

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 «2017 » (“Effective Date”)
(In words, indicate day, month and year.)

DRAFT

July 25, 2017

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

County of Hidalgo, Texas
100 N. Closner Boulevard
Edinburg, Texas 78539 »« »

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

Jacobs Project Management Co.
911 Central Parkway North, Suite 425
San Antonio, TX 78232

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

«New Hidalgo County Courthouse»

« »
« »

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 the Request for Qualifications, Hidalgo County "Program Management Services –for New County Courthouse" ("RFQ") and any modifications to which the parties agree. The requirements of this Agreement, and the requirements of the Legal Notice of the RFQ that by their nature survive the RFQ process, are complementary, and that which is required by either is required by both.

§ 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, as modified, that are part of the contract for construction.

§ 1.3 Project Information

§ 1.3.1 It is anticipated that the Project building will include 7 total floors and approximately 400,000-500,000 square feet. More specifically the Project will include the following:

- 6 (Six) complete floors (Floors 1 thru 6), this will include approximately 350,000 square feet, 24 courtrooms, District and County Clerks' offices, Court of Appeals, Law Library, Public Defender's Office, District Attorney's Office, Indigent Defense Office, Adult Probation Office, Ancillary Spaces and other offices;
- The 7th Floor will include approximately 50,000 square feet and will be a "shell floor," meaning it will be left unfinished, but will include a sub-floor and stud walls for the potential expansion for an additional 6 (Six) courtrooms to be completed by the Owner at a later time;
- The total estimated Project cost is \$150,000,000.
- The County reserves the right to modify the Project Information.

§ 1.3.2 A proposal was submitted in response to an RFQ from a design team comprised of EROS/HDR/Half and Balfour Beatty submitted a schematic design. A copy was attached for information about the Project parameters in Exhibit F of the RFQ. Subsequently, a team led by HOK prepared a peer review and suggested an alternative design in Exhibit G of the RFQ. These documents provide the basic characteristics of the facility being developed, which is now at the Schematic Design Phase level. The Architect of record has not been selected as of the Effective Date of this Agreement.

§ 1.3.2 The Project's physical characteristics, to the extent not previously provided, will be provided as developed including, without limitation, geotechnical reports; site, boundary and topographical surveys; traffic and utility studies; and availability of public and private utilities and services.

§ 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.)

«N/A »

§ 1.3.4 Funding source:
(Identify anticipated funding sources, and deadlines or schedules related to funding, as well as whether funding is authorized.)

«N/A »

§ 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.)

«To be provided in Project program developed by Architect and duly approved by the Owner. »

§ 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.)

«As of the effective date of this Agreement, the Owner intends that the Project will be delivered by Construction Manager at Risk through a cost-plus contract with a guaranteed maximum price. Owner reserves the right to change the delivery method in its sole option and discretion. »

§ 1.3.7 Anticipated scheduling information: To be established by the Owner at a later date with input from the Program Manager, architect and construction manager.
(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:
« »
 - .2 Completion of design:
« »
 - .3 Commencement of construction:
« »
 - .4 Completion of construction:
« »
- .2 Other Project scheduling information:
« »

§ 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.)

«As provided in Exhibit A - Request for Qualifications
In the event of a direct conflict between this Agreement and the content of Exhibit A, the terms of this Agreement shall prevail. »

§ 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.)

«To be determined. »

§ 1.4 Project Team

§ 1.4.1 The Owner will retain the following consultants and contractors:
(List name, discipline, address, and other information.)

«Surveyor; geotechnical engineer and testing firm; Architect; civil engineer; Contractor (or Construction Manager, as applicable) and any others as deemed necessary by Owner. »

§ 1.4.2 The Program Manager will retain any consultants identified in Sections 1.4.2.1 and 1.4.2.2, if any:

§ 1.4.2.1 The Program Manager shall provide an organizational chart for all its Project personnel identified in its Statement of Qualifications ("SOQ") submitted in response to the RFQ for Program Manager.

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

The Program Manager does not intend to use any consultants, as of the Effective Date. If the need arises for consultants later, Program Manager will first seek the Owner's approval, in writing, in advance.

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

«N/A »

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

«Valde Guerra
100 N. Clossner Boulevard
Edinburg, Texas 78539 »

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

«Owner's Architect to be selected. »

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

Terry Page
911 Central Parkway North, Suite 425
San Antonio, TX 78232

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

«N/A »

§ 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. In providing its services for the Project, the Program Manager and its consultants shall at all times exercise not less than the standard of professional care customarily exercised by nationally-recognized program management firms practicing in the State of Texas performing services similar to those required by this Agreement and for the Project. The services and deliverables provided by the Program Manager and its consultants shall comply with all laws, codes, statutes, ordinances, orders, rules and regulations of all federal, state, county and local governmental agencies having jurisdiction over the Project and the Project's design and construction ("Laws").

§ 2.2 The Program Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Project and in conformance with all schedules established to which the parties agree.

§ 2.3 The Program Manager shall confirm in writing to the Owner the names and qualifications of its proposed key staff members and consultants, if any, as required in the RFQ. The Program Manager shall provide an organizational chart for the proposed Project personnel and a summary paragraph of the Project services to be performed by each proposed staff member. Biographic summaries that highlight the experience relevant to the specific Project responsibilities should be provided for all proposed personnel. A statement should also be included about such personnel's education, training and experience related to the services to be provided. 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 any proposed key staff member or (2) that the Owner requires additional time to review. 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 prior written 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 except to the extent Program Manager knew or should have known such information was incomplete or in error. 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. The Program Manager shall not be held responsible by the Owner for the Owner's consultants' or contractors' work services, conduct or finished product except to the extent of a Loss caused by the negligence or breach of the contract by the Program Manager.

§ 2.7 The Program Manager represents and warrants to Owner as follows with respect to the Program Manager, its consultants and their principals and employees:

- .1 Any and all entities of which the Program Manager is comprised are financially solvent, can pay all bills owed when due and has the financial resources to perform all services required of it by this Agreement;
- .2 The Program Manager and its consultants have and will maintain throughout the performance of this Agreement all registrations and licenses necessary to perform its services under this Agreement;
- .3 All professionals providing services on this Project or under this Agreement for Program Manager have all licenses and registrations required by law and regulation;
- .4 No promise, agreement, representation, inducement or condition that is not stated in this Agreement has been made to Program Manager by Owner or anyone acting on Owner's behalf in executing this Agreement;
- .5 The Program Manager is duly authorized to enter into this Agreement;
- .6 The person or persons executing this Agreement have been duly authorized to so act by the party which the person or persons sign;

- .7 The Program Manager will perform all services under this Agreement and for the Project in the best interests of Owner;
- .8 The Program Manager will at all times while performing any obligations under this Agreement cause all Program Manager Parties (defined in 7.1.3.1.5) to comply with the Ethical Standards.

The Program Manager acknowledges and agrees that the Owner is relying upon these representations and warranties and would not have entered into this Agreement if any were false.

§ 2.8 Ethical Standards. The Program Manager acknowledges the following Ethical Standards and shall at all times while performing any obligations under this Agreement cause all Program Manager Parties (defined in 7.1.3.1.5) to comply with and not breach any applicable Ethical Standards including, without limitation, the following:

§ 2.8.1 It shall be a breach of ethics to offer, give or agree to give any elected official, department head or employee, or former elected official, department head or employee, of the Owner, or for any elected official, department head or employee or former elected official, department head or employee of the Owner, to solicit, demand, accept or agree to accept from another person, entity or organization, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or qualification therefore pending before any department or agency of the Owner.

§ 2.8.2 It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of Program Manager or a consultant under a contract to the Program Manager or higher tier consultant for any contractor for the Owner, or any person associated therewith, as an inducement for the award of a subcontract or order.

§ 2.8.3 No public official shall have an interest in this Agreement except in accordance with Chapter 171 of the Texas Local Government Code.

§ 2.8.4 Except as permitted under this Agreement, no Program Manager Parties (defined in 7.1.3.1.5) shall engage in private communication with a member of the Hidalgo County Commissioners Court or department heads regarding any procurement of goods or services by the Owner. Any such private communications shall not binding on the parties to this Agreement. Members of the Commissioners Court are required to make a reasonable effort to inform themselves regarding potential procurements and have a duty to inquire of vendors, their representatives or employees, the nature of any private communication being sought prior to engaging in any communication. "Private Communication" means communication with any Program Manager Party participating outside of a posted meeting of the governing body, a regular meeting of a standing or appointed committee or negotiation, which has been specifically authorized by the governing body.

§ 2.9 Insurance. The Program Manager shall maintain insurance for the duration of this Agreement and thereafter as required by Exhibit B, Owner's Insurance Requirements of Program Manager.

ARTICLE 3 SCOPE OF PROGRAM MANAGER'S BASIC SERVICES

The Scope of Program Manager's services is stated in Exhibit C. The Scope of Services described in Exhibit C includes the services the Program Manager will provide for the Project, which includes those specific services reasonably inferable from the descriptions of services in Exhibit C. The Program Manager represents and warrants to the Owner that the Scope of Services in Exhibit C includes all the program management services that, in the opinion of the Program Manager, are necessary for the successful delivery of the Project without the necessity of providing any Additional Services, based on the § 1.3 Project Information on the Effective Date. The Owner may, in addition to obtaining Additional Services, reduce the Scope of Program Manager's services in Owner's sole discretion, with a commensurate reduction in compensation and adjustment to the Project Schedule. The Program Manager shall continue providing its services through final completion and acceptance of the Project by Owner and any commissioning or other services to be provided by or through the Program Manager included in Exhibit C and through any Additional Services, except to the extent such services are terminated by Owner.

ARTICLE 4

§ 4.1 Additional Services may be required for the Project. Additional Services will be authorized only through individual written Work Authorizations duly approved and issued by the Owner. No Additional Services have been authorized as of the Effective Date of this Agreement.

§ 4.2 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 Article 4 shall entitle the Program Manager to compensation pursuant to Article 10, provided that Program Manager obtained a duly approved written Work Authorization to provide such Additional Services. Absent the written Work Authorization being duly approved and issued, no additional compensation shall be paid. The Owner may, in addition to obtaining Additional Services, reduce the scope of Program Manager's services in any Work Authorization in Owner's sole discretion, with a commensurate reduction in compensation and adjustment to the Project Schedule.

§ 4.3 The following table is not used.

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)
N/A	N/A	N/A

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 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 any consultants retained by the Program Manager as listed in Section 1.4.2, if any. 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.

§ 5.4 The Owner shall identify a representative(s) 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. The Program Manager acknowledges, however, that the Owner is a public body, and as a result, must obtain information and approvals from many varied sources to be able

to respond, which could cause Project delays without adequate planning. It is the Program Manager's duty in its planning for obtaining information from the Owner to plan and build into the Project Schedule adequate time to accommodate obtaining Owner's decisions and information.

§ 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 Owner's benefit 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, if any, 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 endeavor to notify the Program Manager of material communication that affects the Project. The Owner shall promptly notify the Program Manager of material, 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 "broad form" 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.

ARTICLE 6 COPYRIGHTS AND LICENSES

§ 6.1 The Program Manager assigns to the Owner at the time of creation its rights, including copyright, in its Instruments of Service and all deliverables created for the Project. 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, charts, plans, spreadsheets, tables, control tools, 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 and similar management tools 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 and similar management tools 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 and similar management tools. 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 and similar management tools 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. 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.

§ 7.1.2 To the extent damages are covered and paid 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 Waivers and Indemnities

§ 7.1.3.1 Definitions

- .1 "Claims": any and all claims, demand, causes of action and claims for Loss brought, alleged or asserted through any direct claim, cross-claim, counterclaim or claim for contribution or indemnity that arise, in whole or in part, in connection with this Agreement, its performance or interpretation or with respect to the Project or services this Agreement describes;
- .2 "Defend": provide a competent legal defense to the Owner Parties with legal counsel and experts reasonably acceptable to Owner at no cost to any Owner Parties;
- .3 "Loss": any and all actual and alleged loss, costs and damages of any nature including, without limitation, actual, special and consequential damages, vicarious liability, personal injury, death, property damage including loss of use thereof, and economic loss, and any expense including, without limitation, reasonable attorney's and experts' fees and all costs of litigation and defense;
- .4 "Owner Parties": the Owner and its County Judge, Commissioners, Commissioners' Court, its present and former officials and employees, and regardless of whether employed by the Owner, its agents and representatives;
- .5 "Program Manager Parties": the Program Manager, all entities that comprise Program Manager if more than one, and their parents, affiliates, subsidiaries, officers, directors, members, managers, partners, joint venturers, consultants, present and former employees, and regardless of whether employed by the Program Manager, its agents and representatives;

§ 7.1.3.2 General Indemnity The Program Manager shall to the fullest extent permitted by law indemnify and hold harmless the Owner Parties from and against all Loss and Claims Loss to the extent such Loss is caused by the negligent acts or omissions, negligent misrepresentation, breach of contract or breach of any other legal duty of any Program Manager Parties.

§ 7.1.3.3 Indemnity for Employee Injury Claims **THE PROGRAM MANAGER SHALL TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW DEFEND, INDEMNIFY AND HOLD HARMLESS ALL OWNER PARTIES FROM AND AGAINST ALL CLAIMS AGAINST ANY OWNER PARTIES FOR THE PERSONAL INJURY OR ALLEGED PERSONAL INJURY OR DEATH, AT THE PROJECT SITE OR IN CONNECTION WITH THE PROJECT, OF AN EMPLOYEE OF ANY PROGRAM MANAGER PARTIES OF ANY TIER, OR ANYONE DIRECTLY OR INDIRECTLY EMPLOYED BY ANY OF THEM, BROUGHT BY, THROUGH OR UNDER SUCH INJURED EMPLOYEE OR THE EMPLOYEE'S WORKERS COMPENSATION INSURANCE CARRIER (REFERRED TO HEREIN AS AN "EMPLOYEE INJURY CLAIM"), REGARDLESS OF WHETHER ANY SUCH CLAIMS ARE CAUSED, OR ARE ALLEGED TO BE CAUSED, BY ANY NEGLIGENCE, NEGLIGENT MISREPRESENTATION, BREACH OF CONTRACT OR BREACH OF ANY OTHER DUTY OR OBLIGATION OF ANY OWNER PARTIES INDEMNIFIED, DEFENDED OR HELD HARMLESS. THESE OBLIGATIONS SHALL NOT BE LIMITED BY ANY INSURANCE PROVISIONS OR BENEFITS PAYABLE UNDER ANY EMPLOYEE BENEFITS INCLUDING, WITHOUT LIMITATION, WORKERS' COMPENSATION OR DISABILITY ACTS.**

§ 7.1.3.4 The parties intend that all provisions of 7.1.3 shall be enforced the fullest extent permitted by Chapter 151 of the Texas Insurance Code. These indemnity and waiver obligations shall survive termination or expiration of this Agreement.

§ 7.2 Dispute Resolution

§ 7.2.1 Subject to any mediation the parties agree to participate in as set forth in this Agreement, all disputes arising between the Program Manager and Owner shall be resolved by a jury trial in a State District Court located in Hidalgo County, Texas. The Program Manager agrees to cooperate with and assist Owner in any disputes to which Program Manager is not a party between Owner and its consultants, contractors or others concerning or related to any aspect of the Project.

§ 7.2.2 The Program Manager shall pay Owner's reasonable attorneys' and experts' fees and all costs of litigation and defense to the extent Owner prevails on any claim for breach of contract or in *quantum meruit*. The Owner shall pay Program Manager's reasonable attorneys' and experts' fees and all costs of litigation and defense to the extent Program Manager prevails on any claim for breach of contract or in *quantum meruit*.

ARTICLE 8 TERMINATION OR SUSPENSION

§ 8.1 If the Owner fails without cause 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 thirty days' written notice to the Owner and opportunity to cure 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.

§ 8.2 If the Owner suspends the Project, the Program Manager shall be compensated for services properly performed prior to notice of such suspension. When the Project is resumed, the Program Manager shall be compensated for expenses found caused by the interruption and resumption of the Program Manager's services.

§ 8.3 If the Owner suspends the Project for more than 90 consecutive days or 180 cumulative days for reasons other than the fault of the Program Manager, the Program Manager may terminate this Agreement by giving not less than thirty days' written notice.

§ 8.4 Either party may terminate this Agreement upon not less than thirty days' written notice and opportunity to cure 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 properly performed prior to termination then due.

§ 8.7 The parties' rights and remedies that continue after performance shall survive the termination of this Agreement including, without limitation, Owner's rights under 2.9, Article 6 and Article 7.

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 This Agreement shall be governed by Texas law. Exclusive venue for any disputes shall be in a State District Court in Hidalgo County, Texas.

§ 9.2 The Owner and Program Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. The Program Manager shall not assign this Agreement without the written consent of the Owner.

§ 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. 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 privileged information.

§ 9.7 Program Manager shall keep according to GAAP full and detailed records pertaining to services that it is required to perform and shall, without cost, furnish a copy of such records to Owner upon request. Program Manager shall exercise such controls as may be necessary for proper financial management under this Agreement, which shall be reasonably acceptable to Owner and sufficient to substantiate all costs incurred. Owner and Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, Program Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, Consultant's agreements, consultant agreements, proposals, purchase orders, vouchers, memoranda and other data relating to this Agreement. In the event that any audit reveals an error or discrepancy of any nature whatsoever, such error or discrepancy will be corrected promptly, and any moneys owing and due Owner will be paid promptly. Program Manager shall not charge Owner for any costs incurred by Program Manager while assisting Owner with audits performed pursuant to this Agreement. If the audit reveals that Program Manager has overstated any cost to Owner by more than three percent (3%) of the cost of construction, and/or if Program Manager is delinquent in furnishing any records or reports required under this § 9.7, and Owner shall have chosen to have an audit and accounting made of Program Manager's financial records, then Program Manager shall pay the cost of such audit and accounting. Program Manager shall be found delinquent in furnishing records, if, after the 14th day after the Owner requests the records or reports the Program Manager fails to provide the requested records or reports. Program Manager shall preserve these records for a period of five years after final payment, and for so long thereafter as there may remain any unresolved questions or disputes regarding any item or for such longer period as may be required by law.

§ 9.8 In the event any one or more provisions of this Agreement, or the application thereof to any person or circumstance, shall for any reason be held invalid, illegal or unenforceable in any respect, any such invalidity, illegality or unenforceability shall be deemed stricken and shall not affect any other provision of this Agreement or

the application of such provisions to other persons or circumstances, and the balance of this Agreement shall be enforced to the greatest extent permitted by law.

§ 9.9 Notices

§ 9.9.1 Written notice if to Program Manager shall be deemed to have been duly served when delivered in to a manager or officer of the firm or entity; or if sent by certified mail (return receipt requested) the date shown received.

§ 9.9.2 Written notice if to Owner shall be deemed to have been duly served when delivered in person on, or if by certified mail (return receipt requested) upon Owner's receipt by, the person(s) designated in 1.4.3.

§ 9.10 The parties agree not to solicit or hire employees of the other who are involved with the Project prior to one year after completion of the Project.

§ 9.11 The failure of Owner to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance or any other term, covenant, condition or right.

§ 9.12 Claims, disputes, or other matters in controversy arising out of or related to the Contract may by agreement of the parties be mediated prior to resolution by jury trial in a state district court in Hidalgo County, Texas. A request for mediation shall be made in writing and, delivered to the other party to the Contract.

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.)

«Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00) »

§ 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.)

«N/A »

Employee or Category

Rate

§ 10.3 For any Additional Services designated in Sections 4.1, 4.2, or 4.3 approved in advance in writing, 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.)

«N/A »

§ 10.4 For any Additional Services that may arise during the course of the Project, including those under Article 4 that are duly approved in advance in writing, the Owner shall compensate the Program Manager as follows:

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

«On a lump sum basis agreed by the parties. »

§ 10.5 Compensation for Additional Services of the Program Manager's consultants, if any, duly approved in advance in writing when not included in Section 10.4 shall be the amount invoiced to the Program Manager plus

«zero » percent («0 » %), or as otherwise stated below:

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§ 10.6 Intentionally Deleted

§ 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, if any, in accordance with Section 6.3, as follows:

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§ 10.8 Payments to the Program Manager

§ 10.8.1 An initial payment of «zero dollars » (\$ «0.00 ») 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 Payments for services shall be made monthly according to Exhibit D, less a one percent (1%) retainage. Program Manager shall submit a detailed monthly report, as described in Exhibit C Scope of Services, with each invoice describing the services performed during the invoice period. No payment shall be made to the extent of Program Manager's services were faulty or the subject of a dispute. The portion of invoices not in question and that have been duly approved shall be paid.

§ 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 Final Payment to the Program Manager, including retainage held by Owner, shall not be made until after the Project is completed and accepted by Owner and all work products and supporting documents are delivered to the Owner, and this Agreement is otherwise fully performed by the Project Manager, per Article 3. The acceptance by the Program Manager of final payment upon the completion of its services under this Agreement, or of any final payment due upon any earlier termination of this Agreement, shall constitute a full and complete release of the Owner from any claims, demands and causes of action of any nature whatsoever that the Project Manager may have against the Owner in connection with this Agreement, except for claims, demands, or causes of action previously made known to the Owner in writing. The making of partial payments or of any such final payment by the Owner to the Program Manager shall not constitute an acceptance of the services and/or work product of the Program Manager or a release of the Project Manager from any claims, demands or causes of action that the Owner may, now or at any time, hereafter, have against the Program Manager.

§ 10.8.5 In the event that, during any term hereof, the Commissioners Court of Owner does not appropriate sufficient funds to meet the obligations of Owner under this Agreement, Owner may terminate this Agreement upon sixty (60) days written notice to Program Manager. Owner agrees, however, to use reasonable efforts to secure funds necessary for the continued performance of this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of Owner pursuant to the provisions of Tex. Loc. Govt. Code Ann. § 271.903 (Vernon Supp. 1996).

§ 10.8.6 Nothing in this Agreement is intended to and Owner does not hereby waive, release or relinquish any right to assert any of the defenses Owner enjoys by virtue of the state or federal constitution, laws, rules or regulations, and any sovereign, official or qualified immunity available to Owner as to any claim or action of any person, entity, or individual against Owner.

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, and the Exhibits are incorporated herein by reference as if set forth at length. The documents comprising the Agreement are complementary, and that which is required by one shall be required by all. In the event of a direct conflict between the terms of this AIA Document C172-2014 and any Exhibit, the former shall prevail with respect to the directly conflicting term.

- .1 AIA Document C172™–2014, Standard Form Agreement Between Owner and Program Manager for use on a Single Project
- .2 Other documents:
(List other documents, if any, including additional scopes of service forming part of the Agreement.)

- Exhibit A - Request for Qualifications**
- Exhibit B - Program Manager’s Insurance Requirements**
- Exhibit C - Scope of Services**
- Exhibit D – Payment Schedule**

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

 OWNER
County of Hidalgo, Texas

 PROGRAM MANAGER *(Signature)*
Jacobs Project Management Co. « »
(Printed name and title)