

**AMENDED AND RESTATED COLLABORATION AGREEMENT**

This Amended and Restated Collaboration Agreement (this “Agreement”) effective as of \_\_\_\_\_ 2019 (the “Effective Date”), is made by and between the BSA Foundation (the “Foundation”), a Massachusetts non-profit corporation, and the Boston Society of Architects, a Massachusetts non-profit corporation (the “BSA”). The Foundation and the BSA are sometimes referred to herein, individually, as a “Party” and, collectively, as the “Parties.” This Agreement amends and restates in its entirety the Collaboration Agreement executed by the Parties as of May 7, 2015 (the “Original Agreement”).

**BACKGROUND**

- A. The Foundation works to make Boston a model of a resilient, equitable and architecturally vibrant city and region. The Foundation shares an appreciation for the built environment with the BSA and the public, and it is recognized as a charitable educational organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “Code”).
- B. The BSA is the local chapter of the American Institute of Architects in the Boston metropolitan area. Its membership is drawn from Eastern Massachusetts and includes over 4,000 architects, associate members and building industry affiliates. The BSA is committed to professional development for its members, advocacy on behalf of great design, and, through support of the Foundation, sharing an appreciation for the built environment with the public at large. The BSA is a professional organization under Section 501(c)(6) of the Code.
- C. Since the execution of the Original Agreement in 2015, the BSA and Foundation boards and staff have successfully addressed the logistical, programmatic and legal considerations involved in the ongoing collaboration between the BSA and the Foundation, including by having the Foundation serve as the primary overseer of public educational programs that were historically developed and operated by the BSA.
- D. Recognizing the synergies that have been created by collaboration between the BSA and Foundation, the Parties agree to continue this collaboration to allow the BSA and Foundation to maximize their impact while making effective and efficient use of their combined resources, staff and facilities. All activities undertaken via this collaboration shall be in furtherance of the Foundation’s charitable mission, while recognizing that both organizations are independent.
- E. The Parties desire to enter into this Agreement to set forth their agreements and understandings with respect to their continuing collaboration.

## 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 employ a governance model as generally described below. This model is intended to provide timely feedback, guidance and direction on the overall collaboration.
- b. Joint Strategic Collaboration Process. The BSA and Foundation boards shall engage in a joint strategic collaboration process. The BSA/Foundation Joint Strategic Collaboration Committee is responsible for coordinating the missions, visions and goals of the Parties. The Parties will prepare a shared strategic plan, with each of the Parties responsible for defined goals in keeping with their unique missions and strengths. Potential initial areas of collaboration include civic initiatives, exhibitions and lectures/forums/symposiums. Other collaborative advisory committees can be appointed as necessary.
- c. BSA/Foundation Joint Strategic Collaboration Committee. The BSA/Foundation Joint Strategic Collaboration Committee will serve as an advisory committee to the BSA and Foundation boards. The BSA/Foundation Joint Strategic Collaboration Committee shall consist of the then-current members of the Executive Committees of each of the BSA and the Foundation boards and the BSA/Foundation Board Liaison. The Executive Director of the BSA and the Foundation shall be an *ex officio* member of the committee. The BSA/Foundation Joint Strategic Collaboration Committee shall identify strategic directions that align the missions and goals of the BSA and the Foundation and shall present these to both the BSA and the Foundation boards for approval. Approval of both boards is required for implementation. Upon the approval of both boards, the composition of the BSA/Foundation Joint Strategic Collaboration Committee may be modified, without the need to amend this Agreement.
- d. Additional Committees. Additional advisory committees may be formed as necessary, upon the approval of the BSA/Foundation Joint Strategic Collaboration Committee.
- e. Personnel. The BSA personnel shall perform certain administrative, program, financial, fundraising and other tasks for the Foundation.

- f. Status of Personnel. For the avoidance of doubt, the parties agree that all BSA employees shall remain employees of the BSA and shall not be deemed to be employees of the Foundation unless specifically identified through written agreement. The BSA shall be solely responsible for the terms of employment of all such employees, including their salary and benefits and other forms of compensation. The Foundation shall compensate the BSA for staff who work fulfilling the Foundation's mission in accordance with section 2.a. 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 by the BSA and half his salary and benefits is paid for by the Foundation — as such, he reports to both the BSA and Foundation boards. The Foundation shall have no control over such terms and no responsibility to make any payment directly to employees. Nothing contained in this Agreement shall be construed to constitute either the Foundation or the BSA as a partner or agent of the other.
  - g. Coordinated Communications. The BSA and the Foundation agree to coordinate all forms of communication to their members and the broader community, whenever possible and appropriate. In their coordinated communications, the parties will collaborate to describe the goals of both organizations, and the professional and public impacts and benefits of their work.
  - h. Equity, Diversity, Inclusion and Harassment. The BSA and the Foundation are committed to work together and independently in advancing, promoting and advocating for equity, diversity and inclusion within the workplaces and Boards of both organizations, the architectural profession, and broader communities. The parties will work to ensure that both organizations are free of any harassment of staff, members, and guests, and that they adhere all applicable laws and policies.
2. Expense-Sharing Arrangement.
- a. Personnel. As set forth above and on Exhibit A, and based on BSA/Foundation approved strategic plan, BSA staff will, on behalf of the Foundation, perform administrative, program, financial, fundraising and other tasks. The expected percentage of the Foundation Allocated Employee Time is set forth in Exhibit A. The aggregate costs of all the BSA personnel, including costs of benefits and salaries, incurred by the BSA are hereinafter referred to as "BSA Personnel Costs." Exhibit A may be modified from time to time, upon the budgetary approval of both the BSA and the Foundation boards, without the need to amend this Agreement.
  - b. Facilities. To the extent permitted under any applicable lease agreement, the BSA shall permit the Foundation to occupy a portion of space leased by the BSA. The aggregate costs incurred by the BSA under such leases or otherwise with

respect to such facilities are hereinafter referred to as “BSA Facilities Costs”.

- c. Services. The BSA may permit the Foundation to use services provided by third party services providers, such as telephone service, facilities maintenance, internet service, and information technology support services. The aggregate costs incurred by the BSA with respect to such services provided to the Foundation are referred to as “BSA Services Costs” (and together with BSA Personnel Costs and BSA Facilities Costs, “BSA Costs”).
          - d. General. The BSA shall inform the Foundation, from time to time, of the amount of BSA Costs, and the Foundation shall have access to the applicable agreements and the relevant portions of the BSA books and records for purposes of verification of the same.
          - e. Payment. All public charitable activities within the BSA/Foundation agreed-upon strategic direction are Foundation expenses. All direct public charitable program expenses will be paid by the Foundation. The Foundation will reimburse the BSA for any cost-sharing portion of (i) the Foundation’s proportionate share of the BSA Personnel Costs (the “Foundation Personnel Costs”) and (ii) the Foundation’s proportionate share of BSA Services Costs and BSA Facilities Costs (together, “Foundation Other Costs”, and together with Foundation Personnel Costs, “Foundation Allocated Costs”) by an intercompany general ledger transaction. The BSA shall reimburse the Foundation for any cost-sharing portion of (i) the BSA’s contribution to the Foundation and (ii) the BSA’s share of Other Costs, by an intercompany general ledger transaction. Balances are settled at the end of each quarter and a final balance at the end of the Fiscal year. This shall be part of the annual budgeting process and shall be reviewed annually, or during a period of change, by both the BSA and Foundation.
3. Term of Agreement. The term of this Agreement shall commence as of the Effective Date and shall last for a period of 5 years, unless terminated earlier as provided in Section 9. The Agreement shall automatically renew for subsequent two (2) terms, unless terminated earlier as provided in Section 9. 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 the BSA and Foundation boards.
4. Obligations of the Parties. In connection with their joint activities, the Parties shall have the following obligations:
  - a. Foundation Obligations. The Foundation shall focus its attention on the public engagement role of the organization; support the new collaboration with the BSA including shared staff and operational integration; and serve as a public advocate for architecture and engage in fundraising efforts to that end. The Foundation shall participate in necessary meetings as established by the

BSA/Foundation Joint Strategic Collaboration Committees and shall participate in initiatives identified by the BSA/Foundation Joint Strategic Collaboration Committee and approved by the BSA and Foundation boards. In addition, the Foundation shall pursue initiatives to engage the public in appreciating design, including for example through its exhibitions, websites, public programs, grants, and fundraisers. The Foundation agrees to pay the BSA for services rendered by the BSA.

- b. BSA Obligations. The BSA shall focus its attention on the professional engagement role of the organization; serve as an advocate for the profession; and support the collaboration with the Foundation including shared staff and operational integration. The BSA shall participate in necessary meetings as established by the BSA/Foundation Joint Strategic Collaboration Committees and shall participate in initiatives identified by the BSA/ Foundation Joint Strategic Collaboration Committee and approved by the BSA and Foundation boards. In addition, the BSA shall pursue its professional programs that support the creation of architecture, including for example through the Architecture Boston Expo, BSA committees, websites, and design awards.
  - c. Implementation of Strategic Plans. The BSA/Foundation Joint Strategic Collaboration Committee and both boards shall become familiar with the current strategic plans of both organizations, and shall work cooperatively to implement these strategic plans.
  - d. Annual Budget Coordination Process. The BSA and the Foundation shall use best efforts to coordinate their annual budgets with each other, while recognizing that the two organizations shall remain independent, and that each organization's board owes a fiduciary duty toward that organization alone. To implement this goal, the preliminary draft budgets of the BSA and the Foundation will be shared within the BSA/Foundation Joint Strategic Collaboration Committee, allowing sufficient time for the Committee to review and discuss both budgets and explore opportunities for coordination, prior to the formal adoption of the budgets by the two boards.
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 the Foundation and the BSA 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 the BSA or Foundation unless the sole proprietor 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 which 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 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 one hundred eighty (180) 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 the FOUNDATION's and the BSA's respective rights, responsibilities, and obligations as set forth herein shall terminate, provided that Sections 6 and 7 shall survive in perpetuity, and the Foundation shall be responsible for any unpaid Quarterly Payments.
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 the BSA:

BSA, 290 Congress Street, Suite 200

Attn: Secretary to the Board of Directors

Fax: 617-951-0845

E-mail: [bsa@architects.org](mailto:bsa@architects.org)

If to the BSA Foundation:  
BSA Foundation, 290 Congress Street, Suite 200  
Attn: Secretary to the Board of Trustees  
Fax: 617-951-0845  
E-mail: foundation@architects.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 of 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 Commonwealth of Massachusetts, 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.

*[Signature page follows]*



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

Boston Society of Architects

BSA Foundation

By: \_\_\_\_\_

By: \_\_\_\_\_

Name:

Name:

Title:

Title:

**Exhibit A**  
**Listing of BSA Personnel Allocated to Foundation**

Dated: as of *[date]*

BSA paid staff that spends the majority of their time doing BSA work (more than 80% BSA – Foundation % in parenthesis):

- Brian Keefe, ABX Sales Director (Informa reimburses us for 100% of Brian’s salary) (5%)
- Caitlin Hart, Professional Programs Manager (10%)
- Erika Shea, Database and Membership Manager (20%)
- Rachel Reid, Membership Manager (10%)
- Fiona Luis, ArchitectureBoston Editor/Editorial Director (5%)

Staff paid by the BSA who share a fair amount of their time doing Foundation work (30 – 50% time with the Foundation – Foundation % in parenthesis)

- Jenny Effron, Policy Director (50%)
- Zara Yost, Gallery & Facilities Coordinator (reception) (50%)
- Abby Lindauer, Executive Assistant (50%)
- Pamela de Oliveira Smith, Managing Director of Communications (50%)
- Mike Whelan, Web Content Manager (50%)
- Ben Cohen, Managing Director of Finance (40%)
- Li Lam, Senior Accountant (40%)
- Maria Salvatierra, Senior Communications Manager (40%)
- Susan Green, Committee and Technology Manager (30%)
- Billy Craig, Managing Director of Operations (30%)
- Kali Larsson, Membership Coordinator (25%)

Staff paid 50% by the BSA and 50% by the Foundation:

- Eric White, Executive Director
- Paige McWhorter, Exhibitions & Communications Manager

Staff paid by the Foundation who spend the majority of their time doing Foundation work (Foundation % in parenthesis):

- Victoria McKay, Managing Director of Advancement (90%)
- Michela Davola, Development Manager (90%)
- Polly Carpenter FAIA, Public Programs Director (85%)
- TBD, Community Design Director (85%)