



AIA[®]

Document C191[™] – 2009

Standard Form Multi-Party Agreement for Integrated Project Delivery

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

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

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

and the Contractor:
(Name, legal status, address and other information)

and additional Parties, if any:
(Name, legal status, address and other information)

collectively, “the Parties” for the following Project:
(Name, location or address, and general description of the Project to be completed pursuant to this Agreement)

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

If additional Parties are identified, this Agreement, including each exhibit, should be carefully reviewed and modified as necessary.

The Parties agree as follows:

Init.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Integrated Project Delivery

§ 1.1.1 The Parties intend that the Project shall be delivered in a collaborative environment and shall endeavor to align individual interests with those of the Project. The Parties agree to contribute their knowledge, skill and services during all phases of the Project and to bring to bear their expertise for the benefit of the Project. The Parties shall collectively act to establish and accomplish mutually agreed-upon Project Goals that they shall set forth in the Target Criteria Amendment to this Agreement.

§ 1.1.2 The Parties intend to establish a Target Cost for the Project and to amend this Agreement to incorporate the Target Cost. To the extent that the Actual Cost is less than the Target Cost, the Parties shall share in any savings realized in accordance with the terms of this Agreement. To the extent the Parties have agreed to Project Goals, they shall be set forth in Target Criteria Amendment and the Parties shall be compensated for achieving such Project Goals as specified in this Agreement.

§ 1.1.3 The Parties shall identify key Project participants such as separate contractors, Subcontractors, Consultants and suppliers critical to the definition and accomplishment of Project Goals and involve them at appropriate times for the benefit of the Project.

§ 1.1.4 The Parties agree, where practicable, to employ collaborative technologies such as Building Information Modeling (BIM) and digital collaboration tools. The Project Management Team may choose to augment Models with additional materials including, but not limited to, physical models, renderings, sketches, drawings, reports, or specifications.

§ 1.2 Integrated Project Delivery Phasing

The Parties shall deliver the Project in the following phases: Conceptualization, Criteria Design, Detailed Design, Implementation Documents, Agency Review, Buyout, Construction, and Closeout. The descriptions of these phases and the Parties' respective responsibilities during each phase are more fully set forth in the General Conditions, attached hereto as Exhibit A.

ARTICLE 2 MANAGEMENT OF THE PROJECT

§ 2.1 Project Executive Team

§ 2.1.1 The Project Executive Team shall make decisions as well as plan and manage the Project in such a manner as to allow the Parties to achieve the Project Goals and successfully complete the Project. The Project Executive Team shall exercise its authority in the best interests of the Project. The Project Executive Team may delegate its responsibilities to others, including the Project Management Team, if in the view of the Project Executive Team such delegation is in the best interests of the Project. The Project Executive Team is not responsible for supervising any Party's employees nor is it authorized to direct the actions of any Party's employees and shall not be responsible for the failure of any Party to perform its obligations.

§ 2.1.2 Decisions by the Project Executive Team must be unanimous. If the Project Executive Team is unable to reach a unanimous decision, it may submit the matter to the dispute resolution process set forth in Article 9, Dispute Resolution.

§ 2.1.2.1 In the event the Project Executive Team is unable to reach unanimous decision, the Owner may issue a directive within the general scope of the Contract with regard to the matter. The Owner's Directive shall be issued in writing and provide clear direction to the Parties. The Parties shall comply with the Owner's Directive. To the extent the Owner's Directive requires an increase in the Target Cost or Contract Time or otherwise materially impacts achieving a Project Goal, the directive shall identify the Owner's proposed modifications to the Target Criteria Amendment. Any dispute regarding an Owner's Directive issued under this section shall be resolved pursuant to the terms of Article 9, Dispute Resolution.

§ 2.1.3 The Project Executive Team shall consist of one representative from each of the Parties. The Parties' respective representatives are identified below:

Owner:
Architect:
Contractor:
Additional Parties, if any:

The Parties' representatives shall have full authority to bind their respective organizations in all matters within the scope of the Project Executive Team's authority.

§ 2.2 Project Management Team

§ 2.2.1 The Project Management Team is responsible for executing the decisions and directives of the Project Executive Team, or any Owner Directives issued pursuant to this Article 2. The Project Management Team shall be responsible for the day-to-day management of the Project, including the scheduling and coordination of the Parties' activities required to complete the Project in a collaborative and integrated manner. The Project Management Team is responsible for establishing the procedures and processes necessary to achieve Project Goals including such protocols and understandings as are necessary to implement collaborative technologies, such as Building Information Modeling. The Project Management Team is not responsible for supervising any Party's employees nor is it authorized to direct the actions of any Party's employees and shall not be responsible for the failure of any Party to perform its obligations. When appropriate, the Project Management Team shall plan and implement programs to improve Project performance and shall develop Recovery Plans as required by Section 5.4 of this Agreement.

§ 2.2.2 The Project Management Team shall consist of one representative from each Party. The Parties' representatives shall use their knowledge, skill, and expertise to benefit the Project. The Project Management Team shall develop such communication and management protocols as appropriate to carry out its responsibilities, including whether and to what extent to colocate team members. The Parties acknowledge the importance of selecting Consultants, Subcontractors, and suppliers who can operate effectively within a collaborative environment; and the Project Management Team shall establish a set of pre-qualification criteria and selection protocols to facilitate the selection of Project participants who can successfully perform within a collaborative environment.

§ 2.2.2.1 The Project Management Team may choose to include, as non-voting advisers, representatives from certain key Project participants that are not parties to this Agreement in order to bring to bear their unique skills and expertise on particular matters.

§ 2.2.3 Decisions by the Project Management Team shall be unanimous. Subject to a subsequent decision by the Project Executive Team and the Dispute Resolution Committee, the Parties agree to be bound by any decision rendered by the Project Management Team. If the team representatives are unable to reach a unanimous decision on a matter, any Party's Project Management Team representative may refer the matter to the Project Executive Team for decision.

§ 2.2.4 The Project Management Team shall create and maintain a Project work plan for review and approval by the Project Executive Team. The Project work plan shall set forth the process by which the Project Management Team proposes to develop a Project Definition consistent with the Owner's Criteria. The Project work plan shall also contain a schedule for accomplishing the work necessary to develop the various elements of the Target Criteria Amendment. Upon execution of the Target Criteria Amendment, the Project Management Team shall supplement the Project work plan to describe the process by which the Project Management Team expects to achieve the Project Goals and successfully complete the Project.

§ 2.2.5 A primary responsibility of each Party is to communicate to its employees the importance of adhering to Integrated Project Delivery principles and to provide training and guidance as necessary. The Project Management Team shall assist the Parties in these efforts and shall be responsible for monitoring training for the employees of key Project participants focused on Integrated Project Delivery principles.

§ 2.2.6 The Project Management Team shall develop mutual understandings with respect to Project quality and communicate such understandings to all Project participants. The Project Management Team shall monitor Project quality through the implementation of appropriate Project quality control and assurance procedures. The Project Management Team's Project quality understandings and procedures shall be set forth in writing and delivered to the Project Executive Team for review and approval.

§ 2.2.7 The Parties' respective representatives to the Project Management Team are identified below:

Owner:
Architect:
Contractor:
Additional Parties, if any:

The Parties' representatives shall have full authority to bind their respective organizations in all matters within the scope of the Project Management Team's authority.

§ 2.3 Issue Resolution

§ 2.3.1 The Parties shall develop protocols by which Project issues shall be raised and reviewed by the Project Management Team and Project Executive Team. Such protocols shall include, but not be limited to, any notice requirements for raising matters to be addressed, required supporting documentation, and time frames within which team members must render a decision. The Parties shall endeavor to resolve all Project issues through direct discussions at meetings of the Project Management Team. Issues not resolved by the Project Management Team may be submitted by any Party's Project Management Team representative to the Project Executive Team. Issues that are not resolved by the Project Executive Team may be referred by any Party's Project Executive Team representative for resolution under Article 9, Dispute Resolution.

§ 2.3.2 If the resolution of any issue results in a change to the Target Cost or the Contract Time, the Project Management Team shall prepare a proposed Change Order for review and approval by the Project Executive Team. If the Project Executive Team agrees to a change, the Parties shall execute a Change Order. In the event the Project Executive Team fails to agree, the Project Executive Team representative of any Party may submit the matter to be resolved pursuant to Article 9, Dispute Resolution.

§ 2.4 Team Meetings, Communications and Recordkeeping

§ 2.4.1 The Project Executive Team shall establish a meeting schedule, which shall include regular meetings with the Project Management Team. The Project Management Team shall establish a regular meeting schedule, which, unless the Project Management Team agrees otherwise, shall require meetings no less frequently than weekly. Special meetings of either the Project Executive Team or the Project Management Team may be called by any team member upon two business days' written notice to the other team members. The notice shall specify the reasons for the meeting and include a proposed agenda and any documents material to the subject matter for discussion.

§ 2.4.2 The Parties acknowledge that timely sharing of relevant Project information among the Parties and, when relevant and applicable, among other Project participants, is important to the success of the Project. Accordingly, communications for purposes of sharing such information are not based on a contractual hierarchy, and team members, their Consultants, Subcontractors, advisors, and agents are encouraged to share information directly with one another.

§ 2.4.3 The Project Executive Team and Project Management Team shall each elect a chair. The chair may delegate administrative and recordkeeping responsibilities to one or more of the representatives. All decisions directly affecting Target Cost, Actual Cost, Project Goals, Contract Time or otherwise bearing materially on the success of the Project, shall be recorded in the teams' minutes, which shall be timely distributed to all team members and, where appropriate, to other key Project participants. Meeting minutes shall be prepared for all meetings of the Project Management Team, and shall be timely distributed to all team members, the Project Executive Team and, where appropriate, other Project participants. Meeting minutes shall be prepared for all meetings of the Project Executive Team, and shall be timely distributed to all team members, the Project Management Team, and, where appropriate, other Project participants.

ARTICLE 3 RESPONSIBILITIES AND PARTIES

§ 3.1 Collaboration Responsibilities

§ 3.1.1 In addition to performing its individual responsibilities, each Party shall collaborate with the other Parties and key Project participants toward the successful accomplishment of the Project. Collaboration shall occur during all aspects of design and construction of the Project.

§ 3.1.2 The Parties' specific obligations during the Conceptualization and Criteria Design phases shall be set forth below.

(Identify the services and other obligations of the Parties or the document in which the Parties have set forth their respective responsibilities during the Conceptualization and Criteria Design phases.)

§ 3.2 Owner Responsibilities

§ 3.2.1 In accordance with Article 4, Compensation, the Owner shall pay for the Work performed by the Parties to develop the Target Criteria Proposal and the Target Criteria Amendment. If the Owner accepts the Target Criteria Proposal and the Parties execute the Target Criteria Amendment, the Owner shall thereafter pay to the Parties the Actual Cost, including earned Goal Achievement Compensation, to complete the Project, as well as all earned Incentive Compensation.

§ 3.2.2 The Owner shall timely furnish the services specifically required of it in the Contract Documents. To the extent the Owner furnishes those services through agreements with its own Consultants and contractors, the Owner shall furnish to the other Parties copies of the scopes of services in such agreements. With the assistance of the Project Management Team, the Owner shall coordinate the services of its own Consultants and contractors with those services furnished by others.

§ 3.2.3 Owner Responsibilities Prior to Execution of the Target Criteria Amendment

The Owner shall provide the information and services required of it in the Contract Documents, including those items identified in Section 3.1.2, to develop the Target Criteria Proposal and Target Criteria Amendment.

§ 3.2.4 Owner Responsibilities Following Execution of the Target Criteria Amendment

Upon the Parties' execution of the Target Criteria Amendment, the Owner shall provide the portions of the Work required of the Owner as described in the Contract Documents including those required of the Owner in the Target Criteria Amendment.

§ 3.2.5 Throughout the course of the Project, the Owner shall participate in the management process for the Work as required in the Contract Documents. Accordingly, the Owner shall provide the representatives identified in Article 2, Management of the Project, to serve on the Project Executive Team and Project Management Team.

§ 3.3 Architect Responsibilities

§ 3.3.1 General

§ 3.3.1.1 The Architect shall provide the Architect's Services, including planning, design and construction contract administration services, as set forth in the Contract Documents.

§ 3.3.1.2 The Architect shall perform the Architect's Services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform the Architect's Services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 3.3.1.3 Throughout the course of the Project, the Architect shall participate in the management process for the Work as required in the Contract Documents. Accordingly, the Architect shall provide the representatives identified in Article 2, Management of the Project, to serve on the Project Executive Team and Project Management Team.

§ 3.3.2 Architect Services Prior to Execution of the Target Criteria Amendment

The Architect shall provide the Architect's Services required of it in the Contract Documents, including those Architect's Services identified in Section 3.1.2, to develop the Target Criteria Proposal and Target Criteria Amendment.

§ 3.3.3 Architect Services Following Execution of the Target Criteria Amendment

Upon the Parties' execution of the Target Criteria Amendment, the Architect shall provide the Architect's Services described in the Contract Documents including those required of the Architect in the Target Criteria Amendment.

§ 3.4 Contractor Responsibilities

§ 3.4.1 General

§ 3.4.1.1 The Contractor shall provide the Contractor's Work as set forth in the Contract Documents.

§ 3.4.1.2 The Contractor shall perform the Contractor's Work required under the Contract Documents consistent with the skill and care ordinarily provided by a contractor in the same or similar locality under the same or similar circumstances. The Contractor shall perform the Contractor's Work as expeditiously as is consistent with such skill and care and the orderly progress of the Project.

§ 3.4.1.3 Throughout the course of the Project, the Contractor shall participate in the management process for the Work as required in this Agreement. Accordingly, the Contractor shall provide the representatives identified in Article 2, Management of the Project, to serve on the Project Executive Team and Project Management Team.

§ 3.4.2 Contractor Work Prior to Execution of the Target Criteria Amendment

§ 3.4.2.1 The Contractor shall provide the Contractor's Work required of it in the Contract Documents, including those items identified in Section 3.1.2, to develop the Target Criteria Proposal and Target Criteria Amendment.

§ 3.4.3 Contractor Work Following Execution of the Target Criteria Amendment

Upon the Parties' execution of the Target Criteria Amendment, the Contractor shall perform the Contractor's Work as required in the Contract Documents and in the Target Criteria Amendment.

§ 3.5 Additional Party Responsibilities

(Set forth below, in detail, the responsibilities of any additional Parties to this Agreement.)

§ 3.6 Key Project Personnel

Each Party has identified the following key Project personnel, if any. Each Party agrees that it shall not remove or replace any of the identified key Project personnel without the approval of the Project Management Team, which approval shall not be unreasonably withheld.

(Set forth below the key Project personnel for each Party, if any.)

ARTICLE 4 COMPENSATION

§ 4.1 The Owner shall reimburse the other Parties for their Cost of the Work, as that term is defined in Section A.13 of Exhibit A, General Conditions, incurred in the performance of their obligations under the Contract Documents. Except as otherwise provided in the Contract Documents, the Owner's obligation to reimburse the other Parties for their Cost of the Work shall continue regardless of whether Actual Costs exceed the Target Cost.

§ 4.2 Labor Costs

§ 4.2.1 If the Owner's payments for Labor Costs are to be based on negotiated hourly rates, insert the rates below. The rates shall be adjusted in accordance with the Parties' respective normal review practices. It is understood that any rates identified below, or subsequently agreed upon, incorporate all Labor Costs identified in Sections A.13.1.1.2 through A.13.1.1.5 of Exhibit A, General Conditions.

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

| Party | Employee or Category of Employee | Hourly Rate |
|-------|----------------------------------|-------------|
|-------|----------------------------------|-------------|

§ 4.2.2 If the Owner's payments for Labor Costs are not to be based on negotiated hourly rates, the Labor Costs shall be determined in accordance with Sections A.13.1.1.2 through A.13.1.1.5 of Exhibit A, General Conditions.

(For each Party, if applicable, insert any agreed upon overhead rate as a percentage to be applied to the Parties' Labor Costs listed below, or other method for calculating an overhead rate.)

| Party | Method of Calculating Overhead Rate |
|-------|-------------------------------------|
|-------|-------------------------------------|

§ 4.2.3 If the Parties agree to a not-to-exceed amount for the development of a Target Criteria Proposal, such amount shall be set forth below.

(If applicable, insert the maximum not-to-exceed amount below.)

§ 4.2.4 Compensation for Labor Costs When Actual Costs Exceed the Target Cost

When Actual Costs for the Project exceed the Target Cost, as adjusted under the Contract Documents, the Owner's obligation to reimburse the other Parties' Labor Costs shall be as follows:

(Check the appropriate box.)

- The Owner shall reimburse the Parties for all Labor Costs in accordance with Section 4.2.
- The Owner shall not be required to reimburse the other Parties for any further Labor Costs incurred.
- Other: *(Identify)*

If the Parties fail to make a selection above, the Owner shall reimburse the Parties for all Labor Costs in accordance with Section 4.2.

§ 4.3 The Owner shall pay the Parties in accordance with Article A.12 of Exhibit A, General Conditions. 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 affected Party.

(Federal, state or local laws may require payment within a certain period of time. Insert rate of monthly or annual interest agreed upon, if any.)

§ 4.4 Incentive Compensation

§ 4.4.1 Upon final completion of the Project as set forth in Section A.12.9 of Exhibit A, General Conditions, if the Actual Costs are less than the Target Cost, then the Owner shall pay to the other Parties, as Incentive Compensation, a portion of the difference between the Actual Costs and the Target Cost, as follows:

(Insert each Party's proportionate share of any savings realized as Incentive Compensation.)

§ 4.4.1.1 The Owner shall pay Incentive Compensation earned under this Agreement in a lump sum payment () days following final payment. Amounts unpaid () days after final payment shall bear interest at the rate required in Section 4.3.

§ 4.5 Goal Achievement Compensation

§ 4.5.1 Project Goals shall be set forth in the Target Criteria Amendment. For each Project Goal, the Owner and the other Parties shall agree either on an amount, or on the method to determine an amount, available to the other Parties as Goal Achievement Compensation.

§ 4.5.2 Upon achievement of a Project Goal, the other Parties are each entitled to invoice the Owner for their respective Goal Achievement Compensation as set forth in the Target Criteria Amendment.

§ 4.5.3 Goal Achievement Compensation for each Project Goal shall be payable by the Owner upon achievement of such Project Goal. Amounts unpaid by the Owner () days after the invoice date shall bear interest at the rate required in Section 4.3.

§ 4.5.4 If Actual Costs for the Project exceed the Target Cost, as adjusted under the Contract Documents, the Owner shall not be relieved of its obligation to pay the other Parties any Goal Achievement Compensation earned on the Project.

§ 4.6 Record Keeping and Owner Audit Rights

§ 4.6.1 The Parties shall keep detailed records and accounts related to the Cost of the Work to substantiate all costs incurred and exercise such controls as may be necessary for proper financial management under the Contract Documents. The Parties shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ 4.6.2 The other Parties' accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the other Parties' respective records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Consultant or Subcontractor proposals, purchase orders, vouchers, memoranda and other data relating to the Contract Documents. Agreed upon rates, unit prices, lump sums and other agreed upon fixed dollar amounts shall not be subject to audit.

§ 4.6.3 Any information relating to accounting records, business methods, including methods for determining costs and expenses for purposes of determining the Actual Cost, and other related business and accounting information a Party provides to the Owner or the other Parties, shall be deemed confidential and business proprietary. Accordingly, the receiving Party shall be subject to the requirements set forth in Section 11.5 with regard to maintaining the confidentiality of such information. This provision applies regardless of whether the transmitting Party designates such information as "confidential" or "business proprietary."

ARTICLE 5 TARGET CRITERIA AMENDMENT AND TARGET COST

§ 5.1 Target Criteria Proposal

The Parties shall jointly develop a Target Criteria Proposal for the Owner's final review and acceptance. To do so, the Parties shall perform the pre-Target Criteria Amendment services set forth in the Contract Documents, including Section 3.1.2, and shall undertake the actions required under Articles A.4 and A.5 of Exhibit A, General Conditions, including the development of Project Goals, a Target Cost, a Project Definition and a Project Schedule.

§ 5.2 Accepting or Rejecting the Target Criteria Proposal

At the conclusion of the Criteria Design phase, the Parties other than the Owner shall agree upon a Target Criteria Proposal, making all such adjustments to the Project Definition and Project Schedule as necessary. If the Owner accepts the Target Criteria Proposal, the agreed-to Target Criteria, including the Target Cost, shall be set forth in the Target Criteria Amendment to this Agreement. In the event the Parties are unable to arrive at a mutually agreeable Target Cost or are otherwise unable to execute the Target Criteria Amendment, this Agreement shall terminate pursuant to Section 10.2.1.

§ 5.3 Adjusting the Target Cost

§ 5.3.1 Upon the execution of the Target Criteria Amendment, the Target Cost shall not be adjusted except as stated in this Section 5.3, or upon the unanimous, written agreement of the Parties. A Target Cost adjustment must be recorded as a Modification to this Agreement. If the Parties cannot agree with respect to adjusting the Target Cost, the Parties shall resolve the matter pursuant to Article 9, Dispute Resolution.

§ 5.3.2 The Target Cost may be adjusted as a result of agreed upon quantity variations for specified units for which unit pricing has been provided in accordance with Section A.5.8.1 of Exhibit A, General Conditions; costs variations from specified allowances established in accordance with Section A.5.8.1 of Exhibit A, General Conditions; Owner-initiated changes in the Project Definition; Owner-initiated changes to the Project Schedule; material defects and deficiencies in information or services required of the Owner by the Contract Documents; and events falling within Article 6, Force Majeure.

§ 5.3.3 The Target Cost shall be reduced to the extent that a Project Goal identified in the Target Criteria Amendment is not achieved and, as a result, Goal Achievement Compensation for the unachieved Project Goal is not awarded.

§ 5.4 Monitoring and Maintaining the Target Cost

§ 5.4.1 The Parties agree that, in addition to achieving the identified Project Goals, a primary objective is to maintain the Target Cost. The Parties shall closely monitor Actual Costs and make such periodic cost projections as are necessary to satisfy all Parties that the Target Cost is being maintained. Unless agreed to otherwise, periodic cost projections shall be made monthly, shall identify all material variations between incurred Actual Costs and the Target Costs, and shall project those variations to Project completion.

§ 5.4.2 If any periodic cost projection reveals that the Target Cost may be exceeded for reasons that do not justify an adjustment to the Target Cost under Section 5.3, the Parties shall develop and unanimously approve a plan to maintain the Target Cost (Recovery Plan). The Recovery Plan may entail alterations to the Project Definition and Project Schedule.

§ 5.4.3 If any Party comes to believe or acquires information to suggest that the Target Cost may be exceeded for reasons that do not justify an adjustment to the Target Cost under Section 5.3, it shall immediately notify the other Parties in writing, setting forth the basis for its belief and any pertinent information acquired. The Parties shall then timely meet to evaluate the matter. If, after reviewing the matter, the Parties agree that it is likely the Target Cost will be exceeded, the Parties shall develop a Recovery Plan as necessary for review and approval by all Parties.

§ 5.4.4 If a Party identifies an occurrence or expected occurrence justifying an adjustment to the Target Cost under Article 6, Force Majeure, the Party shall notify the other Parties in writing and the Parties shall either appropriately adjust the Target Cost by unanimous written amendment or, upon the request of any Party, develop a Recovery Plan for review and approval by all Parties. Any Party shall have the right to require the Parties to attempt to develop an acceptable Recovery Plan.

§ 5.4.5 If the Target Cost is projected to be exceeded for reasons for which an adjustment is not justified under Section 5.3, Adjusting The Target Cost, the Parties shall jointly prepare a written Recovery Plan for review and approval by all Parties. If a Recovery Plan is not approved, the Parties shall proceed with the Work and take such mitigation steps as are reasonable to keep cost escalation to a minimum.

§ 5.4.6 Recovery Plans called for under this Section 5.4 shall be developed without consideration of which Party or Parties is (are) responsible for the failure to maintain the Target Cost. The Parties reaffirm their commitment to work collaboratively to maintain the Target Cost and to develop Recovery Plans when necessary. The Contract shall be appropriately amended through a Modification in the event the Parties approve a Recovery Plan.

ARTICLE 6 FORCE MAJEURE

§ 6.1 Force Majeure Event

As used in this Agreement, a "Force Majeure Event" shall mean any act or event that prevents a Party from performing, or interferes with a Party's performance of, its obligations under the Contract Documents if such act or event is beyond the reasonable control of, and not the fault of, the Party. A Force Majeure Event shall include the following events: war; earthquake; fire; volcanic eruption; explosion; landslide; unusually severe weather; or other similar acts of God or the public enemy; unknown burial markers or archeological sites; conditions encountered at the site that are unknown physical conditions of an unusual nature differing materially from those normally found to exist and recognized generally as inherent in construction activities; strikes or labor disputes, but expressly excluding any strikes or labor disputes involving only employees or other direct labor of a Party; civil disturbance; unanticipated change in law; or action of a court or public authority that reasonable action by the Party could not have prevented.

§ 6.2 Excused Performance

Except for payment obligations accruing in accordance with the Contract Documents, if any Party is rendered wholly or partially unable to perform its obligations under the Contract Documents because of a Force Majeure Event, that Party shall be excused from whatever performance is affected by the Force Majeure Event to the extent so affected, provided that

- .1 the affected Party, within ten (10) business days after becoming aware of the occurrence of a Force Majeure Event, gives the other Parties written notice describing the particulars of the occurrence, including an estimation of its expected duration and probable impact on the performance of the Party's obligations, and thereafter continues to furnish timely, regular reports of its effects during the continuation of the Force Majeure Event;
- .2 the Party's suspended performance shall be of no greater scope and of no longer duration than is reasonably caused by the Force Majeure Event;
- .3 no failure of performance before a Force Majeure Event arose shall be excused as a result of a Force Majeure Event; and
- .4 the affected Party shall exercise all reasonable efforts to mitigate or limit damages to the other Parties, provided that, and notwithstanding anything in the Contract Documents to the contrary, the affected Party shall not be obligated to otherwise incur costs that would not normally be incurred in performance of its obligations under the Contract Documents in order to overcome any delay due to a Force Majeure Event, unless the Party is compensated for the costs incurred.

§ 6.3 Adjusting Target Cost for Force Majeure Events

The Target Cost shall be subject to adjustment based on the reasonable costs incurred as a result of a Force Majeure Event. If the Parties cannot reach agreement with respect to adjusting the Target Cost and other aspects of the Target Criteria Amendment, where applicable, the matter shall be resolved pursuant to Article 9, Dispute Resolution.

ARTICLE 7 INSURANCE AND BONDS

§ 7.1 Insurance Program

The Parties shall retain an insurance consultant to provide advice and assistance with respect to integrated insurance products such as Owner or Contractor-Controlled Insurance Programs or with respect to the individual insurance requirements for the Parties and other Project participants. The Parties shall obtain from the insurance consultant recommendations with regard to the desirability and structure of an insurance program. Any insurance program the Parties select shall be instituted no later than execution of the Target Criteria Amendment and structured to provide adequate coverage at reasonable cost, striving to avoid duplication in coverage or exposure gaps. Once an insurance program is selected, the terms and requirements of the program shall be set forth in the Target Criteria Amendment. Each eligible Party shall enroll in, and cause any eligible Subcontractors and Consultants to enroll in, the selected insurance program. Each Party is entitled to receive copies of any policies required under this Article 7.

§ 7.2 Initial Insurance Requirements

Prior to implementation of the insurance program selected pursuant to Section 7.1, the Parties shall obtain the following coverages in such amounts and upon such terms as set forth below and in Article A.14 of Exhibit A, General Conditions. The Parties shall be required to maintain insurance in accordance with this Section 7.2 and Article A.14 of Exhibit A, General Conditions, until such time as the Parties agree on an insurance program as set forth in Section 7.1:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to this Agreement, if any.)

- .1 From Architect: Commercial General Liability, Automobile Liability, Workers' Compensation/Employers Liability, Electronic Data Processing Liability, and Professional Liability.

- .2 From Contractor: Commercial General Liability, Automobile Liability, Workers' Compensation/Employers Liability, and Electronic Data Processing Liability. If the Contractor performs professional services, it shall procure Professional Liability insurance.

- .3 From Owner: Commercial General Liability, Automobile Liability, Workers' Compensation/Employers Liability, and, no later than the commencement of any Work, appropriate property coverages.

§ 7.3 Bonds

The Parties shall purchase and provide bonds as set forth below.

(State bonding requirements, if any.)

| Party | Type of Bond | Bond Amount |
|-------|--------------|-------------|
|-------|--------------|-------------|

ARTICLE 8 RISK SHARING

§ 8.1 General Waivers of Claims and Liability

The Parties waive all claims against each other, except this waiver shall not extend to claims

- .1 arising out of a Party's willful misconduct;
- .2 arising out of any express warranty obligations of the Parties including those set forth under Section A.10.4 of Exhibit A, General Conditions, or an obligation to provide third-party warranties under the Contract Documents;
- .3 against the Owner for payment of amounts due under this Agreement. Nor shall the Parties' waiver restrict their ability to enforce their right to payment pursuant to applicable statutory law, including the right to enforce mechanics' liens or stop-notice rights;
- .4 arising out of any express indemnification obligations set forth in the Contract Documents, including those set forth in Exhibit A, General Conditions;
- .5 for failure to procure the insurance required under the Contract Documents;
- .6 to the extent insurance proceeds are available through insurance expressly required under the Contract Documents; and
- .7 for damages arising from liens, claims, security interests or encumbrances against the Project filed by persons or entities not a Party to this Agreement.

§ 8.2 Additional Waivers

The following waivers are in addition to those set forth in Section 8.1 and are not subject to the exceptions set forth in Section 8.1.

§ 8.2.1 Waiver of Claims for Consequential Damages. The Parties waive claims against each other for consequential damages arising out of or related to the Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses; for losses of use, income, profit, financing, business and reputation; and for loss of management or employee productivity or of the services of such person;
- .2 damages incurred by the Contractor for principal office expenses, including the compensation of personnel stationed there; for losses of financing, business and reputation; and for loss of profit except anticipated profit arising directly from the portions of the Contractor's Work actually performed; and
- .3 damages incurred by the Architect for principal office expenses including the compensation of personnel stationed there; for losses of financing, business and reputation; and for loss of profit except anticipated profit arising directly from the portions of the Architect's Services actually provided.

This mutual waiver is applicable, without limitation, to all consequential damages due to any Party's termination in accordance with Article 10, Termination or Suspension. Nothing in this Section 8.2.1 shall be deemed to preclude an award of liquidated damages, where applicable, in accordance with the requirements of the Contract Documents.

§ 8.2.2 Waivers of Subrogation. The Parties waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, consultants, agents and employees, and each of the other, and (2) separate contractors described in Section A.10.16 of Exhibit A, General Conditions, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Contract or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Parties, as appropriate, shall require of the separate contractors described in Section A.10.16 of Exhibit A, General Conditions, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other Parties enumerated herein. The insurance policy or policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 8.3 Indemnification against Claims for Property Damage or Bodily Injury

To the fullest extent permitted by law, a Party shall indemnify and hold harmless the other Parties and the agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of such Party's portion of the Work required under the Contract Documents, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Party providing the indemnification, anyone directly or indirectly

employed by it, or anyone for whose acts it may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a Party indemnified hereunder. The indemnification obligation under this Section 8.3 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable under workers' compensation acts, disability benefit acts, or other employee benefit acts. This indemnification obligation shall be limited, however, to the indemnifying Party's insurance coverage available for this indemnification obligation unless the Party failed to secure the coverage required of it by the Contract Documents.

§ 8.4 Indemnification against Third-Party Claims for Vicarious Liability

To the fullest extent permitted by law, a Party shall indemnify and hold harmless the other Parties and the agents and employees of any of them to the extent of loss or damage, including but not limited to attorneys' fees, arising out of or resulting from a claim based upon vicarious liability arising from the act or omission of the indemnifying Party for which the indemnified Party is or is claimed to be liable, or the failure or alleged failure of the indemnifying Party to perform some obligation required of it under the Contract Documents.

§ 8.5 Cooperation in the Defense of Third-Party Claims

Subject to all applicable legal and ethical considerations, including the need for independent legal counsel, the Parties shall cooperate to seek resolution of all third-party claims.

§ 8.6 Any claims or disputes permitted under this Article 8 shall be pursued only through the dispute resolution proceedings set forth in Article 9, Dispute Resolution.

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 General

All disputes between or among any of the Parties, arising out of or related to this Agreement, whether stated in contract, tort, warranty or otherwise, that are not resolved under Section 2.3, shall be subject to the provisions of this Article 9.

§ 9.2 Continuing Contract Performance

Pending final resolution of a dispute, except as otherwise agreed in writing or as provided in Section A.12.8.13 of Exhibit A, General Conditions, and Article 10, Termination or Suspension, the Parties shall proceed diligently with performance of their contractual obligations, including any Owner's Directive issued pursuant to Section 2.1.2.1.

§ 9.3 Initiation of Disputes

Disputes may be initiated in the following manner:

- .1 Upon written referral by the Project Executive Team.
- .2 After the Project Executive Team has failed to reach unanimous decision on any issue, any Party may initiate a dispute upon written notice by that Party to the other Parties.
- .3 On issues arising after final payment, upon notice by any Party to the other Parties.

§ 9.4 Dispute Resolution Committee

All disputes initiated in accordance with Section 9.3 shall be referred to the Dispute Resolution Committee for resolution. The Dispute Resolution Committee shall consist of Party representatives in senior management with broad organizational responsibilities and the Project Neutral identified in this Section 9.4.

§ 9.4.1 The following individuals are designated as the Parties' respective members of the Dispute Resolution Committee:

Owner:
Architect:
Contractor:
Additional Parties, if any:

The Party representatives of the Dispute Resolution Committee shall have full authority to bind their respective Party. If, at any time a dispute is initiated, a Party's designated representative is unable to serve, the Party shall appoint another person from senior management as its Party representative.

§ 9.4.2 The following individual is designated as the Project Neutral:

Project Neutral:

§ 9.4.2.1 In the event the Parties fail to designate a Project Neutral and the Parties cannot otherwise mutually agree upon a Project Neutral, or if the Project Neutral selected by the Parties is unable to serve, the Parties shall select a Project Neutral in accordance with the American Arbitration Association's Construction Industry Mediation Procedures.

§ 9.5 Mediation through the Dispute Resolution Committee

§ 9.5.1 The Dispute Resolution Committee shall meet and confer within 15 days of initiation of a dispute. The Project Neutral shall endeavor to mediate a resolution of the dispute. Unless mutually agreed to otherwise, the mediation shall be conducted in accordance with the American Arbitration Association's Construction Industry Mediation Procedures in effect on the date of this Agreement. The Project Neutral shall decide all procedural matters such as scheduling and location of meetings. The Parties to the dispute shall share equally the fees and expenses of the Project Neutral. If a resolution is reached, the Project Neutral shall prepare a written settlement agreement setting forth the terms of the Parties' resolution and upon the Parties' execution of a settlement agreement, this Agreement shall be modified accordingly.

§ 9.5.2 Disputes shall be subject to mediation as a condition precedent to binding dispute resolution. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 9.6 Binding Dispute Resolution

If the Parties do not resolve a dispute through mediation pursuant to Section 9.5, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the parties do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method, the dispute will be resolved by arbitration before the Project Neutral in accordance with the procedures determined by the Project Neutral.)

- Arbitration before the Project Neutral in accordance with procedures identified by the Project Neutral
- Arbitration pursuant to Article A.15 of Exhibit A, General Conditions
- Other: *(Specify another method of binding dispute resolution such as litigation in a court of competent jurisdiction, dispute resolution board or a mini-trial.)*

ARTICLE 10 SUSPENSION AND TERMINATION

§ 10.1 Suspension

§ 10.1.1 The Owner may, without cause and upon seven days' written notice to the Parties, suspend the Project or one or more Party's performance under this Agreement.

§ 10.1.2 The Owner shall pay each Party whose performance is suspended all sums due prior to suspension, including earned Goal Achievement Compensation as of the date of suspension, plus an equitable amount for Goal Achievement Compensation not realized as a result of such suspension, and any expenses incurred by such Party, caused by or as a result of such suspension, and any other sums due under the Contract Documents.

§ 10.1.3 In the event of a suspension under this Section 10.1, and prior to the resumption of a Party's performance, the Target Cost and Project Schedule shall be adjusted for increases in the cost and time of performance caused by suspension, delay or interruption. No adjustment shall be made, however, to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Party whose services are suspended is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 10.2 Termination

§ 10.2.1 Automatic Termination

This Agreement shall terminate upon the Parties' failure to execute the Target Criteria Amendment. Upon such termination, the Owner shall pay to the other Parties all amounts due and owing under the Contract Documents at the time of such termination.

§ 10.2.2 Termination by Parties Other Than the Owner

§ 10.2.2.1 A Party other than the Owner, upon seven days' written notice to the other Parties, may terminate its obligations under this Agreement, if the Party's portion of the Work has been stopped for a period of 30 consecutive days through no act or fault of the Party or any of its agents or employees or any other persons or entities performing under direct or indirect contract with the Party, because the Owner has failed to make payments to the Party in accordance with the Contract Documents. In the event of such a termination, the Owner shall compensate the Party in accordance with Section 10.2.3.2.

§ 10.2.2.2 A Party other than the Owner may terminate its obligations under this Agreement if, through no act or fault of the Party or any of its agents or employees or any other persons or entities performing under direct or indirect contract with the Party, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 10.1 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion or 120 days in any 365-day period, whichever is less. In the event of such a termination, the Owner shall compensate the Party in accordance with Section 10.2.3.2.

§ 10.2.2.3 In the event a Party other than the Owner terminates pursuant to this Section 10.2.2, any remaining Parties shall meet within 10 days of such termination to determine whether to proceed with the Project. If the remaining Parties cannot mutually agree upon the terms and conditions under which they shall continue with the Project, the Contract shall terminate and the Owner shall compensate the terminated Parties in accordance with Section 10.2.3.2.

§ 10.2.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause, upon seven days' written notice to the other Parties.

§ 10.2.3.1 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Parties shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 10.2.3.2 In the event of a termination under this Section 10.2.3, the Owner shall pay the Parties all sums due and owing under the Contract, including earned Goal Achievement Compensation as of the date of termination plus an equitable amount for Goal Achievement Compensation not realized as a result of a termination and all Termination Expenses as defined in Section 10.2.3.2.1.

§ 10.2.3.2.1 Termination Expenses are in addition to compensation to the Parties required by the Contract and include expenses directly attributable to termination for which the Parties are not otherwise compensated, plus an amount for the Parties' customary profit as of the date of termination.

§ 10.2.4 Termination by the Owner for Cause

§ 10.2.4.1 The Owner may terminate the Contract, or the participation of one or more of the Parties to this Agreement, for cause if one or more of the Parties

- .1 repeatedly refuses or fails to supply enough labor or resources to adequately perform obligations under the Contract;
- .2 fails to make payments as required under their respective agreements with their Consultants and Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 10.2.4.2 If the Owner terminates one or more of the Parties to this Agreement pursuant to Section 10.2.4.1, the terminated Party or Parties shall not be entitled to receive further payment until the Project is completed. Upon completion of the Project, the Owner shall pay sums properly attributable to the terminated Party or Parties as a result of their performance prior to termination as that amount is determined by the remaining Parties, less damages and expenses incurred by the remaining Parties by virtue of such termination.

§ 10.2.4.3 In the event the Owner terminates one or more of the Parties to this Agreement pursuant to Section 10.2.4.1, but not the entire Contract, the remaining parties shall meet within 10 days of such termination to determine whether to proceed with the Project. If the remaining Parties cannot mutually agree upon the terms and conditions under which they shall continue with the Project, the Contract shall terminate and the Owner shall compensate such Parties in accordance with Section 10.2.3.2.

§ 10.2.5 Continued Use of Instruments of Service

The Owner's right to continue using a terminated Party's Instruments of Service shall be as set forth in Section A.16.2 of Exhibit A, General Conditions.

§ 10.2.6 Any dispute arising from or related to a termination or suspension under this Article 10 shall be resolved pursuant to Article 9, Dispute Resolution.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Nothing in this Agreement shall be interpreted to create or form any partnership or joint venture among the Parties and no Party shall represent that a partnership or joint venture has been created.

§ 11.2 Nothing in this Agreement shall create a contractual relationship with, or cause of action in favor of a third party against, any Party to this Agreement.

§ 11.3 Terms in this Agreement shall have the same meaning as those in AIA Document C191–2009, Exhibit A, General Conditions of the Multi-Party Agreement for Integrated Project Delivery.

§ 11.4 The Parties bind themselves, their respective agents, successors, assigns and legal representatives to this Agreement. No Party shall assign this Agreement without the written consent of the other Parties, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under the Contract Documents.

§ 11.5 If any Party receives information specifically designated by another Party as "confidential" or "business proprietary," or as otherwise required under Section 4.6.3 of this Agreement, the receiving Party shall keep such information strictly confidential and shall not disclose it to any other person, except to

- .1 its employees,
- .2 those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project,
- .3 its Consultants and contractors whose contracts include similar restrictions on the use of confidential information, or
- .4 its legal counsel, accountants, or in response to an order issued by a court.

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

§ 11.7 Each Party shall have the right to include photographic or artistic representations of the Project among the Party's promotional and professional materials. Each Party shall provide appropriate professional credit to the other. Each Party shall be given reasonable access to the completed Project to make such representations. However, no Party's materials shall include the Owner's confidential or proprietary information if the Owner has previously advised the Party in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the other Parties in the Owner's promotional materials for the Project.

§ 11.8 Failure to Pursue Remedies

The failure of any Party to seek redress for violation of, or to insist upon the strict performance of, any provision of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

§ 11.9 Governing Law

Unless the Parties mutually agree otherwise, this Agreement and the rights of the Parties hereunder shall be interpreted in accordance with the laws of the jurisdiction where the Project is located, and all rights and remedies shall be governed by such laws without regard to principles of conflict of laws.

§ 11.10 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 among the Parties and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by each of the Parties.

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

- .1 AIA Document C191–2009, Standard Form Multi-Party Agreement for Integrated Project Delivery
- .2 AIA Document C191–2009, Exhibit A, General Conditions of the Multi-Party Agreement for Integrated Project Delivery
- .3 AIA Document C191–2009, Exhibit B, Legal Description of Project, or the following:
 - .4 AIA Document C191–2009, Exhibit C, Owner’s Criteria
 - .5 AIA Document C191–2009, Exhibit D, Target Criteria Amendment
 - .1 AIA Document C191–2009, Exhibit D, Exhibit AA: Target Cost Breakdown
 - .2 AIA Document C191–2009, Exhibit D, Exhibit BB: Project Definition
 - .3 AIA Document C191–2009, Exhibit D, Exhibit CC: Project Goals
 - .4 AIA Document C191–2009, Exhibit D, Exhibit DD: Integrated Scope of Services
 - .5 AIA Document C191–2009, Exhibit D, Exhibit EE: Project Schedule
 - .6 AIA Document C191–2009, Exhibit D, Exhibit FF, AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
 - .7 AIA Document C191–2009, Exhibit D, Exhibit GG, AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .6 Other documents:
(List other documents, if any.)

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

PARTIES

OWNER (Signature)

(Printed name and title)

CONTRACTOR (Signature)

(Printed name and title)

OTHER (Signature)

(Printed name and title)

ARCHITECT (Signature)

(Printed name and title)

OTHER (Signature)

(Printed name and title)

OTHER (Signature)

(Printed name and title)

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

