

DRAFT AIA[®] Document B102[™] - 2007

Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services

This AIA Document B102-2007 has been revised with 2008 Arizona Modifications and approved by the Arizona Attorney General's Office.

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

BETWEEN the Owner:
(Name, address and other information)

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

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

«Re-Test of Templates»

The Owner and Architect 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 ARCHITECT'S RESPONSIBILITIES

§ 1.1 The services performed by the Architect, Architect's employees, and Architect's consultants shall be as enumerated in Exhibit B.

§ 1.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval, a schedule for the performance of the Architect's services which initially shall be consistent with the time periods established in AIA Document B201-2007, Exhibit A, Initial Information and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

§ 1.3 The Architect's Designated Representative in AIA Document B201-2007, Exhibit A shall be authorized to act on the Architect's behalf with respect to the Project

§ 1.4 The Architect shall maintain the confidentiality of all Owner information 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 of the Architect's consultant similar agreements to maintain the confidentiality of information. The Architect shall not divulge information concerning this project to anyone (including, without limitation, information in applications for permits, variances, etc.) without the Owner's prior written consent, which shall not be unreasonably withheld. The Owner reserves the right to release all information as well as to time its release, form and content. This requirement shall survive the expiration of the Contract.

§ 1.5 Except with the Owner'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 this Project.

§ 1.6 The Architect shall review laws, codes and regulations applicable to the Architect's services. In designing the Project and preparing the Construction Documents, the Architect shall design the Work in compliance with applicable laws, codes and generally accepted engineering and design standards. Local codes shall be applicable and local inspection requirements shall be satisfied as required by A.R.S. § 34-461. If no local or State codes apply the latest edition of International Building Code, International Mechanical Code, National Electrical Code and Uniform Plumbing Code in effect on the date this Agreement is signed by the Architect, shall apply. Also applicable

are: AAC R10-3-401 through 412 relating to their implementation, the American National Standards Institute's Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped. The State of Arizona Fire Code: A.R.S. § 34-452, solar energy and life cycle cost analysis and Executive Order 91-3, relating to Water Conservation for State Facilities

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

§ 1.8 The Architect is responsible to the Owner for any services designed, approved, certified, or accepted by its Engineers, Architects, Consultants, agents and employees.

§ 1.9 As used in this Agreement, the term "Architect" refers to the design professional who enters into this Agreement with the Owner whether registered as an architect, professional engineer, or other design specialist.

§ 1.10 **Anti-Trust Violations:** The Architect assigns to the State any claim for overcharges resulting from antitrust violations to the extent that such violations concern materials or services supplied by third parties to the Architect toward fulfillment of this Contract.

§ 1.11 **Immigration Laws; E-Verify Requirements:** The Architect agrees to comply with the requirements of A.R.S. §41-4401.

- a. The Architect warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A. (That Subsection reads: "after December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-Verify program).
- b. A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the Contract and the Architect may be subject to penalties up to and including termination of the Contract.
- c. The Owner retains the legal right to inspect the papers of any employee who works on the Contract to ensure that the Architect is complying with the foregoing warranty under paragraph (a).

ARTICLE 2 OWNER'S RESPONSIBILITIES

§ 2.1

§ 2.2 The Owner's Designated Representative identified in AIA Document B201-2007, Exhibit A shall be authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

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

§ 2.4.

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

ARTICLE 3 TERMS AND CONDITIONS

§ 3.1 COST OF THE WORK:

§ 3.1.1 Before bids are received, the "Cost of the Work" is the latest approved Probable Construction Cost within the construction budget; after bids are received, the "Cost of the Work" is the lowest bona fide bid for Work within the construction budget received from a qualified bidder; after Substantial Completion, the "Cost of the Work" is the total cost, including Change Orders of all Work.

§ 3.1.2 *The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect.*

§ 3.1.3 *The Cost of the Work does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner.*

§ 3.2 INSTRUMENTS OF SERVICE

§3.2.1 *Under this Agreement, all construction drawings, specifications, notes, electronic data and other data prepared by the Architectural Firm and the Architect's Consultants, shall be considered a prototypical design and shall become property of the Owner to use for reference in construction of structures based on the prototype. The Architectural Firm's seal shall appear on construction drawings, specifications and other data requiring a seal for prototype structures. Owner acknowledges (1) building codes differ in differing jurisdictions; that building codes, construction materials and technology change over time; (2) that each site may have different needs (including but not limited to positioning and foundations); and (3) that each site project therefore requires a separate seal of a qualified design professional in that jurisdiction. The Owner's design professional for each site where the prototypes will be constructed has the Architectural Firm's permission to refer to and copy the design concepts contained in the construction drawings, specifications, notes, electronic data and other data and the site specific design professional shall accept professional responsibility and seal the construction drawings, specifications and other data prepared and used for that specific site.*

§3.2.2 *The Owner agrees not to sell or transfer any of the drawings, designs, specifications, notes, electronic data or other elements of the Contract Documents to a third party for a profit to the Owner or for profit making purposes to any third party. In the case of future reuse of any of the documents by the Owner, the Architects and its registrant-consultant's name and seal shall be removed from the reused document(s) and the Architect and its registrant-consultants shall not be liable to the Owner or to third parties for their reuse. The Owner agrees to add the Architect and its registrant-consultants as an additional insureds under the Owner's self-insurance program or any successor insurance program for the sole purpose of protecting the Architect and its registrant-consultant from harm resulting from any such reuse.*

§3.2.3 *If the Contract is terminated by the Owner, all drawings, specifications, electronic data and other documents relating to the design or observation of Work shall be surrendered forthwith by the Architect to the Owner.*

§3.2.4 *The Architect shall provide in electronic data format, the Instrument of Service.*

§ 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 when authorized by the Owner in writing in advance of performance. Except for a change due to the fault of the Architect, Change in Services of the Architect shall entitle the Architect to an adjustment in compensation pursuant to Article 6, and to any Reimbursable Expenses described in Sections 6.2.3, 6.4.2 and 6.4.3.*

§3.3.2 *If any of the following circumstances affect the Architect's services for the Project, additional services shall be provided:*

- .1 *change in the instructions or approvals given by the Owner that necessitate revisions in Instruments of Service*
- .2 *enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service*
- .3 *significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget or procurement method*
- .4 *Special inspections as specified by either the Building Code or by the permit issuing authority*
- .5 *Providing services in connection with extensive Change Orders and Construction Change Directives, unless resulting from the fault of the Architect*
- .6 *Providing the services, not otherwise provided for in the Contract Documents, made necessary by the discovery of a latent condition which requires a service under AIA A201-2007 with Arizona Modifications last approved by the Office of the Attorney General, Section 15.3 by default of the*

- Contractor, by major defects of deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction unless unjustifiably caused by the Architect or other fault of the Architect
- .7 Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work, but excluding claims resulting from inadequate drawings or specifications, delays unjustifiably caused by the Architect or other fault of the Architect
 - .8 Preparing documents for alternate, separate or sequential bids if not contemplated under the Architectural Program or the initial Contract for Construction,
 - .9 Providing a detailed study to determine how energy conservation systems and solar devices might most effectively be utilized in the proposed structure except to the extent required by the Architectural Program
 - .10 Providing analyses of the Owner's needs and programming the requirements of the Project, except to the extent required by the Architectural Program
 - .11 Making investigations, surveys, evaluations, inventories or detailed appraisals of existing facilities and services required in connection with the work of a construction manager or separate consultant retained by the Owner or construction performed by the Owner except to the extent required by the Architectural Program

§ 3.4 ARBITRATION

§3.4.1 *The Architect understands that all claims made by the Owner against the Architect and by the Architect against the Owner which have not been resolved in a manner acceptable to both the Architect and the Owner shall be resolved as provided by A.R.S. §41-2611 and A.A.C. R2-7-A901 through R2-7-D902. The latter can be found on the Arizona Secretary of State's Web Site in the Arizona Administrative Code.*

§3.4.2 *The Architect shall defend, indemnify and hold the Owner, its offers, agents and employees, harmless from all liens, suits, claims, demands, obligations and liability to the extent of any negligent acts or omissions of the Architect, and any of its consultants, agents, officers or employees arising from torts or the Architect's breach of this Agreement. In no case shall the Architect be liable for claims, expenses, loss or damage to the extent of any negligent acts or omissions of the Owner, and any of its contractors, agents, officers or employees arising from torts or the Owner's breach of this Agreement. The Architect agrees to indemnify the Owner for the Owner's vicarious liability for the tortious conduct of the Architect.*

§3.4.3 *The parties agree to use arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. §12-1518. In the event such a dispute is arbitrated, the parties hereby agree that the prevailing party is entitled to recover its attorney's fees and costs. Attorney's fees shall be based on the prevailing hourly rate for attorneys in Phoenix, Arizona.*

§ 3.5 INDEMNIFICATION

§ 3.5.1 *The parties to this Contract agree that the Owner will be indemnified and held harmless by the Architect for its vicarious liability as a result of entering into this Contract. The parties further agree that each party to this Contract is responsible for its own negligence.*

ARTICLE 4 CLAIMS AND DISPUTES

ARTICLE 5 TERMINATION OR SUSPENSION

§ 5.1 *If the Owner fails to make payments to the Architect within fourteen days after the Architect's billing is approved by the Owner, which approval shall not be unreasonably withheld, the Architect may suspend performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all 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.*

§ 5.2 *If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the*

interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 5.3 If the Owner suspends the Project for more than 180 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 5.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 5.5 The Owner may terminate this Agreement *for the convenience of the Owner with seven days' advance written notice to the Architect specifying the termination date of the Agreement.*

§ 5.6 In the event of a termination *by the Owner for convenience or any reason, not the fault of the Architect, the Architect shall be reasonably compensated based on reasonable overhead and profit for services performed on the project prior to the effective date of the termination and for reasonable expenses properly incurred as a result of the termination. In the event this Agreement is terminated before the Architect's services under this Agreement are completed, the Owner may take over the services to be done under this Agreement and prosecute the services to completion by contract or otherwise.*

§ 5.7 *Every payment obligation of the Owner created by the Agreement is conditioned upon the availability of State or Federal funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of the Architect's services, this Agreement may be terminated by the Owner at the end of the period for which funds are available. The Owner shall notify the Architect at the earliest possible time if the Architect's services will or may be affected by a shortage of funds. No liability shall accrue to the Owner in the event this provision is exercised, and the Owner shall not be obligated or liable for any future payments for any damages as a result of termination under this paragraph.*

§ 5.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 3 and Section 6.3.

§ 5.9 *The Owner may terminate this Agreement without penalty or further obligation pursuant to A.R.S. §38-511 if any person significantly involved in initiating, securing, drafting, or creating the Agreement on behalf of the Owner is or becomes, within 3 years after its execution and while the Agreement is in effect, an employee of or consultant to the Architect with respect to the subject matter of the Agreement. Such termination shall be effective when written notice from the Owner is received by the Architect, unless the notice specifies a later time. The Owner may, by written notice to the Architect, terminate this Agreement if it is found by the Owner that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Architect or any agent or representative of the Architect to any officer or employee of the State of Arizona.*

ARTICLE 6 COMPENSATION

§ 6.1 The Owner shall compensate the Architect for services described in Section 1.1 as set forth below, or in the attached exhibit or scope document incorporated into this Agreement in Section 9.2.

(Insert amount of, or basis for, compensation or indicate the exhibit or scope document in which compensation is provided for.)

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§ 6.2 *For Services of the Architect's Consultants, such as structural, electrical engineers, etc. compensation shall be computed as a multiple of _____ the actual expenses incurred by the Consultant.*

§ 6.2.1 *If the services of the Architect are changed as described in Section 3.3, the Architect's compensation shall be adjusted. Such adjustment shall be direct actual costs of personnel expenses as set forth in the fixed rates listed below: (Insert basis of compensation 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)*

§ 6.2.2 For a Change in Services of the Architect's Consultants, compensation shall be computed as a multiple of _____ times the amount billed to the Architect for such services.

§ 6.2.3 For Reimbursable Expenses as described in Section 6.4, the compensation shall be the actual expenses incurred by the Architect, and the Architect's employees and consultants.

§ 6.2.4 Payment for services and Reimbursable Expenses shall be made monthly, in proportion to services performed on the basis set forth in this Agreement.

§ 6.2.5 Payments are due and payable pursuant to A.R.S. §35-342. Amounts allowed but unpaid for 30 or more days shall bear interest at the rate specified by A.R.S. §44-1201.

§ 6.2.6 If the services covered by this Agreement have not been completed within 3 months of the date of the required date of Substantial Completion of the Work hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provide in Section 6.2.1

§ 6.3

§ 6.4 PAYMENTS TO THE ARCHITECT

§ 6.4.1 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 contractors

§ 6.4.2 Reimbursable Expenses are direct actual costs which are in addition to compensation for the Architect's services and are limited to:

- .1 transportation in connection with the Project, authorized out-of-town travel and subsistence, subject to the cost limitation of the State of Arizona Travel Policy
- .2 fees paid for securing approval of authorities having jurisdiction over the Project
- .3 reproduction, plots, standard form documents, postage, handling and delivery of Instruments of Service
- .4 long distance telephone charges
- .5 job site office expenses
- .6 surveys, tests and reports requested by the Owner.

Prior to each phase of the Work, the Architect shall furnish for the Owner's approval, an estimate of reimbursable expenses for the forthcoming phase of the Work. The cumulative total of requests for reimbursement for that phase shall not exceed the approved estimate without prior written authorization by the Owner

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§ 6.4.3 Records of Reimbursable Expenses pertaining to the Project shall be kept in accordance with generally accepted accounting principals.

§ 6.4.4 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, sick leave, holidays, vacations, employee retirement plans and similar contributions.

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 This Agreement shall be governed by the law of the State of Arizona.

§ 7.2 Terms in this Agreement shall have the same meaning as those in the latest edition of AIA Document A201-2007, General Conditions of the Contract for Construction with Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement .

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

§ 7.4 To the extent damages are covered by property insurance during construction, the Owner 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 the Edition of AIA Document A201-2007, General Conditions of the Contract for Construction with Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 7.4.1 Architects and consultants shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Architect, his agents, representatives, employees or consultants.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Architect and their consultants from liabilities that might arise out of the performance of the work under this contract by the Architect, its agents, representatives, employees or consultants, and Architects is free to purchase additional insurance.

1. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$ 500,000
Disease – Each Employee	\$ 500,000
Disease – Policy Limit	\$1,000,000

- a. Policy shall contain a waiver of subrogation against the **State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees** for losses arising from work performed by or on behalf of the Architect and their consultants.
- b. This requirement shall not apply to: Separately, EACH Architect and consultant exempt under A.R.S. 23-901, AND when such Architect or consultant executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.

2. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability coverage.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Blanket Contractual Liability – Written and Oral \$1,000,000
- Fire Legal Liability \$ 50,000
- Each Occurrence \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: **"The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor"**.
- b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

3. **Business Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

- a. *The policy shall be endorsed to include the following additional insured language: "The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Architect, involving automobiles owned, leased, hired or borrowed by the Architect".*
- b. *Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Architect.*

4. **Professional Liability (Errors and Omissions Liability)**

Each Claim \$1,000,000

Annual Aggregate \$3,000,000

- a. *In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Architect and consultants warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.*
- b. *The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Work of this contract.*

5. **Additional Insurance Requirements:** *The policies shall include, or be endorsed to include, the following provisions:*

- a. *The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by the Architect, even if those limits of liability are in excess of those required by this Contract.*
- b. *The Architect's insurance coverage shall be primary insurance with respect to all other available sources.*
- c. *Coverage provided by the Architect shall not be limited to the liability assumed under the indemnification provisions of this Contract.*

6. **NOTICE OF CANCELLATION:** *Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to (State of Arizona Department Representative's Name & Address) and shall be sent by certified mail, return receipt requested.*

7. **ACCEPTABILITY OF INSURERS:** *Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Architect from potential insurer insolvency.*

8. **VERIFICATION OF COVERAGE:** *Architect shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.*

All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to **State of Arizona Department Representative's Name and Address**. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time

9. **CONSULTANTS:** Architects' certificate(s) shall include all consultants as insureds under its policies or Architect shall furnish to the State of Arizona separate certificates and endorsements for each consultant. All coverages for consultants shall be subject to the minimum requirements identified above.
10. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the Department of Administration, Risk Management Division, whose decision shall be final.

§ 7.4.2 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 limitation shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the 11th Month Warranty Report for acts or failures to act occurring after Substantial Completion.

§ 7.4.3 The policies required for Commercial General Liability insurance and Commercial Automobile Liability insurance shall be endorsed to include the Owner, its agents, officers and employees as additional insured and shall specify that the insurance afforded by the Architect shall be primary insurance and that any insurance carried by the Owner shall be excess, except as provided by State law, and not contributory insurance to that provided by the Architect.

§ 7.4.4 The Architect shall provide a certificate of insurance to the Owner which shall identify this Agreement and contain provisions that coverage afforded under the required policies will not be cancelled, terminated, or reduced in limit or restricted in scope of coverage until at least 30 days prior written notice has been given to the Owner. Coverage provided by these policies shall be promptly renewed by the Architect and the Owner shall be given 30 days notice in the event that renewal is unobtainable. Failure on the part of the Architect to procure or maintain required insurance shall constitute a material breach of contract upon which the Owner may immediately terminate this Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, and all monies to be paid by the Owner may offset the cost of the premiums against any monies due to the Architect from the Owner.

§ 7.4.5 The Owner reserves the right to request and receive within 10 working days from receipt of request certified copies of any or all of the above policies and endorsements. If the policy has not yet been issued, the Owner will accept a copy of a specimen contract and the binder within 10 days of its issuance.

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

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

§ 7.5 ASBESTOS AND OTHER HAZARDOUS MATERIALS-FREE CERTIFICATION

The Architect shall provide to the Owner a certificate stating all new materials specified for construction as not containing asbestos or other hazardous materials per the regulatory standard.

§ 7.5.1 The proposed language of such certificates shall be prepared by the Architect and submitted to the Owner for review at least 30 days prior to the requested dates of execution. The Owner shall approve or modify the proposed

certificate at least 15 days prior to execution. The Owner shall not request services beyond the scope of this Agreement.

§ 7.6 The Architect may request, in writing, permission to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. The Owner shall have the right to approve or disapprove such use of representation or photography in its sole discretion.

§ 7.7 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other.

§ 7.9 The parties in any litigation arising out of this Agreement shall be entitled to recover its reasonable costs including expert fees, attorney's fees and court costs, from the other party based upon the reasonable hourly rates of such persons with similar experience in the community provided however, this paragraph shall not apply to administrative dispute resolution proceedings. Such costs shall be determined by the court and not by the jury.

§ 7.9 The Architect shall comply with all applicable Federal, State and local laws, rules and ordinances pertaining to equal employment opportunity and non-discrimination, including but not limited to A.R.S. §Title 41, Chapter 4, and Executive Order 99-4.

§ 7.10 If the Architect or owner receives information specifically designated by the other party as "confidential" or "business proprietary", the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 8 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are those indicated in Solicitation No:

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ARTICLE 9 SCOPE OF THE AGREEMENT

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

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

- 1 AIA Document B102-2007, Standard Form Agreement Between Owner and Architect with Arizona Modifications last approved by the Office of the Attorney General as of the date of this Agreement.
- 2 AIA Document B201-2007, Exhibit A with 2008 Arizona Modifications, Initial Information and B201-2007 Exhibit B-Arizona Edition
- 3 Other documents:
(List other documents, including the Architect's scope of services document, hereby incorporated into the Agreement.)

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

OWNER

ARCHITECT

(Signature)

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(Printed name and title)

(Signature)

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(Printed name and title)

