirements of this Section 3.2.4 in all agreements with its consultants.

§ 3.2.5 Except for the licenses granted in Section 3.2.2, no other license or right shall be deemed granted or implied under this Agreement. The Design-Builder shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. However, subject to the Design-Builder's compliance with its obligations under this Agreement, the Design-Builder shall be permitted to authorize the Design-Builder's other consultants, Contractor, subcontractors, sub-subcontractors and material or equipment suppliers to reproduce applicable portions of the Instruments of Service for the following purposes: performing services; executing Work; and coordinating services with those of the Architect by license granted in Section 3.2.2. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants. The Design-Builder shall not use the Instruments of Service for future additions or alterations to this Project or for other projects, unless the Design-Builder obtains the prior written agreement of the Architect and the Architect's consultants. Any unauthorized use of the Instruments of Service shall be at the Design-Builder's sole risk and without liability to the Architect and the Architect's consultants. The Design-Builder's license to reproduce and use the Architect's and Architect's consultants' Instruments of Service may be assigned by the Design-Builder to the Owner in connection with the Owner's use and maintenance of the Project.

§ 3.2.6 Prior to the Architect providing to the Design-Builder any Instruments of Service in electronic form or the Design-Builder providing to the Architect any electronic data for incorporation into the Instruments of Service, the Design-Builder and the Architect shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement and, if appropriate, adjustments in the Architect's compensation and schedule for performance of the Architect's services.

### § 3.3 Change in Services

§ 3.3.1 Change in Services of the Architect, including services required of the Architect's consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the Architect's control, or if the Architect's services are affected as described in Section 3.3.2. In the absence of mutual agreement in writing, the Architect shall notify the Design-Builder prior to providing such services. If the Design-Builder deems that all or a part of such Change in Services is not required, the Design-Builder shall give prompt written notice to the Architect, and the Architect shall have no obligation to provide those services. Except for a change due solely to the fault of the Architect, any Change in Services of the Architect shall entitle the Architect to an adjustment in compensation pursuant to Section 5.2, and to any Reimbursable Expenses described in Section 3.8.2 and Section 5.5.

§ 3.3.2 If any of the following circumstances affect the Architect's services for the Project, the Architect shall be entitled to an appropriate adjustment in the Architect's schedule and compensation:

- .1 Change in the instructions or approvals given by the Design-Builder that necessitate (1) revisions in Instruments of Service, (2) changes to services previously performed, (3) changes in the manner of preparing Instruments of Service, or (4) changes to the performance of services not yet performed;
- .2 Enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;
- .3 Decisions of the Owner, Design-Builder or others not rendered in a timely manner;
- .4 Significant change in the Project including, but not limited to, size, quality, complexity, the Design-Builder's schedule or budget, or procurement method;

- .5 Failure of performance on the part of the Design-Builder or the Design-Builder's consultants or contractors;
- .6 Preparation for and attendance at a public meeting or hearing, a dispute resolution proceeding or a legal proceeding, except where the Architect is party thereto; or
- .7 Change in the information referred in Article 1.

### § 3.4 DISPUTE RESOLUTION

§ 3.4.1 If the parties do not resolve their dispute through mediation pursuant to Section 3.4.2, the method of binding dispute resolution shall be the following:

*(If the parties do not select a method of binding dispute resolution, then the method of binding dispute resolution shall be by litigation in a court of competent jurisdiction.) (Check one.)*

- Arbitration pursuant to Section 3.4.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

### § 3.4.2 Mediation

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

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

§ 3.4.2.3 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.

### § 3.4.3 Arbitration

§ 3.4.3.1 Claims, disputes and other matters in question between the parties arising out of or related to this Agreement that are not resolved by mediation and which are subject to arbitration pursuant to Section 3.4.1 shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.

§ 3.4.3.2 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 statute of limitations.

§ 3.4.3.3 An arbitration pursuant to this Section 3.4.3 may be joined with an arbitration involving common issues of law or fact between the Design-Builder or Architect and any person or entity with whom the Design-Builder or Architect has a contractual obligation to arbitrate disputes which does not prohibit consolidation or joinder. No other arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder, or in any other manner, an additional person or entity not a party to this Agreement or not a party to an agreement with the Design-Builder or Architect,

except by written consent containing a specific reference to this Agreement signed by the Architect, the Design-Builder and any other person or entities 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.

§ 3.4.3.4 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.

### § 3.5 Claims for Consequential Damages

The Design-Builder and the Architect waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Section 3.7.

### § 3.6 Miscellaneous Provisions

§ 3.6.1 This Agreement shall be governed by the law of the Project's location, unless otherwise provided in Section 4.2.

§ 3.6.2 Unless otherwise noted, terms not defined in this Agreement shall have the same meaning as those in AIA Document A142-2004, Exhibit A, Terms and Conditions. Modifications to those definitions in A142-2004 executed by the Design-Builder and Contractor shall be enforceable under this Agreement only to the extent that they are consistent with this Agreement or approved in writing by the Architect.

§ 3.6.3 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 of the Architect's Portion of the Project for acts or failures to act occurring prior to Substantial Completion of the Architect's Portion of the Project or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion of the Architect's Portion of the Project or a portion thereof. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.

§ 3.6.4 To the extent damages are covered by property insurance during construction, the Design-Builder and the Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A141-2004, Exhibit A, Terms and Conditions. The Design-Builder 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.

§ 3.6.5 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 Design-Builder or Architect.

§ 3.6.7 The Architect shall have the right to include photographic or artistic representations 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 or Design-Builder's confidential or proprietary information if the Design-Builder has previously advised the Architect in writing of the specific information considered by the Owner or Design-Builder to be confidential or proprietary. The Design-Builder shall provide professional credit to the Architect in the Design-Builder's promotional materials for the Project.

§ 3.6.9 The Design-Builder and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Design-Builder nor the Architect shall assign this Agreement without the written consent of the other. In the event the Owner assigns the Agreement between the Owner and the Design-Builder to an institutional lender providing financing for the Project, and the lender assumes the Owner's rights and obligations under the Agreement between the Owner and the Design-Builder, the Architect shall execute all reasonable consents facilitating such assignment, conditioned upon the Architect's receipt of all amounts due as provided in this Agreement.



### § 3.7 Termination or Suspension

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

§ 3.7.2 If the Project is suspended or the Architect's services are suspended by the Design-Builder, the Architect shall be compensated for services performed prior to such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

- .1 Failure to provide services with promptness and diligence in accordance with any schedule agreed to by the Design-Builder and Architect;
- .2 Failure to provide appropriately qualified design professionals;
- .3 Failure to comply with legal, regulatory and code requirements; or
- .4 Failure substantially to perform this Agreement.

§ 3.7.5 This Agreement may be terminated by the Design-Builder upon not less than seven days' written notice to the Architect for the Design-Builder's convenience and without cause.

§ 3.7.6 In the event of termination not solely 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 Section 3.7.7.

§ 3.7.7 Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

### § 3.8 Payments to the Architect

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

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

- .1 Transportation in connection with the Project, authorized out-of-town travel and subsistence, and electronic communications;
- .2 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 Reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service;
- .4 Expense of overtime work requiring higher than regular rates if authorized in advance by the Design-Builder;
- .5 Renderings, models and mock-ups requested by the Design-Builder;
- .6 Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Design-Builder in excess of that normally carried by the Architect and the Architect's consultants;
- .7 Reimbursable Expenses as designated in Section 5.5; and
- .8 Other similar direct Project-related expenditures.

§ 3.8.3 Records of Reimbursable Expenses, of expenses pertaining to a Change in Services, and of services performed on the basis of hourly rates or a multiple of Direct Personnel Expense shall be available to the Design-Builder at mutually convenient times.

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

#### ARTICLE 4 SCOPE OF AGREEMENT

§ 4.1 This Agreement represents the entire and integrated agreement between the Design-Builder 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 Design-Builder and Architect. This Agreement is comprised of the documents listed below:

- .1 AIA Document B143–2004, Standard Form of Agreement Between Design-Builder and Architect
- .2 AIA Document B143–2004, Exhibit A, Initial Information, or as follows:  
*(List other documents, if any, delineating initial information upon which this Agreement is based and attach to this Agreement as Exhibit A.)*
  
- .3 AIA Document B143–2004, Exhibit B, Architect's Services, or as follows:  
*(List other documents, if any, delineating Architect's scope of services and attach to this Agreement as Exhibit B.)*
  
- .4 Other documents, as follows:  
*(List other documents, if any, forming part of the Agreement.)*

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

#### ARTICLE 5 COMPENSATION

§ 5.1 For the Architect's services under this Agreement, compensation shall be computed as follows:

*(Insert amount and/or basis of determining each component of compensation, including, where applicable, rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required; provide details regarding participation in shared savings, bonuses or other incentive provisions, if any.)*

§ 5.2 For a Change in Services as described in Section 3.3, the Architect's compensation shall be adjusted as described below or, if no method of adjustment is indicated in this Section 5.2, in an equitable manner.  
*(Insert basis of adjustment, including rates and multiples of Direct Personnel Expense for Principals and employees, and identify Principals and classify employees, if required. Identify specific services to which particular methods of compensation apply.)*

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

§ 5.4 For Reimbursable Expenses as described in Section 3.8.2, and any other items included in Section 5.5 as Reimbursable Expenses, compensation shall be computed as a multiple of ( ) times the expenses incurred by the Architect and the Architect's employees and consultants.

§ 5.5 Other Reimbursable Expenses, if any, are as follows:

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

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

§ 5.8 Payments are due and payable ( ) days from the date of the Architect's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect. No amounts shall be withheld as retainage from payments due.  
*(Insert rate of interest agreed upon.)*

*(Usury laws and requirements under the Federal truth in Lending Act, similar state and local consumer credit laws and other regulations at the Design-Builder'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.)*

§ 5.9 If the services covered by this Agreement have not been completed by through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Section 5.2.

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

\_\_\_\_\_  
DESIGN-BUILDER *(Signature)*

\_\_\_\_\_  
ARCHITECT *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*

**CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.**

Sample