



# AIA<sup>®</sup> Document B171<sup>™</sup> – 2013

## Standard Form of Agreement Between Owner and Design Manager *for use in a Multiple Project Program*

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

BETWEEN the Design Manager's client identified as the Owner:  
*(Name, legal status, address and other information)*

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

and the Design Manager:  
*(Name, legal status, address and other information)*

for the following Program:  
*(Name, location, and detailed description of the group of buildings and/or site improvement projects included in the Program.)*

The Program Manager:  
*(Name, legal status, address and other information)*

The Owner and Design Manager agree as follows.

Init.

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### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement."')*

§ 1.1.1 The physical characteristics of the sites:

*(For each project in the Program, identify or describe, if appropriate, size, location, dimensions, or other pertinent information such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site(s); etc.)*

§ 1.1.2 Preliminary assessment of the condition of existing facilities or sites, if any:

*(Identify or describe written reports detailing the condition of existing facilities or sites.)*

§ 1.1.3 The Owner's total budget for the Program, including the budgets for each project in the Program:

*(Provide the Owner's total budget for the projects in the Program and, if known, a breakdown of the budget(s) for the Cost of the Work, as defined in Section 6.1, for each project.)*

§ 1.1.4 The Owner's schedule for the projects in the Program:

*(Provide overall schedule for the projects in the Program and, if known, specific schedules for each project.)*

§ 1.1.5 The Owner intends to utilize the following procurement or delivery methods for the projects in the Program:  
*(Identify the procurement or delivery method, such as competitive bid, negotiated contract, multiple prime contracts or construction management, for each project in the Program.)*

§ 1.1.6 Other Program information:  
*(Identify special characteristics or needs of the Program not provided elsewhere, such as sustainable objectives or historic preservation requirements.)*

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.16:  
*(List name, address and other information.)*

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Design Manager's submittals to the Owner are as follows:  
*(List name, address and other information.)*

§ 1.1.9 The Owner will retain the following consultants and contractors:  
*(List name, legal status, address, project(s) for which the consultant or contractor is retained, and other information.)*

- .1 Cost Consultant(s):
- .2 Architect(s) of Record:
- .3 Geotechnical Engineer(s):
- .4 Civil Engineer(s):
- .5 Other consultants or contractors:

§ 1.1.10 The Design Manager identifies the following representative in accordance with Section 2.3:  
*(List name, address and other information.)*

§ 1.1.11 The Design Manager will retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2.

§ 1.1.11.1 Consultants retained under Basic Services:

*(List name, legal status, address, project(s) for which the consultant is retained, and other information.)*

- .1 Structural Engineer(s)

.2 Mechanical Engineer(s)

.3 Electrical Engineer(s)

.4 Other consultants:

§ 1.1.11.2 Consultants retained under Additional Services:

*(List name, legal status, address, project(s) for which the consultant is retained, and other information.)*

§ 1.1.12 Other Initial Information on which the Agreement is based:

*(Provide other Initial Information.)*

§ 1.1.13 The Owner and Design Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Design Manager shall appropriately adjust the schedule, the Design Manager's services and the Design Manager's compensation.

## ARTICLE 2 DESIGN MANAGER'S RESPONSIBILITIES

§ 2.1 The Design Manager shall provide the professional services as set forth in this Agreement. The Design Manager and its consultants shall be licensed in the applicable jurisdictions to perform the professional services required under this Agreement.

§ 2.2 The Design Manager shall perform its services consistent with the professional skill and care ordinarily provided by an architect providing design management services in the same or similar locality under the same or similar circumstances. The Design Manager shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Program.

§ 2.3 The Design Manager shall identify a representative authorized to act on behalf of the Design Manager with respect to the Program.

§ 2.4 Except with the Owner's knowledge and consent, the Design Manager shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Design Manager's professional judgment with respect to the Program.

§ 2.5 The Design Manager shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Design Manager normally maintains, the Owner shall reimburse the Design Manager for any additional cost as set forth in Section 11.6.3.

§ 2.5.1 Comprehensive General Liability with policy limits of not less than \_\_\_\_\_ (\$\_\_\_) for each occurrence and in the aggregate for bodily injury and property damage. The Owner shall be named as an additional insured on the Design Manager's Comprehensive General Liability insurance policy.

§ 2.5.2 Automobile Liability covering owned and rented vehicles operated by the Design Manager with policy limits of not less than \_\_\_\_\_ (\$\_\_\_) combined single limit and aggregate for bodily injury and property damage. The Owner shall be named as an additional insured on the Design Manager's Automobile Liability insurance policy.

§ 2.5.3 The Design Manager may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies. The Owner shall be named as an additional insured on the Design Manager's umbrella or excess insurance policy.

§ 2.5.4 Workers' Compensation at statutory limits and Employers Liability with a policy limit of not less than \_\_\_\_\_ (\$\_\_\_).

§ 2.5.5 Professional Liability covering the Design Manager's negligent acts, errors and omissions in its performance of professional services with policy limits of not less than \_\_\_\_\_ (\$\_\_\_) per claim and in the aggregate.

§ 2.5.6 The Design Manager shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.5. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, and umbrella or excess policies.

### ARTICLE 3 SCOPE OF THE DESIGN MANAGER'S BASIC SERVICES

§ 3.1 The Design Manager's Basic Services consist of those described in this Article 3.

§ 3.2 The Design Manager shall consult with the Owner and Program Manager, research applicable design criteria, attend Program and project meetings, communicate with members of the Program and project team(s), and issue periodic reports on the status and progress of the Design Manager's services and in particular the development of the Design Standards and Transfer Package(s).

§ 3.3 The Design Manager shall coordinate its services with those services provided by the Owner, the Program Manager, the Architect(s) of Record, and the Owner's other consultants and contractors. The Design Manager shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner, the Program Manager, and the Owner's other consultants and contractors. The Design Manager shall provide prompt written notice to the Owner and the Program Manager if the Design Manager becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.3.1 The Design Manager shall cooperate with the Program Manager and provide information and documents reasonably necessary for the Program Manager to perform its services.

§ 3.4 The Design Manager's Basic Services shall include the usual and customary structural, mechanical, and electrical engineering services necessary for the Design Manager to perform its services under this Agreement.

§ 3.5 The Design Manager shall, at appropriate times, contact the governmental authorities and the entities providing utility services to the projects. In developing the Program design documents and Design Standards, the Design Manager shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.6 The Design Manager shall not be responsible for directives or substitutions made by the Owner or the Architect(s) of Record, without the Design Manager's approval.

§ 3.7 The Design Manager shall not have control over, charge of, or responsibility for the services provided by the Architect(s) of Record, nor shall the Design Manager be responsible for the Architect(s) of Record's failure to perform the services in accordance with the requirements of the agreements between the Owner and the Architect(s) of Record.

§ 3.8 The Design Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with any construction or related activity on any project in the Program.

#### § 3.9 Program Development

The Design Manager shall assist the Owner and Program Manager in development of the Program as set forth in this Section 3.9.

§ 3.9.1 The Design Manager shall review the Initial Information and any other Program information provided by the Owner.

§ 3.9.2 Based on its review of the Initial Information and other Program information provided by the Owner, the Design Manager shall prepare and present, in writing, its preliminary evaluation of the design requirements of the Program to the Owner and Program Manager. The Design Manager shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Design Manager to perform its services for the Program. The Design Manager shall reach an understanding with the Owner regarding the design requirements of the Program.

§ 3.9.3 The Design Manager shall meet regularly with the Owner and Program Manager to discuss the further development of the Program.

§ 3.9.4 The Design Manager, in collaboration with the Owner and Program Manager, shall develop an order of priority for the projects in the Program based on the analysis of facility assessment data provided by the Owner, estimates of probable construction cost, scheduling implications, and other Program goals and requirements.

§ 3.9.5 As soon as practicable after the date of this Agreement, the Design Manager shall submit to the Owner and the Program Manager a schedule of the Design Manager's services. The schedule of the Design Manager's services shall include design milestone dates, anticipated dates when cost estimates and design reviews may occur, and allowances for periods of time required (1) for the Owner's reviews, (2) for the performance of the Owner's consultants, and (3) for review and approval of submissions by authorities having jurisdiction over the project to the extent such review and approvals are required for the design services of the Design Manager. The schedule of the Design Manager's services shall be provided to the Owner and Program Manager for evaluation and approval by the Owner. Once the Owner and the Design Manager agree to the time limits established by the schedule of Design Manager's services, the Owner and the Design Manager shall not exceed them, except for reasonable cause.

### § 3.10 Design Standards

§ 3.10.1 In consultation with the Owner and Program Manager, the Design Manager shall develop and document the Design Standards for the Program, including any sustainability objectives. The Design Standards shall provide a functional, aesthetic, and quality framework for the projects in the Program and shall include the following: planning criteria (area, volume, equipment, finish, technical services and other relevant functional requirements for typical spaces); specifications and performance requirements (including sustainable design criteria) for materials, systems, components and assemblies organized by classification system as agreed upon with the Owner; drawing, building information modeling, and documentation standards (including requirements for interim and final contract document deliverables); typical design details of selected conditions; and procurement, contracting and general requirements. The Design Standards shall incorporate any existing Owner design standards. The Design Manager shall provide the Design Standards to the Owner and Program Manager for evaluation and approval by the Owner.

§ 3.10.2 The Design Manager shall provide the approved Design Standards to the Program Manager for inclusion in the Web-based Program Management Information System, implemented by the Program Manager to receive, distribute and maintain Program Reports and other information and documentation, and for use by the Architect(s) of Record and other Program participants.

§ 3.10.3 In consultation with the Owner and Program Manager, the Design Manager shall review and update the Design Standards at appropriate intervals as required by the status of the Program.

### § 3.11 Schematic Design Services

The Design Manager shall perform the Schematic Design services set forth in this Section 3.11 for each project in the Program.

§ 3.11.1 The Design Manager shall review the program and other project specific information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Design Manager's services.

§ 3.11.2 The Design Manager shall prepare a preliminary evaluation of the program, schedule, budget for the Cost of the Work, project site, proposed procurement or delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the project. The Design Manager shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably necessary.

§ 3.11.3 The Design Manager shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction, including the feasibility of incorporating environmentally responsible design approaches. The Design Manager shall reach an understanding with the Owner regarding the requirements of the project.

§ 3.11.4 Based on the project's requirements as agreed upon with the Owner, the Design Manager shall prepare, and present for the Owner's approval, a preliminary design illustrating the scale and relationship of the project components.

§ 3.11.5 Based on the Owner's approval of the preliminary design, the Design Manager shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.11.6 The Design Manager shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Design Standards as well as the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.11.7 The Design Manager shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.11.8 The Design Manager shall submit the Schematic Design Documents to the Owner for the purpose of obtaining a detailed estimate of the Cost of the Work. The Design Manager shall meet with the Owner and Program Manager to review the Schematic Design Documents.

§ 3.11.9 Upon receipt of the detailed estimate of the Cost of the Work at the conclusion of Schematic Design services, the Design Manager shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents.

### § 3.12 Design Development Services

The Design Manager shall perform the Design Development services set forth in this Section 3.12 for each project in the Program.

§ 3.12.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any revisions or adjustments in the requirements and the budget for the Cost of the Work pursuant to Section 6.4, the Design Manager shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents. The Design Development Documents shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include draft specifications that identify major materials and systems and establish in general their quality levels.

§ 3.12.2 The Design Manager shall submit the Design Development Documents to the Owner for the purpose of obtaining a detailed estimate of the Cost of the Work. The Design Manager shall meet with the Owner and Program Manager to review the Design Development Documents and the detailed estimate of the Cost of the Work.

§ 3.12.3 Upon receipt of the detailed estimate of the Cost of the Work for the Design Development Documents, the Design Manager shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

§ 3.12.4 After incorporation of any modifications under Section 6.6, the Design Manager shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's budget for the Cost of the Work.

### § 3.13 Selection of Architects of Record

§ 3.13.1 For each project in the Program, the Design Manager shall assist the Owner in selecting Architect(s) of Record for implementation of the projects in the Program.

§ 3.13.2 The Design Manager shall assist the Owner in

- .1 determining a method of soliciting, receiving, and reviewing the qualifications of prospective Architects of Record;
- .2 establishing a list of architects as prequalified to perform Architect of Record services in the Program;
- .3 establishing contracting methodology;
- .4 reviewing the Architect(s) of Record's fee proposals and scopes of services in the proposed agreements; and
- .5 selecting the Architect of Record for each project.

### § 3.14 Preparation of the Transfer Package

Based on the Owner's approval of the Design Development Documents, the Design Manager shall prepare a Transfer Package for each project in the Program for the Owner's approval. The Transfer Package shall consist of the Design Development documents, Design Standards, detailed estimate of the Cost of the Work, and other documentation as appropriate to communicate the scope, quality, budget and intent of each project, and a preliminary schedule indicating the design and construction milestone dates through final completion of the project. The 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 each project. Upon the Owner's approval of the Transfer Package, the Design Manager shall provide the Transfer Package to the Architect of Record for each project in the Program.

### § 3.15 Services Relative to the Architect(s) of Record

§ 3.15.1 The Design Manager shall provide administration of the Architect(s) of Record's services for each project in the Program as described in this Section 3.15. The Design Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement.

§ 3.15.2 The Design Manager shall review the Architect(s) of Record's Construction Documents for general conformance with budget, scope, design intent, and Design Standards as set forth in each Transfer Package.

§ 3.15.3 The Design Manager shall establish a protocol, schedule and criteria for review of the Architect(s) of Record's services. The Design Manager shall conduct reviews of Construction Documents prepared by the Architect(s) of Record at the approximate mid-point of their completion and again just prior to their completion, unless otherwise agreed as follows:

- .1 \_\_\_\_\_ percent (\_\_\_%) Construction Documents Phase
- .2 \_\_\_\_\_ percent (\_\_\_%) Construction Documents Phase

The Design Manager's review of the construction documents prepared by the Architect(s) of Record shall be for the limited purpose of checking for conformance with information given and the design concepts expressed in the Transfer Package. Review of such documents is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of materials equipment or systems, which are the Architect(s) of Record's responsibility.

§ 3.15.4 The Design Manager shall document the reviews provided for in Section 3.15.3 through written reports to the Owner, Program Manager and Architect(s) of Record.

§ 3.15.5 The Design Manager shall document the Architect(s) of Record's responses to review comments and discuss them with the Owner and Program Manager.

§ 3.15.6 The Design Manager shall assist in coordinating the schedule of presentations by the Architect(s) of Record to user groups, committees, boards or other public or private groups in cooperation with the other Program participants.

§ 3.15.7 The Design Manager shall provide, in a consistent format, a monthly status report indicating the progress of design and design documentation for ongoing projects, and identifying any concerns with regard to the performance of the Architect(s) of Record. The monthly status report shall be provided to the Program Manager for inclusion in the Program Management Information System.

§ 3.15.8 The Design Manager shall review invoices and requests for Additional Services from the Architect(s) of Record, and provide recommendations to the Owner.

§ 3.15.9 During the Bidding or Negotiation Phase, the Design Manager shall assist the Architect(s) of Record and Program Manager in responding to questions, and rendering decisions, regarding compliance with the Design Standards.

§ 3.15.10 Upon the request of the Owner, the Design Manager shall participate in pre-bid and preconstruction meetings.

§ 3.15.11 The Design Manager shall assist the Owner in establishing a system for managing records of Design Standards, and design and construction documents, for the projects in the Program, in coordination with, or as part of, the Program Management Information System.



**ARTICLE 4 ADDITIONAL SERVICES**

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Program. The Design Manager shall provide the listed Additional Services only if specifically designated in the table below as the Design Manager’s responsibility, and the Owner shall compensate the Design Manager as provided in Section 11.2. *(Designate the Additional Services the Design Manager shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2, or in an exhibit attached to this services document. If in an exhibit, identify the exhibit.)*

Services	Responsibility (Design Manager, Owner or Not Provided)	Location of Service Description (Section 4.2 below or an exhibit attached to this document and identified below)
§ 4.1.1 Multiple preliminary design for individual projects		
§ 4.1.2 Programming for individual projects (B202™–2009)		
§ 4.1.3 Prototype Facility design		
§ 4.1.4 Services as the Architect of Record for one or more projects (B172™–2013)		
§ 4.1.5 Pre-purchased material and equipment design, logistics and specifications		
§ 4.1.6 Contract Administration Phase services for individual projects, except those services listed in Section 4.3.1.2		
§ 4.1.7 Detailed cost estimating		
§ 4.1.8 Measured drawings		
§ 4.1.9 Existing facilities surveys		
§ 4.1.10 Facility Condition Assessment as defined in Section 4.3.3		
§ 4.1.11 Site Evaluation and Planning (B203™–2007)		
§ 4.1.12 Civil engineering		
§ 4.1.13 Landscape design		
§ 4.1.14 Architectural Interior Design (B252™–2007)		
§ 4.1.15 Value Analysis (B204™–2007)		
§ 4.1.16 Preliminary LEED® Certification Services		
§ 4.1.17 Post occupancy evaluation		
§ 4.1.18 Tenant-related services		
§ 4.1.19 Coordination of Owner’s consultants		
§ 4.1.20 Telecommunications/data design		
§ 4.1.21 Security Evaluation and Planning (B206™–2007)		
§ 4.1.22 Commissioning (B211™–2007)		
§ 4.1.23 Extensive environmentally responsible design		
§ 4.1.24 LEED® Certification (B214™–2012)		
§ 4.1.25 Historic Preservation (B205™–2007)		
§ 4.1.26 Preliminary Energy Modeling Services		
§ 4.1.27 Technical Peer review of Construction Documents		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Design Manager's responsibility, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Design Manager, any Additional Services provided in accordance with this Section 4.3 shall entitle the Design Manager to compensation pursuant to Section 11.3 and an appropriate adjustment in the Design Manager's schedule.

§ 4.3.1 Upon written notification from the Owner, the Design Manager shall perform the following as Additional Services:

- .1 Assist in the analysis of the use of alternative materials and systems proposed by bidders, and render decisions regarding compliance with the Design Standards.
- .2 Review submittals, construction change directives, and change orders on projects, as prepared by the Architect(s) of Record or others, and render decisions regarding compliance with the Design Standards.
- .3 Other:

§ 4.3.2 The Design Manager shall provide services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Design Manager shall notify the Owner:

- .1 \_\_\_\_\_ ( ) meetings with user groups
- .2 \_\_\_\_\_ ( ) attendance at public hearings

#### § 4.3.3 Facility Condition Assessment

§ 4.3.3.1 If designated as an Additional Service pursuant to Section 4.1.10, the Design Manager shall consult with the Owner and its consultants and prepare a strategy and schedule for performing a Facility Condition Assessment of the Owner's existing facilities.

§ 4.3.3.2 The Design Manager shall assess and document the condition of existing facilities within the scope of the Program based on an agreed upon schedule and common format for recording assessment information. Assessments shall be performed by architects and engineers using readily available building and site documentation and on site visual observation.

§ 4.3.3.3 The Design Manager shall identify to the Owner and Program Manager the need for more extensive investigation and testing of existing conditions, to assist in determination of facility condition, and if approved by the Owner, shall provide the investigation and testing.

§ 4.3.3.4 The Design Manager shall discuss with the Owner and Program Manager the need for collection and organization of documentation of existing conditions, such as existing land surveys, or existing as-built or as-designed construction documents, and if approved by the Owner, shall collect and organize the documents in a uniform electronic format.

§ 4.3.3.5 The Design Manager shall provide the condition assessment information to the Owner in an agreed upon format.

#### ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on each project in the Program. The Owner shall furnish a written program for each project, which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements, relationships, flexibility, and expandability; and special equipment, systems and site requirements.

§ 5.2 The Owner shall provide to the Design Manager all available information and documentation, for each project in the Program, as necessary for the Design Manager to provide its services. The information and documentation may include facility condition assessment reports; design drawings; construction documents; record drawings; master plans; operation costs; operation budgets; and pertinent records relative to historical building data, building equipment and furnishings, and repair records.

§ 5.3 For each project in the Program, the Owner shall provide access to the property, buildings, and personnel necessary for the Design Manager to provide the Design Management Services. The Owner shall provide knowledgeable representatives to conduct tours and walk-throughs and explain the existing facility's original, current and anticipated future use.

§ 5.4 The Owner shall retain an Architect of Record for each project in the Program. The Architect of Record is the architect that will receive the Transfer Package and develop Construction Documents for one or more projects in the Program. The Architect of Record may also provide construction phase services, such as contract administration, or other services for one or more projects. There may be one or more Architects of Record for the Program. The Architect(s) of Record shall be licensed in the applicable jurisdiction to perform the required professional services.

§ 5.5 The Owner shall retain a Program Manager to provide services, duties and responsibilities as described in AIA Document C171™-2013, Standard Form of Agreement Between Owner and Program Manager.

§ 5.6 Unless otherwise specifically required by this Agreement, the Owner shall furnish the services of any other consultants and contractors necessary to allow the Design Manager to perform its services under this Agreement.

§ 5.7 The Owner shall provide cost consulting and detailed project cost estimating services either through the Program Manager, through the Design Manager as an Additional Service, or through another retained cost consultant.

§ 5.8 The Owner shall establish and periodically update the Owner's budget for the Program, including (1) the budget for the Cost of the Work of each project; (2) the Owner's other costs; and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work for any of the projects, the Owner shall notify the Design Manager. The Owner and the Design Manager shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the projects' scope and quality as they relate to the services of the Design Manager.

§ 5.9 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of each project, and a written legal description of each project site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a project benchmark.

§ 5.10 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.11 The Owner shall coordinate the services of its own consultants with those services provided by the Design Manager. Upon the Design Manager's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Design Manager to furnish them as an Additional Service, when the Design Manager requests such services and demonstrates that they are reasonably required to provide the Design Manager's Services. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

§ 5.12 The Owner shall furnish tests, inspections and reports required by law or requested by the Design Manager, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.13 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for each project to meet the Owner's needs and interests.

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

§ 5.15 The Owner shall provide the Design Manager access to the individual project site(s) and shall obligate its contractors to provide the Design Manager access to the Work wherever it is in preparation or progress.

§ 5.16 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Program, and in addition, if necessary, one or more representatives to act on the Owner's behalf with respect to each project. The Owner shall render decisions and approve the Design Manager's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Design Manager's services.

#### ARTICLE 6 COST OF THE WORK OF THE PROJECTS

§ 6.1 For purposes of this Agreement, the Cost of the Work for each project shall be the total cost to the Owner to construct all elements of the project designed or specified by the Design Manager and the Architect(s) of Record, and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Program Manager, Design Manager or the Architect(s) of Record, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner. The term "Cost of the Work" is project specific and does not apply to the entire Program.

§ 6.2 The Owner's budget for the Cost of the Work for the project(s) is provided in the Initial Information, and may be adjusted throughout the project as required under Sections 5.8, 6.4 and 6.5. The Design Manager's evaluations of the Owner's budget for the Cost of the Work represent the Design Manager's judgment as a design professional.

§ 6.3 The Owner shall require the individual or entity responsible for cost estimating to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Design Manager shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the cost consultant prepares as the Design Manager progresses with its services. The Design Manager shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the cost consultant's inaccuracies or any incompleteness in preparing cost estimates. The Design Manager may review the estimates, and such review will be solely for the Design Manager's guidance in completion of its services; however, the Design Manager shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.4 If, prior to the conclusion of the Design Development Phase, an estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Design Manager, in consultation with the individual or entity responsible for estimating, shall make appropriate recommendations to the Owner to adjust the project's size, quality or budget, and the Owner shall cooperate with the Design Manager in making such adjustments.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 in consultation with the Design Manager, revise the project program, scope, or quality as required to reduce the Cost of the Work; or
- .3 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.2, the Design Manager, without additional compensation, shall incorporate the required modifications in the Transfer Package as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Design Manager's modification shall be incorporated into the Transfer Package, and shall be the limit of the Design Manager's responsibility as a Basic Service under this Article 6.

#### ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Design Manager and the Owner warrant 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 the Program. If the Owner and Design Manager intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Design Manager and the Design Manager's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Program is not to be construed as publication in derogation of the reserved rights of the Design Manager and the Design Manager's consultants.

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§ 7.3 Upon execution of this Agreement, the Design Manager grants to the Owner a nonexclusive license to use the Design Manager's Instruments of Service solely and exclusively for purposes of completing the Construction Documents by the Architect(s) of Record, and constructing, using, maintaining, altering and adding to the project(s) in the Program, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Design Manager shall obtain similar nonexclusive licenses from the Design Manager's consultants consistent with this Agreement. The license granted under this Section permits the Owner to authorize the Program Manager, Architect(s) of Record, Contractor(s), Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the project(s) in the Program. If the Design Manager rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 The Owner, to the extent permitted by law, agrees to indemnify and hold harmless the Design Manager and its consultants 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 changes to the Instruments of Service not authorized by the Design Manager. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Design Manager. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Design Manager and the Design Manager's consultants.

## ARTICLE 8 CLAIMS AND DISPUTES

### § 8.1 General

§ 8.1.1 The Owner and Design Manager shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work on the project out of which the claim arises. The Owner and Design Manager waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Design Manager 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 AIA Document A201™-2007, General Conditions of the Contract for Construction. The Owner or the Design Manager, 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.

§ 8.1.3 The Design Manager shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Design Manager, its employees and its consultants in the performance of professional services under this Agreement. The Design Manager's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage.

§ 8.1.4 The Design Manager and Owner waive consequential damages for claims, disputes or other matters in question 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, except as specifically provided in Section 9.7.

### § 8.2 Meet and Confer

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to a meet and confer session as a condition precedent to mediation.

§ 8.2.2 The Owner and Design Manager shall endeavor to resolve claims, disputes and other matters in question during the meet and confer session. The meet and confer session shall be attended by the Owner and Design Manager or their authorized representatives who shall have the authority to bind the parties. The meet and confer session shall take place within thirty (30)

days after a request by either party, unless the parties mutually agree otherwise. Prior to the meet and confer session, the parties shall exchange relevant information that will assist in resolving the claim, dispute or controversy.

§ 8.2.3 If the parties reach a mutually acceptable resolution, then they shall prepare appropriate documentation memorializing the resolution. If the parties cannot reach a mutually acceptable resolution, they shall proceed to mediation in accordance with Section 8.3.

### § 8.3 Mediation

§ 8.3.1 Any claim, dispute or other matter in question arising out of or related to this Agreement not resolved by the meet and confer session shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Design Manager's services, the Design Manager may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.3.2 Unless the parties mutually agree otherwise, the mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 8.3.3 The parties shall share the mediator's fee and any filing fees equally. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.3.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.3, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and Design Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

- Arbitration pursuant to Section 8.4 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

### § 8.4 Arbitration

§ 8.4.1 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 subject to, but not resolved by, mediation 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 the 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.

§ 8.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it 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.

§ 8.4.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

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

#### § 8.4.4 Consolidation or Joinder

§ 8.4.4.1 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).

§ 8.4.4.2 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.

§ 8.4.4.3 The Owner and Design Manager grant to any person or entity made a party to an arbitration conducted under this Section 8.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design Manager under this Agreement.

### ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Design Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design Manager's option, cause for suspension of performance of services under this Agreement. If the Design Manager elects to suspend services, the Design Manager shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Design Manager shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Design Manager shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design Manager's services. The Design Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Program, or any project in the Program, the Design Manager shall be compensated for services performed prior to notice of such suspension. When the Program or project is resumed, the Design Manager shall be compensated for expenses incurred in the interruption and resumption of the Design Manager's services. The Design Manager's fees for the remaining services and the time schedules shall be equitably adjusted. In the event that the Owner terminates one or more of the projects, and that termination is not the fault of the Design Manager, the Design Manager shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.3 If the Owner suspends the Program for more than 90 cumulative days for reasons other than the fault of the Design Manager, the Design Manager may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 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.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design Manager for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Design Manager, the Design Manager shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Design Manager's services and include expenses directly attributable to termination for which the Design Manager is not otherwise compensated, plus an amount for the Design Manager's anticipated profit on the value of the services not performed by the Design Manager.

§ 9.8 The Owner's rights to use the Design Manager's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.7.

## ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the jurisdiction identified below. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.4. *(Identify the jurisdiction whose laws will govern this Agreement.)*

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Design Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Design Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Program if the lender agrees to assume the Owner’s rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Design Manager to execute certificates, the proposed language of such certificates shall be submitted to the Design Manager for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design Manager to execute consents reasonably required to facilitate assignment to a lender, the Design Manager shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Design Manager for review at least 14 days prior to execution. The Design Manager shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 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 Design Manager.

§ 10.6 Unless otherwise required in this Agreement, the Design Manager 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 any project site.

§ 10.7 The Design Manager shall have the right to include photographic or artistic representations of the design of the project(s) among the Design Manager’s promotional and professional materials and shall provide professional credit for the Architect(s) of Record as appropriate. The Design Manager shall be given reasonable access to the completed project(s) to make such representations. However, the Design Manager’s materials shall not include the Owner’s confidential or proprietary information if the Owner has previously advised the Design Manager in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Design Manager and the Architect(s) of Record in the Owner’s promotional materials for the project(s).

§ 10.8 If the Design Manager 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 as set forth in Section 10.8.1.

§ 10.8.1 If the Design Manager or Owner receives information specifically designated by the other party as “confidential” or “business proprietary,” the receiving party may disclose such information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The Party receiving such information may also disclose it to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Program, 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 10.8.

## ARTICLE 11 COMPENSATION

§ 11.1 For the Design Manager’s Basic Services described under Article 3, the Owner shall compensate the Design Manager as follows:  
*(Insert amount of, or basis for, compensation.)*



§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Design Manager as follows:  
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

§ 11.3 For Additional Services that may arise during the course of the Program, including those under Section 4.3, the Owner shall compensate the Design Manager as follows:  
(Insert amount of, or basis for, compensation.)

§ 11.4 Compensation for Additional Services of the Design Manager's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Design Manager plus \_\_\_\_\_ percent (\_\_\_%), or as otherwise stated below:

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

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

Employee or Category

Rate

#### § 11.6 Compensation for Reimbursable Expenses

§ 11.6.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Design Manager and the Design Manager's consultants directly related to the Program or the project(s), as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over a project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Design Manager's consultants' expense of professional liability insurance dedicated exclusively to this Program or the project(s), or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Design Manager's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Program or project specific remote office expenses; and
- .11 Other similar Program-related or project-related expenditures.

§ 11.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Design Manager and the Design Manager's consultants plus \_\_\_\_\_ percent (\_\_\_%) of the expenses incurred.

§ 11.6.3 If the insurance requirements listed in Section 2.5 exceed the types and limits the Design Manager normally maintains and the Design Manager incurred additional costs to satisfy such requirements, the Owner shall reimburse the Designer Manager for such costs as set forth below:

**§ 11.7 Compensation for Use of Design Manager's Instruments of Service**

If the Owner terminates the Design Manager for its convenience under Section 9.5, or the Design Manager terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Design Manager's Instruments of Service solely for purposes of completing, using and maintaining one or more projects in the Program as follows:

**§ 11.8 Payments to the Design Manager**

§ 11.8.1 An initial payment of \_\_\_\_\_ (\$\_\_\_) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.8.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Design Manager invoice. Amounts unpaid \_\_\_\_\_ (\_\_\_) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design Manager.  
*(Insert rate of monthly or annual interest agreed upon.)*

§ 11.8.3 The Owner shall not withhold amounts from the Design Manager's compensation to impose a penalty or liquidated damages on the Design Manager, or to offset sums requested by or paid to Architect(s) of Record, other consultants, or contractors for the cost of changes in the Work unless the Design Manager agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.8.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

**ARTICLE 12 SPECIAL TERMS AND CONDITIONS**

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

**ARTICLE 13 SCOPE OF THE AGREEMENT**

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Design Manager 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 Design Manager.

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

- .1 AIA Document B171™-2013, Standard Form of Agreement Between Owner and Design Manager
- .2 AIA Document E203™-2013, Building Information Modeling and Digital Data Protocol Exhibit, if completed, or the following:
- .3 Other documents:  
*(List other documents, if any, including additional scopes of service forming part of the Agreement.)*

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

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
DESIGN MANAGER (Signature)

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*