



AIA[®] Document C441[™] – 2008

Standard Form of Agreement Between Architect and Consultant for a Design-Build Project

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

BETWEEN the Architect:
(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's Consultant (hereinafter, the Consultant):
(Name, legal status, address and other information)

Consultant's discipline:

Consultant's Designated Representative:
(Name, address and other information)

The Architect has made an agreement, hereinafter known as the Prime Agreement, with the Architect's client identified as the Design-Builder:
(Name, legal status, address and other information)

dated:
(In words, indicate month, day and year of the Prime Agreement.)

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

The Architect and Consultant agree as follows.

Init.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 A copy of the Architect's agreement with the Design-Builder, known as the Prime Agreement (from which compensation amounts may be deleted), is attached as Exhibit A and is made a part of this Agreement.

§ 1.2 The portion of the Project for which the Consultant shall provide services is hereinafter called This Portion of the Project. Except as set forth herein, the Consultant shall not have any duties or responsibilities for any other portion of the Project. This Portion of the Project consists of the following:
(Fully describe the Portion of the Project for which the Consultant shall provide the services set forth in Article 3.)

§ 1.3 To the extent that the provisions of the Prime Agreement apply to This Portion of the Project, the Architect shall assume toward the Consultant all obligations and responsibilities that the Design-Builder assumes toward the Architect, and the Consultant shall assume toward the Architect all obligations and responsibilities that the Architect assumes toward the Design-Builder. Insofar as applicable to this Agreement, the Architect shall have the benefit of all rights, remedies and redress against the Consultant that the Design-Builder, under the Prime Agreement, has against the Architect, and the Consultant shall have the benefit of all rights, remedies and redress against the Architect that the Architect, under the Prime Agreement, has against the Design-Builder. Where a provision of the Prime Agreement is inconsistent with a provision of this Agreement, this Agreement shall govern.

§ 1.4 The Consultant is an independent contractor for This Portion of the Project. The Consultant is responsible for methods and means used in performing its services under this Agreement, and is not an employee, agent or partner of the Architect. The Architect shall not be responsible for the acts or omissions of the Consultant.

§ 1.5 Except as authorized by the Architect, all communications between the Consultant and the Design-BUILDER, Contractor or other consultants for the Project shall be forwarded through the Architect. The Architect shall be the administrator of the professional services for the Project, and shall facilitate the exchange of information among the Design-BUILDER, Consultant and other consultants as necessary for the coordination of This Portion of the Project.

§ 1.6 If applicable, the Architect and Consultant agree to share professional credit for the Project as follows:

§ 1.7 The other consultants to be retained by the Architect are as follows:
(List disciplines and, if known, names, addresses and other information.)

§ 1.8 The subconsultants to be retained by the Consultant are as follows:
(List disciplines and, if known, names, addresses and other information.)

ARTICLE 2 CONSULTANT'S RESPONSIBILITIES

§ 2.1 The Consultant shall perform its services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project.

§ 2.2 The Consultant shall identify a representative authorized to act on behalf of the Consultant with respect to This Portion of the Project, and key personnel who will perform the Consultant's services. The Consultant shall not replace its identified representative or key personnel without the Architect's approval, which shall not unreasonably be withheld.

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

§ 2.4 The Consultant shall coordinate its services with those of the Architect and other consultants in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's or other consultants' services. The Consultant shall coordinate all aspects of its design of the Work for This Portion of the Project with the Work designed by the Architect and other consultants, as necessary for the proper coordination of the Project.

§ 2.5 The Consultant shall provide copies of drawings, reports, specifications and other necessary information to the Architect and other consultants in the format the Architect requires.

§ 2.6 The Consultant shall not be responsible for the acts or omissions of the Architect, Architect's other consultants, Design-BUILDER, Contractor, Subcontractors, their agents or employees, or other persons performing any of the Work. The Consultant shall provide prompt written notice to the Architect if the Consultant becomes aware of any errors, omissions or inconsistencies in the services or information provided by the Architect or other consultants.

§ 2.7 The Consultant shall submit for the Architect's approval a schedule for the performance of the Consultant's services consistent with the requirements of the Prime Agreement, which may be adjusted as the Project proceeds. The Consultant's schedule shall allow reasonable time for the Architect and other consultants to review the Consultant's submittals. Once approved by the Architect, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Consultant or Architect.

§ 2.8 The Consultant shall maintain the following insurance for the duration of this Agreement:
(Identify types and limits of insurance coverage, deductible amounts, and other insurance requirements applicable to the Agreement, if any.)

- .1 General Liability

- .2 Automobile Liability

- .3 Workers' Compensation

- .4 Professional Liability

ARTICLE 3 SCOPE OF CONSULTANT'S SERVICES

§ 3.1 The Consultant shall provide the Architect with the same professional services for This Portion of the Project as the Architect is required to provide to the Design-Builder under the Prime Agreement, unless otherwise described below:
(Set forth, in detail, any variations to, or limitations on, the professional services designated in the Prime Agreement affecting the Consultant's services under this Agreement.)

§ 3.1.1 The Consultant shall ascertain the requirements for This Portion of the Project and shall confirm such requirements to the Architect.

§ 3.1.2 If required in the jurisdiction where the Project is located, the Consultant shall be licensed to perform the services described in this Section 3.1, or shall cause such services to be performed by appropriately licensed design professionals.

§ 3.1.3 Upon request of the Architect, the Consultant shall furnish to the Architect, with reasonable promptness, interpretations of the Contract Documents prepared by the Consultant.

§ 3.1.4 The Consultant shall, within time limits agreed upon or otherwise with reasonable promptness, render written recommendations on claims, disputes and other matters in question between the Design-Builder and Contractor relating to the execution or progress of This Portion of the Project as provided by the Contract Documents.

§ 3.1.5 If the Architect is authorized to reject Work in the Prime Agreement, the Consultant shall assist the Architect in determining whether the Architect shall reject Work for This Portion of the Project which does not conform to the Contract Documents or whether additional inspection or testing is required.

ARTICLE 4 CHANGE IN SERVICES

§ 4.1 A Change in Services may be provided after execution of this Agreement without invalidating the Agreement. Upon recognizing the need to perform a Change in Services that may arise as the Project proceeds, the Consultant shall notify the Architect. The Consultant, however, shall not proceed to provide such services until the Consultant receives the Architect's written authorization. Except for services due to the fault of the Consultant, a Change in Services provided in accordance with this Section 4.1 shall entitle the Consultant to compensation pursuant to Section 11.2.

§ 4.2 The Consultant shall provide () site visits during construction of the Project. When this number is reached, the Consultant shall notify the Architect. The Consultant shall conduct site visits in excess of that number as a Change in Services.

ARTICLE 5 ARCHITECT'S RESPONSIBILITIES

§ 5.1 The Architect shall provide available information in a timely manner regarding requirements for and limitations on This Portion of the Project. Within seven days after receipt of a written request, the Architect shall request information from the Design-Builder as necessary and relevant for the Consultant to evaluate, give notice of or enforce lien rights. Within seven days of receipt of such information from the Design-Builder, the Architect shall furnish the information to the Consultant.

§ 5.2 The Architect shall identify a representative authorized to act on the Architect's behalf with respect to This Portion of the Project. The Architect or such identified representative shall render decisions in a timely manner pertaining to documents submitted by the Consultant in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's services. The Architect shall not replace its identified representative without the approval of the Consultant, which shall not unreasonably be withheld.

§ 5.3 On the Consultant's request for This Portion of the Project, the Architect shall furnish to the Consultant, in a timely manner, (1) detailed layouts showing the location of connections, and (2) tabulations giving sizes, loads and other information on equipment designed, specified or furnished by others for design and coordination of This Portion of the Project.

§ 5.4 The Architect shall confer with the Consultant before issuing interpretations or clarifications of documents prepared by the Consultant and shall request the recommendation of the Consultant before providing interpretations or clarifications of shop drawings, product data, samples or other submissions of the Contractor, or upon Change Orders and Construction Change Directives affecting This Portion of the Project.

§ 5.5 The Architect shall furnish to the Consultant a copy of the preliminary estimate or updated estimates of Cost of the Work as submitted to the Design-Builder, bidding documents, bid tabulations, negotiated proposals and Contract Documents, including, to the extent they pertain to This Portion of the Project, Change Orders and Construction Change Directives for the Consultant's use in the design and coordination of This Portion of the Project.

§ 5.6 The Architect shall advise the Consultant of the identity of other consultants participating in the Architect's Portion of the Project and the scope of their services.

§ 5.7 If the Consultant reasonably requests information from investigations, surveys, tests, analyses and reports, or the services of other consultants not within the scope of the Consultant's services, the Architect shall request that the Design-Builder furnish the information or services.

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

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work for the Architect's Portion of the Project is defined as set forth in AIA Document B143™-2004, Standard Form of Agreement Between Design-Builder and Architect, in Section 3.1.

§ 6.2 When the Project requirements have been sufficiently identified, and if the Architect is obligated to perform budget evaluation or cost-estimating services pursuant to the Prime Agreement, the Consultant shall prepare and submit to the Architect an estimate of Cost of the Work for This Portion of the Project. The Consultant shall update the estimate for This Portion of the Project as required by the Prime Agreement.

§ 6.3 If at any time the estimate for the Cost of the Work for the Architect's Portion of the Project exceeds the Owner's budget, the Consultant shall make appropriate recommendations to the Architect to adjust the Project's size, quality or budget related to This Portion of the Project. Additionally, the Consultant shall cooperate with the Architect and the Architect's other consultants in redesigning the Work for This Portion of the Project to comply with the budget for the Cost of the Work for the Architect's Portion of the Project.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 Upon execution of this Agreement, the Consultant grants to the Architect a license to use the Consultant's Instruments of Service in the same manner and to the same extent as the Architect has granted a license to the Design-Builder in the Prime Agreement.

§ 7.2 The Architect and the Consultant shall not make changes in each other's Instruments of Service without written permission of the other party.

§ 7.3 The Consultant shall maintain on file and make available to the Architect design calculations for This Portion of the Project, and shall furnish copies thereof to the Architect on request.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 Subject to Section 8.2, any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to the same dispute resolution provisions as set forth in the Prime Agreement. If such matter relates to or is the subject of a lien arising out of the Consultant's services, the Consultant may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter under the dispute resolution provisions set forth in the Prime Agreement.

§ 8.2 If the claim, dispute or other matter in question arising out of or related to this Agreement is unrelated to a dispute between the Architect and Design-Builder, or if the Consultant is legally precluded from being a party to the dispute resolution procedures set forth in the Prime Agreement, then claims, disputes or other matters in question shall be resolved in accordance with this Section 8.2. Any such claim, dispute or matter in question shall be subject to mediation as a condition precedent to binding dispute resolution. Mediation shall be conducted as set forth in AIA Document B143-2004 in Section 3.4.2. When applying those provisions to this Agreement, "Consultant" shall be substituted for "Architect." If the parties do not resolve a claim, dispute or matter in question through mediation, 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 the terms and conditions set forth in Section 3.4.3 of AIA Document 143-2004. When applying those provisions to this Agreement, "Architect" shall be substituted for "Design-Builder" and "Consultant" shall be substituted for "Architect."
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

§ 8.3 The Consultant shall indemnify and hold the Architect and the Architect's officers and employees 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 caused by the negligent acts or omissions of the Consultant, its employees and its consultants in the performance of professional services under this Agreement.

§ 8.4 The Architect shall indemnify and hold the Consultant and the Consultant's officers and employees 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 caused by the negligent acts or omissions of the Architect, its employees and its other consultants in the performance of professional services under this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 Except as otherwise provided below, the Architect may terminate this Agreement or suspend the Consultant's services pursuant to the same terms and conditions under which the Design-Builder may terminate the Prime Agreement or suspend the Architect's services under the Prime Agreement. Additionally, the Consultant may terminate this Agreement or suspend its services pursuant to the same terms and conditions under which the Architect may terminate the Prime Agreement or suspend its services under the Prime Agreement.

§ 9.2 Either party may terminate this Agreement at such time as the Prime Agreement is terminated. The Architect shall promptly notify the Consultant of such termination.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law provided in the Prime Agreement. If the parties have selected arbitration as the method of binding dispute resolution in Section 8.2, the Federal Arbitration Act shall govern the arbitration set forth in Section 3.4.3 of AIA Document B143–2004.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document B143–2004, Standard Form of Agreement Between Design-Builder and Architect.

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

§ 10.4 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 Architect or Consultant.

§ 10.5 Unless otherwise required in this Agreement, the Architect and Consultant 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.

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

ARTICLE 11 COMPENSATION

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

(Insert amount of, or basis for, compensation.)

§ 11.2 For a Change in Services that may arise during the course of the Project, the Architect shall compensate the Consultant as follows:

(Insert amount of, or basis for, compensation.)

§ 11.3 Compensation for a Change in Services of the Consultant's subconsultants when not included in Section 11.2, shall be the amount invoiced to the Consultant plus _____ percent (_____ %), or as otherwise stated below:

§ 11.4 The hourly billing rates for services of the Consultant and the Consultant's subconsultants, if any, are set forth below. The rates shall be adjusted in accordance with the Consultant's and Consultant's subconsultants' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category

Rate

§ 11.5 Compensation for Reimbursable Expenses

The Architect shall reimburse the Consultant for the Reimbursable Expenses necessarily incurred by the Consultant or the Consultant's employees directly relating to the Project and listed in the Prime Agreement. Reimbursable Expenses are in addition to compensation for the Consultant's services.

§ 11.6 Payments to the Consultant

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

§ 11.6.2 Payments to the Consultant shall be made promptly after the Architect is paid by the Design-Builder under the Prime Agreement. The Architect shall exert reasonable and diligent efforts to collect prompt payment from the Design-Builder. The Architect shall pay the Consultant in proportion to amounts received from the Design-Builder which are attributable to the Consultant's services rendered and Reimbursable Expenses incurred.

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 Architect and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Architect and Consultant.

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

- .1 AIA Document C441™–2008, Standard Form Agreement Between Architect and Consultant for a Design-Build Project
- .2 Prime Agreement attached as Exhibit A
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

- .4 Other documents:

(List other documents, if any, including additional scopes of service forming part of the Agreement.)

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

ARCHITECT *(Signature)*

CONSULTANT *(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