



# AIA<sup>®</sup> Document C171<sup>™</sup> – 2013

## *Standard Form of Agreement Between Owner and Program 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 Program 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.

This document is intended to be used in conjunction with AIA Contract Documents.

and the Program 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 Owner and Program Manager agree as follows.

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### ARTICLE 1 PROGRAM INFORMATION AND INITIAL INFORMATION

§ 1.1 This Agreement is based on the Program Information and Initial Information set forth in Sections 1.2 and 1.3.

#### § 1.2 Program Information

*(Insert the requested Program Information below. For information that is not provided, insert a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

##### § 1.2.1 Preliminary description of the projects comprising the Program:

*(Identify proposed use, size, or other known information for each project in the Program.)*

##### § 1.2.2 Location of each project in the Program:

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

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

##### § 1.2.4 Funding source:

*(Identify anticipated funding sources, and deadlines or schedules related to funding, as well as whether funding is authorized.)*

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

*(Provide the Owner's total budget for the Program and, if known, a line-item breakdown of all costs described in Section 3.4.1.)*

§ 1.2.6 The Owner's intended procurement or delivery methods for design and construction of the projects in the Program.

*(Identify method such as competitive bid, negotiated contract, multiple prime contracts or construction management.)*

§ 1.2.7 Anticipated scheduling information:

*(Include overall Program duration and milestones. If known, include proposed dates for commencement and completion of design, commencement and completion of construction, occupancy, and any other critical scheduling information for each project in the Program.)*

.1 Anticipated dates of Program commencement and completion:

.1 Commencement of design, if other than the date of this Agreement:

.2 Completion of design:

.3 Commencement of construction

.4 Completion of construction

.2 Other Program scheduling information:

§ 1.2.8 Other information regarding the Program:

*(Identify any other available studies or reports, as well as special characteristics or needs of the Program, such as environmentally responsible design or historic preservation requirements, not provided elsewhere.)*

§ 1.3 Initial Information

*(Insert the requested Initial Information below. For information that is not to be provided, insert a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

§ 1.3.1 The Owner will retain the following consultants and contractors:

*(List name, discipline, address and other information. If the Owner will retain a consultant or contractor for some, but not all, projects in the program, indicate the project(s) for which the consultant or contractor is retained.)*

§ 1.3.2 The Program Manager will retain the consultants identified in Sections 1.3.2.1 and 1.3.2.2:

§ 1.3.2.1 Consultants retained under Basic Services:

*(List name, discipline, address and other information. If the Program Manager will retain a consultant for some, but not all, projects in the program, indicate the project(s) for which the consultant or contractor is retained.)*

§ 1.3.2.2 Consultants retained under Additional Services:

*(List name, discipline, address and other information. If the Program Manager will retain a consultant for some, but not all, projects in the program, indicate the project(s) for which the consultant or contractor is retained.)*

§ 1.3.3 The Owner identifies the following representative in accordance with Section 5.4:

*(List name, address and other information.)*

§ 1.3.4 The persons or entities, in addition to the Owner's representative, who are required to review and approve the Program Manager's submittals to the Owner are as follows:

*(List name, address and other information.)*

§ 1.3.5 The Program Manager identifies the following representative in accordance with Section 2.4:

*(List name, address and other information.)*

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

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

## ARTICLE 2 PROGRAM MANAGER'S RESPONSIBILITIES

§ 2.1 The Program Manager shall provide the services as set forth in this Agreement.

§ 2.2 The Program Manager shall perform its services consistent with the skill and care ordinarily provided by program managers practicing in the same or similar locality under the same or similar circumstances. The Program Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Program.

§ 2.3 The Program Manager, as soon as practicable after execution of the Agreement, shall confirm in writing to the Owner the names and qualifications of its proposed key staff members. Within 14 days of receipt of the names and qualifications of the Program Manager's proposed key staff members, the Owner may reply to the Program Manager in writing stating (1) whether the Owner has reasonable objection to a proposed key staff member or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14 day period shall constitute notice of no reasonable objection. The Program Manager shall not staff any employees on the Program to whom the Owner has made reasonable and timely objection. The Program Manager shall not change its key staff members without the Owner's consent, which shall not unreasonably be withheld or delayed.

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

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

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

§ 2.7 The Program 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 Program Manager normally maintains, the Owner shall reimburse the Program Manager for any additional cost as set forth in Section 10.6.3.

§ 2.7.1 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 Program Manager's Comprehensive General Liability policy.

§ 2.7.2 Automobile Liability covering owned and rented vehicles operated by the Program 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 Program Manager's Automobile Liability policy.

§ 2.7.3 The Program 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 Program Manager's umbrella or excess insurance policy.

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

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

§ 2.7.6 The Program Manager shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.7. 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 PROGRAM MANAGER'S BASIC SERVICES

#### § 3.1 General

§ 3.1.1 The Program Manager's Basic Services consist of those described in this Article 3. The Program Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Program 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 employed in connection with the construction of the projects in the Program, nor shall the Program Manager be responsible for the failure of the Owner's consultants or contractors to perform services for, or the construction of, a project in accordance with the plans, specification or other contract or legal requirements. The Program Manager shall be responsible for the Program Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Owner's consultants or contractors.

§ 3.1.2 The Program Manager shall periodically review the development of the design for each project in the Program and provide recommendations for systems, materials, equipment and techniques that are utilized to achieve the Design Standards established pursuant to Section 3.3.4. The Program Manager shall provide advice on construction feasibility, availability of materials and labor, and procurement and time requirements for installation and construction.

§ 3.1.3 The Program Manager shall determine the need for retaining consultants to provide professional and other services for each project in the Program, and assist the Owner in reviewing qualifications and selecting any such consultants.

§ 3.1.4 The Program Manager shall assist the Owner in selecting the services of independent testing laboratories, review their reports and make recommendations to the Owner.

§ 3.1.5 The Program Manager shall assist the Owner in reviewing the qualifications of, and in selecting and retaining contractors for each project in the Program.

§ 3.1.6 The Program Manager shall assist the Owner in establishing building information modeling and digital data protocols for the projects in the Program as appropriate.

### § 3.2 Program Management Plan

§ 3.2.1 In order to ascertain the requirements of the Program, the Program Manager shall review and discuss with the Owner the Program Information and Initial Information, along with any other information listed below to be furnished by the Owner. The Program Manager and the Owner shall discuss the feasibility of incorporating sustainable objectives in the Program.

*(List other information to be furnished by the Owner.)*

§ 3.2.2 The Program Manager shall develop and document a Program Management Plan reflecting the scope and related requirements of the Program and submit the Program Management Plan to the Owner for approval. The Program Management Plan shall include a description of, and requirements pertaining to, the following:

- .1 Program management approach and organization, including executive, management and team staffing plan and responsibilities;
- .2 Program planning and development activities, including strategic planning, prioritizing, and defining scope, schedule and budget of the projects in the Program;
- .3 Program management controls, including scope, budget/cost, schedule, and quality management plan;
- .4 Procurement strategies and procedures, including strategy for procurement of design services and construction; procedures for pre-purchase of material, systems, and equipment; evaluating and approving substitutions; and affirmative action or diversity plan;
- .5 Authorization processes and procedures, including administrative approval processes and responsibilities, and key documentation for: professional services and preconstruction services; processes and procedures for project construction procurement, such as award, contracting, notice to proceed, change orders, payment certification; and project closeout;
- .6 Program communication procedures, including systems, meetings, reporting, investigation, and records;
- .7 Development of design process guidelines, including assessment, prioritization, project scope definition, design development, coordination, and permit process;
- .8 Development of construction process guidelines, including preconstruction and construction administration services, construction phase processes and procedures, program coordination, change order management, commissioning, and project closeout procedures; and
- .9 Project acceptance and turnover guidelines relating to contract completion and closeout management, including record documentation, manuals and warranties.

§ 3.2.3 The Program Manager shall obtain the Owner's approval of the Program Management Plan, and any subsequent revisions to the Program Management Plan. The Program Manager shall meet with the Owner to discuss the Program Management Plan and any necessary revisions every six months, or at intervals set forth below:

*(Insert the milestones or intervals for Program Management Plan updates, if other than every six months.)*

### § 3.3 Information Management and Standards

§ 3.3.1 Program Management Information System. The Program Manager shall implement and, for the duration of the Program, maintain and upgrade as necessary a web-based Program Management Information System to be used to receive, distribute, and maintain Program Reports, Program Schedules, and other information, reports and documentation as agreed by the Owner and the Program Manager. Activities under the Program will be scheduled and documented through the Program Management Information System. The Program Management Information System



shall organize information by project, activity, or relevant categories, as determined by the Program Manager and Owner. The Program Manager shall collect information pertaining to the Program, and update the Program Management Information System on a weekly basis unless otherwise agreed. The Program Management Information System shall contain, at a minimum, current status on contracts, budget, schedule and quality on a Program and project basis.

§ 3.3.2 The Owner shall have access to all information in the Program Management Information System. Other Program and project participants shall have access to specific information only as approved by the Owner. Upon the completion of each project in the Program, the Program Manager shall preserve the documentation and information contained in the Program Management Information System and provide a copy to the Owner.

§ 3.3.3 The Program Manager shall develop protocols and standards for the exchange and use of information in digital form to be integrated into the Program Management Information System. The Program Manager shall provide information to the Owner and the Owner's consultants and contractors, as required for the duration of the Program, regarding the use of the Program Management Information System.

§ 3.3.4 **Design Standards.** The Program Manager shall assist the Owner, and Owner's Design Manager, if any, in developing and periodically updating Design Standards for the Owner's approval. The Design Standards shall provide a functional, aesthetic, and quality framework for the projects in the Program and shall include the following: planning criteria (including 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.

§ 3.3.5 Prior to the start of the design of each project, the Program Manager shall make the Owner-approved Design Standards available to the Owner's design consultants through the Program Management Information System.

§ 3.3.6 **Program Report.** On a monthly basis, or as set forth below, the Program Manager shall prepare a Program Report. The Program Report shall include a summary update of Program and project status, an updated Program Schedule, actual and anticipated costs related to the Program, cost and payment reports for each consultant and construction contract, cash flow projections, proposed and approved change orders, and any claims pertaining to the Program Manager, Owner, and the Owner's other consultants and contractors.

*(If the Program Report is required at intervals other than monthly, set forth such intervals below.)*

#### § 3.4 Program Budget Control

§ 3.4.1 If the Owner has not established a Program Budget, the Program Manager and the Owner shall collaborate to prepare a preliminary Program Budget, which shall include the costs for the Program Manager's services, the costs of the services of the Owner's other consultants, the costs for design and construction of each project in the Program, and additional details necessary for the Owner to prepare a complete Program Budget. The Owner shall review and approve in writing the preliminary Program Budget. The Program Manager shall provide monthly reports on the Program Budget, or at intervals otherwise agreed to by the Owner and Program Manager below. The Program Manager shall organize the Program Budget in a manner that will allow costs to be tracked using the Program Management Information System.

*(If the Program Manager is required to provide Program Budget reports at intervals other than monthly, set forth such intervals below.)*

§ 3.4.2 The Program Manager shall develop and implement a system of budget and cost controls to assist the Owner in the management of Program and project costs. The Program Manager shall prepare cash flow projections of costs for the Program.

§ 3.4.3 The Program Manager shall review estimates prepared by the Owner's consultants and contractors and produce a report identifying variances from the Program Budget along with recommendations for resolving such variances.

§ 3.4.4 The Program Manager shall share information regarding the Program Budget with the Owner's consultants as authorized by the Owner.

§ 3.4.5 The Program Manager shall assist in identifying Program-wide procurement and cost saving opportunities.

§ 3.4.6 The Program Manager shall report the cost impact on the Program Budget of proposed contracts, change orders, and proposed contract amendments from the Owner and the Owner's consultants and contractors.

### § 3.5 Program Schedule Control

§ 3.5.1 The Program Manager shall prepare a Program Schedule showing priorities, sequences, durations, and responsible parties for major design, pricing, construction and Owner activities; establishing the overall duration of the Program; and identifying critical milestone dates. The Program Manager shall update and expand the level of detail and status of the Program Schedule as the Program progresses. The Program Schedule shall also incorporate or identify

- .1 dates for approvals and permits;
- .2 project specific milestones and design and construction schedules, including dates of commencement and completion;
- .3 components that need to be ordered or procured for the overall Program by the Owner, if any; and
- .4 the Owner's occupancy requirements and any portions of the Program having occupancy priority.

§ 3.5.2 The Program Manager shall provide recommendations for project sequencing and phasing to meet overall Program objectives.

§ 3.5.3 The Program Manager shall provide recommendations on the milestone dates and durations in the design and construction schedules as they are developed for the projects in the Program.

§ 3.5.4 The Program Manager shall monitor and report on the progress of the Program and indicate to the Owner observed deviations from the Program Schedule or key milestones of the individual project schedules that may impact substantial completion or final completion. The Program Manager shall include the reports in the Program Management Information System. The Program Manager shall consult with the Owner and the Owner's consultants and contractors to develop recovery plans when the schedules or objectives are not being met.

### § 3.6 Program Quality Control

§ 3.6.1 The Program Manager shall establish, and distribute through the Program Management Information System, quality control guidelines that define the obligations of the Program Manager, Owner, and the Owner's consultants and contractors.

§ 3.6.2 The Program Manager shall periodically review the development of the design for each project in the Program for conformance with the Program requirements and Design Standards. The Program Manager shall provide a list of observed deviations from the Design Standards and discuss resolution of the observed deviations with the Owner and, as appropriate, the Owner's consultants and contractors.

§ 3.6.3 The Program Manager shall confirm that each contractor has prepared a safety program and project specific quality control plan.

§ 3.6.4 The Program Manager shall advise the Owner of observations it makes regarding deficiencies in the performance of the Owner's consultants and contractors.

### § 3.7 Other Services

§ 3.7.1 Subject to Sections 4.1.1 and 4.3.1.3, upon the Owner's written request, the Program Manager shall provide reasonable assistance in the areas of community and public relations, in order to enhance and maintain public awareness in furtherance of the interests of the Program and the Owner.

§ 3.7.2 The Program Manager shall schedule and conduct meetings with the necessary Program participants to coordinate the progress of the Program. The Program Manager shall also prepare minutes of such meetings and include them, as appropriate, in the Program Management Information System.

§ 3.7.3 The Program Manager shall develop a strategy, procedure, and schedule to assist the Owner in obtaining the required reviews and approvals of authorities having jurisdiction over each project in the Program.



§ 3.7.4 The Program Manager shall assist the Owner in developing and implementing protocols for the review and processing of changes or proposed changes in the scope of design or construction for projects in the Program, and the corresponding contracts for design and construction.

§ 3.7.5 The Program Manager shall assist the Owner in developing and implementing protocols for the review and processing of applications for payment for the Program and the projects in the Program.

§ 3.7.6 The Program Manager shall assist the Owner in selecting the dispute resolution procedures to be included in the various agreements between the Owner or the Program Manager and consultants and contractors for disputes arising out of the Program.

§ 3.7.7 Upon the written request of the Owner, the Program Manager shall evaluate and provide input to the Owner on claims arising out of the Program.

§ 3.7.8 The Program Manager shall assist the Owner in establishing a procedure for tracking and submission of records, warranties, guarantees, and documents pertaining to systems verification and project close-out, for projects in the Program.

**ARTICLE 4 ADDITIONAL SERVICES**

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Program. The Program Manager shall provide the listed Additional Services only if specifically designated in the table below as the Program Manager’s responsibility, and the Owner shall compensate the Program Manager as provided in Section 10.3. *(Designate the Additional Services the Program 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 attached exhibit. If in an exhibit, identify the exhibit. AIA Contract Document numbers are cited, where applicable, to provide a basis for the proposed scope of services, but may need to be revised to be applicable in the Program Management context.)*

Services	Responsibility (Program Manager, Owner or not provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Community communications not included in Section 3.7.1		
§ 4.1.2 Capital campaign support		
§ 4.1.3 Project Specific Construction Management (C132™-2009)		
§ 4.1.4 Assistance with sustainability certifications		
§ 4.1.5 Affirmative action/diversity compliance and outreach		
§ 4.1.6 Design Management Services (B171™-2013)		
§ 4.1.7 Existing facilities analysis		
§ 4.1.8 Site Selection Analysis (B203™-2007)		
§ 4.1.9 Economic analysis		
§ 4.1.10 Project Programming (B202™-2009)		
§ 4.1.11 Master planning		
§ 4.1.12 Early procurement of materials and equipment		
§ 4.1.13 FF&E procurement coordination		
§ 4.1.14 Detailed cost estimating		
§ 4.1.15 Life cycle analysis		
§ 4.1.16 Move management		
§ 4.1.17 Coordination of hazardous material testing or abatement		
§ 4.1.18 Other project specific services:		
§ 4.1.19 Other Program specific services:		

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Program 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 this Agreement. Except for services required due to the fault of the Program Manager, any Additional Services provided in accordance with this Section 4.3 shall entitle the Program Manager to compensation pursuant to Section 10.4.

§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Program Manager shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Program Manager shall not proceed to provide the following services until the Program Manager receives the Owner's written authorization:

- .1 Services necessitated by a change in the Program Information or Initial Information; a change to previous instructions or approvals given by the Owner; or a material change in the Program or projects in the Program including, but not limited to, size, quality, complexity, the Owner's Program Schedule or Program Budget, or procurement or delivery methods in addition to those listed in Section 1.2.6;
- .2 Services necessitated by the enactment or revision of codes, laws or regulations or official interpretations after the date of this Agreement;
- .3 Preparation for, and attendance at, public presentations, meetings or hearings in excess of ( ) total hours;
- .4 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Program Manager is party thereto;
- .5 Services required to assist in the repair or replacement of any elements of construction on projects in the Program, for any cause except the negligence of the Program Manager; or
- .6 Services required by deficiencies in the performance or default of Owner's consultants or contractors.

§ 4.3.2 If the services covered by this Agreement have not been completed within ( ) months of the date of this Agreement, through no fault of the Program Manager, an extension of the Program Manager's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 The Owner shall provide and update information regarding requirements for, and limitations on, the Program in a timely manner, including the information in Article 1; other objectives, schedule constraints and criteria, and site requirements; and any other information either described in Article 5 or required for the Program Manager to perform its services.

§ 5.2 The Owner shall collaborate with the Program Manager to establish and periodically update the Program Budget including (1) the Program Manager's costs, (2) design and constructions costs, (3) the Owner's other costs, and (4) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Program Budget, the Owner shall promptly notify the Program Manager, and in consultation with Program Manager and the Owner's other consultants and contractors, agree to corresponding changes in project scopes, features or quality.

§ 5.3 The Owner shall retain all contractors and consultants necessary to carry out the Program except for those consultants retained by the Program Manager as listed in Section 1.3.2. The Owner shall provide the Program Manager with a copy of all executed agreements between the Owner and its consultants and contractors, and any modifications to those agreements. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided, and require that its contractors maintain commercial general liability insurance and other liability insurance as appropriate to the services or work provided. The Owner shall require all contractors to name the Program Manager and its consultants as Additional Insureds on all insurance policies where available.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Program. The Owner shall render decisions in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Program Manager's services.

§ 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the sites included within the Program, and written legal descriptions of those sites. 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 an appropriate benchmark at each project location.

§ 5.6 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.

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

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

§ 5.9 The Owner shall provide, and shall require that its consultants and contractors provide, prompt written notice to the Program Manager if they become aware of any fault or defect in the Program, including errors, omissions or inconsistencies in any documents produced by, or services provided by, the Program Manager.

§ 5.10 In the agreements between the Owner and the Owner's consultants or contractors, the Owner shall include a duty that the consultant or contractor cooperate with the Program Manager and provide information and documents reasonably necessary for the Program Manager to prepare and update the Program Management Plan or as otherwise required for the Program Manager to perform its services.

§ 5.11 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Program Manager's consultants through the Program Manager about matters arising out of or relating to the Program. The Owner shall communicate with its own forces, consultants, and contractors, and coordinate its own internal information and communications that are necessary for the Program. The Owner shall notify the Program Manager of any such communication that affects the Program. The Owner shall promptly notify the Program Manager of any direct communications that may affect the Program Manager's services.

§ 5.12 The Owner shall provide the Program Manager access to the project sites and other facilities under the Owner's control and associated with the Program. The Owner shall obligate its contractors to provide the Program Manager access to the project sites wherever work is in preparation or progress.

§ 5.13 For each project in the Program, the Owner shall purchase and maintain or require its contractors to purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial contract sum, plus the value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire project at the site on a replacement cost basis without optional deductibles. These policies shall cover reasonable compensation for Program Manager's services and expenses required as a result of such insured loss.

## ARTICLE 6 COPYRIGHTS AND LICENSES

§ 6.1 The Program Manager assigns to the Owner its rights, including copyright, in its Instruments of Service. The Program Manager shall obtain a similar assignment to the Owner from the Program Manager's consultants consistent with this Agreement. For purposes of this Agreement, Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Program Manager, the Owner, and their consultants and contractors under their respective services agreements. Instruments of Service may include, without limitation studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 6.2 The Program Manager and Owner warrant that in transmitting any information, including Instruments of Service, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the project.

§ 6.3 The Owner shall have exclusive ownership of all data in the Program Management Information System and the Program Management Plan developed or contributed by the Program Manager or the Program Manager's consultants and contractors. Ownership of the data in the Program Management Information System and the Program Management Plan does not include ownership of any proprietary software developed and owned by the Program Manager and used in connection with the collection, manipulation, or publication of the data in the Program Management Information System and the Program Management Plan. Unless the Owner pays the licensing fee described in Section 10.7, the Owner's right to use any such proprietary software shall terminate at the time of termination of this Agreement. The Program Manager shall take all steps reasonably necessary to allow the Owner to exercise the Owner's rights to own and utilize the data in the Program Management Information System and the Project Management Plan after termination of the Owner's rights to use any proprietary software. The Program Manager shall include provisions consistent with the provisions in this Section 6.3 in the Program Manager's agreements with the Program Manager's consultants. If the Program Manager rightfully terminates this Agreement for cause as provided in Section 8.4, the Program Manager's obligations under, and the Owner's rights to further use of proprietary software granted in, this Section 6.3 shall terminate. Ownership of data obtained from or compiled, developed or contributed by the Owner's consultants or contractors will be controlled by the terms of the Owner's agreements with those consultants or contractors.

## ARTICLE 7 CLAIMS AND DISPUTES

### § 7.1 General

§ 7.1.1 The Owner and Program 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 Program Manager waive all claims and causes of action not commenced in accordance with this Section 7.1.1.

§ 7.1.2 To the extent damages are covered by property insurance required under Section 5.13, the Owner and Program 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 Section 5.13. The Owner or the Program 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.

§ 7.1.3 The Program 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 Program Manager, its employees and its consultants in the performance of services under this Agreement. The Program Manager's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage.

§ 7.1.4 The Program 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 8.7.

### § 7.2 Meet and Confer

§ 7.2.1 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.

§ 7.2.2 The Owner and Program 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 Program 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.

§ 7.2.3 If the parties reach a mutually acceptable resolution, 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 7.3.



### § 7.3 Mediation

§ 7.3.1 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.

§ 7.3.2 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.

§ 7.3.3 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.

§ 7.3.4 If the parties do not resolve a dispute through mediation pursuant to this Section 7.3, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and Program 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 7.4 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

### § 7.4 Arbitration

§ 7.4.1 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.

§ 7.4.1.1 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.

§ 7.4.2 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.

§ 7.4.3 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.

### § 7.4.4 Consolidation or Joinder

§ 7.4.4.1 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).

§ 7.4.4.2 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.

§ 7.4.4.3 The Owner and Program Manager grant to any person or entity made a party to an arbitration conducted under this Section 7.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Program Manager under this Agreement.

## ARTICLE 8 TERMINATION OR SUSPENSION

§ 8.1 If the Owner fails to make payments to the Program Manager in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Program Manager's option, cause for suspension of performance of services under this Agreement. If the Program Manager elects to suspend services, the Program Manager shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Program 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 Program Manager shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Program Manager's services. The Program Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 8.2 If the Owner suspends the Program, the Program Manager shall be compensated for services performed prior to notice of such suspension. When the Program is resumed, the Program Manager shall be compensated for expenses incurred in the interruption and resumption of the Program Manager's services. The Program Manager's fees for the remaining services and the time schedules shall be equitably adjusted.

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

§ 8.4 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.

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

§ 8.6 In the event of termination not the fault of the Program Manager, the Program Manager shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 8.7.

§ 8.7 Termination Expenses are in addition to compensation for the Program Manager's services and include expenses directly attributable to termination for which the Program Manager is not otherwise compensated.

§ 8.8 In the event of termination of this Agreement, the Owner's rights to use information and materials provided by the Program Manager are set forth in Article 6.

## ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 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 7.4. *(Identify the jurisdiction whose laws will govern this Agreement.)*

§ 9.2 The Owner and Program Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Program 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.



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

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

§ 9.5 Unless otherwise required in this Agreement, the Program 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 the project sites.

§ 9.6 The Program Manager shall have the right to include photographs of the projects in the Program among the Program Manager's promotional and professional materials. The Program Manager shall be given reasonable access to the projects to take photographs. However, the Program Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Program Manager in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Program Manager in the Owner's promotional materials for the Program.

§ 9.7 If the Program 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 or entity except as set forth in Section 9.7.1.

§ 9.7.1 If the Program 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 9.7.

§ 9.8 Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 9.9 The Owner agrees not to solicit or hire the Program Manager's employees who are involved with the Program prior to one year after completion of the Program. If the Owner hires a Program Manager's employee involved with the Program prior to one year after completion of the Program, the Owner agrees to pay the Program Manager an amount as set forth below.

*(Insert stipulated sum or method of calculation for the amount to be paid to the Program Manager.)*

## ARTICLE 10 COMPENSATION

§ 10.1 For the Program Manager's Basic Services described under Article 3, the Owner shall compensate the Program Manager as follows:

*(Insert amount of, or basis for, compensation, including stipulated sums, hourly or monthly billing rates, direct salary expense plus multiple, or monthly fee.)*

§ 10.2 The hourly labor cost rates and billing rates for services of the Program Manager and the Program Manager's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Program Manager's and Program Manager's consultants' normal review practices.  
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category

Rate

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

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

§ 10.5 Compensation for Additional Services of the Program Manager's consultants when not included in Sections 10.3 and 10.4 shall be the amount invoiced to the Program Manager plus percent ( %), or as otherwise stated below:

#### § 10.6 Compensation for Reimbursable Expenses

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

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences;
- .3 Fees paid for securing approval of authorities having jurisdiction over the projects;
- .4 Fees paid for testing, surveys or other data obtained at the request of the Owner;
- .5 Printing, reproductions, plots, standard form documents;
- .6 Postage, handling and delivery;
- .7 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .8 Professional photography and presentation materials requested by the Owner;
- .9 Program Manager's consultants' expense of professional liability insurance dedicated exclusively to this Program, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Program Manager's consultants;
- .10 All taxes levied on professional services and on reimbursable expenses;
- .11 Site office expenses, if authorized in advance by the Owner;
- .12 Customization of the Program Management Information System; and
- .13 Other similar Program-related expenditures.

§ 10.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Program Manager and the Program Manager's consultants plus percent ( %) of the expenses incurred.

§ 10.6.3 If the insurance requirements listed in Section 2.7 exceed the types and limits the Program Manager normally maintains and the Program Manager incurs additional costs to satisfy such requirements, the Owner shall reimburse the Program Manager for such costs as set forth below:

#### § 10.7 Compensation for Use of Program Manager's Proprietary Software

If the Owner terminates the Program Manager for its convenience under Section 8.5, or the Program Manager terminates this Agreement under Section 8.3, or upon completion of the Program Manager's services under this

Agreement, the Owner shall pay a licensing fee, as compensation for the Owner's continued use of the Program Manager's proprietary software developed and owned by the Program Manager in accordance with Section 6.3, as follows:

#### § 10.8 Payments to the Program Manager

§ 10.8.1 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.

§ 10.8.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Program Manager's 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 Program Manager.  
*(Insert rate of monthly or annual interest agreed upon.)*

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

§ 10.8.4 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 for a period of three years after the termination or completion of this Agreement.

#### ARTICLE 11 SPECIAL TERMS AND CONDITIONS

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

#### ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 This Agreement represents the entire and integrated agreement between the Owner and the Program 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 the Owner and Program Manager.

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

- .1 AIA Document C171™-2013, Standard Form Agreement Between Owner and Program 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 is entered into as of the day and year first written above.

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

\_\_\_\_\_  
PROGRAM MANAGER *(Signature)*

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

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