

Resolution to Approve Chapter / Foundation Collaboration Agreement

By: Foundation Representatives to Chapter / Foundation Unification Task Force

Date: October 26, 2018 email distribution / October 29, 2018 vote concluded

Document: *Collaboration Agreement-18_0920 for formal consideration.pdf* (“*Collaboration Agreement 2018*”)

Foundation Representatives: Chris Noack, Jacqui Dodson, David Goujon, Al York

Chapter Representatives: Wendy Dunham Tita, Luis Jauregui, Michael Boduch, Matt Ryan

Shared Executive Director: Ingrid Spencer

Resolution

The AFA Board approves the formal execution of the Collaboration Agreement 2018 between AIA Austin (the Chapter) and The Austin Foundation for Architecture (the Foundation) as developed by the Chapter / Foundation Unification Task Force. The Foundation officers are authorized to approve revisions to the final document to improve form, style, or minor technical issues as required for the Chapter and Foundation to execute the document.

Background:

Representatives of the Chapter and Foundation began meeting in Spring 2018 to discuss the past working relationship between both groups, the ramifications of the Foundation’s new 501c3 status, and potential new opportunities to strengthen the collaboration for mutual benefit. Various governance, administrative, and financial issues related to the mission, purpose, and goal of each organization were discussed, and a new document was developed to address these issues and enumerate how the Foundation’s use of Chapter resources are to be addressed financially. Cullinane Law Group was jointly retained by both parties to develop the document.

The proposed Collaboration Agreement 2018 is similar in nature to the Memorandum of Understanding (MOU) and Managed Service Agreements (MSA), most recently executed for 2017, that have been in place for many years. The proposed financial arrangement for the Foundation to compensate the Chapter for the Foundation’s use of Chapter staff and resources are similar in nature to the MSA arrangement. The following is a summary of the financial aspects:

1. The Chapter retains complete autonomy regarding staff employment and benefits. The Foundation will compensate the Chapter as an independent contractor for use of staff time and office resources.

2. The regular, on-going activities to support the Foundation are defined as the Basic Management and Administrative Services (BMAS). The value of the 2018 BMAS is established as \$25,000 (see 2.c).
 - a. Michael Boduch reviewed the Chapter budget and a cost allocation based on anticipated staff time on Foundation activities. Boduch's methodology was reviewed by the Task Force and found to be reportable, justifiable, and repeatable in the future.
3. A discounted rate for the Foundation to pay the Chapter for the BMAS is established for 3 years. Further a recommendation that annual cost not to exceed 30% of the value of the services provided is established (see 2.c).
4. A value for specific program services as Additional Services is established as an hourly rate (see 2.g).
5. The Foundation will aid the Chapter by accepting grant funding from other sources for various Chapter programs to take advantage of the Foundation's 501c3 status, allowing acceptance of personal contributions on a charitable basis, and for accepting grant funding from other entities that requires payment to a 501c3 entity. The Foundation will not charge an administrative fee for administering grants to Chapter programs (See 4.a).
 - a. Administration costs for the Foundation to facilitate grant funding for other activities is outside of this Collaboration Agreement 2018. If the Foundation serves in this type of role, the Foundation may charge an administrative fee for serving as a program sponsor.

10/29/2018 Email Vote Concluded: Approved - Yea (10) / Nay (0) / Abstention (0)

Directors: Noack, Robinson, Dodson, Garcia, Austin, Gresham, Parnell, Black, Goujon, Boduch

COLLABORATION AGREEMENT

This Collaboration Agreement (this “Agreement”) effective as of _____ 2018 (the “Effective Date”), is made by and between the Austin Foundation for Architecture (“Foundation”), and Austin Chapter of the American Institute of Architects (“AIA Austin” or “Chapter”). Foundation and Chapter are sometimes referred to herein, individually, as a “Party” and, collectively, as the “Parties.”

RECITALS

History and Purpose of the Foundation

The Foundation was originally founded in November 2003 as the *Fly Foundation* by 2003 Chapter President Alan Bell, AIA, and a group of former Chapter presidents. The Fly Foundation's original purpose was the development of sustainable leadership for Chapter by identifying, supporting, and promoting the growth of future Chapter leaders. The Fly Foundation was informally administered by a group of Chapter past presidents during the time of its existence.

During 2005 and 2006, the Chapter's office lease expiration, the vision of 2005 Chapter President Al York, AIA to establish a "center for architecture" for public education and outreach, and the 150th anniversary celebration of the AIA, all led the Fly Foundation's de facto leadership broaden the role of the Fly Foundation. The result was the formal establishment of the Austin Foundation for Architecture in 2007, and the expansion of the Foundation's purpose to include raising the general public's awareness and appreciation for architecture. The Foundation was not registered with the State of Texas or the Internal Revenue Service, therefore the Foundation operated as an unincorporated entity from 2007 until 2017.

In 2017, the Foundation determined it was in the organization's best interest to become a formally recognized non-profit and charitable entity. Effective August 29, 2017, the Foundation became a recognized nonprofit corporation with the State of Texas, and has been granted 501(c)(3) status by the Internal Revenue Service. The following are the goals and purpose of the Foundation. (refer to *The Austin Foundation for Architecture Bylaws*, adopted August 29, 2017):

- A. Development of the general public's education, awareness, and appreciation for architecture, and to promote responsible stewardship of the Central Texas environment.
- B. Development of sustainable architectural leadership for The Austin Chapter of the American Institute of Architects, and other public, professional, and community organizations in Central Texas.
- C. Development of charitable and educational programming in conjunction with AIA Austin.

Description and Purpose of the Chapter

The Chapter is the local component of the American Institute of Architects (“AIA” or “Institute”), chartered in 1938. The AIA is a national corporate membership organization. The objectives of the AIA, according to the Institute Bylaws, are as follows:

1.02 Organization Objects. The objects of The American Institute of Architects shall be to organize and unite in fellowship the members of the architectural profession of the United States of America; to promote the aesthetic, scientific and practical efficiency of the profession; to advance the science and art of planning and building by advancing the standards of architectural education, training and practice; to coordinate the building industry and the profession of architecture to insure the advancement of the living standards of people through their improved environment; and to make the profession of ever-increasing service to society.

The mission of the Chapter according to *Plan 2016, A Long Range Strategic Plan for Chapter* is "to support our members and promote the value of architects and architecture."

Relationship Between the Foundation and the Chapter

The Foundation and the Chapter are complementary, symbiotic, and independent organizations. Overlap occurs in the organization, leadership, and general objectives of the two entities. The Foundation desires, similarly to the Chapter, to further appreciation of architecture. However, it is the intention of the Foundation to reach a broader audience than the Chapter membership by engaging persons who are not eligible or interested in AIA membership.

The Foundation does not exist to raise funds solely from Chapter members, nor does it exist to be a major revenue source for the Chapter. The Foundation and the Chapter will, whenever feasible, collaborate to further our common interests of a) architectural appreciation and awareness, and b) leadership development. The Foundation may also support other organizations as prudent to further its goals.

The Foundation will collaborate with the Chapter by providing grant funding for specific public outreach projects developed by the Chapter. Grant funds will cover part, or all, of the direct expense of a specific project; grant funds will not be provided for shared staff expense, unless specifically identified and provided for as a program expense. Foundation funding to the Chapter will not be of a "sponsorship" nature, wherein "sponsor" funding is intended to generate revenue beyond the expense of an activity and to recognize the marketing value of being associated with the Chapter and its members.

The Foundation may support the Chapter by providing "grant" or scholarship funding for leadership development of Chapter members. This is a continuation of the original Fly Foundation objective.

The Chapter supports the Foundation by providing general office, personnel, and other support to the Foundation at costs discounted below their actual value in recognition of the Foundation's

charitable status, such that a larger portion of the Foundation's assets may be directed to charitable activities in lieu of general administrative expenses.

Similarly, Foundation will administer grants received on behalf of Chapter programs, and Chapter capital fundraising campaigns at discounted administration fees, versus grants and capital fundraising campaigns administered for charitable activities with other parties, so that a larger portion of grant funding and/or capital fundraising may be directed to the charitable activities related to the Chapter in lieu of grant and/or fundraising administrative expense.

AGREEMENT

The Parties hereby agree as follows:

1. Administration of the Collaboration.

a. Administrative Structure. To facilitate the administration of the collaboration, the Parties shall implement a governance model as generally described below. This model is intended to provide timely feedback, guidance and direction on the overall collaboration between the Parties.

b. Joint Strategic Collaboration Process. Chapter and Foundation boards shall engage in a joint strategic collaboration process. Chapter/Foundation Joint Collaboration Committee is responsible for coordinating the missions, visions and goals of the Parties. Potential initial areas of collaboration include charitable and educational programming, civic initiatives, exhibitions and lectures/forums/symposiums. Other collaborative advisory committees can be appointed as necessary.

c. Chapter/Foundation Joint Collaboration Committee. The Chapter and Foundation will form a Joint Collaboration Committee that will oversee the relationship and serve as an advisory committee to Chapter and Foundation boards. The Joint Collaboration Committee shall consist of three appointed representatives from the Chapter and three appointed representatives of the Foundation, comprised of the following from each organization: (1) president, (2) executive committee member and (3) non-executive committee member. The Joint Collaboration Committee shall meet at least twice a year. The Joint Collaboration Committee shall monitor and review the relationship between the Parties, identify strategic directions that align the missions and goals of Chapter and Foundation and shall present these to both Chapter and Foundation boards for approval. Approval of both boards is required for implementation.

d. Liaison. The Chapter and Foundation shall each appoint an executive level and non-executive level liaison from each respective organization to communicate and meet with the executive level management of the other organization.

e. Additional Committees. It is also expected that additional advisory committees shall be formed as necessary.

f. Personnel. Chapter personnel shall perform certain administrative, program, financial, fundraising and other tasks for Foundation as set forth in Section 2.

g. Status of Personnel. For the avoidance of doubt, the parties agree that all Chapter employees and contractors shall remain employees and contractors of Chapter and shall not be deemed to be employees or contractors of Foundation unless specifically identified through written agreement. Chapter shall be solely responsible for the terms of employment or contractor arrangements of all such employees and contractors, including their salary and benefits and other forms of compensation. All staff report to the Executive Director who shall have the sole right to make decisions regarding hiring and termination of such employees and engaging or terminating the engagement of contractors. The Executive Director is employed and supervised by Chapter. Foundation shall have no control over such terms and no responsibility to make any payment directly to employees or contractors, unless specifically identified through written agreement. Nothing contained in this Agreement shall be construed to constitute either Foundation or Chapter as a partner or agent of the other.

2. Basic Management and Administrative Services.

a. Foundation hereby retains Chapter as an independent contractor, and not as its agent, to perform services (“Basic Management and Administrative Services”) on its behalf, as described more fully below. Chapter shall devote its best efforts to the performance of its Basic Management and Administrative Services. Chapter shall perform such other work as agreed upon by the parties from time to time.

b. Chapter shall supervise its own employees and independent contractors who perform compensated services on behalf of Foundation. All such persons shall be employees and independent contractors of Chapter and not of Foundation, unless specifically identified through written agreement. Chapter shall be responsible for all income and payroll tax withholding and reporting for its employees.

c. Basic Management and Administrative Services includes, but is not limited to:

- (1) Providing general administrative and support services to the Foundation board and its committees to include, but not limited to: reception, secretarial, copying, maintenance of records for the board, maintenance of mailing list, support for committees and other duties as may be necessary to fulfill these tasks.
- (2) Providing fundraising support by designated Chapter staff in the form of grant-writing and donor solicitation.
- (3) Providing administrative assistance in complying with grant reporting obligations.

- (4) Use of Chapter facilities for regular meetings and an End of Year evening event. Schedule will be determined in advance with Chapter.
- (5) Foundation use of email, computer systems, address and phone number.

d. In addition, services (“Additional Services”) for managing and administrating special events, including but not limited to, Discover Design, End of the Year Celebration, special graphic projects and the Golf Tournament are excluded from Basic Services and the direct and indirect expenses will be invoiced to Foundation at the rate defined below.

e. Based on current calculations, both the Chapter and Foundation value the Basic Management and Administrative Services provided to Foundation at approximately \$25,000.00. In recognition of the Foundation’s nonprofit, charitable 501(c)(3) tax-exempt status, Chapter shall provide the Basic Management and Administrative Services at a discounted fixed fee on an annual basis as follows:

- \$5,000 for 2018
- \$6,500 for 2019
- \$8,000 for 2020

However, the discount annual fixed fee paid by the Foundation to the Chapter shall not exceed 30% of the updated calculation of Basic Management and Administrative Services provided to Foundation, if any.

f. The annual fee for 2018 shall be paid by Foundation to Chapter within 30 days of the Effective Date of this Agreement. The annual fee for years 2019 and 2020 will be invoiced by Chapter to Foundation in January of the service year, and shall be paid within 30 days of receipt.

g. In the unlikely event that Foundation does not even utilize the amount of resources reflected in the discount annual fixed fee paid by the Foundation to the Chapter for Basic Management and Administrative Services, Chapter shall reimburse or credit the unused balance to the Foundation in the subsequent year. Chapter shall submit monthly invoices of for its Additional Services. Additional Services shall be invoiced at a rate of \$63.00 / hour. Foundations shall make payments to Chapter on a quarterly basis (“Quarterly Payments”). Chapter shall maintain at its own expense, except for the reimbursement provided herein, personnel adequate to perform its services as described herein.

h. Special projects, events or occurrences that arise in the future that may require significant Chapter time, resources or services that would result in significant increases in the Chapter calculation of Basic Management and Administrative Services, as referenced above, shall be addressed and resolved by the Joint Collaboration Committee prior to Chapter providing such services.

3. Term of Agreement. The term of this Agreement shall commence as of the Effective Date and shall last for a period of three (3) years, unless modified by the Parties in Section 19 or terminated earlier as provided in Section 8. The Agreement shall automatically renew for subsequent term, unless terminated earlier as provided in Section 8. Each renewal term (if any) as agreed upon by the Parties shall be referred to herein collectively as the “Term”. Either party may request the agreement be amended as provided in Section 19. Such agreement amendments require approval of both Chapter and Foundation boards.
4. Obligations of the Parties. In connection with their joint activities, the Parties shall have the following obligations:
 - a. Foundation Obligations. Foundation shall focus attention on the public engagement role of the organization; support the new collaboration with Chapter including shared staff and operation integration; and serve as a public advocate for architecture and engage in fundraising efforts to that end. Foundation shall participate in necessary meetings as established by Joint Collaboration Committees and shall participate in initiatives identified by Joint Collaboration Committee and approved by Chapter and Foundation boards. In addition, Foundation shall pursue initiatives to engage the public in charitable and educational programming, including for example through its exhibitions, websites, public programs, grants, and fundraisers. Foundation agrees to pay Chapter for additional services rendered by Chapter. Upon approval by its Board of Directors, Foundation shall facilitate grant funding for specific public outreach projects developed by the Chapter. Such grant funds will cover part, or all, of the direct expense of a specific project. However, no such grant funds will be retained by Foundation for Basic Management and Administrative Services, Additional Services or other expenses, unless specifically identified and provided for as a program expense or otherwise approved in advance by the Chapter.
 - b. Chapter Obligations. Chapter shall focus Chapter attention on the professional engagement role of the organization; serve as an advocate for the profession; and support the new collaboration with Foundation including shared staff and operation integration. Chapter shall participate in necessary meetings as established by Chapter/Foundation Joint Collaboration Committees and shall participate in initiatives identified by Chapter/Foundation Joint Collaboration Committee and approved by Chapter and Foundation boards. In addition, Chapter shall pursue its professional programs that support architecture, including for example through Chapter committees, websites, and design awards.
5. Intellectual Property. The following rules will govern the Parties use and creation of intellectual property in connection with their joint activities:
 - a. Each of Foundation and Chapter will retain sole ownership of any intellectual property that such Party owns prior to the Effective Date of this Agreement and

any intellectual property that such Party creates on its own or acquires from a third party outside the scope of their joint activities.

- b. Intellectual Property that exists prior to the effective date of this agreement can be used by either Chapter or Foundation unless a party objects.

6. Confidentiality. For the Term of this Agreement and following its termination, both Parties shall undertake to treat any Confidential Information received in confidence from the other Party in a confidential manner, and shall neither convey nor disclose such data or information to third parties nor to use it for purposes other than for the performance of this Agreement. This obligation of confidentiality shall not apply to information that is proven to be general public knowledge or which, through no action on the part of the recipient, becomes public knowledge. "Confidential Information" shall mean any non-public information, data, or documents disclosed or otherwise obtained under this Agreement, including without limitation any information and data relating to any or all of one of the Parties' business.

7. Non-Exclusive Relationship. Nothing contained in this Agreement shall be deemed as a restriction or limitation of any kind on the ability of any Party to apply for or accept funding from any grant-maker, government funding agency or any other not-for-profit funding agency.

8. Termination.

- a. Either Party may terminate this Agreement at any time and without cause upon at least sixty (60) days prior written notice to the other Party. In the event that any Party shall materially breach the terms of this Agreement, and such breach is not cured within a period of thirty (30) days after written notice thereof has been given to such Party by the non-breaching Party, the non-breaching Party may immediately terminate this Agreement upon notice to the other Party.

- b. Upon termination or expiration of this Agreement, all of Foundation's and Chapter's respective rights, responsibilities, and obligation as set forth herein shall terminate, provided that Sections 6 and 7 shall survive in perpetuity, and Foundation shall be responsible for any unpaid Quarterly Payments. In addition, Foundation shall continue funding and administration of all grants approved prior to termination.

9. Assignment and Delegation. Neither Party may assign this Agreement in its entirety or assign or delegate any of its rights or obligations hereunder, whether voluntarily, involuntarily or by operation of law, in whole or in part.

10. Notices. Any notice, demand or request which may be permitted, required or desired to be given in connection with this Agreement shall be given in writing and directed to the Parties hereto as follows:

If to Chapter:
801 W 12th St, Austin, TX 78701
Attn: President, AIA Austin
Copy To: Executive Director
E-mail: ingrid@aiaaustin.org

If to Foundation:
801 W 12th St, Austin, TX 78701
Attn: Board President, AFA
Copy To: Executive Director
E-mail: ingrid@aiaaustin.org

- a. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or: (a) personal delivery to the Party to be notified; (b) when sent, if sent by confirmed electronic mail or confirmed facsimile during normal business hours of the recipient and, if not sent during normal business hours, then on the recipient's next business day; or (c) one (1) business day after deposit with an internationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification or receipt. All communications shall be sent to the respective Parties at their address as set forth above, or to such e-mail address, facsimile number or address as subsequently modified by written notice given in accordance within this Section 10.

11. Binding on Successors. This Agreement shall be binding upon the Parties hereto and their respective successors and permitted assigns.
12. Waiver of Provisions. Any waiver of any terms and conditions hereof must be in writing and must be signed by the Party against which the waiver is sought to be enforced. The waiver of any of the terms and conditions of this Agreement on any one occasion shall not be construed as a waiver of any other term and condition hereof or the waiver thereof on any other occasion.
13. Independent Relationship. By entering into this Agreement, the Parties are not creating or forming a joint venture, partnership, or agency relationship, and nothing in this Agreement shall be interpreted as creating a joint venture, partnership, or agency relationship between the Parties.
14. Severability. The provisions of this Agreement shall be deemed severable, and if any portion shall be held invalid, illegal or unenforceable for any reason, the remainder of this Agreement shall be effective and binding upon the Parties.
15. Additional Documents. Each of the Parties agrees to execute and deliver any document or documents that may be reasonably requested from time to time by the other Party to implement or complete such Party's obligations pursuant to this Agreement, in a manner that is compatible with its legal status and its internal rules and regulations.

16. Remedies Cumulative. No remedy set forth in this Agreement or otherwise conferred upon or reserved to any Party shall be considered exclusive of any other remedy available to any Party, but the same shall be distinct, separate and cumulative and may be exercised from time to time as often as occasion may arise or as may be deemed expedient.
17. Entire Agreement. This Agreement supersedes all prior and contemporaneous agreements and understandings, oral or written, between the Parties with respect to the subject matter hereof.
18. No Obligation to Third Parties. None of the obligations and duties of the Parties shall in any way or in any manner be deemed to create any obligation of the Parties to, or any rights in, any person or entity not a party to this Agreement.
19. Amendments/Modifications. This Agreement may not be amended or modified in any manner except by an instrument in writing signed by the Parties. The Parties agree that in the event that any state or federal laws or regulations, now existing or hereafter enacted or promulgated, are interpreted by judicial decision, a regulatory agency having jurisdiction over the Parties or the subject matter of this Agreement, or by legal counsel to a Party hereto, in such a manner as to indicate that the terms, structure or effect of this Agreement may be in violation of such laws or regulations, or otherwise be illegal or be deemed unethical by any recognized agency, or may reasonably be expected to jeopardize the tax-exempt status of either Party, the Parties shall use their best efforts in good faith to amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying arrangements between the Parties.
20. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of laws principles thereof.
21. Authorization of Agreement. Each Party represents and warrants that this Agreement has been duly and lawfully authorized by its Board of Directors, Board of Trustees, or other authorized representative, and that this Agreement constitutes a valid and binding obligation of such Party enforceable against such Party in accordance with its terms.
22. Counterpart Signatures. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile, .pdf and other electronic signatures shall have the same force and effect as original signatures.

IN WITNESS WHEREOF, the undersigned Parties have executed this Agreement as of the Effective Date.

Austin Foundation for Architecture

Austin Chapter of the American Institute of Architects

Chris Noack, President

Wendy Dunnam Tita, President