



# AIA<sup>®</sup> Document C196<sup>™</sup> – 2008

## *Standard Form of Agreement Between Single Purpose Entity and Owner for Integrated Project Delivery*

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

BETWEEN the Company:  
*(Company's name and address of the principal place of business)*

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

for the following Project:  
*(Name and location or address)*

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

AIA Document C195<sup>™</sup>–2008, Standard Form Single Purpose Entity Agreement for Integrated Project Delivery, is incorporated in this document by reference.

### TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER'S RESPONSIBILITIES
- 3 COMPANY'S RESPONSIBILITIES
- 4 COPYRIGHTS AND LICENSES
- 5 CLAIMS AND DISPUTES
- 6 TERMINATION
- 7 MISCELLANEOUS PROVISIONS
- 8 SCOPE OF THE AGREEMENT

Init.

## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 PURPOSE

The Owner, Architect, Construction Manager, and other Non-Owner Members, if any, have entered into AIA Document C195™–2008 Standard Form Single Purpose Entity Agreement for Integrated Project Delivery (the SPE Agreement), which is incorporated herein by reference, to form the Company in order to deliver the Project in a collaborative environment, following the principles of Integrated Project Delivery. Pursuant to the SPE Agreement, the Owner is required to fund the Company and the Company is required to furnish the planning, design, construction and commissioning of the Project through separate agreements with the Architect, Construction Manager, other Non-Owner Members, and Non-Member consultants and contractors.

### § 1.2 OWNER

The Owner is the Member of the Company identified as the Owner above and in the SPE Agreement.

## ARTICLE 2 OWNER'S RESPONSIBILITIES

### § 2.1 GENERAL

§ 2.1.1 The Owner acknowledges that the Project is to be delivered pursuant to the principles of Integrated Project Delivery, which require the Owner to participate in a highly collaborative environment.

§ 2.1.2 Within 15 days after receipt of a written request from the Company, the Owner shall furnish the requested information as necessary and relevant for the Company to evaluate, give notice of or enforce lien rights.

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

§ 2.1.4 The Owner shall provide the Company access to the Project site.

§ 2.1.5 Except as otherwise specifically provided, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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

§ 2.1.7 The Owner shall serve on the Project Management Team described in Exhibit D of the SPE Agreement (the Workplan) and assist the Project Management Team with its responsibilities. Accordingly, the Owner shall provide the representative identified in the Workplan to serve on the Project Management Team. The Owner's representative serving on the Project Management Team shall have express authority to make decisions on behalf of the Owner with respect to the Project.

### § 2.2 OWNER'S FUNDING REQUIREMENT

#### § 2.2.1 GENERAL

§ 2.2.1.1 In accordance with the specific terms and conditions set forth in this Section 2.2, the Owner shall provide the Company with funds to satisfy the Company's obligations to complete the Project as set forth in the SPE Agreement. Amounts the Owner pays to fund the Company's commitments to develop a Target Cost and to complete the Project are neither Capital Contributions nor advances, but are solely amounts paid for services. These amounts paid for services are in addition to the Owner's Capital Contributions.

§ 2.2.1.2 To the extent the Company receives reimbursement from third parties, including insurance companies, for any costs the Owner has funded under this Section 2.2, the Company shall forward the reimbursement amount to the Owner within 30 days of receiving the reimbursement.

#### § 2.2.2 OWNER'S FUNDING REQUIREMENTS PRIOR TO EXECUTION OF THE TARGET COST AMENDMENT

The Owner shall fund the Company all amounts the Company incurs to develop the Target Cost proposal and establish the Target Cost.

### § 2.2.3 OWNER'S FUNDING REQUIREMENTS AFTER EXECUTION OF THE TARGET COST AMENDMENT

§ 2.2.3.1 Upon the Company's execution of the Target Cost Amendment, the Owner shall fund the Company the amounts required to satisfy the Actual Cost the Company incurs to complete the Project, including amounts incurred for Goal Achievement Compensation. The Owner's funding obligations shall be in accordance with the Funding Schedule the Company completes pursuant to Section 5.2.7 of the SPE Agreement. Upon the Company's completion of the Funding Schedule, the Company and the Owner shall incorporate the Funding Schedule into this Agreement by written amendment.

§ 2.2.3.2 If the Actual Cost the Company incurs to complete the Project is less than the Target Cost, the Owner shall fund the Company amounts in excess of the Actual Cost for any obligations the Company incurs to pay Incentive Compensation pursuant to its agreements with the Non-Owner Members.

§ 2.2.3.3 If the Actual Cost the Company incurs to complete the Project exceeds the Target Cost, the Owner shall have no further funding obligations to the Company in excess of the Target Cost, except that the Owner shall fund the Company amounts in excess of the Target Cost for (1) any obligations the Company incurs pursuant to its agreements with any Non-Member, and (2) any obligations the Company incurs pursuant to its agreements with the Non-Owner Members for the payment of Goal Achievement Compensation earned.

### § 2.3 OWNER-FURNISHED SERVICES

§ 2.3.1 The Owner shall furnish the services specifically required of it in this Agreement. As necessary, the Owner may furnish those services through agreements with separate consultants and contractors. The costs or expenses of any such agreements the Owner enters into, to which the Company is not also a party, shall be at the Owner's expense and will not be included in the Target Cost for the Project. For coordination purposes, the Owner shall furnish to the Company copies of the scopes of services in the agreements between the Owner and the Owner's consultants and contractors. The Owner shall coordinate the services of its own consultants and contractors with those services furnished by the Company. The Owner shall require that its consultants and contractors maintain insurance as appropriate to the services provided.

### § 2.3.2 SERVICES PRIOR TO EXECUTION OF THE TARGET COST AMENDMENT

The Owner shall furnish the services required of it in this Agreement and shall collaborate with the Non-Owner Members to perform the services described in Section 5.2 of the SPE Agreement and Article D.2 of the Workplan to develop a Target Cost proposal.

§ 2.3.2.1 The Owner's services prior to the execution of the Target Cost Amendment shall also include the following: *(Set forth in detail the services the Owner shall also furnish.)*

### § 2.3.3 SERVICES FOLLOWING EXECUTION OF THE TARGET COST AMENDMENT

Upon the Company's execution of the Target Cost Amendment, the Owner shall furnish the services described in Article D.2 of the Workplan and the services required of the Owner in the Target Cost Amendment.

### § 2.4 OWNER'S INSURANCE REQUIREMENTS

#### § 2.4.1 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

#### § 2.4.2 PROPERTY INSURANCE

Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the Target Cost, as it is amended from time to time, 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. Such property insurance shall be maintained, unless otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property, whichever is later.

§ 2.4.2.1 Property insurance shall be on an “all-risk” or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements.

§ 2.4.2.2 If the Owner does not intend to purchase the property insurance required by this Section 2.4.2 and with all of the coverages in the amount described above, the Owner shall so inform the Company in writing prior to commencement of the Work. The Company shall notify the Non-Owner Members of the Owner’s intent and the Company and Non-Owner Members may then effect insurance that will protect the interests of the Company, Members and Non-Members in the Work. If the Company or Non-Owner Members are damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Company in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 2.4.2.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 2.4.2.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

#### § 2.4.3 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by law or otherwise, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Company, Non-Owner Members and Non-Members in the Work, and the Owner, Non-Owner Members, and Non-Members performing Work on the Project site shall be named insureds.

#### § 2.4.4 LOSS OF USE INSURANCE

The Owner, at the Owner’s option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner’s property due to fire or other hazards, however caused. The Owner waives all rights of action against the Company for loss of use of the Owner’s property, including consequential losses due to fire or other hazards however caused.

#### § 2.4.5 CERTIFICATES

The Owner shall purchase the insurance required by Sections 2.4.1, 2.4.2, 2.4.3 and 2.4.4 above and provide certificates of insurance acceptable to the Company prior to commencement of the Work on the Project site and thereafter upon renewal or replacement of each required policy of insurance. Upon the Company’s request, the Owner shall provide copies of the insurance policies required by this Agreement. The certificates and the insurance policies required by this Section 2.4 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days’ prior written notice has been given to the Company.

#### § 2.4.6 COMPANY-CONTROLLED INSURANCE PROGRAM

If the Company elects to institute a Company-Controlled Insurance Program (CCIP), the Owner shall enroll in the CCIP and shall secure such insurance as required by the Company after consultation with the Company’s insurance consultant, which insurance coverage may be either in addition to, or in lieu of, the insurance coverage required by Sections 2.4.1, 2.4.2, 2.4.3 and 2.4.4 above.

### ARTICLE 3 COMPANY’S RESPONSIBILITIES

#### § 3.1 GENERAL

§ 3.1.1 The Company acknowledges that the Project is to be delivered pursuant to the principles of Integrated Project Delivery, which requires the Company to furnish services in a highly collaborative environment.

§ 3.1.2 The Company shall be responsible for furnishing the planning, design, construction and commissioning services required to complete the Project, and specifically those services set forth in this Article 3. It is understood, however, that the Company will not provide such services directly, rather it will furnish the services through separate agreements with Non-Owner Members and Non-Members. Where applicable law requires that such services be provided by properly licensed persons or entities, the Company shall furnish such services through agreements with qualified persons or entities duly licensed in accordance with applicable law.

§ 3.1.3 The Company shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### § 3.2 SERVICES PRIOR TO EXECUTION OF THE TARGET COST AMENDMENT

§ 3.2.1 The Company shall furnish the services necessary to develop a Target Cost proposal. Such services shall include, but not be limited to, the services described in Section 5.2 of the SPE Agreement and Article D.2 of the Workplan.

§ 3.2.2 The Company's services prior to the execution of the Target Cost Amendment shall also include the following: *(Set forth in detail the services the Company shall also furnish.)*

### § 3.3 SERVICES FOLLOWING EXECUTION OF THE TARGET COST AMENDMENT

Upon the Company's execution of the Target Cost Amendment, the Company shall furnish the services set forth in the Target Cost Amendment, other than those required of the Owner. Additionally, the Company shall cause the Project to be constructed in accordance with the Target Cost Amendment.

## ARTICLE 4 COPYRIGHTS AND LICENSES

§ 4.1 The Owner and the Company warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Company and Owner intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. If necessary, the Owner shall obtain nonexclusive licenses from its consultants and contractors sufficient to allow the Owner to satisfy its obligation to the Company under Section 4.2.1.

### § 4.2 LICENSE FOR COMPANY'S USE OF THE INSTRUMENTS OF SERVICE OF OWNER-PROVIDED CONSULTANTS AND CONTRACTORS

§ 4.2.1 Upon execution of this Agreement, the Owner grants to the Company a nonexclusive license to use its consultants' and contractors' Instruments of Service solely and exclusively for purposes of designing, administering, managing and constructing the Project. The license granted under this section permits the Company to authorize the Non-Owner Members and Non-Members, as well as their respective consultants, contractors, subcontractors, sub-subcontractors, and material or equipment suppliers, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. The license granted under this Section 4.2.1 shall terminate upon the termination of this Agreement.

§ 4.2.2 Except for the licenses granted in this Article 4, no other license or right shall be deemed granted or implied under this Agreement. The Company shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Owner. Any unauthorized use of the Instruments of Service shall be at the Company's sole risk and without liability to the Owner and the Owner's consultants and contractors.

### § 4.3 COMPANY'S LICENSE TO THE OWNER FOR USE OF NON-OWNER MEMBER'S INSTRUMENTS OF SERVICE

§ 4.3.1 Upon dissolution of the Company or the Owner's termination of this Agreement for its convenience, the Company grants to the Owner a nonexclusive license to use the Instruments of Service of its Non-Owner Members solely and exclusively for designing, administering, managing, constructing, using, maintaining, altering and adding to the Project. The license granted in this section is conditioned on the Owner's substantial performance of its obligations, including funding of all amounts required under this Agreement.

§ 4.3.2 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Company and Non-Owner Members and their consultants and contractors from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Non-Owner Members and their consultants and contractors from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under Section 4.3.1.



## ARTICLE 5 DISPUTES

§ 5.1 The Owner waives its right to pursue claims and disputes against the Company and the Non-Owner Members, and the Company waives its right to pursue claims and disputes against the Owner, except as set forth in this Article 5.

§ 5.2 The Owner and the Company shall be entitled to pursue all claims and disputes based in equity, law or contract against one another and the Non-Owner Members, but only through the dispute resolution proceedings set forth in Article 18 of the SPE Agreement.

§ 5.3 With the exception of liability arising out of a Non-Owner Member's willful misconduct, the Owner may not recover against any Non-Owner Members for amounts in excess of the proceeds of insurance required under this Agreement and available for the Non-Owner Members' liability. The Owner assigns to the Company all claims and disputes against the Non-Owner Members and further acknowledges that the Company is empowered to resolve or compromise the assigned claim or dispute and to distribute any recoveries as it sees fit, subject to the Members' rights under the dispute resolution proceedings set forth in Article 18 of the SPE Agreement.

§ 5.4 To the fullest extent permitted by applicable law the Company shall defend, indemnify and hold harmless the Owner and its consultants, contractors, and agents and employees of any of them, from and against all claims and disputes not paid by insurance whether or not such claim or dispute is caused in whole or in part by a party indemnified hereunder. The Company, however, shall not be obligated to indemnify the Owner for any claims and disputes arising from the Owner's willful misconduct.

§ 5.5 The Owner assigns to the Company all claims and disputes against any Non-Member providing services or performing Work for the Project and further acknowledges that the Company is empowered to resolve or compromise the assigned claims and disputes and to distribute any recoveries as it sees fit, subject to the Members' rights under the dispute resolution proceedings set forth in Article 18 of the SPE Agreement.

§ 5.6 Upon dissolution of the Company, and thereafter, the Owner agrees to resolve all claims and disputes between it and any of the Non-Owner Members pursuant to the terms and conditions set forth in Article 18 of the SPE Agreement.

## ARTICLE 6 TERMINATION AND DISSOLUTION

§ 6.1 The Owner may, at any time, terminate this Agreement for the Owner's convenience and without cause.

§ 6.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Company 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;
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing contracts and purchase orders and enter into no further subcontracts and purchase orders; and
- .4 cooperate in dissolving the Company and winding up its affairs.

§ 6.3 Upon dissolution of the Company, and thereafter, the Owner assumes all duties and responsibilities the Company owes to the Non-Owner Members under their respective agreements with the Company for services provided prior to the completion of the winding up period of the Company. These duties and responsibilities include reimbursement for claims against Non-Owner Members that may be filed after the winding up period, but which are based upon acts, omissions or events which pre-dated the completion of the winding up period.

## ARTICLE 7 MISCELLANEOUS PROVISIONS

### § 7.1 OWNER'S AUDIT RIGHTS

The Company shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Agreement and to substantiate all costs incurred. The 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 Company's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, contracts, subcontracts, consultant's proposals, contractor's proposals, subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Agreement. The Company shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## § 7.2 WAIVERS OF SUBROGATION

The Owner and Company waive all rights against each other and any of their design professionals, consultants, contractors, subcontractors, sub-subcontractors, agents and employees, each of the other, 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 Agreement or other applicable property insurance, except such rights as they have to proceeds of such insurance held by the Company as fiduciary. The Owner or Company, as appropriate, shall require of its design professionals, consultants, separate contractors, 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 other parties enumerated herein. The 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.

§ 7.3 Terms in this Agreement shall have the same meaning as those in the SPE Agreement.

§ 7.4 This Agreement shall be interpreted in accordance with the laws of the jurisdiction governing the Company, and all rights and remedies shall be governed by such laws without regard to principles of conflict of laws.

§ 7.5 Nothing contained in this Agreement shall create a contractual relationship of any kind between (1) the Owner and any Non-Member contracting directly with the Company, or (2) the Owner and any consultant or subcontractor of the Non-Owner Members or a Non-Member.

§ 7.6 To the extent any provision of this Agreement conflicts with Section 6.2.2 of the SPE Agreement, the terms of this Agreement shall control.

## ARTICLE 8 SCOPE OF THE AGREEMENT

§ 8.1 This Agreement represents the entire and integrated agreement between the Owner and the Company and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Company.

§ 8.2 This Agreement comprises the following documents listed below:

- .1 AIA Document C196™–2008, Standard Form Agreement Between Company and Owner Member for Integrated Project Delivery.
- .2 AIA Document C195™–2008, Standard Form Single Purpose Entity Agreement for Integrated Project Delivery, including attached exhibits, as executed by the Members and amended from time to time.
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .5 Other documents:  
*(List other documents hereby incorporated into the Agreement.)*

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

\_\_\_\_\_  
COMPANY (Signature)

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

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

\_\_\_\_\_  
(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.**

