

DRAFT AIA® Document C403™ – 2021

Standard Form of Agreement Between Client and Consultant for Design Assist Services

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

BETWEEN the Client:
(Name, legal status, address, role on Project, and other information)

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

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Consultant's trade or discipline:

« »

The Client has made an agreement, hereinafter known as the Prime Contract, dated:
(In words, indicate month, day, and year of the Prime Contract.)

« »

with the following Project Participant:
(Name, legal status, address, and other information)

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

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The Client and Consultant agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Client and the Consultant enter into this Agreement to establish the responsibilities of the Parties, and terms and conditions under which the Consultant shall provide Design Assist Services to the Client for the Project.

§ 1.2 The Client and the Consultant agree to contribute their knowledge, skills, and services toward the Design Assist Services, and to work together, and with other Project Participants, for the purposes identified in this Agreement.

§ 1.3 Definitions

§ 1.3.1 Design Assist Services. Design Assist Services include all services performed by the Consultant under this Agreement.

§ 1.3.2 Deliverables. Deliverables include Instruments of Service and other information or documentation that the Consultant is obligated to submit to the Client under this Agreement.

§ 1.3.3 Preconstruction Submissions. Preconstruction Submissions include Instruments of Service and other information or documentation that the Client is obligated to submit to one or more Project Participants to assist with the design of the Project.

§ 1.3.4 Project Participants. Project Participants are entities who design or perform services to assist with the design of the Project. Project Participants may include the Owner and its consultants, the Architect and its consultants, the Construction Manager, Contractor, Subcontractors, or suppliers.

§ 1.4 The terms of the Prime Contract are not incorporated in this Agreement, except for the following provisions of the Prime Contract that apply to the Design Assist Services:

(List the provisions of the Prime Contract that apply to the Design Assist Services.)

« »

A copy of the Prime Contract is attached as Exhibit A.

§ 1.5 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 1.5.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.6 The Client identifies the following representative in accordance with Section 5.4:
(List name, address, and other information.)

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§ 1.7 The Consultant identifies the following representative in accordance with Section 2.14:
(List name, address, and other information.)

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ARTICLE 2 CONSULTANT'S RESPONSIBILITIES

§ 2.1 The Consultant shall be licensed, if required in the jurisdiction where the Project is located.

§ 2.2 The Consultant shall exercise reasonable care in performing its Design Assist Services.

§ 2.3 As soon as practicable after the date of this Agreement, the Consultant shall submit, for the Client's review and approval, a schedule for the performance of the Consultant's obligations under this Agreement. Once approved, the Client shall incorporate the approved schedule into the schedule the Client prepares in accordance with Section 5.1.

§ 2.4 The Consultant shall perform its services in coordination with the Client and other Project Participants in order to avoid unreasonable delay in the orderly and sequential progress of the services provided by the Client and other Project Participants.

§ 2.5 The Consultant shall review documents and information furnished by the Client, and furnished by other Project Participants through the Client, that relate to the Design Assist Services and provide prompt written notice to the Client if the Consultant observes or otherwise becomes aware of any errors, omissions, or inconsistencies between such documents and information and the Design Assist Services. The Consultant is not required to ascertain that the documents or information are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Consultant shall promptly report in writing to the Client any nonconformity discovered by or made known to Consultant.

§ 2.6 The Consultant shall review laws, codes, and regulations applicable to the Consultant's services.

§ 2.7 The Consultant shall provide Deliverables to the Client in accordance with the protocols established pursuant to Section 1.5 or, in the absence of such protocols, in the format the Client reasonably requires.

§ 2.8 If the Consultant is notified of, or becomes aware of, any changes in the Instruments of Service prepared by other Project Participants, the Consultant shall review the changes to determine if they affect the Design Assist Services. If

the changes affect the Design Assist Services, the Consultant shall review the changes with the Client and, where appropriate, accommodate such changes in the Deliverables. If the Consultant requests an adjustment to time or compensation, the Consultant shall request the Client's written authorization in accordance with Article 4.

§ 2.9 The Consultant shall recommend to the Client any appropriate investigations, surveys, tests, analyses, reports, and services of other consultants that should be obtained for the proper execution of the Design Assist Services.

§ 2.10 The Consultant shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of documents, services, and information furnished by the Client and other Project Participants.

§ 2.11 The Consultant shall request that the Client provide any additional information necessary for the Consultant to comply with its obligations under this Agreement.

§ 2.12 If requested by the Client, the Consultant shall participate in discussions, meetings, and other communications with the other Project Participants. The Consultant shall not communicate directly with, or submit any information directly to, other Project Participants without the written consent of the Client.

§ 2.13 If the Client is obligated to provide Preconstruction Submissions to one or more Project Participants pursuant to Section 5.8, and provides those Preconstruction Submissions to the Consultant, the Consultant shall review the Preconstruction Submissions for the limited purpose of evaluating how the Deliverables or other Design Assist Services have been incorporated into the Preconstruction Submissions. Based on that review, the Consultant shall advise the Client of any errors or inconsistencies and provide other input, recommendations, and feedback on the Preconstruction Submissions, by the response date requested by the Client.

§ 2.14 The Consultant shall identify a representative authorized to act on behalf of the Consultant with respect to the Project.

§ 2.15 The Consultant is an independent contractor. The Consultant is responsible for methods and means used in performing the Design Assist Services and is not an employee, agent, or partner of the Client.

§ 2.16 The Consultant shall not be responsible for the acts or omissions of the Client or other Project Participants. The design professional of record for the Project retains control over the design and the responsibility to incorporate Consultant-provided information into the design and identify and resolve design conflicts.

§ 2.17 The Consultant shall maintain the following insurance:

(Select the types of insurance the Consultant is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

[☐] General Liability

☐ ☐

[☐] Automobile Liability

☐ ☐

[☐] Workers' Compensation

☐ ☐

[☐] Other

☐ ☐

§ 2.17.1 The Consultant shall provide to the Client certificates of insurance evidencing compliance with the requirements in this Section 2.17.

ARTICLE 3 SCOPE OF CONSULTANT'S SERVICES

The Consultant shall provide the Design Assist Services set forth below or as described in an exhibit attached to this Agreement.

(Specify the Consultant's Design Assist Services or identify the attached Exhibit that contains a description of the Consultant's Design Assist Services.)

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ARTICLE 4 ADDITIONAL SERVICES

Additional Services are services in addition to those required in Article 3. Additional Services may be provided after execution of this Agreement without invalidating the Agreement. Upon recognizing the need to perform Additional Services, the Consultant shall notify the Client. The Consultant shall not provide such services until the Consultant receives the Client's written authorization. The Client has no obligation to compensate the Consultant for any Additional Services performed without such written authorization. Except for services due to the fault of the Consultant, any Additional Services provided in accordance with this Section shall entitle the Consultant to compensation pursuant to Section 10.2.

ARTICLE 5 CLIENT'S RESPONSIBILITIES

§ 5.1 Upon receipt of the Consultant's schedule required in Section 2.3, the Client shall prepare and provide to the Consultant a schedule to establish the milestones for the Design Assist Services. The schedule shall include allowances for periods of time required for (a) the performance of the Consultant's obligations under this Agreement, (b) the Client's review of Deliverables submitted by the Consultant, (c) if required, incorporation of the Deliverables into the Preconstruction Submissions, and (d) if incorporated, review of the Preconstruction Submissions by the Consultant. The time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Client and Consultant.

§ 5.2 The Client shall provide available information in a timely manner regarding requirements for, and limitations on, the Design Assist Services.

§ 5.3 The Client and other Project Participants shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Consultant.

§ 5.4 The Client shall identify a representative authorized to act on the Client's behalf with respect to the Project.

§ 5.5 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, and necessary for the Consultant to adequately perform the Design Assist Services or produce the Deliverables, the Client shall furnish the information or services or request that the information or services be furnished by the Project Participant with whom the Client has made the Prime Contract.

§ 5.6 The Client shall promptly notify the Consultant regarding any changes in the design that may affect the Design Assist Services under this Agreement.

§ 5.7 The Client shall coordinate the Design Assist Services of the Consultant with the services furnished by the Client and other Project Participants.

§ 5.8 The Client shall determine whether, and to what extent, the Consultant's Design Assist Services shall be incorporated into the Preconstruction Submissions.

§ 5.9 Prior to the Client's submission of the Preconstruction Submissions to other Project Participants, the Client shall provide the Consultant with a reasonable opportunity to review the Preconstruction Submissions and a date by which the Consultant must respond.

§ 5.10 The Client shall review the Design Assist Services and Deliverables and provide prompt written notice to the Consultant if the Client observes or otherwise becomes aware of any errors, omissions, or inconsistencies in such services or Deliverables.

§ 5.11 Within seven days after receipt of a written request, the Client shall request information from the Project Participant with whom the Client has made the Prime Contract 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 Project Participant with whom the Client has made the Prime Contract, the Client shall furnish the information to the Consultant.

§ 5.12 The Client shall promptly, upon request of the Consultant, furnish a copy or permit a copy to be made of any bond covering payment of obligations arising under this Agreement.

ARTICLE 6 COPYRIGHTS AND LICENSES

§ 6.1 Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work prepared by the Client, the Consultant, or other Project Participants. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 6.2 The Client and the Consultant represent that in transmitting Instruments of Service or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use in connection with the Project.

§ 6.3 The Client, and its other consultants, and Consultant, and its sub consultants, shall be deemed the authors and owners of their respective Instruments of Service, and will retain all common law, statutory and other reserved rights, including copyrights. No party shall own or claim a copyright in the Instruments of Service of any other party. Submission or distribution by the Client in connection with the Preconstruction Submissions, or for other purposes in connection with this Project, shall not be construed as publication in derogation of the Consultant's or its subconsultants' reserved rights.

§ 6.4 The Consultant grants to the Client a limited, irrevocable, and nonexclusive license to use the Consultant's Instruments of Service solely and exclusively in connection with this Project. The Consultant shall obtain similar limited, irrevocable, and nonexclusive licenses from the Consultant's subconsultants consistent with this Agreement. The license granted under this Article 6 permits the Client to authorize its other consultants and other Project Participants to reproduce and, subject to Section 6.5, make changes, corrections, or additions to the Instruments of Service for the purpose of preparing the Preconstruction Submissions and for purposes of designing, constructing, using, maintaining, altering, and adding to the Project, provided that the Client substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 8 and Article 10. The Consultant shall obtain similar limited, irrevocable, and nonexclusive licenses from the Consultant's sub consultants consistent with this Agreement.

§ 6.5 If the Client alters or uses the Consultant's or its subconsultants' Instruments of Service without the Consultant's or its subconsultants' written authorization, the Client releases the Consultant and its subconsultants from all claims and causes of action arising from such alterations or uses. The Client, to the extent permitted by law, further agrees to indemnify and hold harmless the Consultant and its subconsultants 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 Client's unauthorized alteration or use of the Instruments of Service.

§ 6.6 Except for the licenses granted in this Article 6, no other license or right shall be deemed granted or implied under this Agreement and no permission is granted to the Client or other Project Participants to assign, delegate, sublicense, pledge, or otherwise transfer any license granted herein to another party without the prior written agreement of the Consultant. Any unauthorized use of the Instruments of Service shall be at the Client's or other Project Participant's, sole risk and without liability to the Consultant and its subconsultants.

§ 6.7 Except as otherwise stated in Section 6.5, the provisions of this Article 6 shall survive the termination of this Agreement.

ARTICLE 7 CLAIMS AND DISPUTES

§ 7.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be resolved by the following method of binding dispute resolution:

(Check the appropriate box.)

☐ Arbitration, pursuant to the terms and conditions set forth in Section 7.2

☐ Litigation in a court of competent jurisdiction

☐ Other: (Specify)

« »

If the Client and Consultant do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved by litigation in a court of competent jurisdiction.

§ 7.2 Arbitration

§ 7.2.1 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 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.

§ 7.2.1.1 A demand for arbitration shall not 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.

§ 7.2.2 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.

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

§ 7.2.4 Consolidation or Joinder

§ 7.2.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 7.2.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. 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.

§ 7.2.4.3 The Client and Consultant grant to any person or entity made a party to an arbitration conducted under this Section 7.2.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Client and Consultant under this Agreement.

§ 7.3 Claims for Consequential Damages

The Client and Consultant waive all claims for consequential damages 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.

ARTICLE 8 TERMINATION OR SUSPENSION

§ 8.1 If the Prime Contract is terminated or suspended, then the Client may terminate or suspend, respectively, this Agreement. The Client shall promptly notify the Consultant of such termination or suspension in writing.

§ 8.2 This Agreement shall terminate when the first of the following events occurs:

- .1 Mutual agreement of the Client and Consultant to terminate this Agreement;
- .2 The expiration of one (1) year from the submission of the last Deliverable under this Agreement or such date as may be mutually agreed upon in writing by the Client and Consultant; or
- .3 Written notice from the Client to the Consultant that the Project Participant with whom the Client has made the Prime Contract that the Consultant is not acceptable to perform the Design Assist Services.

§ 8.3 Either the Client or Consultant may, upon seven (7) days' written notice, terminate this Agreement upon the occurrence of one of the following events:

- .1 the Prime Contract is amended to substantially change the scope, budget, or schedule for the Project as they pertain to the Design Assist Services; or
- .2 the other party fails substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 8.4 The Client may terminate this Agreement upon not less than seven (7) days' written notice to the Consultant for the Client's convenience and without cause.

§ 8.5 If the Client terminates this Agreement for its convenience pursuant to Section 8.4, the Client shall compensate the Consultant for services performed prior to termination, together with Reimbursable Expenses then due.

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 Unless otherwise provided, this Agreement shall be governed by the law of the place where the Project is located.

§ 9.2 Unless otherwise defined in this Agreement, terms in this Agreement shall have the same meaning as those in AIA Document A201®–2017, General Conditions of the Contract for Construction.

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

§ 9.4 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 Client or Consultant.

§ 9.5 Unless otherwise required in this Agreement, the Client 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.

§ 9.6 If the Consultant or Client receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 9.6.1.

§ 9.6.1 The receiving party may disclose "confidential" or "business proprietary" information after seven (7) days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively

for the Project, provided those employees, consultants, and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 9.6.

§ 9.7 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case, the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 10 COMPENSATION

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

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

« »

§ 10.2 For Additional Services that may arise during the term of this Agreement, the Client shall compensate the Consultant as follows:

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

« »

§ 10.3 Compensation for Reimbursable Expenses

The Client shall reimburse the Consultant for the Reimbursable Expenses necessarily incurred by the Consultant or the Consultant's employees directly relating to the Project and specified below plus « » percent (« » %) of the expenses incurred. Reimbursable Expenses are in addition to compensation for the Consultant's Services and Additional Services.

(List expenses to be reimbursed.)

« »

§ 10.4 Payments to the Consultant

§ 10.4.1 The Consultant shall submit invoices for services and Reimbursable Expenses. The Client shall review such invoices and, if they are considered incorrect or untimely, the Client shall, within ten (10) days from receipt of the Consultant's billing, review the matter with the Consultant and confirm, in writing to the Consultant, the Client's understanding of the disposition of the issue.

§ 10.4.2 Payments to the Consultant shall be made promptly after the Client is paid by the Project Participant pursuant to the Prime Contract. The Client shall exert reasonable and diligent efforts to collect prompt payment under the Prime Contract. The Client shall pay the Consultant in proportion to the amounts received from the Project Participant which are attributable to the Consultant's services rendered and Reimbursable Expenses incurred.

ARTICLE 11 SPECIAL TERMS AND CONDITIONS

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

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ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Client 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 Client and Consultant.

§ 12.2 This Agreement is comprised of the following documents:

- .1 AIA Document C403™-2021, Standard Form Agreement Between Client and Consultant for Design Assist Services

- .2 Prime Contract between the Project Participant and Client including all applicable exhibits thereto, attached as Exhibit A (limited to the provisions of the Prime Contract that apply to the Consultant's services)
- .3 Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement)

« »

- .4 Other documents:
(List other documents, if any, forming part of the Agreement.)

« »

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

CLIENT (Signature)

« »« »

(Printed name and title)

CONSULTANT (Signature)

« »« »

(Printed name and title)