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)

«**State of Rhode Island, acting by and through the Department of Administration, Division of Purchases, on behalf of the User Agency**»

«**One Capitol Hill, Second Floor**»

«**Providence, Rhode Island 02908-5855**»

«**401.578.8100 (telephone); 401.574.8387 (facsimile)**»

«**www.ridop.ri.gov**»

on behalf of the User Agency:

*(Name, legal status, address, telephone and facsimile numbers, and website)*

« »

« »

« »

« »

« »

and the Program Manager:

(Name, legal status, address, and other information)

[Fill in vendor information]

for the following Project:

(Name, location, and detailed description)

[Fill in Project information]

The Owner and Program Manager agree as follows.

TABLE OF ARTICLES

1 INITIAL INFORMATION

2 PROGRAM MANAGER’S RESPONSIBILITIES

3 SCOPE OF PROGRAM MANAGER’S BASIC SERVICES

4 ADDITIONAL SERVICES

5 OWNER’S RESPONSIBILITIES

6 COPYRIGHTS AND LICENSES

7 CLAIMS AND DISPUTES

8 TERMINATION OR SUSPENSION

9 MISCELLANEOUS PROVISIONS

10 COMPENSATION

11 SPECIAL TERMS AND CONDITIONS

12 SCOPE OF THE AGREEMENT

# 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, as modified by the Owner.

§ 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.)

« »

§ 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.)

« »

§ 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.)

« »

§ 1.3.4 Deleted.

« »

§ 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.)

« »

§ 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.)

« »

§ 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:

« »

.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.)

« »

§ 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.)

« »

§ 1.4 Project Team

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

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

« »

§ 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.)

« »

§ 1.4.2.2 Consultants retained under Additional Services:

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

« »

§ 1.4.3 The Owner identifies the following representative in accordance with Section 5.4:

(List name, address, and other information.)

« »

« »

« »

« »

« »

« »

§ 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.)

« »

§ 1.4.5 The Program Manager identifies the following representative in accordance with Section 2.4:

(List name, address, and other information.)

« »

« »

« »

« »

« »

« »

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

« »

§ 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 (i) the Solicitation issued by the Owner; and (ii) this Agreement. The Program Manager represents that it is properly licensed in the state of Rhode Island to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals. No part of the professional services shall be performed by Subconsultants or Subcontractors without the Owner’s prior written consent. .

§ 2.2 The Program Manager shall perform its services consistent with the professional 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, unless different amounts have been specified in the Solicitation:

§ 2.7.1 Commercial General Liability (including broad-form contractual liability and completed operations) with policy limits of not less than $1,000,000 for each occurrence and in the aggregate for bodily injury and property damage.

§ 2.7.2 Commercial Automobile Liability covering vehicles owned and hired by the Program Manager and non-owned vehicles used by the Program Manager with policy limits of not less than $1,000,000 combined single limit and in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles 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 Commercial 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, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.7.4 Workers’ Compensation at statutory limits.

§ 2.7.5 Professional Liability covering bodily injury and property damage due to the Program Managers negligent acts, errors, and omissions in the performance of professional services, with policy limits of not less than $2,000,000 per claim and in the aggregate, maintained during the term of this Agreement and for a period of 5 years after the completion of any and all of the Program Manager’s services under this Agreement. Any retroactive date or prior acts exclusion to which such coverage is subject shall predate the date on which services hereunder are commenced and the date of this Agreement.

§ 2.7.6 Additional Insured Obligations. The Program Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Commercial Automobile Liability to include the Owner and the User Agency as additional insureds for claims caused in whole or in part by the Program Manager’s negligent acts or omissions. 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 and the User Agency, on an annual basis for the duration of the Agreement and from time to time upon request, with a copy of a policy endorsement and certificates of insurance that name the State of Rhode Island and the User Agency as “certificate holders” and as “additional insureds” and that otherwise evidences compliance with the requirements in this Section 2.7. The certificate of insurance must state that 30 calendar days’ advance notice of cancellation, nonrenewal, or material change (together with a copy of the materially changed policy or endorsement) in coverage will be sent to: Rhode Island Department of Administration, Division of Purchases, One Capitol Hill, Providence, Rhode Island 02908-5855, fax # (401) 574-8387, and must reference the Project and this Agreement. Material changes that are not acceptable to the Owner may result in the termination by the Owner pursuant to Section 8.4. All policies, endorsements, and certificates of insurance must include the following language: Coverage is primary and noncontributory. Subrogation is waived for the additional insured.

# ARTICLE 3   SCOPE OF PROGRAM MANAGER’S BASIC SERVICES

§ 3.1 General

§ 3.1.1 The Program Manager’s Basic Services consist of those described in the Solicitation and 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, and all pertinent meetings.

.12 Any other documentation required of the Contractor under the Contract Documents, including warranties and similar submittals

.13 Other

« »

§ 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.

« »

§ 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. The Program Manager shall review all proposals for additional services from the Contractor and Owner’s consultations and advise the Owner on the acceptability.

§ 3.8.4 Deleted.

§ 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.)

|  |  |
| --- | --- |
|   | § 4.1.1 Based on the preliminary design and other design criteria prepared by the Design Agent 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 Design Agent suggests alternative materials and systems, at the request of the Owner the 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 Design Agent and shall include the Contractor’s general conditions costs, overhead, and profit. The Cost of the Work does not include the compensation of the Design Agent 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. |
|  | § 4.1.2 As the Design Agent 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 Design Agent, and if appropriate, incorporated by the Design Agent. |
|  | § 4.1.3 The Program Manager shall provide written recommendations regarding add and deduct alternates to be considered by the Owner and Design Agent, and if appropriate, incorporated by the Design Agent 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.)

|  |  |
| --- | --- |
|   | § 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 Design Agent in writing of observed defects and deficiencies in the Work. |
|  | § 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 Design Agent, regarding any questions or concerns the Program Manager has with the information provided by the Contractor. |
|  | § 4.2.3 If the Program Manager reasonably believes the Design Agent should reject Work or require additional inspection or testing of the Work, the Program Manager shall promptly recommend such actions to the Owner and Design Agent 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. |
|  | § 4.2.4 The Program Manager shall review the Contractor’s Applications for Payment and provide written recommendations, if any, to the Owner and Design Agent. |
|  | § 4.2.5 If requested by the Design Agent and Owner, the Program Manager shall evaluate Contractor requests for information regarding the Contract Documents and provide written recommendations to the Owner and Design Agent.  |
|  | § 4.2.6 When requested by the Owner, the Program Manager shall review requests for changes, assist the Owner and Design Agent in evaluating and negotiating Contractors’ proposals, and submit written recommendations to the Design Agent and Owner. Upon request by the Owner, the Program Manager will review Change Orders and Construction Change Directives prepared by the Design Agent and provide written comments regarding any questions or concerns the Program Manager has regarding the Change Orders or Construction Change Directives. |
|  | § 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. |
|  | § 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 Design Agent. Upon the Contractor’s completion of the Work, the Program Manager shall inspect the Work and provide written recommendations to the Owner and Design Agent. |
|  | § 4.2.9 With the Design Agent 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. |
|  | § 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. |
|  | § 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 Design Agent. |
|  | § 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 Design Agent 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 |   |  |
| § 4.3.2 Capital campaign support |  |  |
| § 4.3.3 Assistance with sustainability certifications  |  |  |
| § 4.3.4 Affirmative action/diversity compliance and outreach  |  |  |
| § 4.3.5 Existing facilities analysis  |  |  |
| § 4.3.6 Site Selection Analysis (B203™–2007) |  |  |
| § 4.3.7 Economic analysis |  |  |
| § 4.3.8 Programming (B202™–2009) |  |  |
| § 4.3.9 Master planning |  |  |
| § 4.3.10 Design standards services |  |  |
| § 4.3.11 Early procurement of materials and equipment |  |  |
| § 4.3.12 FF&E procurement coordination  |  |  |
| § 4.3.13 Life cycle analysis |  |  |
| § 4.3.14 Move management |  |  |
| § 4.3.15 Coordination of hazardous material testing or abatement |  |  |
| § 4.3.16 Payroll compliance services |  |  |
| § 4.3.17 Stakeholder relationships management |  |  |
|  |  |  |

§ 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.

« »

§ 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 Deleted.

# ARTICLE 5   OWNER’S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for in this Agreement, 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 Deleted.

§ 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 required by law. and require that its contractors maintain commercial general liability insurance and other liability insurance as required by law.

§ 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 If necessary for the Program Manager to perform its services under this Agreement, 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 If necessary for the Program Manager to perform its services under this Agreement, 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 Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 Deleted.

§ 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 Deleted.

# 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.

**§ 6.4** Except as otherwise stated in Section 6.3, the provisions of Article 6 shall survive the termination of this Agreement.

# 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. 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 and AIA Document A201-2007, General Conditions of the Contract for Construction, as modified by the Owner. The Program Manager 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 in accordance with the General Conditions of Purchase, 220-RICR-30-00-13.21.

§ 7.1.4 The Program Manager waives consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This 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.

§ 7.1.4.1 Without limiting the generality of the foregoing, the defense and indemnity set forth in this Section 7.1.4 includes, without limitation, all judgments, liabilities, damages, losses, claims, demands, and actions on account of bodily injury, death, or property loss to a person or entity indemnified hereunder or any other persons or entities, whether based upon statutory (including, without limitation, workers compensation), contractual, tort, or other liability of any person or entity so indemnified.

§ 7.1.4.2 The remedies set forth herein shall not deprive any person indemnified hereunder of any other indemnity action, right, or remedy otherwise available to any such person or entity at common law or otherwise.

§ 7.1.4.3 The Program Manager will include the indemnity set forth in this Section 7.1.3 without modification, in each Subcontract with any Subconsultant or Subcontractor.

§ 7.1.4.4 Notwithstanding any other requirement in the Contract Documents to the contrary, the indemnity hereunder shall survive Final Completion of the Work and final payment under this Agreement and shall survive any termination of this Agreement.

§ 7.1.5 The Owner shall have the right to deduct from any payments due to the Program Manager the amount of any unpaid obligations owed to the State of Rhode Island by the Program Manager, including without limitation, any and all unpaid taxes, the amount of any claim against the Program Manager arising out of this Agreement, or any amount on account of any other reason permitted by applicable law.

§ 7.2 Mediation

§ 7.2.1 Claims shall be referred to the Initial Decision Maker for initial decision. The Purchasing Agent appointed pursuant to the provisions of the “State Purchases Act,” R.I. Gen. Laws § 37-2-1 et seq., will serve as the Initial Decision Maker in accordance with the provisions of the State Purchases Act, State of Rhode Island Procurement Regulations, and this Section 8.2.1. An initial decision shall be required as a condition precedent to binding dispute resolution pursuant to Section 8.3.1 of any Claim arising prior to the date final payment is due.

§ 7.2.2 For any Claim not resolved by the Initial Decision Maker procedures set forth in Section 8.2.1, and prior to the implementation of the binding dispute resolution procedures set forth in Section 8.3.1, the Program Manager shall have the option to pursue mediation, exercisable by written notice to the Owner within 30 calendar days of an Initial Decision. In the event of the exercise of such option by the Program Manager, the Owner and the Program Manager shall attempt to select a mediator, and in the event that the Owner and the Program Manager cannot agree on a mediator, either party may apply in writing to the Presiding Justice of the Providence County Superior Court, with a copy to the other, with a request for the court to appoint a mediator, and the costs of the mediator shall be borne equally by both parties.

§ 7.2.3 Deleted.

§ 7.2.4 Deleted.

§ 7.3 Arbitration

§ 7.3.1 For any Claim not resolved by the Initial Decision Maker procedures set forth in Section 7.2.1, or mediation at the option of the Program Manager pursuant to Section 7.2.2, the method of binding dispute resolution shall be determined in accordance with the provisions of the “Public Works Arbitration Act,” R.I. Gen. Laws §§ 37-16-1 et seq. The provisions of Article 7 shall survive the termination of 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 7 working 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 The Owner may suspend the Project as provided in this Agreement, the State Purchases Act, R.I. Gen. Laws § 37-2-1 et seq., the State of Rhode Island Procurement Regulations, or other applicable law. If the Owner suspends the Project, the Program Manager shall be compensated for services performed prior to notice of such suspension. If and when the Project is resumed, 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 working days for reasons other than the fault of the Program Manager, the Program Manager may terminate this Agreement by giving not less than 7 working days’ written notice.

§ 8.4 Either party may terminate this Agreement upon not less than 7 working 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 written notice to the Program Manager for the Owner’s convenience and without cause. The Owner may also terminate this Agreement: (i) in the event of the unavailability of appropriated funds; (ii) in the absence of a determination of continued need; or (iii) as otherwise provided in the State Purchases Act, R.I. Gen. Laws §§ 37-2-1 et. seq., the State of Rhode Island Procurement Regulations, or other applicable law.

§ 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.

§ 8.7 Deleted.

§ 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 is subject to, and governed by, the laws of the State of Rhode Island, including all procurement statutes and regulations (available at [www.ridop.ri.gov](http://www.ridop.ri.gov)), and applicable federal and local law, all of which are incorporated into this Agreement by reference. In the event of any conflict between this Agreement and any such procurement statutes or regulations or any other provision of Rhode Island law, the procurement statutes, regulations and Rhode Island law will control. The Program Manager hereby consents to and confers exclusive personal jurisdiction upon the courts of the State of Rhode Island and of the federal government sitting within this state. In the event of any conflicts or discrepancies among the Contract Documents, the provisions of the Contract Documents will be interpreted in the order of priority set forth in General Conditions of Purchase 220-RICR-30-00-13.4(B).

§ 9.2 The Owner and Program Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement; provided, however, that the Program Manager may not assign its rights nor delegate its responsibilities under this Agreement without the Owner’s prior written consent.

§ 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.

§ 9.4 The User Agency is a disclosed third-party beneficiary of this Agreement and shall have all of the rights and benefits to which such a party is entitled hereunder. Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, any other third party against the Owner, User Agency, 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 This Section shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 8.4.

§ 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. This Section shall survive the termination of this Agreement.

§ 9.7.1 The receiving party may disclose “confidential” or “business proprietary” information 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 10.8.

§ 9.8 Written notice shall be duly served in accordance with Section 13.3 of AIA Document A201- General Conditions of the Contract for Construction, as modified by the Owner.

§ 9.9 Deleted.

# 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.)

« »

§ 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.)

« »

|  |  |
| --- | --- |
| Employee or Category | 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.) The personnel rates listed in the Bid response.

« »

§ 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.)

The compensation shall be the expenses incurred by the Program Manager.

« »

§ 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 « six» percent ( « 6 » %), or as otherwise stated below:

« »

§ 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 except for travel to and from the Project Manager’s offices or the Consultant’s offices, to meet with the Owner, the User Agency, or to visit the Project site; travel reimbursable expenses are subject to the limitations established from time to time for state employees by the Rhode Island Department of Administration Office of Accounts and Control;

.2 Deleted..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 provided to the Owner, Owner’s consultants and Contractor;

.6 Postage, handling, and delivery, if authorized in advance by the Owner;

.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 Deleted. .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, if authorized in advance by the Owner.

§ 10.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Program Manager and the Program Manager’s consultants.

§ 10.6.3 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 in accordance with Section 6.3, as follows:

« »

§ 10.8 Payments to the Program Manager

§ 10.8.1 Deleted.

§ 10.8.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable not later than the 30th working day following written approval by the Owner of the Program Manager’s invoice. No interest shall be due or payable on account of any payment due or unpaid except in accordance wit the provisions of “Prompt Payment by Department of Administration,” R.I. Gen. ALWs §§ 42-11.1-1, et. seq.

§ 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 upon reasonable notice for a period of three years after the termination or completion of this Agreement.

§ 10.9 Within 10 working days of receipt of any progress payment from the Owner, the Program Manager must pay its Subconsultants and Subcontractors the full amount included for each such Subconsultant and Subcontractor reflected in the Program Manager’s invoice for payment.

**§ 10.9.1** The Owner may, at its sole option, issue joint checks to the Program Manager and to any Subconsultant or Subcontractor or material or equipment suppliers to whom the Program Manager failed to make payment for Work properly performed or material and equipment suitably delivered.

**ARTICLE 11   SPECIAL TERMS AND CONDITIONS**

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

§ 11.1 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties’ intentions and purposes in executing the Agreement.

§ 11.2 The Owner is the State of Rhode Island, acting by and through its Department of Administration Division of Purchases, and therefore, pursuant to the provisions of R.I. Gen. Laws § 34-28-31, liens against the Project are not enforceable.

# 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 AIA Document A201–2007, General Conditions of the Contract for Construction, as modified by the Owner.

**.4** Other documents:

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

« »

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

|  |  |  |
| --- | --- | --- |
|   |  |   |
| OWNER *(Signature)* |  | PROGRAM MANAGER *(Signature)* |
| « »« » |  | « »« » |
| (Printed name and title) |  | (Printed name and title) |