

 **AIA**® Document C198™ – 2010

Standard Form of Agreement Between Single Purpose Entity and Consultant 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)

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

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

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

The Company and Consultant agree as follows.

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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 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 The portion of the Project for which the Consultant shall provide services is hereinafter called This Portion of the Project. Except as set forth herein, the Consultant shall not have any duties or responsibilities for any other portion of the Project. This Portion of the Project consists of the following:

(Fully describe the portion of the Project for which the Consultant shall provide the services set forth in this Agreement.)

§ 1.3 The Consultant is an independent contractor for This Portion of the Project. The Consultant is responsible for methods and means used in performing its services under this Agreement, and is not an employee, agent, member, or partner of the Company or any of its Members. The Company shall not be responsible for the acts or omissions of the Consultant.

§ 1.4 Except as authorized by the Company, all communications between the Consultant and the Company or its Members, contractors or other consultants for the Project shall be forwarded through the Company's designated representative. The Company shall facilitate the exchange of information among the Company, its Members, contractors and other consultants as necessary for the coordination of This Portion of the Project.

§ 1.5 The other consultants to be retained by the Company, and the scopes of their services, are as follows:

Init.

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(List disciplines and, if known, names, addresses and other information.)

§ 1.6 The subconsultants to be retained by the Consultant, and the scopes of their services, are as follows:
(List disciplines and, if known, names, addresses and other information.)

§ 1.7 Except with the Company's knowledge and consent, the Consultant shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Consultant's professional judgment with respect to this Project.

ARTICLE 2 CONSULTANT'S RESPONSIBILITIES

§ 2.1 The Consultant acknowledges that the Project is to be delivered pursuant to the principles of Integrated Project Delivery, which require the Consultant to perform its services in a highly collaborative environment.

§ 2.2 The Consultant shall identify a representative authorized to act on behalf of the Consultant with respect to This Portion of the Project, and key personnel who will perform the Consultant's services. The Consultant shall not replace its identified representative or key personnel without the Company's approval, which shall not unreasonably be withheld.

§ 2.3 The Consultant shall recommend to the Company appropriate investigations, surveys, tests, analyses, reports and the services of other consultants that should be obtained for the proper execution of the Consultant's services.

§ 2.4 The Consultant shall coordinate its services with those of the Members, and the Company's and its Members' contractors and other consultants in order to avoid unreasonable delay in the orderly and sequential progress of the Member's, and the Company's and its Members' contractors' and other consultants' work or services. The Consultant shall coordinate all aspects of its design of the Work for This Portion of the Project with the Work designed by the Members, and the Company's and its Members' contractors and other consultants, as necessary for the proper coordination of the Project.

§ 2.5 The Consultant shall provide copies of models, drawings, reports, specifications and other necessary information to the Company, its Members, and the Company's and its Members' contractors and other consultants in the format the Company requires.

§ 2.6 The Consultant shall not be responsible for the acts or omissions of the Company, its Members, their other consultants, contractors, subcontractors, or the agents or employees of any of the foregoing parties. The Consultant shall provide prompt written notice to the Company if the Consultant becomes aware of any errors, omissions or inconsistencies in the services or information provided by the Company, its Members, and the Company's and its Members' contractors and other consultants.

§ 2.7 The Consultant shall submit for the Company's approval a schedule for the performance of the Consultant's services consistent with the requirements of the SPE Agreement, which may be adjusted as the Project proceeds. The Consultant's schedule shall allow reasonable time for the Company, its Members, and the Company's and its Members' other contractors and consultants to review the Consultant's submittals. Once approved by the Company, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Consultant or the Company.

§ 2.8 Software and Data Exchange Protocols

The Company and Consultant shall, at the earliest practical moment, meet and delineate the types of software to be used on the Project and establish protocols, standards and tolerances as may be required for the proper execution of the Work. The Company and Consultant shall work together to establish the permitted uses for all digital information,

including the Model, to be exchanged on the Project. Such determinations shall be set forth in AIA Document E201™–2007 and AIA Document E202™–2008, or similar documents, that shall be incorporated by reference into all agreements for services or construction for the Project.

§ 2.9 Insurance

§ 2.9.1 The Consultant shall maintain the following insurance for the duration of this Agreement:

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

- .1 General Liability

- .2 Automobile Liability

- .3 Workers' Compensation

- .4 Professional Liability

§ 2.9.2 The Consultant shall cause any Commercial General Liability and Automobile Liability policies the Consultant maintains to include the Company and its Members as additional insureds for claims caused in whole or in part by the Consultant's negligent acts or omissions during the Consultant's operations.

§ 2.9.3 Certificates of insurance acceptable to the Company shall be provided to the Company prior to commencement of services under this Agreement and thereafter upon renewal or replacement of each required policy of insurance. Upon the Company's request, the Consultant shall provide copies of the insurance policies required by this Agreement. The certificates and the insurance policies required by this Section 2.9 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.

§ 2.9.4 If the Company elects to institute a Company Controlled Insurance Program (CCIP), the Consultant shall enroll in the CCIP, if eligible, and shall secure such insurance as the Company requires 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 Section 2.9.1.

§ 2.9.5 If any of the requirements set forth in this Section 2.9 exceed the types and limits of insurance the Consultant normally maintains, the Company shall reimburse the Consultant for any additional cost.

§ 2.10 The Consultant shall assist the Company in its obligations to the Owner with regard to submissions required for the approval of governmental authorities having jurisdiction over the Project.

§ 2.11 Services

§ 2.11.1 The Consultant shall perform the services required under this Agreement consistent with the skill and care ordinarily provided by persons or entities providing similar services in the same or similar locality under the same or similar circumstances. Where applicable law requires that the services set forth in this Agreement be provided by properly licensed persons or entities, the Consultant shall provide such services through qualified persons or entities duly licensed in accordance with applicable law.

§ 2.11.2 Services Prior to Execution of the Target Cost Amendment

§ 2.11.2.1 The Consultant shall provide the services required of it in this Agreement and, with respect to This Portion of the Project, shall collaborate with and assist the Company and its Members with the Members' performance of their services described in Section 5.2 of the SPE Agreement and Article D.2 of the Workplan in the SPE Agreement to develop a Target Cost proposal.

§ 2.11.2.2 The Consultant's services prior to the execution of the Target Cost Amendment shall also include the following:

(Set forth in detail the services the Consultant shall provide prior to execution of the Target Cost Amendment in addition to those described in Section 2.11.2.1.)

§ 2.11.3 Services Following Execution of the Target Cost Amendment

Upon the Company's execution of the Target Cost Amendment, the Consultant shall provide the services required of it in this Agreement and, with respect to This Portion of the Project, shall provide the services required of it described in Article D.2 of the Workplan in the SPE Agreement and the Target Cost Amendment to the SPE Agreement, including the Integrated Scope of Services matrix.

§ 2.11.3.1 The Consultant's services following execution of the Target Cost Amendment shall also include the following:
(Set forth in detail the services the Consultant shall also provide, if not otherwise set forth in the documents identified in Section 2.11.3.)

§ 2.11.4 Cost of the Work

§ 2.11.4.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Company to construct all elements of This Portion of the Project designed or specified by the Consultant and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Members or other consultants retained by the Company or its Members, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Company or its Members.

§ 2.11.4.2 When the Project requirements have been sufficiently identified, but in no event later than during the Criteria Design Phase, in order to assist the Company in its preparation of a Target Cost proposal, the Consultant shall prepare and submit to the Company an estimate of the Cost of the Work. The Consultant shall from time to time update the estimate for the Cost of the Work as required by the Company. If at any time the estimate for the Cost of the Work and all of the other elements that would constitute the Target Cost exceed the Owner's budget, the Consultant shall participate with the Company to make appropriate recommendations to the Owner to adjust the Project's size, quality or budget related to This Portion of the Project. Additionally, the Consultant shall cooperate with the Company, its Members, and the Company's and its Members' contractors and other consultants in redesigning the Work for This Portion of the Project to comply with the Owner's budget.

§ 2.11.4.3 If at any time the Company notifies the Consultant that the Target Cost is projected to be exceeded, the Consultant shall participate with the Company in developing and implementing a Recovery Plan as described in Section 5.7 of the SPE Agreement and in furtherance thereof shall make appropriate recommendations to the Company to adjust the Project's size, quality or budget related to This Portion of the Project. Additionally, the Consultant shall cooperate with the Company, its Members, and the Company's and its Members' contractors and other consultants in redesigning the Work for This Portion of the Project in accordance with the Recovery Plan.

§ 2.12 Additional Services

§ 2.12.1 Services not set forth in this Article 2 are Additional Services. Additional Services may be provided after execution of this Agreement without invalidating this Agreement. Upon recognizing the need to perform Additional Services that may arise as the Project proceeds, the Consultant shall notify the Company. The Consultant, however, shall not proceed to provide such services until the Consultant receives the Company's written authorization. Except for services due to the fault of the Consultant, any Additional Services provided in accordance with this Section 2.12.1 shall entitle the Consultant to compensation pursuant to Sections 5.1.3 and 5.1.4.

§ 2.12.2 The Consultant shall provide () site visits during construction of the Project. When this number is reached, the Consultant shall notify the Company. The Consultant shall conduct site visits in excess of that number as Additional Services.

ARTICLE 3 COMPANY'S RESPONSIBILITIES

§ 3.1 The Company shall furnish, with reasonable promptness, any information or services required of it by this Agreement and the SPE Agreement.

§ 3.2 If required by the Consultant, the Company 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.

§ 3.3 The Company shall render decisions in a timely manner so as to avoid unreasonable delay in the orderly and sequential progress of the Consultant's performance of its services.

§ 3.4 Where required by applicable law, the Company shall require that any consultants or contractors providing services to the Company shall be licensed as may be required by applicable law to perform such services in the jurisdiction where the Project is located.

§ 3.5 Unless otherwise provided in this Agreement, upon the reasonable request of the Consultant, the Company 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.

§ 3.6 The Company shall provide available information in a timely manner regarding requirements for and limitations on This Portion of the Project, including a copy of the Owner's program for the Project. Within seven days after receipt of a written request from the Consultant, the Company shall request information from the Owner as necessary and relevant for the Consultant to evaluate, give notice of or enforce lien rights. Within seven days of receipt of such information from the Owner, the Company shall furnish the information to the Consultant.

§ 3.7 The Company shall identify a representative authorized to act on the Company's behalf with respect to This Portion of the Project. The Company or such identified representative shall render decisions in a timely manner pertaining to documents submitted by the Consultant in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's services. The Company may from time to time, upon at least seven days prior written notice, replace its identified representative.

§ 3.8 On the Consultant's request, the Company shall furnish to the Consultant, in a timely manner, (1) detailed layouts showing the location of connections, and (2) tabulations giving sizes, loads and other information on equipment designed, specified or furnished by others for design and coordination of This Portion of the Project.

§ 3.9 The Company shall confer with the Consultant before issuing interpretations or clarifications of documents prepared by the Consultant and shall request the recommendation of the Consultant before providing interpretations or clarifications of shop drawings, product data, samples or other submissions of contractors or subcontractors, or upon Change Orders and Construction Change Directives affecting This Portion of the Project.

§ 3.10 The Company shall furnish to the Consultant a copy of the SPE Agreement, a copy of the Target Cost Amendment to the SPE Agreement upon its execution, any preliminary estimate or updated estimates or other cost data with respect to the Cost of the Work, Detailed Design and Implementation Documents, including bidding documents, bid tabulations, and negotiated proposals, all to the extent they pertain to This Portion of the Project, for the Consultant's use in the design and coordination of This Portion of the Project.

§ 3.11 The Consultant shall be entitled to rely on the accuracy and completeness of services and information furnished by the Company. The Consultant shall provide prompt written notice to the Company if the Consultant becomes aware of any errors, omissions or inconsistencies in such services or information.

ARTICLE 4 COPYRIGHTS AND LICENSES

§ 4.1 The Consultant 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.

§ 4.2 License for Use of the Consultant's Instruments of Service

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

§ 4.2.2 Upon execution of this Agreement, the Consultant grants to the Company a nonexclusive license to use the Consultant's Instruments of Service solely and exclusively for the Project for purposes of designing, administering, managing and constructing the Project. The Consultant shall obtain similar nonexclusive licenses from the Consultant's subconsultants and contractors consistent with this Agreement. The license granted under this section permits the Company to authorize its Members and Non-Members, as well as their respective consultants, subconsultants, 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 in this section is conditioned on the Company's substantial performance of its obligations, including prompt payment of all sums when due, under this Agreement.

§ 4.2.2.1 In the event the Company uses the Instruments of Service without retaining the author of the Instruments of Service, the Company releases the Consultant and Consultant's subconsultant(s) from all claims and causes of action arising from such uses. The Company, to the extent permitted by law, further agrees to indemnify and hold harmless the Consultant and its subconsultants 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 Company's use of the Instruments of Service under this Section 4.2.2. The terms of this Section 4.2.2.1 shall not apply if the Company rightfully terminates this Agreement for cause under Section 7.5.

§ 4.2.3 Upon dissolution of the Company, or the Owner's request to the Company to terminate the SPE Agreement for the Owner's convenience, or the Company's termination of this Agreement pursuant to Section 7.6, the Consultant grants the Company the additional right to grant to the Owner a nonexclusive license to use the Consultant's Instruments of Services for designing, administering, managing, constructing, using, maintaining, altering and adding to the Project. The Consultant shall obtain similar nonexclusive licenses from the Consultant's subconsultants and contractors consistent with this Agreement.

§ 4.2.3.1 The rights granted to the Company under Section 4.2.3 are conditioned on the Company's substantial performance of its obligations, including prompt payment of all sums when due, under this Agreement. Such rights are further conditioned on the Consultant receiving a written agreement from the Owner that in the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, (1) the Owner releases the Consultant and its subconsultants and contractors from all claims and causes of action arising from such uses and (2) the Owner, to the extent permitted by law, agrees to indemnify and hold harmless the Consultant and its subconsultants 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 such uses.

§ 4.2.4 Except for the licenses granted in this Article 4, no other license or right shall be deemed granted or implied under this Agreement. Except as provided in Sections 4.2.2 and 4.2.3, 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 Consultant. Any unauthorized use of the Instruments of Service shall be at the Company's sole risk and without liability to the Consultant and the Consultant's subconsultants and contractors.

ARTICLE 5 COMPENSATION

§ 5.1 Compensation for Services

§ 5.1.1 For the Consultant's services prior to execution of the Target Cost Amendment, as described under Section 2.11.2, the Company shall compensate the Consultant as follows:

(Insert amount of, or basis for, compensation.)

§ 5.1.2 For the Consultant's Services following execution of the Target Cost Amendment, as described under Section 2.11.3, the Company shall compensate the Consultant as follows:
(Insert amount of, or basis for, compensation.)

§ 5.1.3 For Additional Services that may arise during the course of the Project, the Company shall compensate the Consultant as follows:
(Insert amount of, or basis for, compensation.)

§ 5.1.4 Compensation for Additional Services of the Consultant's subconsultants when not included in Section 5.1.3, shall be the amount invoiced to the Consultant plus _____ percent
(_____ %), or as otherwise stated below:

§ 5.1.5 The hourly billing rates for services of the Consultant and the Consultant's subconsultants, if any, are set forth below. The rates shall be adjusted in accordance with the Consultant's and Consultant's subconsultants' respective normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

| Employee or Category | Rate |
|----------------------|------|
|----------------------|------|

§ 5.1.6 Unless otherwise agreed, payments for services shall be made monthly on the basis of services performed. Payments are due and payable upon presentation of the Consultant'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 Consultant.
(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.)

§ 5.2 Consultant Incentive Compensation

§ 5.2.1 Upon final completion of the Project, if the Actual Cost the Company incurs to complete the Project is less than the Target Cost, as set forth in the Target Cost Amendment to the SPE Agreement and as amended from time to time, then the Company shall pay to the Consultant as Consultant Incentive Compensation:

§ 5.2.1.1 A portion of the amount the Actual Cost is less than the adjusted Target Cost as follows:
(Insert the portion or percentage of the savings payable as Consultant Incentive Compensation.)

§ 5.2.1.2 The following in lieu of the Consultant Incentive Compensation described in Section 5.2.1.1:
(Describe the amount, or method for determining the amount, of Consultant Incentive Compensation.)

§ 5.2.2 The Company shall pay any Consultant Incentive Compensation earned under this Agreement in a lump sum payment following the final reconciliation of the Project accounting. Amounts unpaid () days after final reconciliation of the Project accounting shall bear interest at the rate set forth in Section 5.1.6, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Consultant.

§ 5.3 Consultant Goal Achievement Compensation

§ 5.3.1 The Company and Consultant may define certain Consultant Project Goals that, if achieved, will entitle the Consultant to additional compensation. Any Consultant Project Goals shall be set forth in Exhibit A, Consultant Project Goals Amendment. The Consultant Project Goals may relate to Project Goals the Members identified in the Target Cost Amendment to the SPE Agreement or may relate solely to the Consultant's services. For each Consultant Project Goal, the Company and the Consultant shall agree on, and set forth in Exhibit A, Consultant Project Goals Amendment, an amount, or the method to determine an amount, available to the Consultant as Consultant Goal Achievement Compensation, if the Consultant Project Goal is achieved.

§ 5.3.2 Upon the achievement of a Consultant Project Goal as mutually agreed by the Company and Consultant, the Consultant is entitled to invoice the Company for its Consultant Goal Achievement Compensation as set forth in Exhibit A, Consultant Project Goals Amendment.

§ 5.3.3 Consultant Goal Achievement Compensation shall be immediately payable upon achievement of each Consultant Project Goal. Amounts unpaid () days after the invoice date shall bear interest at the rate set forth in Section 5.1.6, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Consultant.

§ 5.3.3.1 If the Actual Costs for the Project exceed the Target Cost, as adjusted under this Agreement and the SPE Agreement, the Company shall not be relieved of its obligation to pay the Consultant its Consultant Goal Achievement Compensation earned on the Project.

§ 5.3.4 Failure to Meet Project Goals

To the extent any Project Goals, including any Consultant Project Goals, included in the Target Cost are not achieved, the Target Cost shall be adjusted downward in an amount equal to the Goal Achievement Compensation, including any Consultant Goal Achievement Compensation, that the Company did not award under the SPE Agreement or this Agreement.

§ 5.4 Company Audit Rights

§ 5.4.1 If any portion of the Consultant's compensation for services performed, Consultant Incentive Compensation, Consultant Goal Achievement Compensation, or reimbursement of expenses, is determined on a cost reimbursement basis, then the Company shall have the audit rights set forth in Section 5.4.1.1.

§ 5.4.1.1 The Consultant shall keep full and detailed records and accounts related to its services 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 Company. The Company and the Company's

auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Consultant's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, consultant or contractor proposals, purchase orders, vouchers, memoranda and other data relating to this Agreement. The Consultant shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ 5.5 Compensation for Reimbursable Expenses

§ 5.5.1 Reimbursable Expenses are in addition to compensation set forth in Sections 5.1, 5.2 and 5.3 and includes expenses incurred by the Consultant and the Consultant's subconsultants and contractors directly related to the Project, as follows:

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

§ 5.5.2 For Reimbursable Expenses, the Company shall compensate the Consultant for the expenses incurred by the Consultant and the Consultant's subconsultants and contractors plus _____ percent (_____ %) of the expenses incurred.

§ 5.6 The Company shall not withhold amounts from the Consultant's compensation to impose a penalty or liquidated damages on the Consultant, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Consultant agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

ARTICLE 6 CLAIMS AND DISPUTES

§ 6.1 General

§ 6.1.1 Any claims and disputes, or causes of action, whether in contract, tort, or otherwise, between the Company and Consultant arising out of or related to this Agreement shall be subject to 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. The Company and the Consultant waive all claims and causes of action not commenced in accordance with this Section 6.1.1.

§ 6.1.2 To the extent damages are covered by insurance, the Company and the Consultant waive all rights against (1) each other and any of their contractors, consultants, subconsultants, agents and employees of the other, and (2) the Owner, the Architect, the Construction Manager, other Members of the Company, if any, contractors, consultants, subconsultants, agents and employees of any of the foregoing for damages, except such rights as they may have to the proceeds of such insurance as set forth in this Agreement or other insurance applicable to the Project. The Company or the Consultant, as appropriate, shall require of the contractors, consultants, subconsultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 6.1.3 The Consultant shall indemnify and hold the Company and its Members, and the Company's and its Members' other contractors, consultants, agents 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 Consultant, its employees and its subconsultants and contractors in the performance of professional services under this Agreement.

§ 6.1.4 The Company shall indemnify and hold the Consultant and the Consultant'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 Company, its Members, and the Company's and its Members' other contractors, consultants and employees in the performance of professional services under this Agreement.

§ 6.1.5 The Company and Consultant 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 7.8.

§ 6.2 Mediation

§ 6.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Consultant's services, the Consultant may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 6.2.2 The Company and Consultant shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this 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.

§ 6.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 6.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 6.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Company and Consultant 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 6.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

§ 6.3 Arbitration

§ 6.3.1 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 this 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.

§ 6.3.1.1 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.

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

§ 6.3.3 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.

§ 6.3.4 Consolidation or Joinder

§ 6.3.4.1 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).

§ 6.3.4.2 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.

§ 6.3.4.3 The Company and Consultant grant to any person or entity made a party to an arbitration conducted under this Section 6.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Company and Consultant under this Agreement.

ARTICLE 7 TERMINATION PROVISIONS

§ 7.1 Upon the Consultant's receipt of the Owner's notice to the Company of the Owner's termination of the SPE Agreement for the Owner's convenience, this Agreement shall terminate.

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

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

§ 7.4 If the Company suspends the Project for more than 90 cumulative days for reasons other than the fault of the Consultant, the Consultant may terminate this Agreement by giving not less than seven days' written notice to the Company.

§ 7.5 Either party may terminate this Agreement upon not less than seven days' written notice to the other party 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.

§ 7.6 The Company may terminate this Agreement upon not less than seven days' written notice to the Consultant for the Company's convenience and without cause.

§ 7.7 In the event of termination not the fault of the Consultant, the Consultant shall be compensated for services performed prior to the termination, including Consultant Goal Achievement Compensation for achieving Project Goals as of the date of termination, together with Reimbursable Expenses then due and Termination Expenses as defined in Section 7.8.

§ 7.8 Termination Expenses are in addition to compensation for the Consultant's services and include expenses directly attributable to termination for which the Consultant is not otherwise compensated, plus an amount for the Consultant's customary profit earned as of the date of termination.

§ 7.9 The Company's and Owner's rights to use the Consultant's Instruments of Service in the event of a termination of this Agreement are set forth in Article 4 and Section 7.10.

§ 7.10 Compensation for Use of Consultant's Instruments of Service

Upon the Consultant's receipt of the Owner's notice to the Company of the Owner's termination of the SPE Agreement for the Owner's convenience, or if the Company terminates this Agreement with the Consultant for the Company's convenience under Section 7.6, or if the Consultant terminates this Agreement under Section 7.4, the Company shall pay a licensing fee as compensation for the Owner's or Company's continued use of the Consultant's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 The Company and the Consultant, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Company nor the Consultant shall assign this Agreement without the written consent of the other, except that the Company may assign this Agreement (1) to a lender providing financing to the Owner for the Project if the lender agrees to assume the Company's rights and obligations under this Agreement, and (2) to the Owner upon dissolution of the Company if the Owner agrees to assume the Company's rights and obligations under this Agreement.

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

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

§ 8.4 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 Company or Consultant.

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

§ 8.6 Unless otherwise required in this Agreement, the Consultant 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 site.

§ 8.7 The Consultant shall have the right to include photographic or artistic representations of the design of the Project among the Consultant's promotional and professional materials. The Consultant shall be given reasonable access to the completed Project to make such representations. However, the Consultant's materials shall not include the Owner's or the Company's confidential or proprietary information if the Owner or Company has previously advised the Consultant in writing of the specific information considered by the Owner or Company to be confidential or proprietary. The Company shall provide professional credit for the Consultant in the Company's promotional materials for the Project, and shall request the Owner to do likewise in the Owner's promotional materials for the Project.

§ 8.8 If the Company or the Consultant receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall

not disclose it to any other person except 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, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 9 SPECIAL TERMS AND CONDITIONS

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

ARTICLE 10 SCOPE OF THE AGREEMENT

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

§ 10.2 This Agreement comprises the following documents listed below:

- .1 AIA Document C198™–2010, Standard Form Agreement Between Single Purpose Entity and Consultant for Integrated Project Delivery, including Exhibit A, Consultant Project Goals Amendment, as executed by the parties and amended from time to time.
- .2 AIA Document C195™–2008, Standard Form Single Purpose Entity Agreement for Integrated Project Delivery, including the Target Cost Amendment and exhibits attached to both the Agreement and the Amendment, as executed by the Members of the Company and amended from time to time.
- .3 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)

CONSULTANT (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.