



AIA[®] Document C199[™] – 2010

Standard Form of Agreement Between Single Purpose Entity and Contractor 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 Contractor:
(Name, legal status, address and other information)

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

The Company is comprised of the following members:

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

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

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

Other Members, if any:
(Name, legal status, address and other information)

The Contractor is not a member of the Company.

The Company and Contractor agree as follows.

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 CONTRACTOR'S RESPONSIBILITIES
- 3 COMPENSATION
- 4 CONTRACT SUM
- 5 DATE OF COMMENCEMENT
- 6 PAYMENTS
- 7 CLAIMS AND DISPUTES
- 8 TERMINATION OR SUSPENSION
- 9 MISCELLANEOUS PROVISIONS
- 10 SCOPE OF THE AGREEMENT

EXHIBIT A TERMS AND CONDITIONS

EXHIBIT B CONTRACT SUM AMENDMENT

EXHIBIT C CONTRACTOR PROJECT GOALS AMENDMENT

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 Contractor shall fully execute the Work as described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others. The portion of the Project for which the Contractor shall provide the Work is hereinafter called This Portion of the Project. Except as set forth herein, the Contractor 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 Contractor shall provide the Work set forth in this Agreement.)

§ 1.3 The Contractor is an independent contractor for This Portion of the Project. The Contractor is responsible for methods and means used in performing the Work 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 Contractor.

§ 1.4 Except as authorized by the Company, all communications between the Contractor and the Company or its Members or other contractors 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, consultants and other contractors as necessary for the coordination of This Portion of the Project.

§ 1.5 The other contractors to be retained by the Company, and their scopes of work, are as follows:
(List trades and, if known, names, addresses and other information.)

ARTICLE 2 CONTRACTOR'S RESPONSIBILITIES

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

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

§ 2.3 The Contractor 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.

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

§ 2.5 The Work under this Agreement shall include:
(Check the appropriate box.)

- Work during the Preconstruction and Construction phases as required pursuant to Sections 2.6 and 2.7.
- Work during Construction as required pursuant to Section 2.7.

§ 2.6 Preconstruction Work

§ 2.6.1 Prior to Execution of the Target Cost Amendment

§ 2.6.1.1 The Contractor shall perform the Work during the Preconstruction phases for This Portion of the Project as required in the Contract Documents, including Article 4 of Exhibit A, Terms and Conditions, and shall collaborate with and assist the Company and its Members in the performance of their services to develop a Target Cost proposal as described in Section 5.2 of the SPE Agreement and Article D.2 of the Workplan in the SPE Agreement.

§ 2.6.1.2 The Contractor's Preconstruction Work prior to the execution of the Target Cost Amendment shall also include the following:

(Set forth in detail additional Preconstruction Work the Contractor shall be required to perform, if any.)

§ 2.6.2 Following Execution of the Target Cost Amendment

§ 2.6.2.1 Upon the Company's execution of the Target Cost Amendment, the Contractor shall perform the Work during the Preconstruction phases for This Portion of the Project as required in the Contract Documents, including Article 4 of Exhibit A, Terms and Conditions, and as described in Article D.2 of the Workplan in the SPE Agreement and the Target Cost Amendment, including the Integrated Scope of Services matrix.

§ 2.6.2.2 The Contractor's Preconstruction Work following execution of the Target Cost Amendment shall also include the following:

(Set forth in detail additional Preconstruction Work the Contractor shall be responsible for, if any.)

§ 2.7 Construction Work

The Contractor shall provide the Work during the Construction Phase for This Portion of the Project as required in the Contract Documents and, with respect to This Portion of the Project, the Target Cost Amendment, including the Integrated Scope of Services matrix.

§ 2.8 Insurance Requirements

§ 2.8.1 The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article A.6 of Exhibit A, Terms and Conditions, and as set forth below:

(State bonding requirements, if any, and limits of coverage for the types of insurance required in Article A.6 of Exhibit A, Terms and Conditions. In addition, identify types and limits of insurance coverage not otherwise required by Article A.6 of Exhibit A, Terms and Conditions, such as Professional Liability coverage.)

§ 2.8.2 If the Company elects to institute a Company Controlled Insurance Program (CCIP), the Contractor shall enroll in the CCIP 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 2.8.1 above.

ARTICLE 3 COMPENSATION

§ 3.1 Compensation and Payments for Work

§ 3.1.1 For the Contractor's Preconstruction Work provided prior to the execution of the Target Cost Amendment pursuant to Section 2.6.1, the Company shall compensate the Contractor as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

§ 3.1.2 For the Contractor's Preconstruction Work following execution of the Target Cost Amendment pursuant to Section 2.6.2, the Company shall compensate the Contractor as follows, if such method is different than the method of compensation set forth in Section 3.1.1:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

§ 3.1.2.1 Compensation for the Contractor's Preconstruction Work following Execution of the Target Cost Amendment shall be included as part of the Contract Sum set forth in Article 4, Contract Sum.

§ 3.1.3 For the Contractor's performance of the Work during the Construction Phase, the Company shall pay the Contractor the Contract Sum in current funds in accordance with Article 4, Contract Sum.

§ 3.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Contractor's personnel providing Preconstruction Work on the Project and the Contractor's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 3.2 Contractor Incentive Compensation

§ 3.2.1 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 Contractor as Contractor Incentive Compensation:

§ 3.2.1.1 A portion of the amount the Actual Cost is less than the adjusted Target Cost as follows:

(Insert the portion or percentage of any savings payable to the Contractor as Contractor Incentive Compensation.)

§ 3.2.1.2 The following in lieu of the Contractor Incentive Compensation described in Section 3.2.1.1:

(Describe the amount or method of determining the amount for Contractor Incentive Compensation.)

§ 3.2.2 The Company shall pay any Contractor 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 6.5, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 3.3 Contractor Goal Achievement Compensation

§ 3.3.1 The Company and Contractor may define certain Contractor Project Goals that, if achieved, will entitle the Contractor to additional compensation. Any Contractor Project Goals shall be set forth in Exhibit C, Contractor Project Goals Amendment. The Contractor Project Goals may relate to Project Goals the Members identify in the Target Cost Amendment to the SPE Agreement or may relate solely to the Work. For each Contractor Project Goal, if any, the Company and the Contractor shall agree on, and set forth in Exhibit C, Contractor Project Goals Amendment, an amount, or on the method to determine an amount, available to the Contractor as Contractor Goal Achievement Compensation, if the Contractor Project Goal is achieved.

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

§ 3.3.3 Contractor Goal Achievement Compensation shall be immediately payable upon achievement of each Contractor Project Goal. Amounts unpaid () days after the invoice date shall bear interest at the rate set forth in Section 6.5, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 3.3.4 To the extent any Project Goals, including any Contractor 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 Contractor Incentive Compensation, that the Company did not award under the SPE Agreement or this Agreement.

§ 3.3.5 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 Contractor Goal Achievement Compensation earned on the Project.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Contract Sum shall be one of the following:

(Check the appropriate box.)

- A Stipulated Sum established in accordance with Section 4.2 below.
- The Cost of the Work Plus the Contractor's Fee with a Guaranteed Maximum Price as established in accordance with Section 4.3 below.

§ 4.2 Stipulated Sum

The Contract Sum shall consist of a Stipulated Sum to be established and set forth in Exhibit B, Contract Sum Amendment, subject to additions and deductions by changes in the Work as provided in the Contract Documents.

§ 4.3 Cost of the Work Plus Contractor's Fee with a Guaranteed Maximum Price

The Contract Sum shall consist of the Cost of the Work, plus the Contractor's Fee, as those terms are defined in Exhibit B, Contract Sum Amendment, with a Guaranteed Maximum Price. The Guaranteed Maximum Price shall be an amount that the Contractor guarantees the Contract Sum will not exceed. The parties shall establish the Guaranteed Maximum Price in Exhibit B, Contract Sum Amendment.

§ 4.4 Execution of the Contract Sum Amendment

The Company and Contractor shall execute Exhibit B, Contract Sum Amendment, prior to the date of commencement of the Construction Phase for This Portion of the Project.

§ 4.5 Changes in the Work

§ 4.5.1 Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Section A.5.21 of Exhibit A, Terms and Conditions.

§ 4.5.2 Where the Contract Sum is the Cost of the Work plus Contractor's Fee with a Guaranteed Maximum Price, and no specific provision is made in Exhibit B, Contract Sum Amendment, for adjustment of the Contractor's Fee in the case of Changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment will cause substantial inequity to the Owner or Company, the Contractor's Fee shall be equitably adjusted on the basis of the original Fee established for the Work, and the Contract Sum shall be adjusted accordingly.

ARTICLE 5 DATE OF COMMENCEMENT

§ 5.1 For purposes of this Agreement, the date of commencement of the Construction Work shall mean the date of commencement of the Construction Phase.

§ 5.2 The Construction Phase shall commence upon the Company's issuance to the Contractor of a Notice to Proceed.

ARTICLE 6 PAYMENTS

§ 6.1 Payments for Preconstruction Work

§ 6.1.1 An initial payment of

(\$) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Company's account in the final invoice for Preconstruction Work.

§ 6.1.2 Unless otherwise agreed, payments for Preconstruction Work shall be made monthly in proportion to the Work performed. Payments are due and payable upon presentation of the Contractor's invoice. Amounts unpaid () days after the invoice date shall bear interest at the rate set forth in Section 6.5 below, or in the absence thereof at the legal rate prevailing from time to time at the place where the Project is located.

§ 6.2 Progress Payments for Construction Work

§ 6.2.1 Based upon Applications for Payment submitted to the Company by the Contractor, the Company shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 6.2.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 6.2.3 Unless otherwise agreed, payments for Construction Work shall be made monthly on the basis of Work performed. Provided that an Application for Payment is received by the Company not later than the day of a month, the Company shall make payment of the certified amount to the Contractor not later than the day of the month. If an Application for Payment is received by the Company after the application date fixed above, payment shall be made by the Company not later than () days after the Company receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 6.2.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Company to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 6.2.5 With each Application for Payment, the Contractor shall submit the most recent schedule of values in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Contractor's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Company may require. This schedule of values, unless objected to by the Company, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 6.2.6 In taking action on the Contractor's Applications for Payment, the Company shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections 6.2.4 or 6.2.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of this Agreement. Such examinations, audits and verifications, if required by the Company, will be performed by the Company's accountants acting in the sole interest of the Company.

§ 6.2.7 Except with the Company's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 6.2.8 Progress Payments—Stipulated Sum

§ 6.2.8.1 Applications for Payment where the Contract Sum is a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 6.2.8.2 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed portions of the Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of () on the Work. Pending final determination of cost to the Company of Changes in the Work, amounts not in dispute shall be included as provided in Section A.5.21.3.9 of Exhibit A, Terms and Conditions;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Company, suitably stored off the site at a location agreed upon in writing), less retainage of ();
- .3 Subtract the aggregate of previous payments made by the Company; and
- .4 Subtract amounts, if any, for which the Company has withheld payment from or nullified an Application for Payment as provided in Section A.5.23.5 of Exhibit A, Terms and Conditions.

§ 6.2.8.3 The progress payment amount determined in accordance with Section 6.2.8.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Contractor shall determine for incomplete portions of the Work, retainage applicable to such work and unsettled claims; and
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Company, any additional amounts payable in accordance with Section A.5.26.2.3 of Exhibit A, Terms and Conditions.

§ 6.2.8.4 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections 6.2.8.2.1 and 6.2.8.2.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)

§ 6.2.9 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ 6.2.9.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 6.2.9.2 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed portions of the Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Company of changes in the Work, amounts not in dispute shall be included as provided in Section A.5.21.3.9 of Exhibit A, Terms and Conditions;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Company, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Contractor's Fee, less retainage of _____ percent (_____ %). The Contractor's Fee shall be computed upon the Cost of the Work described in Sections 6.2.9.2.1 and 6.2.9.2.2 at the rate stated in Section B.3.1.1 of Exhibit B, the Contract Sum Amendment, or, if the Contractor's Fee is stated as a fixed sum in that section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in Sections 6.2.9.2.1 and 6.2.9.2.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract the aggregate of previous payments made by the Company;
- .5 Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 6.2.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Company's accountants in such documentation; and
- .6 Subtract amounts, if any, for which the Company has withheld or nullified a payment as provided in Section A.5.23.5 of Exhibit A, Terms and Conditions.

§ 6.2.9.3 Except with the Company's prior approval, payments to Subcontractors, shall be subject to retainage of not less than _____ percent (_____ %). The Company and Contractor shall agree on a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.

§ 6.3 Records of Reimbursable Expenses and Work performed on the basis of hourly rates shall be available to the Company at mutually convenient times.

§ 6.4 Final Payment

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Company to the Contractor not later than 30 days after the Contractor has fully performed this Agreement and the requirements of Section A.5.26.2 of Exhibit A, Terms and Conditions, have been satisfied, except for the Contractor's responsibility to correct non-conforming portions of the Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ 6.5 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*

ARTICLE 7 CLAIMS AND DISPUTES

§ 7.1 General

§ 7.1.1 Any claims and disputes, or causes of action, whether in contract, tort, or otherwise, between the Company and Contractor 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 and Article A.8 of Exhibit A, Terms and Conditions.

§ 7.1.2 Initial Decision Maker

The Architect will serve as Initial Decision Maker pursuant to Section A.8.2 of Exhibit A, Terms and Conditions, unless the parties appoint below the Construction Manager or another individual, not a party to this Agreement, to serve as Initial Decision Maker.

(Insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 7.1.3 If the parties do not resolve a dispute through mediation pursuant to Section A.8.3 of Exhibit A, Terms and Conditions, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Company and Contractor 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 A.8.4 of Exhibit A, Terms and Conditions
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

ARTICLE 8 TERMINATION OR SUSPENSION

§ 8.1 Termination or Suspension Prior to Execution of the Contract Sum Amendment

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

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

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

§ 8.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

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

§ 8.1.6 In the event of termination not the fault of the Contractor, the Contractor shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 8.1.7.

§ 8.1.7 Termination Expenses are in addition to compensation for the Contractor's Preconstruction Work and include expenses directly attributable to termination for which the Contractor is not otherwise compensated, plus an amount for the Contractor's anticipated profit on the value of the Preconstruction Services not performed by the Contractor.

§ 8.2 Termination or Suspension After Execution of the Contract Sum Amendment

§ 8.2.1 Termination by the Contractor

§ 8.2.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Company has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section A.5.23.4.1 of Exhibit A, Terms and Conditions;
- .4 The Company has failed to pay the Contractor in accordance with this Agreement; or
- .5 The Company has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section A.2.3.3 of Exhibit A, Terms and Conditions.

§ 8.2.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the Work by the Company as described in Section 8.2.3 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.

§ 8.2.1.3 If one of the reasons described in Section 8.2.1.1 or 8.2.1.2 exists, the Contractor may, upon seven days' written notice to the Company, terminate the Contract and recover from the Company payment for the portions of Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, damages, and any Contractor Project Goal Achievement Compensation then due along with profit on any portion of the Work not executed.

§ 8.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons under contract with the Contractor because the Company has repeatedly failed to fulfill the Company's obligations as set forth herein and Exhibit A, Terms and Conditions, with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Company, terminate this Agreement and recover from the Company as provided in Section 8.2.1.3.

§ 8.2.2 Termination by the Company for Cause

§ 8.2.2.1 The Company may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the 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.

§ 8.2.2.2 When any of the above reasons exist, the Company, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Company and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety,

- .1 exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 accept assignment of subcontracts; and
- .3 finish the Work by whatever reasonable method the Company may deem expedient. Upon written request of the Contractor, the Company shall furnish to the Contractor a detailed accounting of the costs incurred by the Company in finishing the Work.

§ 8.2.2.3 When the Company terminates the Contract for one of the reasons stated in Section 8.2.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 8.2.2.4 If the unpaid balance of the Contract Sum plus any earned Contractor Goal Achievement Compensation exceeds costs of finishing the Work, and other damages incurred by the Company and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Company. The amount to be paid to the Contractor or Company, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 8.2.2.5 If the Contract Sum consists of the Cost of the Work with a Guaranteed Maximum Price and the Company terminates the Contract for cause as provided in this Section 8.2.2, the amount, if any, to be paid to the Contractor under Section 8.2.2.4 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section B.3.1.1 of Exhibit B, Contract Sum Amendment, or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Company.

§ 8.2.2.6 The Company shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Company, for any equipment owned by the Contractor that the Company elects to retain and that is not otherwise included in the Cost of the Work. To the extent that the Company elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Section 8.2.2, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Company may require for the purpose of fully vesting in the Company the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 8.2.3 Suspension by the Company for Convenience

§ 8.2.3.1 The Company may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Company may determine.

§ 8.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 8.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

§ 8.2.4 Termination by the Company for Convenience

§ 8.2.4.1 The Company may, at any time, terminate the Contract for the Company's convenience and without cause.

§ 8.2.4.2 Upon receipt of written notice from the Company of such termination for the Company's convenience, the Contractor shall

- .1 cease operations as directed by the Company in the notice;
- .2 take actions necessary, or that the Company may direct, for the protection and preservation of the Work; and
- .3 except for portions of the 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.

§ 8.2.4.3 In case of such termination for the Company's convenience, the Contractor shall be entitled to receive payment for portions of the Work executed, and costs incurred by reason of such termination, along with reasonable profit on portions of the Work not executed and any Contractor Project Goal Achievement Compensation then due.

§ 8.3 Termination of the SPE Agreement by the Owner

Upon the Contractor'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.

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 The Company and Contractor, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Company nor the Contractor shall assign this Agreement without the written consent of the other.

§ 9.2 Unless specifically stated otherwise, terms in this Agreement shall have the same meaning as those in the SPE Agreement and Exhibit A, Terms and Conditions, to this Agreement.

§ 9.3 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.

ARTICLE 10 SCOPE OF THE AGREEMENT

§ 10.1 This Agreement represents the entire and integrated agreement between the Company and the Contractor 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 Contractor.

§ 10.2 This Agreement comprises the following documents listed below:

- .1 AIA Document C199™-2010, Standard Form Agreement Between Company and Contractor for Integrated Project Delivery, including its attached exhibits and the Contract Sum 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 its attached exhibits, 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)

CONTRACTOR (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.