

# DRAFT AIA® Document C172™ - 2014

## Standard Form of Agreement Between Owner and Program Manager for use on a Single Project

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

BETWEEN the Program Manager's client identified as the Owner:  
(Name, legal status, address, and other information)

County of Webb, Texas  
1110 Washington St.  
Suite 101  
Laredo, Texas 78040

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

Gilpin Engineering Company  
11204 McPherson Rd.  
Suite 109  
Laredo, Texas 78045-6577  
JGilpin@gilpinengineering.com

for the following Project:  
(Name, location, and detailed description)

Webb County Fairgrounds Project

The Owner and Program Manager agree as follows.

**ADDITIONS AND DELETIONS:** The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article 1.

*(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution.")*

#### § 1.2 Definitions

§ 1.2.1 Unless otherwise specifically defined in this Agreement, terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

**1.2.1.1 The term "Existing Master Plan" shall refer to the Master Plan provided to Webb County by Hansen.**

#### § 1.3 Project Information

§ 1.3.1 The Owner's program for the Project:

*(Identify documentation or state the manner in which the program will be developed.)*

**The Fairgrounds Project consists of the phased demolition, renovation and redevelopment of the Webb County Fairgrounds facilities including existing and proposed utilities, roadways, parking, buildings, arenas, stables and associated support buildings and infrastructure.**

**It is desired that project will have a construction budget of \$40 Million. Final Master Plan and phasing of master planned components are still being determined in order to set the construction budget for the first phase of improvements as well as to project the budget for future phases of improvements.**

**The Owner's Program includes an investigative report into existing Master Plan percentage completion and practicality of existing Master Plan and submittals. The Program shall first consider changes to the Master Plan such as, but not limited to, adjustments to layout, consideration of existing buildings to be renovated and/or repurposed.**

The Existing Master Plan project includes construction of offsite and onsite infrastructure including potable water and fire protection, wastewater, irrigation water facilities, site grading and drainage, parking, roadways, electrical lighting, landscaping, etc. New construction will include a main public entrance, a 4,000 seat air conditioned Main Events Arena, a Community Center/Banquet Hall, a Show Ring/Animal Exhibition Building, a 100 stall Horse Barn, an outdoor Arena Building, an outdoor stage and potentially other sports complex facilities. A series of livestock show barns are presently located on the property. The majority of facilities will be demolished. A select few buildings will be completely refurbished to host support functions associated with the new facilities. The Buildings will be linked by a partially covered walkway/concourse accented by towers, pavilions and other visual focal points.

The Existing Master Plan indicates that all buildings will be pre-engineered metal building type structures. Most will have concrete floor slabs. All public buildings will have restrooms, ticketing counters and concessions areas that will be accessible from the outside as well as the inside to accommodate a variety of events. All facilities must comply with Texas Accessibility Standards required by the Texas Department of Licensing and Regulations.

The Existing Master Plan includes a proposed new Main Events Arena to be a 4,000-fixed seat air-conditioned building with a 150'x 300' floor area. The fixed stadium seating will be washable self-lifting seats typical of multipurpose ag-expo facilities. A full food-service kitchen will be located in the Main Events Arena. Above the seating bowl will be a continuous wide concourse providing access to concessions, restrooms and open display and dining areas. Sections of the concourse exterior walls will include overhead doors to allow operation of the building for certain events without operating the climate control system.

The Existing Master Plan includes a proposed new Community Center/Banquet Hall will be a multi-purpose air-conditioned facility with 20,000 square feet of Meeting/Banquet space, a full food-service kitchen and will include administrative office space. The Meeting/Banquet space will be fully carpeted acoustically treated and have high ceilings. The Meeting/Banquet space will have the ability to be divided into separate function areas by means of full-height moveable acoustical partition walls.

The Show Ring/Animal Exhibition Building will be utilized for animal exhibition events as well as other commercial trade and consumer shows. This will be an air-conditioned building with large roll-up doors for ventilation when weather permits. The building will include 1,500 fixed and moveable bleacher seats to accommodate spectators for the 60 foot x 80 foot show ring.

The Existing Master Plan includes a proposed new Horse Barn with approximately 26,000 square feet of roof, housing one hundred 10 foot x 10 foot animal stalls. A small office area, a lockable storage area and an animal wash area will be provided under the roof.

The Existing Master Plan includes proposed new Festival Grounds and will have a new outdoor performance stage with concert sound and light power supply. New Stations for concessions/vendor hook-ups are also included as well as new facilities for ticketing and security control.

The Existing Master Plan calls for LIFE Pavilion to be completely refurbished and repurposed to provide approximately 5,000 square feet of storage and equipment maintenance space.

The existing Master Plan addresses locations for potential other sports complex facilities and/or events.

§ 1.3.2 The Project's physical characteristics:

*(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographical surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)*

Attached by reference are the following items:

1. Existing Conditions Survey by Gilpin Engineering Company dated \_\_\_\_\_
2. Existing Master Plan by Hanson dated \_\_\_\_\_
3. Final Draft of Construction Manager at Risk Contract dated \_\_\_\_\_
4. Final Draft of Architect Contract dated \_\_\_\_\_
5. Final Draft of Civil Engineer Contract dated \_\_\_\_\_
6. Final Draft of Geotechnical Engineer Contract dated \_\_\_\_\_

§ 1.3.3 Preliminary assessment of the condition of existing facilities or site, if any:

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

The project site is located on the north side of Hwy 59 east of Laredo at 6010 E Saunders Street, Laredo, Texas 78041 and described by the Hanson Master Plan.

§ 1.3.4 Funding source:

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

**Webb County Certificate of Obligations (Bonds)**

§ 1.3.5 The Owner's budget for the Project:

*(Provide the Owner's total budget for the Project and, if known, a line-item breakdown of all costs described in Section 3.5.1.)*

**\$40 Million for construction and soft costs**

**(See Existing Master Plan by Hanson)**

§ 1.3.6 The Owner's intended procurement or delivery method for design and construction of the Project:

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

**Government Code Sec. 2269.251 Sub-Chapter F Construction Manager At Risk**

§ 1.3.7 Anticipated scheduling information:

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

.1 Anticipated dates of Project commencement and completion:

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

**Same as date of this Agreement**

.2 Completion of design:

To Be Determined (TBD)

.3 Commencement of construction:

To Be Determined (TBD)

.4 Completion of construction:

To Be Determined (TBD)

.2 Other Project scheduling information:

To Be Determined (TBD)

§ 1.3.8 Other information regarding the Project:

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

Prioritize analysis of existing facilities with purpose of incorporating existing infrastructure into updated Master Plan considering all relevant work performed in project Master Plan and all previous submittals delivered to Webb County by Hanson.

§ 1.3.9 The Owner's anticipated sustainable objective for the Project, if any:

*(Identify the Owner's sustainable objective for the Project such as sustainability certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency.)*

Prioritize energy efficiency of buildings by use of open air facilities with some combination full-time open air and part-time open air/climate controlled buildings.

§ 1.4 Project Team

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

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

Program Manager / Owner's Representative

Architect and it's approved subcontractors

Civil Engineer and it's approved subcontractors

Geotechnical Engineer / Testing Engineer and it's approved subcontractors

Construction Manager At Risk

Contractor and its approved subcontractors

§ 1.4.2 The Program Manager will retain the consultants identified in Sections 1.4.2.1 and 1.4.2.2:

§ 1.4.2.1 Consultants retained under Basic Services:

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

Prime Consultant:

Gilpin Engineering Company  
11204 McPherson Road, Suite 109

Laredo, Texas 78045-6577  
JGilpin@gilpinengineering.com

Sub-Consultant:  
Cavazos Architects  
9114 McPherson Road, Suite 2501  
Laredo, Texas 78045  
memo@cavazosarch.com

Sub-Consultant:  
Brighton Group, LLC  
2805 Fountain Boulevard, Suite A-2  
Edinburg, Texas 78539  
[joseph@brightongroup.org](mailto:joseph@brightongroup.org)

Sub-Consultant:  
GDJ Engineering  
2805 Fountain Boulevard, Suite A-1  
Edinburg, Texas 78539  
anthony@gdjeng.com

§ 1.4.2.2 Consultants retained under Additional Services:  
(List name, discipline, address, and other information.)

Prime Consultant:  
Gilpin Engineering Company  
11204 McPherson Road, Suite 109  
Laredo, Texas 78045-6577  
JGilpin@gilpinengineering.com

Sub-Consultant:  
Cavazos Architects  
9114 McPherson Road, Suite 2501  
Laredo, Texas 78045  
memo@cavazosarch.com

Sub-Consultant:  
Brighton Group, LLC  
2805 Fountain Boulevard, Suite A-2  
Edinburg, Texas 78539  
[joseph@brightongroup.org](mailto:joseph@brightongroup.org)

Sub-Consultant:  
GDJ Engineering  
2805 Fountain Boulevard, Suite A-1  
Edinburg, Texas 78539  
anthony@gdjeng.com



§ 1.4.3 The Owner identifies the following representative in accordance with Section 5.4:  
(List name, address, and other information.)

County Judge Tano Tijerina  
Webb County  
1110 Washington St.  
Suite 101  
Laredo, Texas 78040

§ 1.4.4 The persons or entities, in addition to the Owner's representative, who are required to review and approve the Program Manager's submittals to the Owner are as follows:  
(List name, address, and other information.)

Prime Consultant:  
Gilpin Engineering Company  
11204 McPherson Road, Suite 109  
Laredo, Texas 78045-6577  
JGilpin@gilpinengineering.com

Sub-Consultant:  
Cavazos Architects  
9114 McPherson Road, Suite 2501  
Laredo, Texas 78045  
memo@cavazosarch.com

Sub-Consultant:  
Brighton Group, LLC  
2805 Fountain Boulevard, Suite A-2  
Edinburg, Texas 78539  
[joseph@brightongroup.org](mailto:joseph@brightongroup.org)

Sub-Consultant:  
GDJ Engineering  
2805 Fountain Boulevard, Suite A-1  
Edinburg, Texas 78539  
anthony@gdjeng.com

§ 1.4.5 The Program Manager identifies the following representative in accordance with Section 2.4:  
(List name, address, and other information.)

Prime Consultant:  
Gilpin Engineering Company  
11204 McPherson Road, Suite 109  
Laredo, Texas 78045-6577  
JGilpin@gilpinengineering.com

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

None.



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

## ARTICLE 2 PROGRAM MANAGER'S RESPONSIBILITIES

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

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

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

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

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

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

§ 2.7 Insurance. The Program Manager shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Program Manager normally maintains, the Owner shall reimburse the Program Manager for any additional cost as set forth in Section 10.6.3.

§ 2.7.1 Commercial General Liability with policy limits of not less than two million dollars (\$2,000,000) for each occurrence and two million dollars (\$2,000,000) in the aggregate for bodily injury and property damage.

§ 2.7.2 Automobile Liability covering vehicles owned by the Program Manager and non-owned vehicles used by the Program Manager with policy limits of not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate for bodily injury and property damage along with any other statutorily required automobile coverage.

§ 2.7.3 The Program Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections 2.7.1 and 2.7.2.

§ 2.7.4 Workers' Compensation at statutory limits and Employers Liability with policy limits of not less than one million dollars (\$1,000,000).



§ 2.7.5 Professional Liability covering negligent acts, errors, and omissions in the performance of professional services, with policy limits of not less than **one million dollars** (\$1,000,000 ) per claim and **one million dollars** (\$1,000,000 ) in the aggregate.

§ 2.7.6 The Owner shall be an additional insured on the Program Manager's primary and excess insurance policies for Commercial General Liability and Automobile Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations.

§ 2.7.7 The Program Manager shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.7. The certificates will show the Owner as an additional insured on the Commercial General Liability, Automobile Liability, and any excess policies.

## ARTICLE 3 SCOPE OF PROGRAM MANAGER'S BASIC SERVICES

### § 3.1 General

**3.1.01 The Owner's Representative - Project Manager shall update the existing Master Plan allowing for input from the Owner, the Owner's Staff, the Owner's Design Team and the Owner's Construction Manager at Risk.**

**The Owner's Representative shall oversee the processes of designing, constructing and renovating the Webb County Fairgrounds. The primary role of the Owner's Representative is to represent the interest of Owner with regards to recommendations affecting the design and the quality of both materials and workmanship as well as compliance with construction plans and specifications to be approved by Owner. The Owner's Representative shall act independently from the contracted design team and Construction Manager at Risk Contractor throughout the planning, design and construction phases of the Webb County Fairgrounds Project. The Owner's Representative shall assist Owner to deliver the project within the Owner's budget.**

**The Owner's Representative's Basic Services will include all items listed in Articles 3 as follows. Additional Services will include any future items as addressed by Article 4 below.**

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

§ 3.1.2 The Program Manager shall provide the Owner with a preliminary evaluation of the Owner's program, schedule, and construction budget requirements, each in terms of the other.

§ 3.1.3 The Program Manager shall assist the Owner in determining the Owner's need for retaining consultants to provide professional and other services for the Project, and assist the Owner in reviewing qualifications and selecting any such consultants. The Program Manager shall periodically review the development of the design for the Project, and provide recommendations to the Owner for systems, materials, equipment, and techniques that may be utilized to achieve design standards for the Project, if any.

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

§ 3.1.5 The Program Manager shall assist the Owner in coordinating the professional services of surveyors, special consultants, and testing laboratories required for the Project.

§ 3.1.6 The Program Manager shall assist the Owner in reviewing the qualifications of, and in selecting and retaining, the Contractor for Project.

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

§ 3.1.8 The Program Manager shall develop a strategy, procedure, and schedule to assist the Owner in obtaining the required reviews and approvals of authorities having jurisdiction over the Project; and shall assist the Owner in connection with the Owner's responsibility for filing documents required for such approvals. The Program Manager shall assist the Owner in obtaining building permits and special permits for permanent improvements, except for permits required to be obtained directly by the Contractor. The Program Manager shall verify that the Owner has paid applicable fees and assessments.

§ 3.1.9 The Program Manager and the Owner shall discuss the feasibility of incorporating sustainable objectives in the Project.

§ 3.1.10 The Program Manager shall retain all Project related documents and information it receives. Upon reasonable notice, the Owner shall have access to all such documents and information. Project participants shall have access to such documents and information only as approved by the Owner. The Program Manager shall preserve such documentation and information for a period of one year from the date of Substantial Completion and at that time provide a copy to the Owner.

## § 3.2 Project Management Plan

§ 3.2.1 In order to ascertain the requirements of the Project, the Program Manager shall review and discuss with the Owner the Initial Information, along with any other information to be furnished by the Owner and listed below. *(List other information to be furnished by the Owner.)*

<< >>

§ 3.2.2 The Program Manager shall develop and document a Project Management Plan with recommendations for the Owner's internal management of the Project, including a description of, and requirements pertaining to, the following:

- .1 Project management approach and organization, including executive, management and team staffing plan and responsibilities;
- .2 Project planning and development activities, including strategic planning; prioritizing; and defining scope, schedule, and budget for the Project;
- .3 Cost estimates, if selected in Section 4.1;
- .4 Project management controls, including scope, budget/cost, schedule, and quality management plan;
- .5 Procurement strategies and procedures, including strategy for procurement of design services and construction; procedures for pre-purchase of material, systems, and equipment; procedures for evaluating and approving substitutions; and strategy for affirmative action or diversity planning;
- .6 Authorization processes and procedures, including administrative approval processes and responsibilities, and key documentation for: professional services and preconstruction services; processes and procedures for Project construction procurement, such as award, contracting, notice to proceed, Change Orders, payment certification; and Project closeout;
- .7 Project communication procedures, including systems, meetings, reporting, investigation, and records;
- .8 Development of design process guidelines, including coordination and permit process;
- .9 Development of construction process guidelines, including preconstruction and construction administration services, construction phase processes and procedures, program coordination, Change Order management, commissioning, and Project closeout procedures; and
- .10 Project acceptance and turnover guidelines relating to contract completion and closeout management, including record documentation, manuals and warranties.

§ 3.2.3 The Project Management Plan shall also include the Program Manager's recommendations regarding the delivery method for design and construction of the Project.

§ 3.2.4 The Program Manager shall obtain the Owner's approval of the Project Management Plan, and any subsequent revisions to the Project Management Plan.

### § 3.3 Information Management and Standards

§ 3.3.1 The Information Management System is a web-based system used to distribute Project related information. Unless otherwise indicated in Section 3.3.2 below, the Program Manager shall implement a File Sharing System, as described in Section 3.3.3, as the Information Management System for the Project.

§ 3.3.2 If the Program Manager is to implement an Information Management System other than the File Sharing System, check the appropriate box below. If the Program Manager is not going to implement an Information Management System, select "None" below. Nothing in this Section 3.3 is intended to relieve the Program Manager of the information retention obligations set forth in Section 3.1.10.

- Project Management Information System (pursuant to section 3.3.4 below)
- Other Information Management System  
*(Describe in detail the web-based system to be implemented, maintained and upgraded, as necessary, by the Program Manager.)*
- None

§ 3.3.3 File Sharing System. The Program Manager shall implement, maintain, and upgrade as necessary, a web-based File Sharing System to be used to receive and distribute Project Reports, Project Schedules, and other information as agreed by the Owner and the Program Manager.

§ 3.3.4 Project Management Information System. The Program Manager shall implement, maintain, and upgrade as necessary, a web-based Project Management Information System to be used to receive, distribute, and maintain Project Reports, Project Schedules, and other information as agreed by the Owner and the Program Manager. Activities under the Project will be scheduled and documented through the Project Management Information System. The Project Management Information System shall organize information by activity or other relevant categories, as determined by the Program Manager and Owner. The Program Manager shall collect information pertaining to the Project, and update the Project Management Information System on a weekly basis unless otherwise agreed. The Project Management Information System shall contain, at a minimum, the current status on contracts, budget, and schedule, and the documents identified in this Section 3.3.4, including the following:

- .1 The Contract Documents
- .2 Addenda
- .3 Change Orders and Construction Change Directives
- .4 Modifications
- .5 Construction schedules and submittal schedules
- .6 Requests for information and any responses, logs, or compilations pertaining to requests for information
- .7 Approved Shop Drawings, Product Data, and similar required submittals
- .8 Certificates of insurance received from the Contractor
- .9 Consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment
- .10 Affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens
- .11 Minutes for any meeting the Program Manager attends
- .12 Any other documentation required of the Contractor under the Contract Documents, including warranties and similar submittals
- .13 Other

- A. Project Reports by Program Manager
- B. Site Observation reports by Consultants, if provided

§ 3.3.5 The Owner shall have access to all information in the Information Management System. Other Project participants shall have access to specific information only as approved by the Owner. The Program Manager shall preserve the documentation and information contained in the Information Management System for a period of one

year from the date of Substantial Completion and at that time provide a copy of all documentation and information contained in the Information Management System to the Owner.

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

§ 3.4 Project Report. On a monthly basis, or as otherwise agreed to by the Owner, the Program Manager shall prepare a Project Report. The Project Report shall include the following:

- .1 A summary update of the Project status, including photographs to document the progress of the Project
- .2 An updated Project Schedule
- .3 Actual and anticipated costs related to the Project
- .4 Cost and payment reports for each consultant and construction contract
- .5 Updated cash flow projections
- .6 Tests and inspection reports
- .7 A status report of nonconforming and rejected Work
- .8 Proposed and approved Change Orders
- .9 Any actual or potential claims pertaining to the Project
- .10 A status update of the Contractor's submittals
- .11 Other

### § 3.5 Project Budget Control

§ 3.5.1 If the Owner has not established a budget for the Project, the Program Manager and the Owner shall collaborate to prepare a Project Budget, which shall include the costs for the Program Manager's services, the costs of the services of the Owner's other consultants, the costs for design and construction of the Project, reasonable cost contingencies, and additional cost projections and information as necessary. The Owner shall review and approve the Project Budget in writing. On a monthly basis, or as otherwise agreed to by the Owner, the Program shall update and provide reports on the Project Budget. If a Project Management Information System is selected in Section 3.3, the Program Manager shall organize the Project Budget in a manner that will allow costs to be tracked using the Project Management Information System.

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

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

§ 3.5.4 The Program Manager shall report the impact on the Project Budget of contracts and Modifications proposed by the Owner and the Owner's consultants and contractors.

### § 3.6 Project Schedule Control

§ 3.6.1 The Program Manager shall prepare a Project Schedule showing priorities, sequences, durations, and responsible parties, for major design, pricing, construction, and Owner activities. The Project Schedule shall also identify critical milestone dates and schedule contingencies. As the Project progresses, the Program Manager shall update the status and expand the level of detail of the Project Schedule. The Project Schedule shall also incorporate or identify

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

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

§ 3.6.3 The Program Manager shall monitor and report on the progress of the Project and advise the Owner of observed deviations from the Project Schedule or key milestones that may impact Substantial Completion or final

completion. The Program Manager shall include the reports in the Project Management Information System if selected in Section 3.3. The Program Manager shall consult with the Owner and the Owner's consultants and contractors and assist the Owner in developing recovery plans when the schedules or objectives are not being met.

### § 3.7 Project Quality Control

§ 3.7.1 The Program Manager shall establish quality control guidelines, that the Owner may include in agreements between the Owner and the Owner's consultants or contractors, and distribute them through the Information Management System, if one is selected in Section 3.3.

§ 3.7.2 The Program Manager shall confirm that the Contractor has prepared a safety program and quality control plan.

§ 3.7.3 Unless the Program Manager shall provide on-site representation as an additional service pursuant to Section 4.2.1, the Program Manager shall visit the site at intervals appropriate to the state of construction, or at the specific intervals or milestones set forth in Section 3.7.3.1, to become generally familiar with the progress and quality of the portion of the Work completed.

§ 3.7.3.1 If the Program Manager is required to visit the site at specific intervals or milestones, set forth such intervals or milestones below.

The Program Manager shall visit the site on a weekly basis during the Construction Phase.

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

### § 3.8 Other Services

§ 3.8.1 Subject to Sections 4.3.1 and 4.5.1, upon the Owner's written request, the Program Manager shall provide reasonable assistance in the areas of community and public relations, in order to enhance and maintain public awareness in furtherance of the interests of the Project and the Owner.

§ 3.8.2 The Program Manager shall schedule and conduct meetings with the necessary Project participants to coordinate the progress of the Project. The Program Manager shall also prepare minutes of such meetings. The Program Manager shall include its meeting minutes, as appropriate, in the Project Management Information System if selected in Section 3.3.

§ 3.8.3 The Program Manager shall assist the Owner in preparing construction contracts and advise the Owner on the acceptability of Subcontractors and material suppliers proposed by the Contractor.

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

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

## ARTICLE 4 ADDITIONAL SERVICES

Additional Services listed below are not included in Basic Services but may be required for the Project.

### § 4.1 Cost Estimating Services

The Program Manager shall provide to the Owner only the services in this Section that are designated by a check or "X" in the box adjacent to the listed service. The Owner shall compensate the Program Manager for the Additional Services selected in this Section 4.1 as set forth in Section 10.3.

*(Designate the services the Program Manager shall provide by placing a check or "X" in the box adjacent to the listed service. If necessary, provide expanded or modified descriptions of the designated services in the section or in an exhibit attached to this document.)*

X	§ 4.1.1 Based on the preliminary design and other design criteria prepared by the Architect and provided by the Owner, the Program Manager shall prepare a written preliminary estimate of the Cost of the Work using area, volume, or similar conceptual estimating techniques. If the Architect suggests alternative materials and systems, at the request of the Owner the
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	Program Manager shall provide written cost evaluations of those alternative materials and systems, and may also provide its own suggestions for review and consideration by the Owner. The Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Contractor's general conditions costs, overhead, and profit. The Cost of the Work does not include the compensation of the Architect or Program Manager, the costs of the land, rights-of-way, financing, contingencies for changes in the Work, or other costs that are the responsibility of the Owner.
X	§ 4.1.2 As the Architect progresses with the preparation of the schematic design, design development, and construction documents, the Program Manager shall prepare and update, at appropriate intervals agreed to by the Owner and Program Manager, written estimates of the Cost of the Work in increasing detail and refinement. The Program Manager shall include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in the estimates of the Cost of the Work. The Program Manager shall advise the Owner in writing if it appears that the Cost of the Work may exceed the Project Budget and make recommendations for corrective action to be considered by the Owner and Architect, and if appropriate, incorporated by the Architect.
X	§ 4.1.3 The Program Manager shall provide written recommendations regarding add and deduct alternates to be considered by the Owner and Architect, and if appropriate, incorporated by the Architect in the Drawings and Specifications.

#### § 4.2 Construction Contract Administration Services

The Program Manager shall provide to the Owner only the services in this Section that are designated by a check or "X" in the box adjacent to the listed service. The Owner shall compensate the Program Manager for the Additional Services selected in this Section 4.2 as set forth in Section 10.3.

*(Designate the services the Program Manager shall provide by placing a check or "X" in the box adjacent to the listed service. If necessary, provide expanded or modified descriptions of the designated services in the section or in an exhibit attached to this document.)*

X	§ 4.2.1 The Program Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Program Manager shall determine in general that the Work of the Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner and Architect in writing of observed defects and deficiencies in the Work.
X	§ 4.2.2 The Program Manager shall review information regarding tests and inspections provided by the Contractor, and provide written comments to the Owner, for consideration by the Owner and Architect, regarding any questions or concerns the Program Manager has with the information provided by the Contractor.
X	§ 4.2.3 If the Program Manager reasonably believes the Architect should reject Work or require additional inspection or testing of the Work, the Program Manager shall promptly recommend such actions to the Owner and Architect in writing. The Program Manager shall also recommend to the Owner, in writing, courses of action when requirements of a contract are not being fulfilled. The Program Manager shall include all recommendations required by this Section 4.2.3 in its Project Reports.
X	§ 4.2.4 The Program Manager shall review the Contractor's Applications for Payment and provide written recommendations, if any, to the Owner and Architect.
X	§ 4.2.5 If requested by the Architect and Owner, the Program Manager shall evaluate Contractor requests for information regarding the Contract Documents and provide written recommendations to the Owner and Architect.
X	§ 4.2.6 When requested by the Owner, the Program Manager shall review requests for changes, assist the Owner and Architect in evaluating and negotiating Contractors' proposals, and submit written recommendations to the Architect and Owner. Upon request by the Owner, the Program Manager will review Change Orders and Construction Change Directives prepared by the Architect and provide written comments regarding any questions or concerns the Program Manager has regarding the Change Orders or Construction Change Directives.
X	§ 4.2.7 The Program Manager shall review the Contractor's daily logs and other similar relevant data as the Owner may require, and provide written comments to the Owner regarding any questions or concerns the Program Manager has regarding the daily logs or other data.
X	§ 4.2.8 The Program Manager shall evaluate whether the Work, or a designated portion thereof, is substantially complete and provide its written recommendations to the Owner and Architect. Upon the Contractor's completion of the Work, the Program Manager shall inspect the Work and provide written recommendations to the Owner and Architect.
X	§ 4.2.9 With the Architect and the Owner's maintenance personnel, the Program Manager shall observe the Contractor's final testing and start-up of utilities, operational systems and equipment, and observe any commissioning as the Contract Documents may require.
X	§ 4.2.10 The Program Manager shall assist the Owner in establishing a procedure for tracking and submission of records, warranties, guarantees, and documents pertaining to systems verification and Project close-out. The Program Manager shall deliver to the Owner all keys, manuals, record drawings, and maintenance stocks it receives from the Contractor.
X	§ 4.2.11 The Program Manager shall review the Contractor's final Application for Payment and provide written

	recommendations, if any, to the Owner and Architect.
X	§ 4.2.12 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Program Manager shall, without additional compensation, attend a meeting with the Owner and Architect to review the facility operations and performance.

§ 4.3 The Program Manager shall provide the listed Additional Services only if specifically designated in the table below as the Program Manager’s responsibility, and the Owner shall compensate the Program Manager as provided in Section 10.3.

*(Designate the Additional Services the Program Manager shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.4 or in an attached exhibit. If in an exhibit, identify the exhibit. AIA Contract Document numbers are cited, where applicable, to provide a basis for the proposed scope of services, but may need to be revised to be applicable in the program management context.)*

Services	Responsibility (Program Manager, Owner or not provided)	Location of Service Description (Section 4.4 below or in an exhibit attached to this document and identified below)
§ 4.3.1 Community communications not included in Section 3.8.1	NOT PROVIDED	
§ 4.3.2 Capital campaign support	NOT PROVIDED	
§ 4.3.3 Assistance with sustainability certifications	NOT PROVIDED	
§ 4.3.4 Affirmative action/diversity compliance and outreach	NOT PROVIDED	
§ 4.3.5 Existing facilities analysis	PROGRAM MANAGER	
§ 4.3.6 Site Selection Analysis (B203™–2007)	NOT PROVIDED	
§ 4.3.7 Economic analysis	NOT PROVIDED	
§ 4.3.8 Programming (B202™–2009)	PROGRAM MANAGER	
§ 4.3.9 Master planning	PROGRAM MANAGER	
§ 4.3.10 Design standards services	PROGRAM MANAGER	
§ 4.3.11 Early procurement of materials and equipment	NOT PROVIDED	
§ 4.3.12 FF&E procurement coordination	PROGRAM MANAGER	
§ 4.3.13 Life cycle analysis	NOT PROVIDED	
§ 4.3.14 Move management	NOT PROVIDED	
§ 4.3.15 Coordination of hazardous material testing or abatement	NOT PROVIDED	
§ 4.3.16 Payroll compliance services	NOT PROVIDED	
§ 4.3.17 Stakeholder relationships management	NOT PROVIDED	

§ 4.4 Insert a description of each Additional Service designated in Section 4.3 as the Program Manager’s responsibility, if not further described in an exhibit attached to this document.

Pending approval of Article 4.3 selections.

§ 4.5 Additional Services may be provided after execution of this Agreement without invalidating this Agreement. Except for services required due to the fault of the Program Manager, any Additional Services provided in accordance with this Section 4.5 shall entitle the Program Manager to compensation pursuant to Section 10.4.

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

- .1 Services necessitated by a change in the Initial Information; a change to previous instructions or approvals given by the Owner; or a material change in the Project including, but not limited to, size,

- quality, complexity, the Owner's Project Schedule or Project Budget, or procurement or delivery methods listed in Section 1.3.6;
- .2 Services necessitated by the enactment or revision of codes, laws or regulations, or by official interpretations, after the date of this Agreement;
  - .3 Preparation for, and attendance at, public presentations, meetings, or hearings, in excess of « » ( « » ) total hours;
  - .4 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Program Manager is party thereto;
  - .5 Services required to assist in the repair or replacement of any elements of construction for any cause except the negligence of the Program Manager; or
  - .6 Services required by deficiencies in the performance or default of Owner's consultants or contractors.

§ 4.5.2 If the services covered by this Agreement have not been completed within « » ( « » ) months of the date of this Agreement, through no fault of the Program Manager, an extension of the Program Manager's services beyond that time shall be compensated as Additional Services pursuant to Section 10.4.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

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

§ 5.2 The Owner shall collaborate with the Program Manager to establish and periodically update the Project Budget including (1) the Program Manager's costs, (2) design and constructions costs, (3) the Owner's other costs, and (4) reasonable contingencies related to all of these costs. The Owner shall promptly notify the Program Manager if the Owner if significantly increases or decreases the Project Budget.

§ 5.3 The Owner shall retain all contractors and consultants necessary to carry out the Project except for those consultants retained by the Program Manager as listed in Section 1.4.2. The Owner shall provide the Program Manager with a copy of all executed agreements between the Owner and its consultants and contractors, and any modifications to those agreements. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided, and require that its contractors maintain commercial general liability insurance and other liability insurance as appropriate to the services or work provided. The Owner shall require all contractors to name the Program Manager and its consultants as Additional Insureds on all insurance policies where available.

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

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

§ 5.6 The Owner shall furnish services of a geotechnical engineer, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests, and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

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



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

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

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

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

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

## ARTICLE 6 COPYRIGHTS AND LICENSES

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

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

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

## ARTICLE 7 CLAIMS AND DISPUTES

### § 7.1 General

§ 7.1.1 The Owner and Program Manager shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other, arising out of or related to this Agreement, in accordance with the requirements of the method of binding dispute resolution selected in this Agreement, within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work on the Project. The Owner and Program Manager waive all claims and causes of action not commenced in accordance with this Section 7.1.1.

§ 7.1.2 To the extent damages are covered by property insurance required under Section 5.13, the Owner and Program Manager waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in Section 5.13. The Owner or the Program Manager, as appropriate, shall require of their contractors, consultants, and agents and employees of any of them, similar waivers in favor of the other parties enumerated herein.

§ 7.1.3 The Program Manager shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Program Manager, its employees and its consultants in the performance of services under this Agreement. The Program Manager's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage.

§ 7.1.4 The Program Manager and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 8.7.

### § 7.2 Mediation

§ 7.2.1 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.

§ 7.2.2 The Owner and Program Manager 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 the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 7.2.3 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.

§ 7.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 7.2, the method of binding dispute resolution shall be the following:

*(Check the appropriate box. If the Owner and Program Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

Arbitration pursuant to Section 7.3 of this Agreement

Litigation in a court of competent jurisdiction

Other: (Specify)

### § 7.3 Arbitration

§ 7.3.1 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 the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

§ 7.3.1.1 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.

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

§ 7.3.3 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.

### § 7.3.4 Consolidation or Joinder

§ 7.3.4.1 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).

§ 7.3.4.2 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.

§ 7.3.4.3 The Owner and Program Manager grant to any person or entity made a party to an arbitration conducted under this Section 7.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Program Manager under this Agreement.

## ARTICLE 8 TERMINATION OR SUSPENSION

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

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

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

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

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

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

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

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

## ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 7.3.

§ 9.2 The Owner and Program Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Program Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

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

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

§ 9.5 Unless otherwise required in this Agreement, the Program Manager shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

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

§ 9.7 If the Program Manager or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 9.7.1.

§ 9.7.1 If the Program Manager or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party may disclose such information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The Party receiving such information may also disclose it to its employees, consultants or contractors in order to perform

services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 9.7.

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

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

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

**\$250,000**

## ARTICLE 10 COMPENSATION

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

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

**Two and One Half Percent (2.5%) of Construction Budget (\$40,000,000) = \$1,000,000**

§ 10.2 The hourly labor cost rates and billing rates for services of the Program Manager and the Program Manager's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Program Manager's and Program Manager's consultants' normal review practices.

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

No billing under Article 10.2 shall be accepted by Owner unless requested by Owner in writing and approved by Owner in writing through a formalized contract amendment.

### Employee or Category

Architect: \$250/Hour  
Engineer: \$250/Hour  
Surveyor: \$250/Hour  
Design Technician: \$110/Hour  
Surveying Technician: \$100/Hour  
Contract Administrator: \$170/Hour  
Inspector: \$150/Hour

### Rate

§ 10.3 For Additional Services designated in Sections 4.1, 4.2, or 4.3, the Owner shall compensate the Program Manager as follows:

*(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)*

**One and One Half Percent (1.5%) of Construction Budget (\$40,000,000) = \$600,000**

§ 10.4 For Additional Services that may arise during the course of the Project, including those under Section 4.5, the Owner shall compensate the Program Manager as follows:

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

Architect: \$250/Hour  
Engineer: \$250/Hour  
Surveyor: \$250/Hour  
Design Technician: \$110/Hour  
Surveying Technician: \$100/Hour  
Contract Administrator: \$170/Hour

**Inspector: \$150/Hour**

§ 10.5 Compensation for Additional Services of the Program Manager's consultants when not included in Sections 10.3 and 10.4 shall be the amount invoiced to the Program Manager plus **Ten** percent ( **10** %), or as otherwise stated below:

No additional billing under Articles 10.3 and 10.4 shall be accepted by Owner unless requested by Owner in writing and approved by Owner in writing through a formalized contract amendment.

## § 10.6 Compensation for Reimbursable Expenses

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

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

§ 10.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Program Manager and the Program Manager's consultants plus **8** percent ( **8** %) of the expenses incurred.

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

No billing under Article 10.6 shall be accepted by Owner unless requested by Owner in writing and approved by Owner in writing through a formalized contract amendment.

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

If the Owner terminates the Program Manager for its convenience under Section 8.5, or the Program Manager terminates this Agreement under Section 8.3, or upon completion of the Program Manager's services under this Agreement, the Owner shall pay a licensing fee, as compensation for the Owner's continued use of the Program Manager's proprietary software developed and owned by the Program Manager in accordance with Section 6.3, as follows:

No billing under Article 10.7 shall be accepted by Owner unless requested by Owner in writing and approved by Owner in writing through a formalized contract amendment.

## § 10.8 Payments to the Program Manager

§ 10.8.1 An initial payment of **0** (\$ **0** ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 10.8.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Program Manager's invoice. Amounts unpaid ( **30** ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Program Manager.

(Insert rate of monthly or annual interest agreed upon.)

% 8

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

§ 10.8.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of three years after the termination or completion of this Agreement.

#### ARTICLE 11 SPECIAL TERMS AND CONDITIONS

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

None.

#### ARTICLE 12 SCOPE OF THE AGREEMENT

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

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

- .1 AIA Document C172™-2014, Standard Form Agreement Between Owner and Program Manager for use on a Single Project
- .2 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:

<< >>

- .3 Other documents:  
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

**Addendum No.1**

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

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

County Judge Tano Tijerina  
Webb County  
1110 Washington St.  
Suite 101  
Laredo, Texas 78040

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

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

Judd Gilpin, Gilpin Engineering Company  
11204 McPherson Rd.  
Suite 109  
Laredo, Texas 78045-6577  
JGilpin@gilpinengineering.com

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

**Addendum No.1**  
**to**  
**AIA Document C172 - 2014**

1. No additions, deletions or substitutions of any wording shall be made to the standard form of AIA Document C172 - 2014 used for this agreement, unless noted in this or subsequent addendums.

2. If the services covered by the original Agreement have not been completed within forty-eight (48) months of the date of the original Agreement through no fault of the Program Manager, an extension of the Program Manager's services beyond that time shall be compensated as Additional.

3. Additions within the original body of this agreement are currently highlighted in light blue.

