



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.)

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

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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

The Owner and Program Manager agree as follows.

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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/Halff 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,

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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

(Table deleted)

§ 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.

(Paragraph deleted)

§ 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.

(Table deleted)

§ 4.3 The following table is not used.

Services	Responsibility <i>(Program Manager, Owner or not provided)</i>	Location of Service Description <i>(Section 4.4 below or in an exhibit attached to this document and identified below)</i>
<i>(Rows deleted)</i>		
N/A	N/A	N/A

(Paragraphs deleted)

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.

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 Manger 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

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§ 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:

(Paragraphs deleted)

§ 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:

§ 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

(Paragraphs deleted)

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

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(Paragraphs deleted)

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

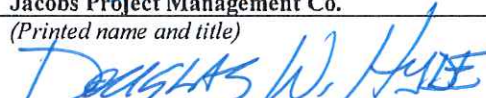


PROGRAM MANAGER (Signature)

Jacobs Project Management Co.

(Printed name and title)

APPROVED BY
COMMISSIONERS' COURT
ON: 7/28/17 and


DOUGLAS W. HYDE
VICE PRESIDENT

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