

**Integrated Project Delivery Agreement
Between Owner, Architect and CM/GC**

Owner :

Architect:

CM/GC:

____, 200

**Integrated Agreement for Project Delivery
Between Owner, Architect and CM/GC**

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43. CONTRACT SIGNING

Integrated Agreement for Project Delivery
Between Owner, Architect, CM/GC and MEP/FP Engineer
(Draft)

This Agreement is made as of the ___ day of _____, 2006 by and between _____ ("Owner") _____, ("Architect") and _____ ("CM/GC") who state and agree as follows:

1. DEFINITIONS

All words and expressions capitalized in this Agreement and the other Contract Documents shall have the meanings stated in the Definitions set forth in this Section or, if not in conflict, the meanings set forth elsewhere in the Contract Documents.

"Architect's Consultants" - Those design or construction professionals retained to perform a portion of the Architect's Services under subcontract with Architect or someone in contract with Architect.

"Building Regulations" - Applicable laws, statutes, ordinances, building codes, rules and regulations governing design and construction of the Project.

"Change Order" - Shall have the meaning described in Section 24.3 of the Agreement.

"Change Proposal Request" or **"CPR"** - Shall have the meaning described in Section 24.7.

"Claim" – Shall have the meaning described in Section 41.3 of the Agreement.

"Contract Documents" - The Integrated Agreement (hereinafter the Agreement) together with any exhibits, Drawings, Specifications, Schedules, Performance Bond, Payment Bond, Addenda issued prior to execution of the Agreement, other documents listed in the Agreement and Modifications issued after execution of the Agreement. A Modification is (1) a written amendment to the Agreement signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders), or sample forms.

"Deliverables" - The documents or other instruments of service to be prepared by a Responsible Designer, including without limitation those documents identified in Exhibit H.

"Drawings" - The graphic and pictorial portions of the Contract Documents, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

"Indemnitees" - Includes Owner, Owner's consultants, any individuals or entities identified in the Agreement, and each of their officers, directors, shareholders, partners, representatives, employees and agents.

“Integrated Project Delivery Team (“IPD Team”)” – Shall have the meaning ascribed in Section 3.1 of this Agreement.

"Owner's Consultants" - Those consultants retained by Owner identified in the Project Roster who will assist Owner in carrying out the Project.

"Product Data" - Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by CM/GC, Subcontractors, or Suppliers to illustrate materials or equipment for some portion of the Work.

"Project" - The total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by Owner or by separate contractors.

"Property Owner" - The individual or entity that owns fee title to the property upon which the Project is located. The identity and address of the Property Owner is set forth in the Project Roster.

"Responsible Designer" - Shall mean the person or entity that has responsibility for preparing the Drawings and/or Specifications for a particular portion of the Work.

"Samples" - Physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

"Services" – The Basic and Additional Services provided by Architect or Architect's Consultants.

"Shop Drawings" - Drawings, diagrams, schedules and other data specially prepared for the Work by CM/GC, Subcontractors, Suppliers or distributors to illustrate some portion of the Work.

"Specifications" - That portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards, execution and workmanship for the Work, and performance of related services.

“Subcontractor(s)” – The individuals or firms retained by CM/GC or a subcontractor or Supplier of CM/GC to install or furnish and install work, labor or materials or provide other services or labor in connection with the Work. The terms Subcontractor, shall include Trade Contractors as described below and Suppliers to the extent that they furnish on-site labor or installation services. To the extent the term Subcontractor is referred to as if singular in number it shall include the plural and shall mean a Subcontractor or an authorized representative the Subcontractor.

"Submittals" - Shop Drawings, Product Data, Samples and similar documents to be prepared or submitted for review by the Architect or Architect's Consultants pursuant to the Contract Documents.

"Suppliers" - Material and equipment suppliers engaged by CM/GC or subcontractors of any tier.

“Trade Contractor" - The individuals or firms retained by CM/GC or a subcontractor to provide collaboration and services during the Pre-Construction Phase of the Project. It is anticipated

that a Trade Contractor will continue to serve as Subcontractor during the Construction Phase provided that the Core Group determines that its performance merits continued participation and accepts its price proposal.

"Work" - The construction and services required from CM/GC by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by CM/GC to fulfill CM/GC's obligations. The Work may constitute the whole or a part of the Project.

"Work Authorization" - A document issued to authorize a limited scope of services to be commenced prior to issuance of this Agreement.

"Work Plan" - The resource-loaded Work Plan prepared by Architect and Architect's Consultants (or any other party as requested by the Core Group) depicting the activities to be accomplished in each phase of the Project and the anticipated labor (and resulting personnel costs), together with anticipated Reimbursable Expenses.

2. GENERAL:

2.1. Project Parameters. The Project consists of design, construction, and commissioning of the Project more specifically described in Exhibit A as "Phase 2A". Owner's business case for the Project is predicated upon (a) the requirements of Owner's Program referenced in Exhibit B; the Construction Budget described in Article 9.1 and set forth in Exhibit C; and the Conceptual Project Schedule, set forth in Exhibit D.

2.2. Value Definition. The Owner's basic value proposition is to build the facilities called for in the Program, for no more than the price set forth in the Construction Budget, within the time frame established by the Conceptual Project Schedule.

2.3. Integrated Project Delivery. In addition, the Owner believes that attaining that value proposition will be benefited by implementing Integrated Project Delivery, promoting project efforts to pursue the following objectives: increasing the relatedness of members of the Integrated Project Delivery Team ("**IPD Team**"); collaborating throughout design and construction with all members of the IPD Team: planning and managing the Project as a network of commitments; optimizing the Project as a whole, rather than any particular piece; and tightly coupling learning with action (promoting continuous improvement throughout the life of the Project). Specific actions in support of these objectives are set forth elsewhere in the Contract Documents.

2.4. Reliable Promising. Fundamental to the success of Integrated Project Delivery is the willingness and ability of all IPD Team members to make and secure reliable promises as the basis for planning and executing the Project. In order for a promise to be reliable, the following elements must be present:

2.4.1. The conditions of satisfaction must be clear to both parties – the performer and the customer;

2.4.2. The performer/promisor is competent to perform the task or has access to the competence to perform the task and the wherewithal (materials, tools, equipment, instructions);

2.4.3. The performer/promisor has estimated the time to perform the task and has internally allocated adequate resources and has blocked the time on its internal schedule.

2.4.4. The performer/promisor is sincere in the moment that the promise is made – only making the promise if there is no current basis for believing that the promise can not or will not be fulfilled.

2.4.5. The performer/promisor is prepared to be accountable if the promise can not be performed as promised and will promptly advise the IPD Team if confidence is lost that the task can be performed as promised.

3. RELATIONSHIP OF THE PARTIES:

3.1. Integrated Project Delivery Team Formation. The parties agree to form an IPD Team to facilitate design, construction and commissioning of the Project. The team members, including Architect and Architect's Consultants and CM/GC and its Subcontractors and Suppliers, will be expected to openly share information and cooperatively collaborate for the benefit of the Project. In forming an Integrated Project Delivery Team, the parties expect that major trade contractors will be selected to provide preconstruction services early in the preconstruction phase and will sign Joining Agreements as they become members of the Team.

3.2. IPD Purpose. By forming an Integrated Team, the parties intend to gain the benefit of an open and creative learning environment, where team members are encouraged to share ideas freely in an atmosphere of mutual respect and tolerance. Team Members shall work together and individually to achieve transparent and cooperative exchange of information in all matters relating to the Project, and to share ideas for improving Project Delivery as contemplated in the Project Objectives described in Exhibit E. Team members shall actively promote harmony, collaboration and cooperation among all entities performing on the Project.

3.3. Trust. The parties accept the relationship of mutual trust and confidence established with each other by this Agreement, and promise to furnish their best skill and judgment and to collaborate and cooperate with each other and with other project participants in actively pursuing an integrated project and furthering the interests of the Project. The parties recognize that each of their opportunities to succeed on the Project is directly tied to the performance of other Project participants. The parties shall therefore work together in the spirit of cooperation, collaboration, and mutual respect for the benefit of the Project, and within the limits of their professional expertise and abilities. Throughout the Project, the parties shall use their best efforts to perform the work in an expeditious and economical manner consistent with the interests of Project.

3.4. No Partnership. By forming this IPD Team and signing a single form of agreement, the parties do not intend to create a partnership between or among any of the members, and no member shall conduct itself in anyway to suggest that such a partnership exists. Each member shall bear professional responsibility only as specifically provided in this Agreement. This Agreement is not a design build agreement and shall not make any party responsible for the professional errors or omissions of any other party except as expressly provided in this Agreement.

3.5. Standard of Care. Each of the parties acknowledges that Owner, not being skilled in such matters, is relying upon each professional for the technical and professional adequacy of all

services and that neither Owner nor Owner's Consultants shall perform any duties of Architect, Architect's Consultants, CM/GC or Subcontractors, or assume any responsibility or liability for the professional or technical adequacy of the Drawings and Specifications prepared by Architect or Architect's Consultant. As provided throughout the Contract Documents, each party shall perform its designated services in a competent professional manner in accordance with the standards of experienced professionals in the same geographic area of the Project experienced in providing services for similar projects of this size, complexity, and construction process.

4. FORMATION AND FUNCTIONING OF THE CORE GROUP

4.1. Purpose of Core Group. The functioning and operation of the Project shall be governed by the Core Group. The Core Group shall include, at a minimum, the Owner's representative, the Architect's Representative and the CM/GC's Representative. The Core Group shall be chaired by the Owner's Representative. This initial Core Group may invite others to become members of the Core Group and may also request added members to leave the Core Group. The Core Group shall exercise its authority in the best interest of the Project. Each Team Member shall assure that its Core Group representative attends all Core Group meetings and fulfills his or her responsibilities as a Core Group Member. The Core Group may approve any member's designation of an alternate representative; any proposed replacement of a Core Group representative shall be subject to the Core Group's approval, which shall not be unreasonably withheld.

4.2. Regular Meetings. The Core Group shall establish a regular meeting schedule, which in general should be no less frequently than monthly (or weekly). The Core Group shall be responsible for reviewing and stimulating the progress of the Project and the pursuit of the Project Objectives set forth in Exhibit E. The Core Group shall also review the periodic project evaluations and shall plan and implement programs to improve Project performance and performer satisfaction on the Project. The Core Group meetings shall be held separately from other meetings for the purpose of ensuring their importance and the candor of the exchange at the Core Group meeting. On a quarterly basis, the Core Group Meeting may include by invitation a Senior Management Representative from each of the Core Group member firms.

4.3. Special Meetings. In addition to the regularly scheduled meetings, a Core Group Meeting may also be set at the request of any Core Group Member, to allow the Core Group to address a matter of urgency. Such a meeting shall have at least seven (7) days notice, unless all Core Group Members agree upon a shorter time. Notice of a special meeting shall identify the issues to be addressed. If a Core Group member is not able to attend either a regular or special meeting because of a scheduling conflict, an alternate may be designated in advance to attend.

4.4. Decision Making. The Core Group shall endeavor to make decisions by consensus. In the event of impasse, the Owner may issue directions that it believes to be in the best interest of the Project subject, if necessary, to further resolution pursuant to the dispute resolution provisions of the Agreement.

4.5. Communications. The Core Group shall establish, in writing, communication protocols for the Project. If the protocols permit direct communications with the Subcontractors and Architect's Consultants (rather than such communications flowing through the Architect and CM/GC), copies shall be provided to Core Group members. The protocol shall also address the use of e-mail, establishment of web-based project management systems, production and publication of meeting minutes, and other issues relating to project communication. All communication that affects the performance or administration of the Contract shall be made or

confirmed in writing, with copies to members of the Core Group. The Contract will be modified only in compliance with the requirements of the Contract Documents.

4.6. Owner's Representative. Owner shall designate in writing a representative authorized to act on its behalf with respect to the Project. Owner's authorized representative shall be responsible for coordinating action among the project participants, including any additional Owner personnel who must participate in decision making on the Project. **Owner's Representative** shall be identified on the project roster and shall be the chair person of the Core Group.

4.7. Architect's Project Personnel. Architect has appointed the individual listed on the attached roster as Architect's Project Manager (the "**Project Manager**") whose duties shall include, without limitation, directing and coordinating the work of Architect and Architect's Consultants. The Project Manager and the Architect's firm are licensed to provide architectural design services in Missouri. Architect has also designated the other individuals designated on the roster to provide the Services required by this Agreement. Architect's Core Group ("**Architect's Representative**") member shall be the individual designated on the roster. Architect shall not remove or replace any of the above individuals without Core Group's prior written consent, which consent shall not be unreasonably withheld. Any replacement Project Manager or employee presented to the Core Group for approval shall have substantially equivalent or better qualifications than the Project Manager or employee whom he or she replaces. The designated Core Group member shall represent Architect, and all communications given to that individual shall be deemed to have been delivered to Architect.

4.8. CM/GC's Project Personnel. CM/GC has appointed the individual listed on the attached roster as CM/GC's Project Executive (the "**Project Executive**") whose duties shall include, without limitation, directing and coordinating the work of CM/GC and the Subcontractors. CM/GC has also designated the other individuals designated on the roster as Project Manager and Project Superintendent to provide services required by this Agreement. CM/GC's Project Manager and Project Superintendent shall possess a record of experience and performance on construction projects in the same geographic area of and of comparable scope to the Project. CM/GC's Core Group member shall be the individual designated on the roster. CM/GC shall not remove or replace any of the above individuals without the Core Group's prior written consent, which consent shall not be unreasonably withheld. Any replacement presented to the Core Group for approval shall have substantially equivalent or better qualifications than the individual whom he or she replaces. The designated Core Group member shall represent CM/GC, and all communications given to that individual shall be deemed to have been delivered to CM/GC.

CM/GC shall designate the representatives who shall be in attendance at the Project site during performance of the Work. Those designated representatives shall represent CM/GC, and communications given to them shall be binding on CM/GC.

4.9. Personnel Management. The Core Group shall not have any duties of supervision or control of any person employed by Architect, Architect's Consultants, CM/GC or any Subcontractor or Supplier in connection with the Project; provided, however, that the Core Group may require any IPD Team Member to remove any person employed in connection with the Project if it is determined that the presence of such person is detrimental to the performance of the Work or Services or if an employee engages in conduct that Owner reasonably deems to be improper.

4.10. Licensure. Architect represents that Architect and Architect's Consultants, and each of them, are duly licensed professionals (if licensure is applicable), qualified to practice their

professions in the State where the Project is located, and, if a partnership, corporation or other form of business entity, are in good standing and qualified to do business in the State where the Project is located. CM/GC represents that CM/GC and Subcontractors, and each of them, are duly licensed contractors (if licensure is applicable), qualified to practice their professions in the State where the Project is located, and, if a partnership, corporation or other form of business entity, are in good standing and qualified to do business in the State where the Project is located.

5. COLLABORATION AND INTEGRATED PRECONSTRUCTION SERVICES

5.1. Collaboration. In order to achieve Owner's objectives, design of the Project must proceed with informed, accurate information concerning program, quality, cost and schedule. While each IPD Team Member will bring different expertise to each of these issues, all of these issues and the full weight of the entire teams' expertise will need to be integrated throughout the pre-construction process if the value proposition is to be attained. None of the parties can proceed in isolation from the others; there must be deep collaboration and ongoing flow of information.

5.2. Role of Cost & Schedule. Cost and schedule are design criteria, and these issues will be reviewed at the monthly design review meetings. The Core Group shall establish protocols and procedures to ensure that design proceeds fully informed by the cost and schedule implications of the design.

5.3. IPD Team Meetings. The Core Group shall meet every other week and shall schedule regular meetings for the IPD Team to be held weekly. Team members shall collaborate regarding all project elements, including site use and improvements, the selection of materials, building systems, and equipment. CM/GC and trade contractors shall provide on-going review and recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

6. PROJECT PLANNING AND SCHEDULING

6.1. Basic Requirements. The planning and scheduling to be performed on the project shall be "**pull scheduling**" using the Last Planner System™, or an equivalent system. In order to be pull-based, the planning system must be based upon requests from IPD Team members to other project performers upon whom the requester's work is dependent, and promises made by the up-stream performer about when it will finish the work to agreed-upon hand off criteria, in order to enable the downstream performer to begin its performance. At a minimum the system must include a milestone schedule, collaboratively created phase schedules, "make-ready" look ahead plans, weekly work plans, and a method for measuring, recording, and improving planning reliability.

6.2. Phase Planning. The Phase Plan must be based on collaborative planning by all IPD Team members who will perform in a phase, who, working backwards from the milestone, create collaborative phase schedules indicating when work should be done. In developing that Phase Schedule, IPD Team members who understand how the work will be performed shall be in direct conversation with the other IPD Team members from whom they will receive work or to whom they will deliver work, whether this work is physical work or information. The purpose of this conversation is to put the performers in action making direct requests and promises to each

other, and specifically discussing and negotiating the hand-off criteria or conditions of satisfaction that are then mutually understood and agreed upon.

6.3. Make-Ready Look Ahead Plan. The system must also include use of a "make-ready" look ahead plan (minimum duration of 6 weeks or as approved by the Core Group), that identifies for each task or item of work appearing within the planning window, whether any constraints (issues that would prevent the performer from making a reliable promise that the work can be performed as indicated on the plan) exist, and if so what person has personally promised that the constraint will be removed and by when.

6.4 Weekly IPD Team Meetings. At each weekly IPD Team meeting, the coming week is reviewed to assess any remaining constraints that would keep someone from making a reliable promise on the coming week's work plan. For any remaining constraints, promises for removal are solicited, and available work for the coming week is confirmed. Then, the subsequent week is reviewed to assess whether work in that week can be made available as workable backlog. The IPD Team evaluates what unconstrained work could be performed early if either a performer gets ahead or if there is some reason that would prevent the performer from doing the work as promised and identifies this subset as workable backlog. Only work authorized IPD Team is to be workable backlog, preventing people from doing work that could be out of sequence that would cause difficulty or rework for themselves or others.

The IPD Team also reviews weeks three through five to monitor completion of the promises for removing constraints and to surface additional constraints which may have been identified. The IPD Team leader should obtain clear promises including completion dates for removing constraints and declarations of completion on previous promises. The Look Ahead Plan should be updated, marking those tasks with no constraints. Finally, the new week is introduced and the tasks for that week are added to the plan and reviewed. The IPD Team then begins to identify constraints applicable to those tasks.

6.5. Weekly Work Planning Meetings. The system must also incorporate collaborative weekly work planning sessions that identify among specialists or trades, based upon the work identified in the Look Ahead Process as constraint-free, what specific work will be completed to agreed-upon hand-off criteria (so that the follow-on task can be commenced) each day and each week. There should also be daily communication declaring what work has been completed, any variation from what was promised, and any revision for the remainder of the work plan. Finally, the system must have a method for tracking planning reliability and assessing root cause of variations for purposes of continuously improving planning reliability.

6.6. Milestone Schedule. During the Pre-Construction Phase, CM/GC in collaboration with all IPD Team members shall prepare a Preliminary Milestone Schedule for Core Group review and approval. The Preliminary Milestone Schedule shall include the entire Project, including both pre-construction and construction, but shall only be prepared at a milestone level. The schedule shall not exceed the Contract Time and shall not replace the pull-scheduling to be done collaboratively by the Project participants.

Throughout the Project, CM/GC, in collaboration with all IPD Team members, shall update the Preliminary Milestone Schedule monthly; again focusing on major milestones relied upon for tracking purposes. CM/GC shall coordinate and integrate the Preliminary Milestone Schedule with the services and activities of Owner, Architect and CM/GC. As the Project proceeds, the Preliminary Milestone Schedule may be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of the

Project Control Estimate ("PCE") proposal, delivery of materials or equipment requiring long-lead time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates of Substantial and Final Completion.

7 ADDING TRADE CONTRACTORS, SUPPLIERS AND CONSULTANTS TO THE INTEGRATED PROJECT DELIVERY TEAM

7.1. Early Involvement. It is anticipated that CM/GC will engage necessary Trade Contractors and Suppliers, as approved by the Core Group, to provide preconstruction services as described in the Contract Documents. It is anticipated that key trades will be retained during schematic design to facilitate an integrated, collaborative design process. For these key trades, Owner anticipates that proposals will be solicited on a Request for Proposal basis and that selections will be made in collaboration with the Core Group.

7.2. Selection. CM/GC shall seek to develop trade contractor interest in the Project and shall collaborate with the Core Group to develop a list of possible Trade Contractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. Before proposing any Trade Contractor or Supplier, CM/GC shall reasonably satisfy itself that the proposed firm has the financial resources, qualifications, and experience to complete the Work for which it is proposed and is available to do so. The Core Group will promptly review the qualifications and decide whether to add the proposed firm to the list. The "pre-qualification" of proposed firms shall not waive the right of the Core Group later to object to or reject any proposed Subcontractor or Supplier. If CM/GC intends to perform a particular scope of Work using its own forces, CM/GC shall provide the Core Group with its qualifications to perform the Work. If requested by the Core Group, CM/GC may be requested to obtain at least two bona fide price proposals for work that is proposed to be self-performed.

7.3. Replacement. CM/GC shall not change a Subcontractor or Supplier previously selected if any Core Group Member makes reasonable objection to the proposed substitute.

7.4. Coordination Drawings. In addition to other preconstruction services outlined elsewhere in the Contract Documents, Trade Contractors are expected to prepare and participate in developing coordination drawings during the preconstruction phase to identify routing and eliminate conflicts among the work of the various trades. The coordination drawings shall be provided to Architect and Architect's Consultants and necessary information shall be reflected and included in the Design Documents, including the Contract Documents that are submitted for permitting.

7.5. Design-Build Work. The Work may also include design-build scopes of work ("**Design-Build Work**"), for which CM/GC and a Subcontractor shall primarily be responsible for design and construction. For Design-Build Work, Architect and Architect's Consultants shall assist Owner in timely specifying all applicable performance and design criteria. CM/GC shall retain appropriately licensed design professionals to provide design services related to the Design-Build Work.

7.6. Integration of Design. Scopes of work that are being performed on a design-build or design-assist basis shall be fully designed during the preconstruction phase and shall be fully integrated into the Construction Documents that are submitted for permit or other governmental approvals. Architect shall be responsible for coordinating the Design-Build Work with the design being provided pursuant to the terms of this Agreement.

7.7. Design Consultants. Architect and Owner may propose consultants to serve the Project as either Architect's Consultants or Owner's Consultants as those roles are described elsewhere in the Contact Documents. Consultant selection shall proceed on a Request for Proposal basis. Final selection shall be made by the Core Group. Before proposing any consultant, Architect shall satisfy itself that the consultant has the qualifications and experience to perform the services for which it has been proposed, and a willingness to perform as a member of an Integrated Project Delivery Team as contemplated by this Agreement. The Core Group will promptly review the qualifications and decide whether to add the proposed consultant to the pre-qualification list. The "pre-qualification" of proposed consultants shall not waive the right of the Core Group later to object to or reject any proposed consultant. If Architect intends to perform services in design disciplines other than architecture using its own staff, Architect shall provide the Core Group with its qualifications to perform those services. If requested by the Core Group, Architect shall obtain at least two alternative proposals for alternative discipline work that is proposed to be self-performed. Upon request of the Core Group, a consultant's proposal shall include a fee proposal, supported by a resource loaded work plan.

7.8. Continuing Responsibility. The Core Group's acceptance of any consultant's credentials shall not in any way relieve Architect of any duty, responsibility or liability to Owner for Services provided by Architect or any of Architect's Consultants. Design Consultants who have been accepted by the Core Group and retained by Architect are listed in the Project Roster. In addition to signing a Joining Agreement, Design Consultants shall contract directly with Architect for all required services, and all fees and other charges of Design Consultants are included in Architect's compensation as provided in Exhibit G. The Core Group may direct Architect to replace any Consultant or employee(s) of any Consultant to whom the Core Group has reasonable objection. Provided Design Consultant was not in default, a mutually agreed upon adjustment in fee may be negotiated. Owner shall have the right to approve any replacement Consultant or employee(s), which approval shall not be unreasonably withheld. References in this Agreement to Architect shall, unless the context clearly indicates otherwise, include Architect's Consultants.

7.9. Limitation of Liability. Architect shall be responsible and liable for the services provided by Architect's Consultants and shall coordinate those services as described in the Design Schedule.

8. OWNER PROVIDED INFORMATION

8.1. Joint Site Investigation Plan. The Core Group shall develop a Joint Site Investigation Plan for developing the scope of pre-construction investigations at or concerning the site. During the Preconstruction Phase, the parties shall advise the Core Group in writing of all information which is needed from others to design the Project. The Core Group will review any existing information and assess to what extent additional investigations should be pursued and shall identify in writing any apparent deficiencies or discrepancies in the information Owner provides during each phase. Architect shall describe and advise Owner of additional investigations or information reasonably required to prepare the Construction Documents.

8.2. Pre-construction Information. Anticipated pre-construction information shall include the following:

8.2.1. Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

8.2.2. Surveys describing physical characteristics, legal limitations and utility locations for the site, and a written legal description of the site. The surveys and legal information may include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours; locations, dimensions and necessary data pertaining 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 information on the survey shall be referenced to a Project benchmark.

8.2.3. Reports and services of geotechnical engineers. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, ground corrosion and resistivity tests, including necessary operations for anticipating subsurface conditions, with reports and appropriate professional recommendations.

8.2.4. Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

8.2.5. Investigation of existing conditions within a structure to be demolished or remodeled to the extent necessary to design and construct the remodel or demolish the building, in whole or in part.

8.3. Access to Existing Documents. To the extent that documents exist, the Core Group shall provide interested parties access to the documents with reasonable promptness, and without cost or expense. IPD Team members shall review the information furnished with reasonable care and advise the Core Group in writing of any errors, inconsistencies, inaccuracies, or incompleteness which would prompt CM/GC or the Subcontractors to include additional contingency in their estimates or require a designer to make a "worst case" assumption that might prove wasteful if additional investigation was performed, as well as suggest a reasonable set of options for additional preconstruction investigation of existing conditions for Core Group consideration, including the cost and potential benefit of the differing levels of potential preconstruction investigation, which the proponent believes is prudent. To the extent an IPD Team member has performed as described above, it shall be entitled to rely upon the accuracy of the information described above to the extent that it is not contradicted by the Contract Documents.

8.4. Surveys/Legal Information. To the extent called for by the scope of the Project, Owner shall furnish a legal description and all existing and available land surveys of the site, giving, as applicable, grades and lines of streets, alleys, pavement, and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries, and contours of the site; locations, dimensions and complete data pertaining to existing buildings, other improvements, and trees; and full information concerning available service and utility lines both public and private.

8.5. Soils Report. Owner shall furnish reports and appropriate professional recommendations and other services of soils, geotechnical, environmental, and other engineers or professionals for use by Architect and Architect's Consultants, as necessary for proper design of the Project. Such services may include but shall not be limited to test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, including

necessary operations for determining subsoil, air and water conditions. Architect shall review the information provided in these reports and shall coordinate with Architect's Consultants to confirm that the information provided is adequate for preparation of the design documents. If Architect believes new or additional information is necessary, it shall so advise Owner. Architect and Architect's Consultants shall conform to the geotechnical recommendations and shall, after submitting the final design to the geotechnical engineer for review and comment, provide written certification that final design does conform. The geotechnical engineer shall review the final Construction Documents for conformance to the report. Verification of the submittal to the geotechnical engineer shall be made in writing to Owner.

8.6. Coordination/Cooperation. Architect shall be responsible for coordinating the information provided by Owner, Owner's Consultants and Architect's Consultants to prepare coordinated Design Documents pursuant to this Agreement. Pursuant to this coordination obligation, Architect shall meet, confer, cooperate and collaborate, as necessary or appropriate, with the other members of Owner's Project team, including Owner's Consultants and subsequently hired consultants (if any), and IPD Team Members. Architect shall promptly prepare minutes of all such pre-construction or design-related construction phase meetings. Architect and Architect's Consultants have reviewed this Agreement and understand the level of cooperation, collaboration, and preconstruction services that Owner anticipates from Architect and Architect's Consultants, as well as other IPD Team Members.

8.7. Legal/Accounting Services. Owner shall determine the necessity of and furnish all legal, accounting, and insurance counseling services necessary for the Project, including such auditing services as Owner may require to verify Payment Applications or to ascertain how or for what purposes CM/GC uses the monies paid by or on behalf of Owner.

9. BUDGET AND COST MODELING

9.1. Construction Budget. The Construction Budget shall include:

- (a) Total cost to Owner of all elements of site development and construction designed or specified by Architect, including the total costs of labor and materials to be furnished by CM/GC;
- (b) CM/GC's Construction Phase Contingencies and Allowances (see sections 12.4 and 12.11, below);
- (c) CM/GC's Fee;
- (d) Amounts to cover bidding and price escalations; and
- (e) Design Contingency.

The Construction Budget shall not include the cost of labor, materials or equipment relative to Owner-supplied equipment for the Project (except the cost of installation by CM/GC of any Owner-supplied equipment as provided in the Construction Documents), compensation for Architect, or the costs of land, rights of way, financing or other items for which Owner is responsible.

9.2. Design Contingency. The Design Contingency identified in subsection (e) is intended to cover increases in the estimated construction costs beyond those identified in subsection (a) as a result of refinement or development of the Project design (but not increases in square footage or Owner-directed changes from the Program). As shown in the approved budget, the Design Contingency shall be reduced upon approval of the Design Development Documents, upon

delivery and approval of the 50% Construction Document Phase Estimate, and upon the delivery and approval of the 90% Construction Document Phase Estimate. Upon approval of the Design Documents by the permitting agencies, and agreement with CM/GC on the PCE, the Design Contingency shall be reduced to the percentage specified as the Errors & Omissions Contingency in the Project Summary, and shall be used to cover costs associated with design errors and omissions during the Construction Phase as provided for in this Article.

9.3. Budget Parameters. The IPD Team acknowledges that the Construction Budget has been established in accordance with extensive internal procedures. The Construction Budget cannot be revised without Owner approval, which approval could be withheld. This process would result in significant delays for the Project. Therefore, the IPD Team shall use its best efforts to design the Project so that it may be constructed without exceeding the Construction Budget.

9.4 Target Value Design. Owner anticipates that CM/GC and the Trade Contractors will provide Target Value Design support services throughout development of the design. Depending on the stage of the document development, the scope and nature of this ongoing effort may change. The listing of the specific estimates below are specific “roll up estimates” or “gate estimates” to provide Owner the opportunity to confirm that the Work, at those milestones, is proceeding within the approved budget parameters. Those estimates shall be the byproduct of the ongoing target value pricing process and are not intended to be performed by progressing the documents to a certain stage of development and then requesting that the CM/GC and the Trade Contractors provide pricing information. As noted, CM/GC and the Trade Contractors will also be expected to provide ongoing cost information and estimating of portions of the Work, systems being considered, details as they are developed, and other cost exercises that the Core Group deems advisable. Formal estimates should not include a Design Contingency, but should include CM/GC’s Construction Phase Contingency, and a contingency for Escalation in labor and material prices based upon the anticipated construction schedule.

9.5 Target Value Design Process. Target Value Design is intended to make explicit that value, cost, schedule and constructability are basic components of the design criteria. The Core Group shall develop written guidelines or protocols for use of Target Value Design principles throughout the design process. At a minimum, these protocols should address the following:

- 9.5.1. Method to establish initial target costs for major components and systems
- 9.5.2. Method for determining other value elements of Target Value Design
- 9.5.3. Agree on schedule for selection of trade contractors during schematic design
- 9.5.4. Method for forming and meeting structure for cross functional teams (clusters) of designers and builders for major components and systems of the site and structures
- 9.5.5 Method for aligning all Project Participants behind the cardinal rule of Target Value Design: the Work’s Target Cost shall never be exceeded without express written approval of the Owner
- 9.5.6. Method to assure cost analysis and reporting procedures within the cross functional teams (clusters) for monitoring estimated costs against target costs
- 9.5.7. Creation of a Target Value team comprised of the cross functional/cluster leaders to meet regularly and frequently with the responsibility of providing direction for dealing

with Target Value Design tradeoffs and opportunities, including function/cost trade offs and be the authority to direct value engineering and adjustments of the component/system costs up or down to maintain total project target cost

9.6. Cost Model Milestones. As an augmentation to the Target Value Design effort, CM/GC shall consolidate its on-going cost modeling efforts and create the following milestone reports. Along with each report, CM/GC shall provide a narrative report identifying and explaining any variances from previous reports.

9.6.1. On a date established by the Core Group and the Project requirements and design concepts have been developed, CM/GC and Trade Contractors shall prepare, for review by the Core Group and Owner's support staff, a preliminary cost model utilizing area, volume or similar conceptual estimating techniques. This preliminary cost model must be prepared in collaboration with Owner and Architect and shall identify all major assumptions leading to the pricing. The preliminary cost model shall include all of the major building systems, and the quantity and unit cost (or cost per square foot) of each work item shall be shown. The preliminary cost model shall also include a summary showing the anticipated cost of constructing each of the parts of the Project (e.g., site work, building, parking garage and tenant improvements). This Preliminary Cost Model, once reviewed and approved by the Core Group, shall become the basis of the Target Value Design initiatives.

9.6.2. When Schematic Design Documents have been prepared by Architect, CM/GC and the Trade Contractors shall add detail to the Preliminary Cost Model, and submit the SD Cost Model Report with supporting data for review and approval by the Core Group.

9.6.3. When Design Development Documents have been prepared by Architect, CM/GC and the Trade Contractors shall submit a detailed DD Cost Model with supporting data for review and approval by the Core Group.

9.6.4. When the Construction Documents are approximately fifty percent (50%) complete, CM/GC and the Trade Contractors shall submit a 50% CD Cost Model Report. When the Construction Documents are one hundred percent (100%) complete, CM/GC and the Trade Contractors shall prepare a detailed estimate based upon the design drawings and specifications received from Architect, based on trade contractor proposals or bids received and the Cost of the Work that CM/GC will perform using its own forces, and shall set forth any assumptions or interpretations that CM/GC used in making the estimate. This estimate shall be the basis for negotiation of the PCE.

9.7. Contingencies in Cost Model. In its Cost Models, CM/GC may carry a "Construction Phase Contingency," "Escalation," and, if applicable, a "Permitting Contingency," each in an amount to be agreed upon by the Core Group. As noted above, a separate "Design Contingency" will be carried in the Project Budget outside CM/GC's Cost Model. The Construction Phase Contingency is intended to be available, as provided elsewhere in the Contract Documents, to pay for items that arise during the Construction Phase and are properly considered a Cost of the Work, but which were not otherwise included in the PCE and for which a Change Order is not otherwise available. CM/GC shall not include contingency in the Project Cost Model to address refinement of designs, materials, or equipment; instead, CM/GC shall include realistic pricing based upon its listed assumptions and understandings concerning the scope of work, labor, materials, and equipment required by the pending design.

9.8. Cost Model Reconciliation. The Project Cost Model will periodically be reviewed for conformance with the approved budget and target costs, including the use of an acceptable portion of the Design Contingency as allowed by Owner's protocols. If the anticipated project costs as shown in the Project Cost Model fail to align with the Target Costs or the overall Project Budget, the Core Group shall determine what actions to take in order to align the budget and the current estimate. If any party contends that its efforts to bring the design and budget into alignment will result in additional costs for which it believes that it is entitled to additional compensation, the Core Group shall determine the validity of that request and may afford that party access to the respective contingency (CM/GC to the Construction Phase Contingency; Architect to the Design E & O Contingency) to cover the cost.

9.9. Construction Budget Exceeded. If the Construction Budget is exceeded by the PCE proposal, 1) Owner may give written approval to increase the Construction Budget; 2) the Core Group may authorize rebidding or renegotiating all or any portion of the Project within a reasonable time; 3) if the Owner elects to abandon the Project, Owner may terminate this Agreement; or 4) the Core Group may direct the IPD Team to cooperate in revising the Project scope and quality as required to reduce the proposed PCE to reconcile with the available Construction Budget. In the case of 4), the IPD Team shall, modify the Drawings and Specifications as necessary to reduce the proposed PCE to one hundred percent (100%) of the available Construction Budget and shall assist in repricing or renegotiating the Project. If the Core Group determines that the Project design is consistent with or below the Construction Budget at the end of the Construction Document Phase, and the final prices received in formulating the PCE exceed the Construction Budget due to market conditions or other conditions beyond the IPD Team's reasonable control, any redesign shall be compensated as an Additional Service. If the Core Group determines that the price variance is not due to market conditions or other conditions beyond the IPD Team's reasonable control, then the Core Group may but is not obligated to authorize reimbursement out of the respective contingency (Design Contingency E&O portion for designers; Construction Phase Contingency for CM/GC and trades).

10. DEVELOPMENT OF DESIGN DOCUMENTS

10.1. Scope. The Core Group shall oversee development of the design documents for the Project. A description of the scope of services to be provided by Architect and Architect's Consultants and the documents to be developed during each phase of the design is set forth in Exhibit G. In developing the milestone schedules for the preconstruction phase, the Core Group shall determine how to integrate Owner's plan reviews and milestone budget confirmations.

10.2. Information. Owner shall provide full information regarding requirements for the Project including a Program which shall set forth Owner's design objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, special equipment and systems and site requirements. Architect shall assist Owner in developing, identifying and determining the necessary information and requirements which shall be subject to Owner approval.

10.3. Government Regulations. All Design Services, whether provided by Architect, Architect's Consultants, CM/GC, Trade Contractor or Subcontractor, shall comply with all applicable requirements in effect during the preparation of the Contract Documents and any governmental authority from whom permits, approvals or other consents for the Project may be required, including the local Fire Marshal. Responsible Designer shall, without additional compensation, shall use due care in identifying and determining the meaning and effect of all applicable

building code provisions and other applicable building requirements and restrictions, including, without limitation, those which are listed in the Contract Documents, and take such measures as may be necessary to meet such requirements. Such measures shall include, without limitation, filing and/or revising any required applications, drawings, specifications, calculations or other documents, and complying with all applicable conditions precedent to the extent necessary to secure any required permits, approvals or other consents for construction of the Project at the Project site. Owner shall pay all costs and fees required to secure necessary permits, approvals and other consents.

10.4. Pull based Design Production. In order for the CM/GC and the Trade Contractors to provide full value during the preconstruction phase, it is important to develop a flow to development of the Design Documents that is based upon "pull Based" planning as described elsewhere in the Contract Documents. The design team must avoid "advancing" aspects of the design beyond what has been anticipated and approved for any given time period by way of the Core Group's approved planning process. Parties shall only pursue work that is shown on the applicable Project work plan as being performed in that week or that has been identified as "workable backlog" If rework is required as a result of failure to conform to the approved plan, the party that is out of compliance shall be responsible for all resulting costs associated with rework.

10.5. Owner's Approvals. All approvals required from Owner shall be in writing. The approval by Owner of Deliverables shall not constitute a waiver by Owner of, or require Owner to relinquish, any of its rights under this Agreement, nor shall it relieve Architect or Architect's Consultants from any of their obligations or liability for the technical or professional adequacy of their Services.

10.6. Role of CM/GC and Subcontractors. CM/GC will neither have control of or charge of, nor will be responsible for design since this is the sole responsibility of the Architect except as expressly provided elsewhere. It is not CM/GC's or Subcontractors' responsibility to ascertain that design documents prepared by Architect or Architect's Consultants are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, ("**Building Regulations**") unless such Building Regulations bear upon construction means, methods, techniques and sequences. However, if CM/GC or Subcontractors observe at any time that portions of the Contract Documents are at variance in any respect therewith, that party shall promptly notify Architect and Owner in writing and, where appropriate, MEP/FP Engineer, and necessary changes shall be accomplished by appropriate Modification. CM/GC and Subcontractors shall not be liable to Owner or Architect for damages resulting from variance in the design documents prepared by Architect or Architect's Consultants with applicable Building Regulations unless CM/GC or Subcontractors observed the variance and failed to promptly report it to Architect and Owner.

10.7. Responsibility for Design-Build Work. If any portion of the Project is proceeding as Design-Build Work, Owner and Architect shall timely specify all applicable performance and design criteria. CM/GC shall retain appropriately licensed design professionals to provide all design services related to the Design-Build Work. Limitations on CM/GC's responsibility for design stated elsewhere in the Contract Documents (e.g., for compliance of the design documents with the applicable standard of care and Building Regulations) shall be inapplicable to Design-Build Work. CM/GC and each proposed Subcontractor or design professional performing any design-related services for Design-Build Work shall maintain professional errors and omissions insurance in an amount not less than the limits set forth in Exhibit I. CM/GC, or

such other amount as may be specifically approved in writing by Owner, which insurance shall be maintained in effect for at least four (4) years after Substantial Completion of the Project.

10.8. Design Drawing Standards. All design documents shall comply with any drawing standards reasonably required by the Core Group (including Computer-Aided Design) and each IPD Team Member shall require each of its subcontractors or consultants, in writing, to conform to such standards in the development of all Drawings and Specifications. Architect shall provide for the Core Group's review, comment and approval examples of the styles, methods and systems proposed to be used by Architect in the preparation of drawings and specifications to be included in the Construction Documents. If Owner introduces CAD Standards during the course of the Project, IPD Team Member's compensation shall be adjusted to the extent the member is able to demonstrate that the standards require additional work beyond that shown in their original resource-loaded Work Plan.

10.9. Short Agreement. The services provided under this Agreement include those commenced and authorized by any Short Agreement or Work Authorization. All services rendered and fees paid pursuant to the Short Agreement or Work Authorization are merged into this Agreement and shall be part of the Services and fees referenced herein.

11. VALUE ENGINEERING, CONSTRUCTABILITY AND WORK STRUCTURING

11.1. Value Analysis Strategy. Throughout the preconstruction phase, and with particular attention during the SD and DD phases, CM/GC and the Trade Contractors shall, on an ongoing basis, be pursuing opportunities to create additional value by identifying options to reduce capital or life cycle cost, improve constructability and functionality, or provide operational flexibility, while satisfying Owner's programmatic needs. In order to avoid waste associated with re-drawing aspects of the work, the emphasis on value analysis and the opportunity for set-based design (carrying multiple design options forward and deferring decisions until the last responsible moment) must be emphasized early in the design process. In order for these efforts to be effective, the project must gain the early involvement of the Trade Contractors who possess information essential to the Value Engineering ("**VE**") process. The Core Group should focus on developing strategies to utilize value analysis as part of its Target Value Design efforts.

11.2. Value Engineering Proposals. CM/GC and the Trade Contractors shall be encouraged to bring forward alternative systems, means, methods, configurations, finishes, equipment and the like that satisfy the general design criteria of the Project, but which result in savings of time or money in constructing or operating and maintaining the Project, or increasing quality, constructability, or other measures of value and are cost neutral. Each VEP Proposal ("**VEP**") shall examine the proposed change, identify all aspects of the Project directly or indirectly affected by the change, specify the cost or time savings to be achieved if the VEP is accepted, and detail any anticipated effect on the Project's service life, economy of operation, ease of maintenance, appearance, design or safety standards. The IPD Team shall initially review and consider whether to incorporate a VEP in the Project. In case of disagreement concerning whether to accept a VEP, the Core Group shall determine which VEPs to pursue. For VEP that are adopted, the Responsible Designers shall ascertain design feasibility, satisfaction of the design concept, compatibility and compliance with Building Regulations, and professional standards of care.

11.3. Constructability. CM/GC and Trade Contractors shall review the design documents for clarity, consistency, constructability and coordination among the design disciplines' drawings and the construction trades and collaborate with the IPD Team in developing solutions to any

identified issues. Unless otherwise directed by the Core Group, CM/GC shall conduct constructability reviews the findings of which shall be recorded and distributed to all IPD Team Members. The purpose of the Constructability Reviews is to determine that the Construction Documents are progressing in a manner that will result in complete, accurate and coordinated drawings which are sufficiently complete and coordinated for construction, and thereby reduce the risk of disruption, delay, change orders and potential claims. CM/GC and the Trade Contractors will focus on accuracy, completeness, sequencing and coordination. These reviews will also seek out alternative construction materials, sequences, details and systems that may result in a cost or time savings to Owner, or increased quality. The results of the review shall be provided in writing and as notations on the Construction Documents. Architect and Architect's Consultants shall review and respond in writing, either by incorporating changes in the Design Documents or explaining why such action is unnecessary, to each comment in the Constructability Review. CM/GC shall not be responsible to determine if the design is complete, accurate or complies with codes, laws or requirements of government or public authorities having jurisdiction over the Project. Nothing in this section shall relieve any Project Participant from their respective obligations to perform in accordance with the terms of their respective contract and the applicable standard of care.

11.4. Document Review. Throughout pre-construction and construction of the Project, CM/GC, Trade Contractors and Subcontractors shall carefully study and compare the design documents with each other and with the joint Site Investigation Report and any information furnished by Owner as provided elsewhere in the Contract Documents and shall immediately report to Architect and Owner in writing any errors, inconsistencies or omissions discovered. CM/GC shall not be liable to Owner or Architect or MEP/FP Engineer for damages resulting from errors, inconsistencies or omissions in the Contract Documents unless CM/GC, Subcontractors, or Suppliers recognize such error, inconsistency or omission and failed to report it to Architect and Owner. If CM/GC, Subcontractors, or Suppliers perform any construction activity which involves an error, inconsistency or omission in the Contract Documents which CM/GC, Subcontractors, or Suppliers knew of without such notice to Architect and Owner, CM/GC and the appropriate Subcontractor and Supplier shall bear the costs for correction and delay as provided in the Agreement and to the extent determined by the Core Group based upon the relative responsibility of CM/GC, Subcontractors, Suppliers, Architect and Architect's Consultants including compensation for Architect's additional services made necessary by such performance. CM/GC's, Subcontractors, and Suppliers performance will not release Architect from its design responsibility for the Contract Documents, nor will it result in CM/GC or any Subcontractor or Supplier becoming the author of any portion of the Contract Documents prepared by Architect or Architect's Consultants.

12. PROJECT CONTROL ESTIMATE AND CONTRACT TIME

12.1. Proposal. When the Core Group determines that the Drawings and Specifications are sufficiently complete, CM/GC shall prepare a Project Control Estimate ("PCE") proposal, which shall be the sum of the estimated Cost of the Work, any Special Allowances, the Permitting Contingency, the Construction Phase Contingency, the General Conditions and CM/GC's Fee.

12.2. Special Allowances. Inasmuch as the Drawings and Specifications may not be finished at the time the PCE is prepared, CM/GC shall include in the PCE, Special Allowances that contemplate final development of the Drawings and Specifications. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

12.3. Permitting Contingency. The PCE shall also include an agreed-upon amount as a Permitting Contingency to address changes required by the permitting agency in approving the Construction Documents. Upon receipt of the permitted Construction Documents, CM/GC shall promptly identify and notify the Core Group in writing of the cost impact of any resulting modifications to the Construction Documents and the amount of the Permitting Contingency that will be needed to cover those costs.

12.4. Construction Phase Contingency. The PCE's Cost of the Work shall include Construction Phase Contingency. Construction Phase Contingency shall cover all additional or extra Costs of the Work that CM/GC may incur in performing the original scope of Work set forth in the Contract Documents as a result of all conditions and events that do not entitle CM/GC to a Change Order. CM/GC shall not be entitled to draw against the contingency without the Core Group's prior written approval, which consent shall not be unreasonably withheld. Unused Construction Phase Contingency shall revert to Owner, unless an incentive program has been adopted by the Core Group.

12.5. General Conditions. The "**general conditions**" portion of the PCE includes all general and administrative expenses for the Project, including foreseeable delays and interferences, which CM/GC may experience on the Project, for the duration of the schedule which is attached to the proposed PCE. CM/GC will be entitled to use the contingency to augment the General Conditions only if the Core Group determines that such action is reasonably required.

12.6. Weather Allowance. The proposed PCE shall include in its assumptions and clarifications the number of "weather days" that are included as an allowance in the proposed schedule and Amendment No. 1 shall specify the number of weather days agreed upon by the parties. Weather impacts will only constitute Excusable Delays to the extent they exceed the allowance agreed upon in the approved PCE and otherwise meet the criteria for an Excusable Delay as described in the General Conditions.

12.7. This section is not used.

12.8. Basis of PCE. CM/GC shall include with the proposed PCE a written statement of its basis, which shall include:

12.8.1. A list of the Drawings and Specifications, including all addenda, that were used in preparation of the proposed PCE.

12.8.2. The proposed PCE, including a statement of the estimated cost and a schedule of values organized by trade categories, allowances, contingencies permitted by this Agreement, self-performed work, and other items and the fee that comprise the PCE.

12.8.3. A list of the clarifications and assumptions made by CM/GC in preparing the proposed PCE to supplement the information contained in the Drawings and Specifications.

12.8.4. The Date of Commencement and the Date of Completion upon which the proposed PCE is based and a schedule of the Construction Documents' issuance dates upon which the Date of Completion is based.

12.8.5. A list of Allowances, Special Allowances and a statement of their basis.

12.8.6. This section is not used.

12.8.7. A detailed budget and breakdown of all General Conditions and jobsite management expenses included within the PCE.

12.9. Core Group Review of Proposed PCE. CM/GC shall meet with the Core Group to review the proposed PCE and the written statement of its basis. CM/GC shall not incur any cost to be reimbursed as part of the Cost of the Work, except as Owner may specifically authorize in writing, prior to acceptance of the PCE and issuance of a Notice to Proceed. Upon acceptance by Owner of the proposed PCE, the PCE and its basis shall be set forth in Exhibit L which shall be incorporated herein by change order. The PCE shall be subject to additions and deductions by a change in the Work and the Date of Completion shall be subject to adjustment as provided in this Agreement.

12.10. Taxes. The PCE shall include in the Cost of the Work only those taxes which are enacted at the time the PCE is established.

12.11. Allowances. In addition to Special Allowances, CM/GC shall include in the PCE all Allowances stated in the Contract Documents. Items covered by Allowances shall be supplied for such amounts and by such persons or entities as the Core Group may direct. Unless otherwise provided in the Contract Documents:

12.11.1. Allowances shall cover the cost of materials and equipment delivered at the site and all required taxes;

12.11.2. CM/GC's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated Allowance amounts shall be included in the PCE but not in the Allowances unless specifically included in the Allowances;

12.11.3. Whenever costs are more than or less than Allowances, the PCE shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under 3.8.2.1 and (2) changes in CM/GC's costs under 3.8.2.2, but only to the extent caused by the change under 3.8.2.1.

Materials and equipment under an Allowance shall be selected by Owner on or before the last responsible moment as established in the planning documents.

13. FINANCIAL RESPONSIBILITIES AND PROJECT CONTINGENCIES

13.1. Intent. By establishing an IPD Team, assembling the project participants early in the design process, and integrating the construction and design professionals throughout the preconstruction and construction phases of the Work, the Owner intends to minimize the risk of delay, disruption and cost exposure experienced in a traditional project delivery model. By participating in the integrated delivery model, each of the participants believes that the overall risks to the Project and each of the participants is reduced.

13.2. Project Risk Assessment. CM/GC represents that during the Preconstruction Phase and before submitting its PCE proposal, it will carefully examine the site at which the Work will be performed and all of the documents included in the Contract Documents; recommend to the

Core Group or perform all reasonable investigations essential to a full understanding of the difficulties that may be encountered in performing the Work; be familiar with the terms and conditions thereof; and acquaint itself with and advise the Core Group concerning the conditions under which the Work is to be performed, including, without limitation, laws, codes and other restrictions on CM/GC's and Subcontractors' operations, local labor conditions, local weather patterns, restriction in access to and from the Project site, prior work performed by others on the Project, and obstructions and other conditions relevant to the Work, the site of the Work and its surroundings.

13.3. Limitation on Change Orders. Subject to its right to access the Construction Phase Contingency, CM/GC will use its best efforts complete the Project for the compensation stated in the PCE except as provided below. Inasmuch as CM/GC will be involved in the Preconstruction Phase of the Project, CM/GC agrees, for itself and on behalf of its Subcontractors and suppliers, that no increase in the PCE will be made for work that CM/GC or any other IPD Team Member might otherwise claim as a Change Order or extra work unless CM/GC establishes that the additional cost is the result of one of the following: (a) material change in the scope of work; (b) a change required by regulatory authorities (including inspections) that was not reasonably ascertainable from the Contract Documents; (c) Differing Site Conditions; (d) a Compensable Delay; or (e) a claim for which the Owner is found liable. CM/GC further acknowledges that its contractual obligation to indemnify Owner extends to claims asserted by Subcontractors or Suppliers seeking compensation for alleged Change Orders or extra work for which Owner is found not to be liable to CM/GC under this Agreement. Nothing in this section shall foreclose CM/GC from access to the Construction Phase Contingency for properly incurred Costs of the Work that are attributable to causes for which a change order is prohibited by this section.

13.4. Design Errors/Omissions. If, during construction of the Project, Owner incurs additional costs in excess of the percentage set forth in the Project Summary of the CM/GC's PCE (Design Errors & Omission Contingency) as a result of Architect's or Architect's Consultant's or omissions (whether violating the standard of care or not), those additional costs shall be charged against the Construction contingency unless said costs are reimbursed pursuant to a policy of professional liability insurance maintained by Architect, Architect's Consultants or MEP/FP Engineer.

13.5. Limitation on Liability. In the absence of negligence, Architect's liability under the foregoing paragraphs, shall be limited to a maximum amount equal to the percentage specified in the Project Summary as the Design Errors & Omission Contingency. Thus, the dollar amount established as Owner's responsibility under this Section shall also be Architect's limit of non-negligent liability established herein. Nothing in this paragraph shall limit Architect's liability to the extent Owner establishes negligence.

The percentages established are based upon the project delivery method and risk allocation under this Agreement. If Owner materially modifies these items, then Architect may propose revised percentages.

13.6. Consequential Damages. No party to this Agreement shall be liable to any other party to this Agreement for consequential damages arising from any cause. The Owner, Architect and CM/GC waive Claims against each other for consequential damages arising out of or relating to this Agreement.

13.7. Differing Site Conditions. The parties agree that the existence of differing site conditions shall not be the basis of a claim of error or omission, provided that Architect and Architect's

Consultants have exercised due care in reviewing available information concerning conditions at the site, participated in development of the joint Site Investigation Plan, and performed the level of investigation selected by Owner.

13.8. Core Group Root-Cause Assessment. The Core Group shall meet at least monthly, beginning with commencement of construction to assign Change Orders to specific categories as defined and listed in Exhibit J. Depending on the causes of a particular change, there may be an apportionment between or among the multiple causes or categories specified in Exhibit J.

14. INCENTIVES

14.1. Goal. Owner believes that by forming the IPD Team and implementing Integrated Project Delivery, it will be able to eliminate wasted cost and time from the design and construction process, increase the quality of the final product, make the project safer, all while increasing the return on investment for IPD Team Members.

14.2. Financial Incentive Program. In support of Integrated Project Delivery, the Core Group, including the Senior Management Representatives, have developed a financial incentive program to encourage superior performance based upon Owner's Integrated Project Delivery goals and to reward the IPD Team for successfully achieving superior performance and successfully exceeding the project expectations and benchmarks. The financial incentive program is attached as Exhibit K. The method, manner, amounts and timing of any payments made as a result of the financial incentives program shall be as detailed and specified in Exhibit K.

14.3. Characteristics of Program. Any incentive program should provide a basis for continually monitoring and reviewing the project team's performance, providing the team with periodic performance information to allow corrections or modifications during project performance to improve the quality of the services provided. The program should be funded with project savings as evidenced by contingency preservation and reduction in the Project's Costs of the Work as compared to the amounts contained within the PCE. The program should consider performance in the following areas: Cost, quality, safety, schedule, planning system reliability, innovative design or construction processes.

15. CONSTRUCTION PHASE OPERATIONS

15.1. "5S" Plan. CM/GC and the Subcontractors shall develop and implement a "5S" plan for the Project. The plan shall address the following elements:

Sort: Removing clutter and all unnecessary items from the work environment; items are brought or stored only when they are needed and are removed from the site when no longer required. Applies to paper, drawings, and other office items, as well as materials and equipment.

Set in Order: Identifying the location where items will be used and placing those items close at hand; creates a place for everything, and requires that everything be put in its place. Items and storage vessels are clearly labeled or marked.

Shine/Sweep: Creating an orderly and clean workspace with continuous clean-up; visual and physical protocol for continuous disposal of refuse; schedule for regular clean-up; visual displays to support.

Standardize: Publishing “Standard practices” for implementing the 5S Program, but constantly look to improve.

Sustain/Self-Discipline: Creating the expectation that satisfying the plan covering the first four elements is the minimum, and that performers are expected to continually evolve and improve the systems.

The 5S Plan shall be submitted to the Core Group for review and approval.

15.2. Clean-up. CM/GC and Subcontractors shall keep the premises and surrounding areas free from accumulation of waste materials or rubbish caused by operations. At completion of the Work, CM/GC and Subcontractors shall remove from and about the Project, waste materials, rubbish, tools, construction equipment, machinery and surplus materials.

15.3. Owner's Rights. If CM/GC fails to clean up as provided in the 5S plan and the Contract Documents, after reasonable notice from Owner of such failure, Owner may do so and the cost thereof shall be charged to CM/GC.

15.4. Glass. CM/GC shall be responsible for glass broken or damaged prior to Substantial Completion by CM/GC or its subcontractors, and at Substantial Completion of the Work, shall replace such damaged or broken glass. After broken or damaged glass has been replaced, CM/GC shall remove all labels, and wash and polish both sides of all glass.

15.5. Use of Site. CM/GC shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. To the maximum extent feasible, CM/GC shall use just-in-time deliveries of materials and equipment.

15.6. Cutting and Patching. CM/GC shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

15.7. Protection of Other's Work. CM/GC shall not damage or endanger a portion of the Work or fully or partially completed construction of Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. CM/GC shall not cut or otherwise alter such construction by Owner or a separate contractor except with written consent of Owner and of such separate contractor; such consent shall not be unreasonably withheld. CM/GC shall not unreasonably withhold from Owner or a separate contractor CM/GC's consent to cutting or otherwise altering the Work.

15.8. Field measurements. To allow Architect to make corrections, CM/GC and Subcontractors shall, sufficiently in advance of undertaking Work, take field measurements and verify field conditions and carefully compare such field measurements and conditions and other information known to CM/GC or Subcontractors with the Contract Documents. Errors, inconsistencies or omissions discovered shall be reported immediately to Architect and Owner in writing. If CM/GC or Subcontractors perform any construction activity which involves an error, inconsistency or omission in Contract Documents which CM/GC or Subcontractors knew of, without such notice to Architect and Owner, CM/GC and Subcontractors shall bear the cost as provided elsewhere in this Agreement.

15.9. Supervision and Oversight. CM/GC shall supervise and direct the Work using CM/GC's best skill and attention. CM/GC shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, including safety

procedures, and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions. CM/GC shall be responsible to Owner for acts and omissions of CM/GC's employees, Subcontractors, suppliers and any of their agents and employees, and other persons or entities performing portions of the Work for or on behalf of CM/GC or any of its Subcontractors or suppliers..

15.10. Coordinating Inspections. If any of the Work is required to be inspected or approved by any public authority, CM/GC shall cause such inspection to be performed or approval to be obtained. No inspection performed or failed to be performed by Owner hereunder shall be a waiver of any of CM/GC's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

15.11. Compliance with Law. CM/GC shall comply, at its own expense, with all applicable federal, state and local laws, codes, rules, regulations, orders, judgments and decrees which are in effect at any time prior to or during the performance of Work, to the extent such laws, codes, rules, regulations, orders, judgments and decrees govern CM/GC's performance of the Work. All changes to the Drawings and Specifications are subject to the approval of the applicable authorities having jurisdiction. Should any laws or ordinances that affect construction of the Project be enacted after execution of the Agreement which cause CM/GC to bear additional costs, Owner shall reimburse CM/GC for such costs.

15.12. This section not used.

15.13. Instructions. Where specific instructions are given in the Contract Documents, CM/GC shall review the instruction, including those of manufacturers, and promptly notify Architect in writing if the specific instruction or procedure deviates from accepted construction practice or normal procedure, or may affect warranties or other responsibilities of CM/GC. CM/GC's notification shall include reasonable alternatives that CM/GC will warrant will accomplish the original intent of the Contract Documents.

15.14. Construction Staking. CM/GC shall employ a Licensed Surveyor to locate and provide construction staking for the Work and establish necessary reference and bench marks. CM/GC, working from established bench marks and reference points, shall lay out and correctly establish all lines, levels, grades and locations of all parts of the Work and be responsible for the accuracy and proper correlation with the Work and established data.

15.15. Labor and Materials. Unless otherwise provided in the Contract Documents, CM/GC shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. CM/GC shall order the material and equipment in accordance with an agreed-upon material logistics plan and the current Look Ahead Plan in an effort to promote just-in-time deliveries to the site in an effort to minimize handling costs and provide the least obstruction of the premises and any adjoining property. CM/GC may make substitutions only with the consent of Owner, after evaluation by Architect and in accordance with a Change Order. Acceptance of materials by or on behalf of Owner does not bar future rejection if subsequently found to be defective, inferior in quality or uniformity to material specified, or not as represented.

15.16. Personnel. CM/GC shall enforce strict discipline and good order among CM/GC's employees and other persons carrying out the Work. CM/GC shall not permit employment of

unfit persons or persons not skilled in tasks assigned to them and shall replace individuals upon request of the Core Group. CM/GC shall provide and maintain at all times a sufficient number of properly trained, skilled and qualified personnel to complete the Work within the Contract Time.

15.17. Taxes. Except to the extent such taxes are not applicable because of Owner's tax-exempt status, CM/GC shall pay sales, consumer, use and similar taxes for the Work provided by CM/GC which are legally enacted when the PCE is finalized, whether or not yet effective or merely scheduled to go into effect.

15.18. Permits and fees. Unless otherwise provided in the Contract Documents, CM/GC shall secure and pay for the building permits and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required. CM/GC shall procure all certificates of inspection, permits and licenses, pay all charges and fees, and give all notices necessary and incidental to the due and lawful operation of its business and prosecution of the Work. Certificates of inspection, including permit cards, shall be delivered to Owner upon completion of the Work in sufficient time for occupation of the Project in accordance with the approved schedule for the Work. CM/GC shall identify in the Construction Milestone Schedule when such licenses, permits, fees and inspections shall be necessary.

15.19. Legal Notices. CM/GC shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work.

16. ARCHITECT'S ADMINISTRATION OF THE CONTRACT

16.1. Duties. Duties, responsibilities and limitations of authority of Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Core Group. If the employment of Architect is terminated, Owner shall employ a new architect, whose status under the Contract Documents shall be that of the former architect.

16.2. Construction Administration. Architect will provide Construction Administration until Final Payment is due and, with Owner's concurrence, from time to time during the one (1)-year warranty period. Architect will have authority to act on behalf of Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

16.3. Site Visits. Architect will visit the site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. However, Architect will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of such on-site observations as an architect, Architect shall prepare site observation reports concerning the progress and quality of the Work, and promptly alert Owner to any nonconformance or condition which might, in Architect's professional opinion, adversely affect the Work or Owner's budget. Architect shall submit a written report as required in the project communications protocol.

16.4. On-Site Representative. To the extent contemplated in the original work plan or if Owner and Architect agree, Architect will provide one or more on-site project representatives to assist in carrying out Architect's responsibilities at the site. The duties, responsibilities and limitations

of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

16.5. Means and Methods. Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely CM/GC's and Subcontractor's rights and responsibilities under the Contract Documents, except as expressly provided elsewhere. Architect will not be responsible for CM/GC's failure to perform the Work in accordance with the requirements of the Contract Documents. Architect will neither have control over or charge of, nor be responsible for, acts or omissions of CM/GC, Subcontractors, or their agents or employees, or of any other persons performing portions of the Work. Notwithstanding the foregoing, if Architect observes any defect, deficiency or nonconformity in the Work, Architect shall immediately so notify both CM/GC and Owner.

17. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

17.1. Submittals. Submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which CM/GC and Subcontractors propose to conform to the information given and the design concept expressed in the Contract Documents. CM/GC shall perform no portion of the Work for which the Contract Documents require delivery and review of Submittals until the respective Submittal has been approved by Architect. Review by Architect is subject to the limitations set forth in this Article. Informational submittals upon which Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals made by CM/GC which are not required by the Contract Documents may be returned without action.

17.2. CM/GC Review. CM/GC shall review for compliance with the Contract Documents, stamp "Reviewed" and submit to Architect, all Submittals required by the Contract Documents with reasonable promptness and in such sequence that conforms to the Phase Schedule and Look Ahead Plan. By reviewing and submitting Submittals, CM/GC represents that it has determined and verified materials, field measurements and related field construction criteria, and has checked and coordinated the information contained within such Submittals with the requirements of the Work and the Contract Documents.

17.3. Transmittal. Submittals shall be accompanied with a request that they be reviewed and returned by a date stated in the transmittal that is related to the ordering or fabrication of the material or equipment or a need to begin the work covered by the submittal. Architect shall discuss the date with CM/GC and make a reliable commitment concerning the date by which the submittal will be returned. This commitment will be recorded and will be reflected in the planning system. Absent an agreement to the contrary, the review period should be no longer than 21 days.

17.4. Variation of Contract Documents. The Work shall be in accordance with approved Submittals, except that CM/GC shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Architect's approval of Submittals unless CM/GC has specifically informed Architect in writing of such deviation at the time of submittal and (1) Architect has given written approval to the specific deviation as a minor change in the Work or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. CM/GC shall not be relieved of responsibility for errors or omissions in Submittals by Architect's approval.

17.5. Certifications. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, Architect shall be entitled to rely upon the accuracy and completeness of such calculations and certifications furnished by CM/GC.

17.6. Architect's Review. Architect and Architect's Consultants will review and approve or take other appropriate action upon CM/GC's Submittals for the purpose of checking for compliance with the Contract Documents and determining whether, when completed, the Work as described in the Submittal will comply with the requirements of the Contract Documents. If a Submittal is rejected, Architect's Representative shall discuss with CM/GC the reason for the rejection and describe the modifications required in order to gain acceptance, as well as returning the Submittal. Architect's review of CM/GC's Submittals shall not relieve CM/GC of its obligations under the Contract Documents.

17.7. Re-Submittals. CM/GC shall direct specific attention, in writing, on resubmitted Submittals, to revisions other than those requested by Architect on previous Submittals. In the absence of such written notice, Architect's approval of a resubmission shall not apply to such revisions. Review of such Submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of CM/GC as required by the Contract Documents.

17.8. Limitation on Review. Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Architect, of any construction means, methods, techniques, sequences or procedures. Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component, or of deviations from the Contract Documents not specifically identified in CM/GC's transmittal accompanying the Submittal.

18. REQUESTS FOR INFORMATION ("RFI'S")

18.1. Zero RFI Goal. The goal of Integrated Project Delivery and the extensive pre-construction involvement of CM/GC and Subcontractors is to maximize the parties understanding of the design requirements, including the design intent and all technical requirements of the Project, prior to field construction. If the parties have maximized this opportunity, there will be no need for RFI's or clarifications after construction is commenced. The Project goal is zero RFI's.

18.2. Process. To the extent that the need for clarification does arise, the party seeking clarification should first raise the issue either in a face-to-face conversation or via telephone in accordance with the Project Communication Protocols. The initial conversation shall describe the issue, identify the area affected, and request the clarification needed. If the parties to that conversation are able to resolve the issue in the course of that conversation, they shall also agree on how the clarification shall be documented and reported to the Core Group. If the parties to that conversation are not able to resolve the issue in the course of that conversation, they shall agree on how the issue will be resolved (who, will do what, by when) and shall agree which of them will notify the Core Group concerning the issue and how they plan to resolve it. It is the parties' goal that RFI's will only be issued to document solutions, rather than raise questions that have not previously been the subject of a conversation, To the extent that

resolution of the issue may affect progress of the Work, the issue shall be included in the planning system.

18.3. Time Limits. Absent an agreement or direction to the contrary by the Core Group, clarifications shall be issued within no more than fourteen (14) days after receipt of a request for interpretation. If the requesting and responding parties are unable to reach agreement on the time for a response, they shall notify the Core Group, and a telephone call shall be scheduled within two (2) business days between the Core Group members and the requesting and responding parties to arrive at a mutually agreeable time period.

18.4. Basis. Interpretations and decisions of Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

19. DOCUMENTS AND SAMPLES AT THE SITE

19.1. Site Documents. CM/GC shall prepare and maintain on a current basis an accurate and complete set of:

- (a) Record Drawings showing clearly all changes, revisions and substitutions during construction, including without limitation field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, pipes, structural members, walls, partitions and other significant features; and
- (b) Annotated Specifications showing clearly all changes, revisions and substitutions during construction.

These Record Drawings and Annotated Specifications shall be kept at the Project site, and CM/GC shall update them as often as necessary to keep them current, but no less often than every two (2) weeks. The Record Drawings and Annotated Specifications shall be available for inspection by Owner, Architect, and any governmental or quasi-governmental authority with jurisdiction over the Work.

19.2. Final Record Set. As a condition to Final Payment Application, CM/GC shall provide one (1) complete set of Record Drawings and Annotated Specifications to Architect, certifying them to be an accurate reflection in all material respects of the actual construction conditions of the Work. Owner shall provide reproducible documents for CM/GC's use in preparing the Project record drawings referred to above. At Owner's request, and pursuant to a Construction Change Directive or Change Order, CM/GC shall provide the Record Drawings and Annotated Specifications in an electronic format specified by Owner. The record drawings to be provided pursuant to this article shall be an as-built version of the construction drawings. The record drawings shall contain a level of detail and specificity comparable to the construction drawings used for the Project.

19.3. Other Documents. CM/GC shall also maintain one (1) record copy of Change Orders and Construction Change Directives, and approved Shop Drawings, Product Data, Samples and similar required submittals at the Project Site ("Site Documents"). These items shall be available for inspection by IPD Team Members and any governmental or quasi-governmental authority with jurisdiction over the Work. At Owner's request, and pursuant to a Construction Change Directive or Change Order, CM/GC shall provide to Owner a complete set of Site Documents, not including a record survey of completed construction, in good condition and

certifying them to be complete and accurate in all material respects, at the time of its Final Payment Application.

20. SAFETY PRECAUTIONS AND PROGRAMS

20.1. Responsibility. CM/GC shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with performance of the Work. This requirement applies when activities are taking place on site. CM/GC shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

20.1.1. Employees on the Work and other persons who may be affected thereby;

20.1.2. The Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of CM/GC or CM/GC's Subcontractors or Sub-subcontractors;

20.1.3. Other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and

20.1.4. Plant life and soils, without limitation, due to solvents, oils and any other substance which may be harmful. Those materials shall be disposed of in containers and removed from the site. At completion of Work, any soil contaminated by CM/GC's operations shall be removed and replaced with soil of equal quality prior to contamination and re-planted by CM/GC.

20.2. Safety Notices. CM/GC shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

20.3. Fines & Penalties. CM/GC shall be responsible for the payment of all fines levied against Owner arising from or related to activities over which CM/GC has responsibility under the Contract Documents.

20.4. Adjacent Owners. CM/GC shall give notice in writing at least forty-eight (48) hours before breaking ground, to all persons having interests on or near the site, including utility companies, owners of property having structures or improvements in proximity to the site, superintendents, inspectors, or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads or otherwise who may be affected by CM/GC's operation, in order that they may remove any obstruction for which they are responsible and have a representative on site to see that their property is properly protected. Such notice does not relieve CM/GC of responsibility for any damages, claims, and defense of all actions against Owner and Architect resulting from performance of such Work in connection with or arising out of the Contract.

20.5. Barriers & Warnings. CM/GC shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

20.6. Ultra-hazardous Activity. When use or storage of hazardous materials or equipment or unusual methods are necessary for execution of the Work, CM/GC shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

20.7. Remedying Damage. CM/GC shall promptly remedy damage and loss to property referred to in this Article to the extent caused in whole or in part by CM/GC, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which CM/GC is responsible under this Agreement, except damage or loss attributable to negligence or willful misconduct of Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, subject to recovery under property insurance provided in accordance with Section 32.9. The foregoing obligations of CM/GC are in addition to CM/GC's indemnity obligations set forth elsewhere in the Contract Documents.

20.8. Safety Representative. CM/GC shall designate the Project Superintendent, or such other qualified member of CM/GC's organization at the site as may be approved by Owner, to be primarily responsible for the prevention of accidents. If Owner, Architect or any public agency with jurisdiction notifies CM/GC of any claimed dangerous condition at the site which is within CM/GC's care, custody or control, CM/GC shall take immediate action to rectify the condition at no additional cost to Owner. CM/GC shall be responsible for the payment of all fines levied against Owner for deficiencies relating to CM/GC's supervision or conduct of the Work.

20.9. Project Loading. CM/GC shall not load or permit any part of the Work, existing property or structures, or the site to be loaded so as to endanger the safety of persons or property.

20.10. Architect's Role. Architect's review of CM/GC's performance does not include review of adequacy of CM/GC's safety measures.

20.11. Weather Risks. CM/GC shall maintain Work, materials and apparatus free from injury or damage from rain, wind, storms, frost or heat. If adverse weather makes it impossible to continue operations safely in spite of weather precautions, CM/GC shall cease Work and notify Owner and Architect of such cessation.

20.12. Site Damage. In addition to its other obligations pursuant to this Article, CM/GC shall, at its sole cost and expense, promptly repair any damage or disturbance to walls, utilities, sidewalks, curbs and property of third parties (including municipalities) resulting from performance of the Work, whether by it or by its Subcontractors.

20.13. Streets. CM/GC shall maintain streets in good repair and traversable condition. CM/GC shall return all improvements on or about the site and adjacent property which are not shown to be altered, removed or otherwise changed, to conditions which existed previous to starting performance under the Contract.

20.14. Water Precautions. CM/GC shall keep all parts of site, including excavations, free from any accumulation of water. CM/GC shall dispose of water in such manner as will not endanger public health or cause damage to property or expense to any adjacent property owner. CM/GC shall comply with requirements of any public agencies having jurisdiction. If sewers and streets are allowed to be used for drainage or disposal of water during construction, CM/GC shall maintain and leave these satisfactorily clean upon completion of the Work.

20.15. Emergencies. In an emergency affecting safety of persons or property, CM/GC shall act, at CM/GC's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by CM/GC on account of an emergency shall be determined as provided in Article 22.

20.16. Accidents. CM/GC shall promptly report in writing to Owner and Architect all accidents arising out of or in connection with the Work which result in death, personal injury or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to Owner and Architect.

21. HAZARDOUS MATERIALS

21.1. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

21.2. The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Control Estimate shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 24.

21.3. To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Subparagraph 21.3 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

21.4. The Owner shall not be responsible under Paragraph 21.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

21.5. If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

22. TIME

22.1. Contract Time. The "**Contract Time**" is the period of time, including authorized adjustments, allotted in the PCE or elsewhere in the Contract Documents for Substantial Completion of the Work.

22.2. Date of Commencement. The "**Date of Commencement**" of the Work is the date established in the Notice to Proceed. CM/GC shall not knowingly, except by agreement or instruction of Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by this Agreement to be furnished by CM/GC. The Date of Commencement of the Work shall not be changed by the effective date of such insurance.

22.3. Substantial Completion. The date of "**Substantial Completion**" is the date certified by the Core Group in accordance with Article 29.

22.4. Day. The term "**day**" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

22.5. General. Time limits stated in the Contract Documents are of the essence of the Contract. By executing the document establishing the Contract Time, the parties confirm that the Contract Time is a reasonable period for performing the Work. CM/GC shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

22.6. Substantial & Final Completion. CM/GC shall achieve Final Completion of the Work within forty-five (45) days after Substantial Completion. If either Substantial Completion or Final Completion is delayed as a result of a governmental agency's refusal to accept the Project and the refusal is unrelated to CM/GC's performance or failure to perform the Work, or to satisfy its obligations under the Contract Documents, CM/GC shall be entitled to an Excusable Delay and a time extension.

22.7. Delays. Whenever it becomes apparent that the Substantial Completion date may extend beyond the Contract Time, CM/GC shall initiate collaborative efforts to re-plan the Work in order to achieve Substantial Completion within the Contract Time. CM/GC shall prepare and submit the revised plan, including an updated schedule describing how the IPD Team intends to recover so as to complete the Work within the Contract Time, within the time requested by the Core Group.

22.8. Time Extensions. If CM/GC is delayed at any time in the commencement or progress of the Work by an "Excusable Delay" or "Compensable Delay" as defined below and CM/GC complies with the requirements of this Article, the Contract Time shall be extended. If the delay is a Compensable Delay, CM/GC shall also be entitled to an adjustment in the PCE for actual costs incurred as a result of the Compensable Delay.

22.9. Excusable Delay. "**Excusable Delay**" means any delay in Substantial or Final Completion of the Work beyond the expiration of the Contract Time caused by conditions beyond the control and without the fault or negligence of CM/GC such as strikes, embargoes, fire, unavoidable casualties, natural disasters, unusual delays in transportation, national emergency, which were not and could not in the exercise of reasonable diligence have been foreseen by CM/GC. An Excusable Delay may also be due to adverse weather, provided CM/GC satisfies the provisions of this Article. The financial inability of CM/GC or any

Subcontractor, Sub-subcontractor or Supplier and any default of any of them, without limitation, shall not be deemed conditions beyond CM/GC's control. An Excusable Delay shall entitle CM/GC to an equitable extension of the Contract Time, in accordance with this subparagraph, but shall not entitle CM/GC to any adjustment of the PCE. CM/GC may, but only with Core Group's written approval which approval shall not be unreasonably withheld, use a portion of the Construction Phase Contingency to cover direct costs attributable to an Excusable Delay.

22.10. Compensable Delay. "**Compensable Delay**" means any delay in Substantial or Final Completion of the Work beyond the expiration of the Contract Time to the extent caused by the acts or omissions of Owner or Architect, or issuance of Change Orders, or claims for which the Owner is found to be liable, or directions to suspend the Work not attributable to the fault or neglect of CM/GC or its subcontractors or suppliers. A Compensable Delay shall entitle CM/GC to an extension of the Contract Time and/or an adjustment of the cost of construction, if warranted in which event the PCE shall be adjusted accordingly.

22.11. Inexcusable Delay. "**Inexcusable Delay**" means any delay in Substantial or Final Completion of the Work beyond the expiration of the Contract Time or the date for Final Completion due to the fault of CM/GC. An Inexcusable Delay shall not entitle CM/GC to an extension of the Contract Time or an adjustment of the PCE.

22.12. Concurrency. CM/GC may make a claim for an extension of the Contract Time, for an Excusable Delay or a Compensable Delay subject to the following:

22.12.1. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time shall be the number of days from the commencement of the first delay to the cessation of the delay which ends last.

22.12.2. If an Inexcusable Delay occurs concurrently with either an Excusable Delay and/or a Compensable Delay, CM/GC shall be entitled to an extension of time only for the period the delays are concurrent and shall not be entitled to any adjustment in the PCE. Delays in the prosecution of parts or classes of the Work which do not prevent or delay Substantial Completion of the whole Work within the Contract Time are not to be considered Excusable or Compensable.

22.13. No Waiver. Any extension of time granted CM/GC pursuant to this article shall not constitute a waiver by Owner, nor a release of CM/GC from its obligations to perform the Work in the time specified by the Contract Documents, as modified by the particular extension in question. Granting of a time extension due to one circumstance on one request shall not guarantee an extension of time for any other circumstance or the same circumstance occurring at some other time, and shall not be viewed by CM/GC as a precedent for any other request for extension.

22.14. Notice of Potential Claim. If any party intends to make Claim for an increase in the Contract Time, Notice of Potential Claim shall be given as provided in Article 41. The Notice of Potential Claim shall include an estimate of probable cost and of probable effect of delay on progress of the Work. Claims for extension of time shall include written justification as required by the Contract, as well as sufficient extraction and analysis of the Construction Schedule as may be required to verify the claimed effect on completion. Approved changes in the Contract Time shall be incorporated by Change Order. Only delay impacting the critical path of the Work shall be considered when determining if CM/GC is entitled to additional time.

22.15. Adverse Weather. If CM/GC is delayed at any time in progress of the Work by adverse weather, or the impact of weather on conditions of the site, then the Contract Time shall be extended only for those delays which meet the following test:

22.15.1. The Work at the Project site which was delayed must have involved an activity on the critical path of the most recently approved Construction Schedule; and

22.15.2. The adverse weather must have prevented at least twenty-five percent (25%) of the normal labor and equipment force for the critical path activity from proceeding with its Work in a reasonable manner; or

22.15.3. The adverse weather must have prevented the normal labor and equipment force for the critical path activity from working at least five (5) hours of a normal eight (8)-hour day; and

22.15.4. The adverse weather or impacts at the site exceed the allowance as set forth in the Construction Schedule.

22.16. Daily Weather Documentation. All adverse weather conditions shall be documented daily and confirmed by the Owner's Representative, whether they are within the allowance or will form the basis of a Claim for an extension of the Contract Time. A summary of weather impacts shall be submitted to the Core Group at least monthly, together with the schedule update. A copy of the on-site Owner's Representative daily log shall be submitted as part of the required documentation for a Claim requesting such an extension of the Contract Time. That documentation shall include crew size, current work activities, equipment, on-site weather conditions, updated schedule, and other relevant information documenting the delay due to adverse weather.

23. DIFFERING SITE CONDITIONS

23.1. Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents ("Differing Site Conditions"), then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Core Group will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in CM/GC's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the PCE or Contract Time, or both. If the Core Group determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Core Group will notify CM/GC in writing, stating the reasons. If after receiving the response, CM/GC still intends to pursue a Claim, it shall provide written notice within ten (10) days after it has received the decision.

23.2. Exclusion. Conditions will not be qualified as concealed or unknown if they were readily visible or reasonably accessible in performance of the Joint Site Investigation.

23.3. Claim Submission. In addition to the information required for other Claims, a Differing Site Condition Claim shall include the following information:

23.3.1. A description of the unknown or concealed condition;

23.3.2. How the condition differs materially from those indicated or anticipated in the Contract Documents; and

23.3.3. An estimate of any schedule impact or change in the scope of the Work required as a result of the condition, which estimate shall be based upon exploratory excavation, system trace out or other means immediately available.

24. CHANGES IN THE WORK OR ADDITIONAL SERVICES

24.1. General. Adjustments to the PCE on account of changes in the Work or to Architect's Compensation based upon Additional Services shall be determined as provided in this Section. In calculating adjustments to subcontracts, CM/GC is limited to its percentage fee, together with documented additional costs. Adjustments to subcontracts awarded with Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

24.2. Process. Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 24 and elsewhere in the Contract Documents. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and CM/GC shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. No change in the Work shall be the basis of adjustment to PCE or Contract Time unless and until authorized by a Change Order, Construction Change Directive or Change Proposal Request executed and issued in accordance and in strict compliance with the requirements of the Contract Documents. This requirement is of the essence to the Contract Documents. Accordingly, no course of conduct or dealings between the parties, no express or implied acceptance of alterations or additions to the Work shall be the basis for any claim for an increase in the PCE or change in the Contract Time.

24.3. Documentation. A "**Change Order**" is a written order to CM/GC signed by Owner, Architect and CM/GC issued after the execution of this Agreement, authorizing a Change in the Project or the method or manner of performance and an adjustment in the PCE, the CM/GC's Fee, or the Contract Time and shall be based upon agreement between Owner and CM/GC. A "**Construction Change Directive**" is a written order to CM/GC signed by Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the PCE or Contract Time, or both. and may or may not be agreed to by CM/GC. An order for a minor change in the Work that does not involve a change in the PCE or the Contract Time may be issued by Architect alone.

24.4. Effect of Change Order. Agreement on any Change Order, Construction Change Directive or Change Proposal Request shall constitute a final settlement of all matters related thereto, including but not limited to, all direct and indirect costs associated with such change and all adjustments to PCE and/or Contract Time. This requirement is of the essence to the Contract Documents.

24.5. This section not used.

24.6. This section not used.

24.7. Change Proposal Request. A Change Proposal Request ("**CPR**") defines proposed changes in the Work and requests pricing and schedule information from CM/GC. Promptly upon determining that a Change is being considered and prior to issuing a CPR, Owner shall discuss the proposed CPR with CM/GC and Architect in order to determine the potential impact on the current plan for execution of the Work. After such conversation and provided Owner determines that issuance of the CPR is in the best interest of the Project, a CPR will be delivered to CM/GC.

24.8. CPR Response. Upon receipt of a CPR, CM/GC and its Subcontractors and suppliers shall review and evaluate the CPR's scope and if any potential time, cost, constructability or similar impact on the Project is determined, shall notify Owner promptly. Owner may direct CM/GC to stop Work in the area affected by the CPR to minimize the cost impact or may direct CM/GC to proceed with the Change. The CPR shall include a request that CM/GC provide, within a time frame set forth in the CPR, a date by which it will be able to respond to the CPR, giving due consideration to the current Project plan and schedule. CM/GC shall thereafter make a reliable commitment of a date by which the proposal will be submitted, which absent approval of the Core Group, shall be within twenty-one (21) days after receipt of a CPR. CM/GC's proposal shall substantiate requested adjustments in the PCE and/or the Contract Time (including complete labor and material itemization). Methods used to determine adjustment shall be limited to those listed in this Article.

24.9. Resolution of CPR. A Change Order shall be prepared if CM/GC's proposal is acceptable to and agreed upon by Owner. CM/GC is authorized to proceed with work once Owner approves the Change. A Construction Change Directive shall be prepared if a Change is to be made, but CM/GC's proposal is not acceptable, or to expedite the change.

24.10. Change Order. A Change Order is a written instrument signed by Owner, CM/GC and Architect, stating their agreement upon all of the following:

- 24.10.1. A change in the Work;
- 24.10.2. The amount of the adjustment, if any, in the PCE; and
- 24.10.3. The extent of the adjustment, if any, in the Contract Time.

Methods used in determining adjustments to the PCE are those listed in this Article.

24.11. Construction Change Directive. A Construction Change Directive is a written order signed by Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the PCE or Contract Time, or both. Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the PCE and Contract Time being adjusted accordingly. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

24.12. Pricing of Changes. If a Construction Change Directive or Change Order provides for an adjustment to the PCE, the adjustment shall be based on one of the following methods:

- 24.12.1. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- 24.12.2. Unit prices stated in the Contract Documents or subsequently agreed upon;

24.12.3. Cost of the Work to be determined in accordance with Exhibit L, plus CM/GC's Fee, with advance agreement on an adjustment in the PCE; or

24.12.4. Cost of the Work to be determined in accordance with Exhibit L, plus CM/GC's Fee without advance agreement on an adjustment in the PCE.

24.13. Response to Construction Change Directive. Upon receipt of a Construction Change Directive, CM/GC shall promptly proceed with the indicated change and advise Core Group of CM/GC's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment of the PCE or Contract Time. A Construction Change Directive signed by CM/GC indicates CM/GC's agreement therewith, including adjustment of the PCE and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

24.14. Direction to Proceed. Owner shall have the discretionary right to require CM/GC to commence performance of Changes in the Work based on Change Proposal Requests prepared by Architect prior to the submission by CM/GC to Owner of a cost proposal, or approval of the cost proposal by Owner. In such case, CM/GC shall proceed with the Work so changed upon receipt of a Construction Change Directive from Owner, and thereafter submit to the Core Group as requested any cost proposal required.

24.15. Price Disagreement. Failure of CM/GC and Owner to agree on an adjustment of the PCE or Contract Time shall not excuse CM/GC from proceeding with prosecution and performance of the Work, including the Work covered by the Construction Change Directive. CM/GC and Subcontractors shall handle all disputes in a manner which will permit the Work to proceed on schedule while the matter in dispute is being resolved.

24.16. Credit Changes. The credit to be allowed for a deletion or Change which results in a net decrease in the PCE shall be actual net decrease, calculated according to this Article. When both additions and credits covering related Work or substitutions are involved in a Change, CM/GC's Fee shall be figured on the basis of net increase, if any, with respect to that Change.

24.17. Effect on Contract Time. If Owner and CM/GC do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be resolved as a Claim.

24.18. Billings. Pending final determination of the total cost of a Construction Change Directive, amounts not in dispute for such Changes in the Work may be included in applications for payment, as set forth in the Construction Change Directive.

25. ARCHITECT'S COMPENSATION

25.1. Compensation For Basic Services. Owner shall pay Architect for Basic Services on the basis of either (a) a fixed fee; or (b) actual hours expended times an accepted hourly rate subject to a not-to-exceed limit. Payment for Basic services shall include all payments made under the Short Agreement, if any. The fee proposal shall be supported by a work plan describing the work to be performed by Architect and Architect's Consultants in each of the following phases of the Project, as those phases are described in Exhibit G:

Programming (Phase I):

Site Master Planning (Phase II):

Conceptual Design (Phase III)
Schematic Design (Phase IV):
Design Development (Phase V):
Permitting/Pricing (Phase VI):
Construction (Phase VII):
Project Close-Out (Phase VIII):

Fees for Architect's consultants shall be included without additional mark-up by Architect; administration and coordination of Architect's Consultants shall be reflected in the work plan.

The agreed-upon fee for Basic Services is set forth in Project Summary.

25.2. Reimbursable Expenses. Owner shall pay Architect for the following actual and reasonable expenditures made by Architect and Architect's Consultants in the interest of the Project ("**Reimbursable Expenses**"). Architect shall develop a budget for Reimbursable Expenses, which shall not be exceeded without Owner's written approval. These Reimbursable Expenses, are in addition to compensation for Basic and Additional Services:

25.2.1. When incurred in connection with Basic Services beyond a 100-mile radius of the Project site, expense of transportation and reasonable living expenses in connection with out-of-town travel for personnel of Architect and Architect's Consultants.

25.2.2. When incurred in connection with authorized Additional Services only, expense of transportation in connection with the Project and reasonable living expenses in connection with out-of-town travel for personnel of Architect and Architect's Consultants (see (a), above).

25.2.3. Any fees paid for securing approval of authorities having jurisdiction over the Project.

25.2.4. The expense of reproductions, postage and handling of Drawings, Specifications and other documents, toll telephone, and miscellaneous expenses.

25.2.5. Expense of data processing (CADD) and photographic production techniques only when used in connection with Additional Services.

25.2.6. If authorized in advance by Owner in writing, expense of overtime work requiring higher than regular pay.

25.2.7. Expense of renderings, models and mock-ups requested by Owner as part of Basic Services.

25.2.8. The cost of printing all promotional material.

25.3. Progress Payments. Payments for Basic Services and Reimbursable Expenses shall be made monthly upon presentation of Architect's invoice. Payments for Basic Services shall be determined on the basis of percentage of work completed for each Phase based upon Architect's Work Plan, updated to show progress.

25.4. Compensation for Additional Services. This Agreement, Exhibit G and Architect's approved RLWP shall establish the mutual understanding of the parties concerning the scope of Basic Services. The fact that more time is required to perform a portion of the Services shall not entitle Architect to Additional Compensation without a demonstration to the satisfaction of the Core Group that the scope of services has been expanded, the scope of the Project has been materially modified, or other causes set forth in this Agreement entitle Architect to an equitable adjustment of its fee. If Architect believes that events or directions are transpiring that may entitle it to additional compensation, it shall promptly notify the Core Group, including an estimate of the financial and time impact. If the Core Group specifically requests, Architect shall provide a detailed cost proposal, supported by a work plan, for the Additional Services. Architect's proposal for Additional Services shall be based on the billing rates listed in Exhibit G. These rates shall not be increased during the term of this Agreement, except as provided in Exhibit G.

26. CM/GC'S COMPENSATION

26.1. Pre-Construction Phase. Owner shall compensate and make payments to CM/GC for Preconstruction Phase services as follows:

26.1.1 For the services described in this Agreement (excluding construction phase management), CM/GC's compensation shall be the stipulated sum specified in the Project Summary. It shall include compensation for the Trade Contractors identified on the Project Roster. This amount shall be increased by Change Order as additional Trade Contractors are added to the IPD Team for the amounts to be paid to those Trade Contractors.

26.1.2. Payments shall be made monthly following presentation of CM/GC's invoice and shall be in proportion to services performed.

26.2. Construction Phase. Owner shall compensate CM/GC for Construction Phase services as follows:

26.2.1. For CM/GC's performance of the Work as described in Article 14, together with all work, labor and material to construct the Project, and except as provided elsewhere in this Agreement, Owner shall pay CM/GC the Cost of the Work as defined in Exhibit L and CM/GC's Fee (at the percentage rate specified in the Project Summary) of the Cost of the Work. At the time that the PCE is approved, establishing the PCE and Contract Time, CM/GC's Fee shall be converted to a lump-sum, which will not be reduced if the Cost of the Work decreases without a change in the scope of the Work.

27. QUALITY OF THE WORK AND SERVICES

27.1. Quality Initiative. The goal of Integrated Project Delivery is production of defect-free work at the least cost and in the least time possible. Defect detection after the hand-off of work between trades or disciplines is costly both in time and dollars. Inspection is not a value-adding activity. Assuring an understanding of the conditions of satisfaction and completion in accordance with that understanding is essential to establishing proper workflow. To the maximum extent possible, quality should be controlled at the source, where the work is being performed, and by those individuals performing the work.

27.2. Built In Quality Plan. Architect and CM/GC, in collaboration with the other IPD Team Members, shall participate and develop a Built In Quality Plan that, at a minimum, addresses the following issues:

27.2.1. Confirming that conditions of satisfaction are clearly communicated to Project participants in the Contract Documents

27.2.2. Training workers on the harm generated by work failing to satisfy the conditions of satisfaction and the benefits of standardized work practices (and their continuing improvement)

27.2.3 Developing the use of mockups, first run studies, early completion of standard work units, and similar efforts to physically document acceptable levels of quality

27.2.4 Effective use of any permit processing period to enhance quality initiatives

27.2.5 Providing quality checklists (specific, tasked based) for use by workers to self evaluate quality, establish benchmarks and structure continuous improvement

27.2.6 Design of feedback mechanism for on site managers and other quality assurance or inspection entities to review early work product and assure completion according to conditions of satisfaction

27.2.7 Integration of quality review and assurance with hand off criteria and the Six Week Look Ahead Plan

27.2.8 Protocols for trade to discuss and assure quality at hand off of work

27.2.9 Procedures for immediately addressing quality failures by the workers originally performing the work to assure minimum cost and maximum learning

27.2.10 Procedures for recognizing outstanding performance and quality according to the conditions of satisfaction

27.2.11 Measurement of Quality Reliability Index to track performance of quality assurance system and record reasons for variance to support continuous improvement

27.3. This section not used.

27.4. Testing. CM/GC shall furnish structural, mechanical, electrical, chemical, and other laboratory tests, inspections, and reports during the Construction Phase, as required by law and unless otherwise provided in the Contract Documents. Owner shall arrange and pay for the special tests and inspections required by building codes. Architect shall identify mandatory tests required to meet all applicable laws and regulations.

27.5. Requests. Tests, inspections, reports and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be arranged for and made at an appropriate time in the progress of the Work so as to cause no delay. CM/GC shall give Architect sufficient advance notice of when all tests and inspections are to be made so Architect or designated inspection agency may observe such procedures, regardless if the tests and inspections are Owner's or CM/GC's responsibility.

Unless otherwise provided in Contract Documents, CM/GC shall make arrangements for such tests, inspections, reports and approvals with the independent testing agency or entity selected by Owner and with the appropriate public authority, and shall bear all related costs of tests, inspections, reports and approvals. If Architect is to observe tests, inspections or approvals required by the Contract Documents, Architect will do so promptly and, where practicable, at the normal place of testing.

27.6. Additional Testing. If Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included elsewhere in the Contract Documents, Owner will request CM/GC to make arrangements for such additional testing, inspection or approval by an entity acceptable to Owner, and CM/GC shall give timely notice to Architect of when and where tests and inspections are to be made so Architect or designated inspection agency may be present for such procedures. If such procedures for testing, inspection or approval under reveal that portions of the Work fail to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for Architect's Additional Services and expenses shall be borne by CM/GC.

27.7. Certifications. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by CM/GC and promptly delivered to Architect.

27.8. Uncovering Work. If a portion of the Work is covered contrary to the request of Owner, Architect, or any governmental authority or to requirements specifically expressed in the Contract Documents, the Work, if required in writing by Architect, Owner, or any governmental authority, shall be uncovered for observation and be replaced without change in the PCE or the Contract Time. If a portion of the Work has been covered which Architect, Owner or any governmental authority has not specifically requested to observe prior to its being covered, Owner may request to see such Work and it shall be uncovered by CM/GC. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be added to the PCE. If such Work is not in accordance with the Contract Documents, correction shall be without increase in the PCE, unless the condition was caused by Owner or a separate contractor in which event Owner shall be responsible for payment of such costs.

27.9. Correction of Rejected Work. CM/GC shall promptly correct Work rejected by Architect or Owner if failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. If the Work fails to conform to the requirements of the Contract Documents and must be corrected due to an act of negligence by CM/GC or one of its subcontractors, the cost of the corrective work and any related costs shall be borne by the negligent party. In the event the corrective work is not attributable to the negligence of CM/GC or one of its subcontractors, then the cost of the corrective work and related costs shall be charged against the construction contingency unless the work to be corrected was performed by one of the CM/GC's lump sum subcontractors in which event the lump sum subcontractor whose work requires correction shall be solely responsible for all costs. Notwithstanding the foregoing, if the Core Group concludes that extensive corrective work is required on work performed by a particular subcontractor, then that particular subcontractor whose work requires extensive repair shall be solely responsible for all costs.

27.10. Right to Order Work Suspended. If CM/GC fails to correct Work which is not in accordance with the requirements of the Contract Documents, Owner may order CM/GC to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of Owner to stop the Work shall not give rise to a duty on the part of Owner to exercise this right for the benefit of CM/GC or any other person or entity, except to the extent required by Section 6.1.3.

27.11. Right to Correct Nonconforming Work. If CM/GC fails within a seven (7)-day period after receipt of written notice from Owner to commence and continue correction of Nonconforming Work with diligence and promptness, Owner shall have the right, but not the obligation, to immediately cause that work to be corrected at CM/GC's expense, without prejudice to any other remedies Owner may have. In such case, a deductive Change Order shall be issued for the cost of correcting such deficiencies, including compensation for Architect's additional services and expenses made necessary thereby. If payments then due CM/GC are not sufficient to cover such amount, at Owner's option, the excess shall be deducted from any payment thereafter due CM/GC, or shall be paid by CM/GC within thirty (30) days after receipt of Owner's written notice of request for payment. Owner, by taking over the Work or by declaring the Contract in default, does not forfeit the right to recover damages from CM/GC or Surety for CM/GC's failure to complete the Contract.

27.12. Acceptance of Nonconforming Work. If Owner prefers to accept Nonconforming Work, Owner may do so instead of requiring its removal and correction, in which case the amount to be paid to CM/GC will be reduced as appropriate and equitable. Such adjustment shall be made whether or not Final Payment has been made. If Owner elects to proceed as indicated in this Section after Final Payment has been made, CM/GC shall pay such amount to Owner immediately upon demand.

27.13. Suspension to Preserve Quality. Owner may suspend work by written notice to CM/GC and Architect if, suspension of work is justified by unforeseen conditions which might adversely affect quality of the Work if such work is not suspended. Such a suspension shall be considered an Excusable Delay. If CM/GC, in its reasonable judgment, believes that a suspension is warranted because of unforeseen circumstances which may adversely affect quality of work if work is continued, CM/GC shall immediately notify the Core Group, in writing, of its belief and shall continue the work unless and until otherwise directed by Owner in accordance with the Contract Documents.

28. PROGRESS PAYMENTS

28.1. Payments. Payment Applications shall be prepared by Architect and CM/GC each in a format approved by the Core Group. The period covered by each Payment Application shall be one (1) calendar month ending on the day of the month specified by the Core Group. Provided a Payment Application is timely submitted, satisfies all requirements of the Contract Documents, and is approved by the Core Group, Owner shall make progress payments within thirty (30) days.

28.2. Schedule of Values. Before the first Payment Application, CM/GC shall submit to the Core Group a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Core Group may require. This schedule, approved by the Core Group, shall be used as a basis for reviewing CM/GC's Applications for Payment. Each CM/GC Payment Application during construction shall be based on the most recent schedule of values submitted by CM/GC in accordance with the Contract

Documents. Payment Applications shall show the percentage of each portion of the Work as of the end of the period covered by the Payment Application completed in accordance with the planning documents approved by the Core Group.

28.3. Materials & Equipment. Payment Applications may include materials and equipment delivered and incorporated into the Work in accordance with the approved planning documents, or with the Core Group's prior approval delivered and suitably stored at the site for subsequent incorporation into the Work or suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by CM/GC with procedures satisfactory to Owner to establish Owner's title to such materials and equipment or otherwise protect Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Except with the Core Group's prior approval, CM/GC shall not make advance payments to suppliers for materials or equipment which have not been delivered and incorporated into the Work.

28.4. This Section Not Used

28.5. Formal Application. On a monthly basis, CM/GC shall prepare its formal Payment Application, which shall be notarized, if required, and supported by such data substantiating CM/GC's right to payment as Owner may require, such as copies of requisitions from Subcontractors and suppliers. Such applications may not include requests for payment of amounts CM/GC does not intend to pay to a Subcontractor or supplier because of a dispute or other reason, unless CM/GC has specifically notified Owner of an intended backcharge or dispute, and Owner has nonetheless approved the payment.

28.6. Supporting Documents. Each Payment Application shall be accompanied by the following, all in form and substance satisfactory to Owner:

28.6.1. a duly executed and acknowledged sworn statement showing all Subcontractors with whom CM/GC has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and the amount to be paid to CM/GC from such progress payment, together with similar sworn statements from all Subcontractors and, where appropriate, from Sub-subcontractors; and

28.6.2. duly executed mechanic's lien waiver and release forms for the portion of the Work covered by such payments conditioned on receipt of payment.

28.7. Certification of Payment Applications. CM/GC shall also certify that (1) it has not received any written claims of mechanic's liens for Work for which it has received payment from the Owner as of the date of such Payment Application (or to the extent it has received such claims, CM/GC has bonded around them); (2) CM/GC has no knowledge of any filed mechanic's liens with respect to the Work for which CM/GC has received payment from the Owner; (3) all due and payable bills with respect to the Work have been paid to date or shall be paid with the proceeds of such Payment Application to the extent billed; and (4) the record drawings for the Work as described in the Contract Documents are accurate and up-to-date. CM/GC shall also certify the amounts previously paid to CM/GC, the amounts previously paid to Subcontractors and Suppliers and the amount currently due to CM/GC, with the amounts, in each case, to be broken down by trades.

28.8. Review of Formal Application. The Core Group will promptly review the Payment Application to confirm compliance with the amounts approved in the Pencil Draw and the terms of the Contract Documents. They shall notify CM/GC that the Payment Application has been approved or notify CM/GC of any reason for disallowing payment, in whole or in part as provided below.

28.9. Right to Withhold. Owner may refuse to approve a Payment Application or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a prior payment to such extent as may be necessary to protect Owner from loss for which CM/GC is responsible because of:

28.9.1. Defective Work not remedied;

28.9.2. Third-party claims filed against Owner or the Project related to this Agreement and caused by CM/GC or reasonable evidence indicating probable filing of such claims, unless security acceptable to Owner is provided;

28.9.3. Failure of CM/GC to make payments properly to Subcontractors or for labor, materials or equipment;

28.9.4. This section not used;

28.9.5. Damage to Owner or another contractor for which CM/GC is potentially liable;

28.9.6. Reasonable evidence that the Work will not be completed within the Contract Time due to the fault of CM/GC, and that the unpaid balance would not be adequate to cover actual or liquidated damages, if any, for the anticipated delay;

28.9.7. Persistent failure to carry out the Work in accordance with the Contract Documents; or

28.9.8. Insufficient documentation, erroneous estimates of value of the Work performed or other incorrect statements in the Application.

When the above reasons for withholding payment are removed, payments will be made for amounts previously withheld.

28.10. No Right to Stop Work. If CM/GC disputes any determination with respect to any Payment Application or any Certificate for Payment, CM/GC nevertheless expeditiously shall continue to prosecute the Work, provided amounts not in dispute are timely paid. Owner shall not be deemed to be in default or breach of this Contract by reason of the withholding of any payment pursuant to any provision of the Contract Documents.

28.11. Retention and Withholds. At the discretion of the Core Group, retention may be withheld equal to ten percent (10%) on lump sum subcontractors and one percent (1%) on subcontractors who are signators to the Joining Agreement on payments to be made to subcontractors, CM/GC self-performed work and CM/GC's Fee. No retention shall be withheld on the Cost of the Work except as stated above. The Payment Application shall be reduced for amounts for which the Core Group has withheld or nullified a Certificate for Payment as provided in the Contract Documents.

28.12. Reliance. In taking action on Applications for Payment, the Core Group shall be entitled to rely on the accuracy and completeness of the information furnished by the applicant and shall not be deemed to represent that they have made a detailed examination, audit or arithmetic verification of the documentation or supporting data; that they have made exhaustive or continuous on-site inspections or that the Core Group has made examinations to ascertain how or for what purposes the applicant has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by Owner, will be performed by Owner's accountants acting in the sole interest of Owner.

28.13. Warranty of Title. CM/GC warrants that title to all work, materials and equipment covered by a Payment Application, whether incorporated in the Project or not, will pass to Owner at the time of payment, free and clear of all liens, claims, security interests or encumbrances in favor of CM/GC, Subcontractors, Suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials or equipment relating to the Work. To the extent of payment received from Owner, CM/GC shall defend, indemnify and hold Owner harmless from any and all liens, security interests or encumbrances filed by CM/GC, Subcontractors, Suppliers, or other persons or entities entitled to make a lien claim by reason of having provided labor, materials and equipment relating to the Work.

28.14. No Waiver. Payment by Owner shall not constitute approval or acceptance of any item of cost in the Payment Application. No partial payment shall be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or relieve CM/GC of its obligations with respect thereto.

28.15. Release of Retention. Owner may also elect to increase the amount of a progress payment by an amount sufficient to enable CM/GC to make Final Payment, including full retainage, to a Subcontractor who has satisfactorily completed its portion of the Work, provided that CM/GC submits a written request for an amount to cover such payment together with all applicable waivers of lien and required close-out documents, and such submittals are approved and followed by Architect's issuance of a Certificate for Payment in the amount requested. Retention shall be released at Substantial Completion except as may be necessary to assure sufficient funds are available to complete punchlist work.

28.16. This section not used.

28.17. Payments to Subcontractors. CM/GC shall pay each Subcontractor and Supplier, within ten (10) days after receipt of payment from Owner, the amount to which each Subcontractor or Supplier is entitled, reflecting percentages actually retained from payments to CM/GC on account of such Subcontractor's or Suppliers portion of the Work. CM/GC shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Neither Owner nor Architect shall have an obligation to pay nor to see to the payment of money to a Subcontractor or Supplier except as may otherwise be required by law.

28.18. Failure of Payment. If Owner does not pay CM/GC within seven (7) days after the date established in the Contract Documents the amount approved for payment, then CM/GC may, upon seven (7) additional days' written notice to Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the PCE shall be increased by the amount of CM/GC's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

29. SUBSTANTIAL & FINAL COMPLETION

29.1. Defined. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so Owner can occupy or utilize the Work for its intended use, and only minor corrective Work remains to be performed, all required approvals, certificates of occupancy and other sign-off from any public agencies with jurisdiction have been obtained, (provided such approvals are not delayed as a result of causes unrelated to CM/GC's or its Subcontractors', Sub-subcontractors', or Suppliers' performance or failure to perform the Work or to satisfy its obligations under the Contract Documents) and CM/GC has cleaned up and removed all equipment, tools and other materials from the Work area. CM/GC shall secure and deliver to Owner written warranties and guaranties from its Subcontractors, Sub-subcontractors and Suppliers bearing the date of Substantial Completion or some other date as may be agreed to by Owner and stating the period of warranty as required by the Contract Documents. CM/GC is responsible for the warranty of all Work, whether performed by it or its Subcontractors at any tier.

29.2. Notice. When CM/GC considers that the Work, or a portion thereof which Owner agrees to accept separately, is Substantially Complete, CM/GC shall prepare and submit to the Core Group a comprehensive list of items to be completed or corrected before Final Payment. Failure to include an item on such list does not alter the responsibility of CM/GC to complete all Work in accordance with the Contract Documents.

29.3. Inspection. Upon receipt of CM/GC's list, Architect and Owner will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the inspection discloses any item, whether or not included in CM/GC's list, which is not in accordance with the requirements of the Contract Documents and which causes the Work not to be Substantially Complete as defined in Article 29.1, CM/GC shall, before issuance of the Certificate of Substantial Completion, complete or correct such item. CM/GC shall then submit a request for another inspection by Architect to determine Substantial Completion.

29.4. Certificate. When the Work or designated portion thereof is approved by Owner as being Substantially Complete, Architect will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of Owner and CM/GC for security, maintenance, heat, utilities, damage to the Work and insurance, and shall identify the agreed-upon time within which CM/GC shall finish any items on the list which can not be completed within fifteen (15) days of Substantial Completion. Warranties and guaranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to Owner and CM/GC for their written acceptance of responsibilities assigned to them in such Certificate.

29.5. Partial Occupancy or Use. Owner may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided Owner and CM/GC have agreed in writing on the responsibilities assigned to each of them for security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. Immediately prior to such partial occupancy or use, Owner, CM/GC and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in

order to determine and record the condition of the Work. Unless otherwise agreed upon, partial occupancy or use of any portion of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

29.6. Use of HVAC System. Owner shall allow the use of portions of the new heating, cooling, or ventilation systems to provide temporary heat, cooling or ventilation prior to Substantial Completion. Any systems so used shall be provided with temporary filters and the systems shall be cleaned and restored to prime condition and new filters installed prior to acceptance. Such use shall not operate to commence the contractually required warranties unless otherwise agreed by the parties.

29.7. Final Completion. Upon receipt of written notice from CM/GC that the Work is ready for final inspection and acceptance, the Core Group will promptly make such inspection. Based upon such inspection and finding the Work acceptable under the Contract Documents and the Contract fully performed, including all items noted at Substantial Completion, Architect and Owner will promptly issue a Certificate of Final Completion accepting the Project as completed in accordance with terms and conditions of the Contract Documents ("**Final Completion**").

30. FINAL PAYMENT

30.1. Payment. Final Payment shall be made by Owner to Architect and CM/GC in accordance with this section within thirty (30) days after the Core Group's receipt of all close-out documentation and final certification of the Cost of the Work. Acceptance of Final Payment by Architect or CM/GC shall constitute a waiver of all claims by that payee against the Owner or the Project, except those claims previously submitted in writing and identified as unresolved at the time of Final Payment Application.

30.2. Amount. The amount of the Final Payment to the CM/GC shall be calculated as follows:

30.2.1. Take the sum of the Cost of the Work substantiated by CM/GC's final accounting and CM/GC's Fee.

30.2.2. Subtract amounts, if any, for which the Core Group withholds, in whole or in part, a final Certificate for Payment as provided in this section or other provisions of the Contract Documents.

30.2.3. Subtract the aggregate of previous payments made by Owner.

30.2.4. If the aggregate of previous payments made by Owner exceeds the amount due CM/GC, CM/GC shall reimburse the difference to Owner.

30.3. Final Accounting. Owner's accountants or other representatives will endeavor to review and report in writing on CM/GC's final accounting within fifteen (15) days after CM/GC's delivery of the final accounting to the Core Group. Based upon such Cost of the Work as Owner's accountants report to be substantiated by CM/GC's final accounting, and provided the other conditions of this Section have been met, the Core Group will, within seven (7) days after receipt of the written report of Owner's accountants, either issue a Final Certificate for Payment, or notify the CM/GC in writing of the reasons for withholding a certificate. If Owner's accountants report the Cost of the Work as substantiated by CM/GC's final accounting to be less than claimed by CM/GC, CM/GC shall be entitled to proceed in accordance with the dispute

resolution provisions. Pending a final resolution of the disputed amount, Owner shall pay CM/GC the amount certified as indicated in the Final Certificate for Payment.

30.4. Contest. If CM/GC contests the amount certified for Final Payment, within fifteen (15) calendar days following receipt of the Core Group's determination of the Final Payment amount, CM/GC shall file its protest in writing with the Core Group.

30.5. Post-Completion Costs. If, subsequent to Final Payment and at Owner's request, CM/GC incurs additional Costs of the Work, including amounts included in the Warranty Reserve, Owner shall reimburse CM/GC such costs related thereto on the same basis as if such costs had been incurred prior to Final Payment.

30.6. Pre-Conditions to Final Payment. Final Payment shall not become due until CM/GC submits to the Core Group (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, excepting only amounts to be paid out of Final Payment, for which Owner or Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Owner; (3) a written statement that CM/GC knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (4) consent of surety, if any, to Final Payment; (5) Conditional Waiver and Release Upon Final Payment Forms from CM/GC and Subcontractors to the extent and in such form as may be designated by Owner; (6) a Certificate of Completion certifying that Work has been completed in accordance with the Contract Documents; (7) the Record Drawings and Annotated Specifications required by the Contract Documents; (8) the warranties, Submittals, operations and maintenance data required by the Contract Documents; and (9) a Final Verified Cost Report, accompanied by an affidavit from an officer of CM/GC certifying the accuracy of the final Cost of the Work.

30.7. Missing Release. If a Subcontractor refuses to furnish a release or waiver required by Owner, CM/GC may furnish a bond or other acceptable security to indemnify Owner against such lien. If such lien remains unsatisfied after payments are made and after giving CM/GC reasonably adequate time to resolve and discharge such lien, CM/GC shall refund to Owner all money that Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

30.8. Delay to Final Completion. If, after Substantial Completion, Final Completion is materially delayed through no fault of CM/GC or by issuance of Change Orders, Owner shall, upon application by CM/GC and satisfaction of the requirements set forth in this Article, make payment of the balance due for that portion of the Work fully completed and accepted. Such semi-Final Payment shall be made under terms and conditions governing Final Payment, except that it shall not constitute a waiver of Claims and CM/GC shall promptly proceed to complete all remaining work.

31. RIGHT TO AUDIT

31.1. Availability of Records. IPD Team Members' records, which shall include but not be limited to accounting records (hard copy, as well as computer readable data if it can be made available), subcontract files; original estimates; estimating work sheets; correspondence (including e-mail and any other electronic information); Change Order files (including

documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned; and any other supporting evidence deemed necessary by Owner to substantiate charges related to this Contract (all foregoing hereinafter referred to as "**Records**") shall be preserved and maintained throughout the course of the project (including the period of any contractual warranties) and shall be open to inspection and subject to audit and/or reproduction by Owner's agent or its authorized representative upon Owner's reasonable request. Owner may also conduct verifications such as counting employees at the Project Site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with employees, subcontractors, and material suppliers.

31.2. This section not used.

31.3. Flow Down. Each IPD Team Member shall require that all payees (including subcontractors and Suppliers) comply with the provisions of this Article by incorporating these requirements in all written contracts. Such requirements to include flow-down right-to-audit provisions in contracts with payees shall also apply to Subcontractors and Sub-Subcontractors, and Suppliers. All IPD Team Members shall cooperate fully and will cause all payees to cooperate fully in furnishing or in making Records available to Owner.

31.4. This section not used

32. INSURANCE AND INDEMNITY

32.1. Insurance. During both phases of the Project, Architect and Architect's consultants shall purchase and maintain insurance as set forth in Exhibit I; CM/GC and Subcontractors shall purchase and maintain insurance as set forth in Exhibit I.

32.2. CM/GC Indemnity. To the fullest extent permitted by law, CM/GC shall indemnify and hold harmless the Owner and its agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the CM/GC, a Subcontractor anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

32.3. Architect Indemnity. To the maximum extent permitted by law, Architect shall defend, indemnify and hold harmless Indemnitees, from and against all claims, demands, causes of action, losses and expenses, damages, liabilities, costs, liens, judgments or obligations, including, without limitation, attorneys' fees, experts' and consultants' fees, resulting from or in any way caused or contributed to, in whole or in part, by Architect's or Architect's Consultants' negligent performance of professional services under or breach of this Agreement. Such obligations of Architect hereunder shall extend to claims caused or contributed to by the passive negligence of an Indemnitee.

32.4. Employee Claims. In claims against any person or entity indemnified under this Article by an employee of CM/GC, a Subcontractor, a sub-subcontractor, supplier, Architect or Architect's Consultants, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Article shall not be limited by a limitation

on amount or type of damages, compensation or benefits payable by or for or under any workers' compensation acts, disability benefit acts or other employee benefit acts.

32.5. Indemnity Against Liens. Provided Owner is not in material breach of its payment obligations under the Contract Documents, CM/GC or Architect, as appropriate to the person asserting the claim, shall discharge, within ten (10) days of written notice, all mechanic's liens, stop notices or other liens or encumbrances for which CM/GC has received payment from Owner (collectively "**Lien**") filed in connection with the Work or the Services, or any portion thereof, and shall indemnify, defend and hold Owner harmless from any liability, damages, costs or expenses (including without limitation attorneys' fees and costs) in connection therewith. If any Lien is filed or otherwise asserted, Owner shall have the right to withhold payment from CM/GC or Architect to the extent necessary to protect Owner from any liability, damage, cost or expense until the Lien has been discharged, or until Owner has been furnished with either (1) a bond in the amount of one hundred fifty percent (150%) of the amount claimed or (2) other security satisfactory to Owner assuring that Owner will suffer no liability, damage, cost or expense in connection with the Lien.

32.6. Labor Disputes. CM/GC will, in advance, advise and consult with the Core Group concerning potential jurisdictional labor disputes after which the CM/GC shall proceed as directed by the Core Group and shall have no obligation to indemnify and hold harmless any party from the consequences resulting therefrom. In the event CM/GC does not advise and consult with the Core Group in advance of a known jurisdictional dispute, or if CM/GC proceeds in a manner other than as directed by the Core Group, then CM/GC agrees to indemnify and hold Owner, Architect and Architect's Consultants harmless from any and all loss or damages arising out of jurisdictional labor disputes or labor troubles of any kind that may occur during performance of the Contract to the extent caused by CM/GC or its subcontractors.

32.7. Limitation on CM/GC's Indemnity. CM/GC's obligation to defend and indemnify Architect and Architect's Consultants shall not extend to claims arising from alleged professional negligence of Architect or Architect's Consultants in preparing the Contract Documents or providing construction administration.

32.8. Relation of Insurance and Indemnity. The indemnity obligations specified in the Contract Documents shall not reduce or limit the insurance requirements specified in the Contract Documents, nor shall the insurance requirements limit the indemnity obligations.

32.9. Builder's Risk Insurance. Owner will provide "All Risk" Builder's Risk Insurance on a replacement cost basis to include CM/GC and subcontractors of all tiers as named insureds. "All Risk" shall include, but not be limited to, the perils of Fire, Extended Coverage, Vandalism and Malicious Mischief, Terrorism, Theft, Collapse, Flood, Earthquake, Transit, Off-Site Storage, Hot Testing, Installation and Rigging. Any co-insurance penalties or deductibles shall be the responsibility of the Owner. The Builder's Risk Insurance shall allow partial use and occupancy and shall continue until final acceptance by the Owner. The construction contract shall provide for waiver of subrogation between all parties at risk and the Builder's Risk policy shall permit such waiver between the parties. This waiver of subrogation shall also apply to any existing real and personal property of the Owner adjacent or adjoining the contract work.

33. PERFORMANCE AND PAYMENT BONDS

33.1 Right TO Demand. Before commencing the Construction Phase, CM/GC, at Owner's request, shall furnish Owner with bonds covering the faithful performance of the Contract and

payment of obligations arising thereunder in the full amount of the GMP. The forms of bonds and sufficiency of sureties shall be subject to Owner's approval. The Surety providing such bonds shall be licensed to do business in Missouri. The bonds shall provide that no change or alteration of the Contract Documents or any subcontract (including without limitation any change in the Contract Sum, Contract Time, Scope of Work) shall release any surety from its obligations to Owner under the bonds. The bonds shall have an effective date not later than the first day the Construction Phase Work is performed so that all Work performed under the Contract shall be subject to the bonds. The cost of such bonds, if required, shall be a Cost of the Work and be included in the Contract Sum.

33.2 Subcontracts. The CM/GC shall require bonds of or include all Subcontractors under subcontract default insurance to cover the obligations of all Subcontractors performing Work on the Project. The cost of such bonds or subcontractor default insurance shall be a Cost of the Work and included in the Contract Sum.

33.3 Execution. CM/GC shall require the attorney in fact who executes the required bonds on behalf of the Surety to affix thereto a certified power of attorney.

33.4 Information to Surety. CM/GC shall keep Surety informed of progress of Work and where necessary, obtain Surety's consent to, or waiver of: (1) notice of changes in the Work; (2) request for reduction or release of retention; (3) request for Final Payment; and (4) any other material required by Surety.

33.5 Copies of Bonds. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment obligations arising under the Contract, CM/GC shall promptly furnish a copy of the bonds or shall permit a copy to be made.

34. SUBCONTRACTS

34.1. Subcontracts. By appropriate written agreement, CM/GC and Architect shall require each Subcontractor, Supplier or Architect's Consultant to be bound by terms of the Contract Documents, and to assume toward Owner and CM/GC or Architect, respectively, all the obligations and responsibilities, including responsibility for safety, which the primary party assumes by these documents. Each subcontract or consulting agreement shall preserve and protect the rights of each of the parties to this Agreement under the Contract Documents with respect to the Work to be performed or Services to be provided by the Subcontractor, Supplier, or consultant, so that subcontracting will not prejudice those rights. The agreement shall allow to the Subcontractor, Supplier, or Architect's Consultant, unless specifically provided otherwise in the Contract Documents, the benefit of all rights, remedies and redress against the party it is in contract with, that such party, by the Contract Documents, has against Owner. Where appropriate, the subcontract or consulting agreement shall require each Subcontractor, Supplier, or Architect's Consultant to enter into similar agreements with lower tier performers. CM/GC and Architect shall make available to each proposed Subcontractor, Supplier, or Architect's Consultant, prior to the execution of its agreement, copies of the Contract Documents to which it will be bound. Subcontractors, Suppliers, and Architect's Consultants will similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors.

34.2. Owner Review of Agreement Form. Notwithstanding any provision of the preceding section, CM/GC and Architect shall submit their standard proposed subcontract or consulting

agreement, in electronic format, for Owner's review and comment. Each such agreement shall, where the context so requires, contain provisions that:

34.2.1. Require that such Work be performed or Services be provided in accordance with the requirements of the Contract Documents;

34.2.2. Waive all rights the contracting parties may have against one another or that the Subcontractor, Supplier, or Consultant may have against Owner for damages caused by fire or other perils covered by the insurance described in the Contract Documents to the extent provided in the Contract Documents;

34.2.3. Require the Subcontractor, Supplier, or Consultant to carry and maintain insurance coverage in accordance with the Contract Documents and to file certificates of such coverage with CM/GC or Architect;

34.2.4. Require the Subcontractor or Supplier (excluding Architect's Consultants, except as requested by the Core Group) to submit statutory conditional waivers of lien for work completed by it and its sub-subcontractors as a condition to the disbursement of the progress payment next due and owing;

34.2.5. Require submission of applications for payment in a form approved by Owner, together with clearly defined invoices and billings supporting all such applications;

34.2.6. Require that each Subcontractor, Supplier, or Architect's Consultant continue to perform under its contract in the event a disagreement, dispute or claim exists, to the same extent required by this Agreement;

34.2.7. This section not used

34.2.8. Require that each Subcontractor, Supplier, or Architect's Consultant honor the contingent assignment provided for in this Agreement;

34.2.9. Contain a "termination for convenience" clause on terms similar to those provided in this Agreement; and

34.2.10. Require each Subcontractor or Architect's Consultant to make similar payments to its sub-subcontractors within ten (10) days of receiving payments from CM/GC or Architect.

34.3. Responsibility for Others. CM/GC and Architect each is fully responsible for acts and omissions of its respective subcontractors, suppliers, or consultants, and persons either directly or indirectly employed by them, or under their control, as it would be for its own employees.

34.4. Third-Party Beneficiary. Nothing in the Contract Documents creates any contractual relationship between or among any Subcontractor, Supplier, Architect's Consultant or subcontractor of whatever tier and Owner, except that Owner shall be an express, intended third-party beneficiary of the performance obligations of the Subcontractors', Suppliers', and Architect's Consultants' performance obligations. Specifically, any design or engineering services provided by or on behalf of any Subcontractor, Supplier, or Architect's Consultant, of any tier, in connection with any portion of the Project, are intended to benefit Owner and such party shall owe a professional duty of due care to Owner.

34.5. Contingent Assignment. Each subcontract or consulting agreement for a portion of the Work or the services is assigned by CM/GC or Architect to Owner provided that:

34.5.1. Assignment is effective only after termination of the Agreement by Owner for cause and only for those agreements which Owner accepts by notifying the Subcontractor or Consultant in writing; and

34.5.2. Assignment is subject to the prior rights of the surety, if any, obligated under a bond relating to the Agreement.

Upon such assignment, if the Work has been suspended for more than thirty (30) days, the compensation shall be equitably adjusted for increases in cost resulting solely from the suspension, provided such suspension is not a result of the act or omission of Subcontractor, Supplier, or Architect's Consultant.

34.6. Information to Owner. CM/GC or Architect will provide copies of its subcontracts, agreements and any modifications thereto, and current information on status of its accounts, upon request by Owner.

34.7. Payment Disputes. If Owner refuses to make a payment for any cause which is the fault of Architect or CM/GC and not the fault of a particular Subcontractor, Supplier, or Architect's Consultant, or if Architect or CM/GC fails to make a payment which is properly due, Owner may after giving Architect or CM/GC written notice, provided that there are no identified and verifiable disputes between Architect or CM/GC and the payee regarding payment, pay such Subcontractor, Supplier, or Architect's Consultant directly, less the amount to be retained under its contract, which paid amount shall be deducted from the amount otherwise owing to CM/GC or Architect.

35. SEPARATE CONTRACTORS

35.1. Owner's Rights. Owner reserves the right to perform design, construction or operations related to the Project with Owner's own forces. Owner further reserves the right to award separate contracts in connection with other portions of the Project or other design, construction or operations. If Architect or CM/GC claims that delay or additional cost is involved because of such action by Owner, it shall make such Claim as provided in this Agreement.

35.2. Coordination. The Core Group shall provide for coordination of the activities of Owner's own forces and of each separate contractor with the Work. Representatives of the Core Group shall participate with other separate contractors in reviewing and coordinating their planning and schedules when requested to do so. The parties shall cooperate in developing coordinated planning documents as provided in Article 5.

35.3. Cooperation. Owner and separate contractors shall be afforded reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate construction and operations with theirs as required by the Contract Documents.

35.4. Quality Assurance. If part of the Work or Services depends, for proper execution or results, upon construction or operations by Owner or a separate contractor, all parties involved shall coordinate the conditions of satisfaction and hand-off criteria, and shall be jointly responsible for confirming that predecessor work meets the conditions of satisfaction. IPD

Team members shall, prior to proceeding with that portion of the Work, promptly report to CM/GC or Architect, who shall report to the Core Group, apparent discrepancies or defects in such other construction or services. Failure to so report shall constitute an acknowledgment that Owner's or separate contractor's completed or partially completed work or services are fit and proper to receive follow-on work, except as to defects not then reasonably discoverable.

35.5. Responsibility for Damage. Owner shall be reimbursed by the responsible party for costs incurred by Owner which are payable to a separate contractor because of delays, improperly timed activities or defective Work or Services. CM/GC, without increase in the PCE, shall promptly remedy damage caused by CM/GC, its Subcontractors or Suppliers to completed or partially completed construction or to property of Owner or separate contractors, subject to recovery under property insurance provided as required under Section 32.9. If such separate contractor initiates legal or any other proceedings against Owner on account of any damage alleged to have been caused by CM/GC or its Subcontractors or Suppliers, Owner shall notify CM/GC, who shall defend such proceedings at its own expense, and if any damage, judgment, or award against Owner arises therefrom for which CM/GC is found to be liable, CM/GC shall pay or satisfy it and shall reimburse Owner for all attorneys' fees and court or other costs incurred by Owner to the extent of CM/GC's liability. CM/GC shall only be responsible for costs of defense, damage, judgment or award to the extent of its liability, and Owner shall reimburse CM/GC for Owner's proportionate share of the costs based upon Owner's relative liability.

35.6. Clean-up. If a dispute arises among CM/GC, separate contractors and Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, Owner may, after forty-eight (48) hours' written notice, clean up and allocate the cost among those responsible as Owner determines to be just.

36. WARRANTY

36.1. Basic Warranty. CM/GC warrants to Owner that materials and equipment furnished for the Project will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered nonconforming or defective ("Nonconforming Work"). CM/GC's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by CM/GC or a Subcontractor or Supplier, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by Architect or Owner, CM/GC shall promptly furnish satisfactory evidence as to the kind and quality of materials and equipment.

36.2. Scope. CM/GC is responsible for the warranty of all Work, whether performed by it or by Subcontractors or Suppliers. The foregoing warranty also applies to any and all products or procedures specified in the Contract Documents. CM/GC's liability for any extended warranties from its Subcontractors or Suppliers required by the Contract Documents shall be the one (1) year correction period. After that time the CM/GC shall assign such warranties to the Owner and provide reasonable assistance to Owner in enforcing the obligations of the Subcontractors or Suppliers.

36.3. Correction. In addition to its CM/GC's warranty obligations, if, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established at Substantial Completion, or by terms of an

applicable special warranty required by the Contract Documents, any of the Work is found to be Nonconforming Work, Owner shall provide written notice and CM/GC shall promptly investigate the condition and advise Owner concerning the proposed remedial course of action. CM/GC shall prosecute and complete any necessary corrections within the shortest reasonable time possible and according to an agreed upon work plan. If Owner's operations or use are impaired by the Nonconforming Work or its correction, CM/GC shall use such off-hours labor and timesaving procedures as Owner may request. Subject to the terms of the Agreement concerning a warranty reserve, CM/GC shall bear all costs arising out of Nonconforming Work, including without limitation all costs of correction, Architect's compensation for additional services, testing and inspection costs, and the cost of making good all work of Owner or separate contractors destroyed or damaged by such correction. If CM/GC fails to remedy any Nonconforming Work within the shortest reasonable possible time, Owner may have such defective Work remedied at CM/GC's expense in accordance with Article 26.

36.4. Affected Work. CM/GC shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of Owner or separate contractors caused by CM/GC's correction or removal of Nonconforming Work, subject to recovery under property insurance provided in accordance with Section 32.9.

36.5. Extension. The one (1)-year period for correction of work shall be extended with respect to portions of Work performed after Substantial Completion by the period of time between Substantial Completion and actual completion of the Work in question.

36.6. Refuse. CM/GC shall remove from the site portions of the Nonconforming Work that are neither corrected by CM/GC nor accepted by Owner.

36.7. No Limitation. Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations which CM/GC might have under the Contract Documents. Establishment of the time period of one (1) -year period as described in this Article relates only to the specific obligation of CM/GC to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish CM/GC's liability with respect to CM/GC's obligations to correct the Work.

37. PROPRIETARY INFORMATION

37.1. Definition. For purposes of this Agreement, "**Proprietary Information**" shall be identified by Owner and shall include all information tangible and intangible provided to or held by any IPD Team member in the course of providing Services or performing Work pursuant to this Agreement related to the business operations and strategic plans of Owner and/or its affiliates.

37.2. No Disclosure. Each IPD Team Member agrees that it will not disclose any of Owner's Proprietary Information to any third person and it will not use any Proprietary Information other than on Owner's behalf, except as Owner may otherwise authorize in writing. If disclosure to a third party is so authorized, the IPD Team Member shall, prior to disclosure, enter into a confidentiality agreement with such third party containing provisions at least as strict with respect to use and disclosure of such Proprietary Information as set forth in this Article.

37.3. Policy/Procedure. Each IPD Team Member represents that it has a policy and procedure designed to protect trade secret rights and to prevent unauthorized publication and disclosure of such information or agrees that it shall take necessary steps to prevent same. Each IPD Team

Member agrees that Owner's Proprietary Information shall be subject to that policy and procedure.

37.4. Documents. Each IPD Team Member shall take all reasonable precautions to safeguard any Proprietary Information. Each IPD Team Member may make copies of such documents only to the extent necessary for performance of its obligations. Each IPD Team Member agrees to return to Owner, upon completion of the Project, all proprietary documents supplied by Owner and at such time to return or destroy all copies thereof.

37.5. Public Relations. All public relations matters arising out of or in connection with the Project shall be the responsibility of and be handled by Owner. Each IPD Team Member shall obtain Owner's prior written approval of the text of any announcement or publication to be made by or on behalf of Architect or any consultant in connection with the Project.

38. OWNERSHIP AND USE OF DOCUMENTS

38.1. Definition. All drawings, plans, specifications, calculations, notations and other documents prepared by Architect, Architect's Consultants, CM/GC, Subcontractors or other IPD Team members in connection with the Project (and any electronic media upon which they were prepared or stored) (the "**Project Documents**"), including, without limitation, the Design Development Documents and the Construction Documents, are prepared as Instruments of Service, and all title, ownership, and copyright privileges are and at all time shall be vested in Owner, subject only to the use provisions set forth below.

38.2. Copies of Documents. Unless otherwise provided in the Contract Documents, the Core Group shall establish the format and number of sets of Drawings and Specifications to be provided by Architect under its reimbursable budget to CM/GC throughout pre-construction including the permitted set of Drawings and Specifications. All other copies and all other drawings and documents required for the execution and completion of the Work shall be furnished by CM/GC and shall be included in its pre-construction budget and the PCE.

38.3. Possession. The originals of all Project Documents shall be held by IPD Team Members for the benefit of Owner. At Owner's request and cost, any or all Project Documents shall be immediately delivered to Owner in their original form, or in clear, reproducible form, regardless of whether this Agreement is completed, suspended or terminated.

38.4. Owner's Use. Owner shall have the right, regardless of whether this Agreement is completed, suspended or terminated, in whole or in part, to use and reuse the Project Documents for any purpose. In the event Owner uses or reuses the Project Documents to perform work or have work performed on its behalf for which an IPD Team Member who authored the documents is not retained, Owner shall indemnify, defend, protect and hold that IPD Team Member free and harmless from liability, if any, arising from the use of any Project Documents by Owner, including, without limitation, any liability to third parties for personal injury, death, or property damage.

38.5. Author's Use. The author of a Project Document may reuse plans, drawings, specifications and other data prepared pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole. In the event any party uses any of the plans, drawings, specifications and other data in its practice, that party shall indemnify, defend, protect and hold Owner free and harmless from liability, if any, arising from the use of such

plans, drawings, specifications and other data, including, without limitation, any liability to third parties for personal injury, death, or property damage.

38.6. Limited Use. The Drawings, Specifications and other documents prepared by Architect, together with submittals or other design documents prepared by CM/GC, or any Subcontractor, Supplier, or sub-subcontractor specifically for this Project, and copies thereof furnished to CM/GC, are for use solely with respect to this Project. They are not to be used by CM/GC, Subcontractors, sub-subcontractors or Suppliers on other projects, or for additions to this Project outside the scope of the Work, without the specific written consent of Owner. CM/GC, Subcontractors, sub-subcontractors and Suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by Architect or Architect's Consultants appropriate to and for use in the execution of their Work under the Contract Documents.

39. DEFAULT, SUSPENSION AND TERMINATION

39.1. Events of Default. Events of Default shall include any of the following:

39.1.1. CM/GC or Architect institutes or consents to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or any similar or applicable federal or state law; or a petition under any federal or state bankruptcy or insolvency law is filed against CM/GC or Architect and such petition is not dismissed within sixty (60) days from the date of said filing;

39.1.2. CM/GC or Architect admits in writing its inability to pay its debts generally as they become due; makes a general assignment for the benefit of its creditors; a receiver, liquidator, trustee or assignee is appointed on account of its bankruptcy or insolvency; or a receiver of all or any substantial portion of CM/GC's or Architect's properties is appointed;

39.1.3. CM/GC or Architect, abandons the Work or Services; or persistently fails, except in cases for which extension of time is provided, to prosecute promptly and diligently the Work or Services, or supply enough properly skilled workers or proper materials for the Work or Services;

39.1.4. CM/GC or Architect submits a Payment Application, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is intentionally falsified;

39.1.5. CM/GC or Architect fails to make prompt payment to Subcontractors, Suppliers, or Architect's Consultants, or for materials or labor, or otherwise materially breaches its obligations under contract with a Subcontractor, Supplier, or Architect's Consultants;

39.1.6. A mechanic's lien is recorded against the Project or Owner's property by a party claiming entitlement through CM/GC or Architect and for which CM/GC or Architect has been paid, and it is not promptly removed, either by bond or release, in a manner satisfactory to Owner;

39.1.7. CM/GC or Architect persistently disregards any laws, statutes, ordinances, rules, regulations or orders of any governmental body or public or quasi-public authority having jurisdiction over those activities for which CM/GC or Architect is responsible under the Contract Documents or the site of the Project; or

39.1.8. CM/GC or Architect otherwise materially breaches the Contract Documents.

39.2. Notice of Default. Upon the occurrence of any of the events of default listed above, Owner shall provide written Notice of Default to the defaulting party, with copies to other member of the Core Group. Owner shall promptly attempt to schedule a meeting of the Core Group, including each party's Senior Management Representative, to be held with seven days of the notice. The notice shall describe the nature of the default and identify a reasonable period within which the party shall cure or commence and continue satisfactory correction of the default, which shall be at least seven (7) days.

39.3. Failure to Cure Default. If the defaulting party fails to cure or commence and continue satisfactory correction of the default within the cure period established in the Notice of Default, Owner may terminate the Contract with respect to that party, without prejudice to any right or remedy available to it under the Contract Documents, at law or in equity. In addition, Owner may, without prejudice to any other rights or remedies, as deemed appropriate in Owner's sole discretion:

39.3.1. Take possession of the site and of all materials, equipment to be incorporated into the Work and tools thereon owned by CM/GC;

39.3.2. Accept assignment of subcontracts pursuant to Article 33; and

39.3.3. Finish the Work by whatever reasonable method Owner may deem expedient.

39.4. Future Payments. When Owner terminates the Contract for one of the reasons stated above, the terminated party shall not be entitled to receive further payment until the Work or Services are completed. Upon completion of the Project, Owner shall, upon the request of the terminated party, furnish an accounting of the relevant costs incurred by Owner in finishing the Project, including all Owner's overhead and administrative expenses caused by the default.

39.5. Final Accounting. If the unpaid balance of the PCE or Architect's Compensation exceeds the costs of finishing the Work or Services, including additional compensation to the non-defaulting party caused by the default and other damages incurred by Owner and not expressly waived, then Owner shall pay to the defaulting party the lesser of (1) the excess amount or (2) the amount for which a progress payment would otherwise have been owing at the time of the default (including any retention). The costs to Owner of completing the Work or Services shall include, but not be limited to, the cost of any additional architectural, managerial and administrative services, any costs incurred in retaining another architect, contractor and/or consultants or subcontractors, any damages which Owner incurs as a result of a delay in completion of the Project, attorneys' fees and expenses, and any other damages, costs and expenses Owner may incur by reason of completing the Project or any delay thereof. If such costs and damages exceed the unpaid balance, the defaulting party shall pay the difference to Owner. These obligations for payment shall survive termination of the Contract.

39.6. Conversion of Improper Termination. If it is later determined, by litigation, arbitration or otherwise, that a termination for default was in error and that Owner was in breach of the Contract for so terminating any party, the termination shall be deemed a Termination for Convenience and the parties' remedies shall be limited to those provided for a Termination for Convenience.

39.7. Suspension. Owner may, without cause, order the IPD Team to suspend, delay or interrupt the Project, in whole or in part, for such period of time as Owner may determine. If Owner suspends the Project for a period of more than 90 consecutive days, the PCE and the Architect's Compensation shall be adjusted for increases in the cost of performance caused by suspension, delay or interruption. Adjustment of the PCE shall include CM/GC's Fee. No adjustment shall be made to the extent that:

39.7.1. Performance is, was or would have been so suspended, delayed or interrupted by another cause for which the party requesting the increase is responsible; or

39.7.2. An equitable adjustment is made or denied under another provision of the Contract.

39.8. Termination for Convenience. Owner may, at any time, terminate this Contract, and the Work or Services hereunder, in whole or part, for Owner's convenience and without cause, upon written notice ("Termination for Convenience"). Such written notice shall state the extent and effective date of such termination, and on such effective date the IPD Team members affected shall (1) as and to the extent directed, stop work under this Contract, place no further orders and enter into no further subcontracts for materials, labor, services or facilities; (2) unless otherwise directed, terminate all subcontracts and orders; and (3) take such other actions as may be necessary or requested by Owner to protect and preserve the terminated Work or Services and any other property in an IPD Team member's possession in which Owner has or may acquire an interest.

39.9. Payment to CM/GC. In the event of Termination for Convenience, Owner shall pay to CM/GC, as the sole and exclusive remedy, (1) that portion of the Cost of the Work allocable to the portion of the Work performed by CM/GC prior to the effective date of termination; (2) such other costs pertaining to the Work which CM/GC may incur as a result of such termination, including without limitation demobilization costs and cancellation costs, and (3) CM/GC's percentage fee applied to the costs determined under 1 and 2. Any payment under this Section shall be made in the manner provided in connection with Final Payment. Any dispute over the amount to be paid upon termination shall be resolved in accordance with the Dispute Resolution Procedures.

39.10. Payment to Architect. In the event of Termination for Convenience, Owner shall pay Architect, as the sole and exclusive remedy, (1) for all Services satisfactorily performed up to the notice of termination the proportionate share of Architect's Compensation based upon the Work Plan and the fee allocation established in the Project Summary, and (2) for all Reimbursable Expenses incurred prior to the notice, as well as those incurred thereafter that could not have been avoided by reasonably prompt efforts by Architect to mitigate its cost upon receipt of the notice of termination. As an Additional Service, upon request of Owner, Architect shall facilitate any new architect's assumption of Architect's duties following a termination pursuant to this Section.

39.11. Assignment. In the event of Termination for Convenience, CM/GC and/or Architect shall, at Owner's request, assign to Owner all of its right, title and interest in and to all or some of the subcontracts or consulting agreements under this Contract.

39.12. No Affect on Other Obligations. Termination of the Contract, either for default of Convenience, shall not constitute a release of continuing performance obligations that would

otherwise survive completion of the Project, including without limitation, claims for personal injury or property damage occurring prior to termination or to indemnity claims.

39.13. Termination by CM/GC or Architect. CM/GC or Architect may terminate the respective portion of the Contract if the Project is stopped for a period of sixty (60) consecutive days through no act or fault of the party seeking to terminate or a Subcontractor, Supplier, Architect's Consultant or any of their agents or employees, or any other person for whom such party is responsible under the Contract Documents, or for any of the following reasons:

39.13.1. Issuance of an order of a court or other public authority having jurisdiction which requires the Project to be stopped;

39.13.2. An act of government, such as a declaration of national emergency, which requires all Project Work or Services to be stopped;

39.13.3. Because Owner has not made payment of an undisputed amount due within the time stated in the Contract Documents; or

39.13.4. Because Owner has persistently failed to fulfill Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work or the Services.

39.13.5. Owner otherwise materially breaches the Contract Documents.

39.14. Notice of Owner Default. If one of the above reasons exists, CM/GC or Architect may provide written notice to the Core Group requesting that the Contract be terminated. If the Core Group agrees that the Contract should be terminated, or if the default is not cured within ten (10) days from the receipt of the written notice, the party requesting termination shall recover from Owner payment for Work executed or Services performed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including all demobilization costs plus reasonable overhead and profit on the work not performed.

40. CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

40.1. Purpose. The IPD Team will develop the Contract Documents with the intent of providing sufficient information to satisfy the permitting and regulatory authorities and to convey to field personnel information necessary for the proper execution and completion of the Work. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. CM/GC, Subcontractors, and Suppliers shall furnish and install all work shown or reasonably inferable from them as being necessary to produce the indicated results, including items, appurtenances and devices incidental to or necessary for a sound, secure, and complete installation.

40.2. Organization. Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control CM/GC in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. CM/GC shall advise the Core Group concerning methods for streamlining the Contract Documents.

40.3. Industry Meaning. Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

40.4. Hierarchy of Documents. If there is a conflict, the following relative order of priority shall apply:

- 40.4.1. Properly signed Changes
- 40.4.2. Approved PCE
- 40.4.3. Integrated Agreement;
- 40.4.4. Special Provisions; and
- 40.4.5. Drawings and Specifications.

40.5. Core Group's Role. In the event of uncertainty or disagreement concerning the meaning or interpretation of the Contract Documents, questions shall be referred to the Core Group.

40.6. Words. In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an." The fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

41. DISPUTE RESOLUTION

41.1. Scope. All claims, disputes or other matters in question between the parties to this Agreement which arise from or in connection with this Agreement shall be resolved as provide in this Section.

41.2. Continued Performance. At all times during the pendency of a Claim or a Dispute Resolution Proceeding and if Owner continues to make payment as required by this Agreement, work shall continue unless otherwise directed by the Core Group. In the event of impasse at the Core Group, and provided Owner continues to comply with its obligations under this Agreement, the parties to the Dispute Resolution Proceeding shall comply with Owner's directives and shall not suspend or disrupt work due to any dispute on the Project without Owner's written permission.

41.3. Definitions. A "**Claim**" is a request, demand or assertion by one of the parties seeking an adjustment or interpretation of Contract terms, payment of money, extension of time, or other relief with respect to its obligations under the Contract Documents. The term "Claim" also includes other disputes and matters in question between the parties arising out of or relating to the Contract Documents. The responsibility to substantiate a Claim rests with the party making the Claim. A "**Dispute Resolution Proceeding**" includes any of the mechanisms to resolve Claims provided in this Article.

41.4. Notice. Notice of Potential Claims shall be made to the Core Group at the earliest opportunity in an effort to afford maximum opportunity to avoid Project delay or cost impacts. Notice shall be provided if any party believes additional cost is involved for reasons including but not limited to (1) a written order for a minor change in the Work, (2) an order by Owner to stop the Work where the claimant allegedly was not at fault, (3) failure of payment by Owner, (4) termination of the Contract by Owner, or (5) Owner's suspension.

The Notice of Potential Claim must be made by written notice and shall contain the information listed below; provided that, if any of the required information is not available at the time the

Notice of Potential Claim is submitted, claimant shall provide all information which is available and a statement indicating when the remaining information will be provided.

41.4.1. The date of the event giving rise to such Claim and, if applicable, the date when the event ceased;

41.4.2. The nature of the occurrence or condition giving rise to the Claim;

41.4.3. Identification of the contractual provisions affected and a detailed explanation of how the Claim is contrary to those provisions;

41.4.4. An estimate of effect upon the PCE, including an itemized breakdown of additional cost, if any; and

41.4.5. An estimate of the effect upon the Construction Schedule and the Contract Time, including a comparison of the Construction Schedule and schedules prepared in connection with the Claim. If required by Owner, this shall include Time Impact Analysis showing in CPM format, both critical and non-critical path activities affected, and showing both the Construction Schedule and Claim sequences, duration and float.

41.5. Time Limits on Claims. Notice of Potential Claim by any party must be initiated within fourteen (14) days after occurrence of the event giving rise to such Claim or within fourteen (14) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. To the maximum extent possible, Notice of Potential Claim shall be provided before the additional work is performed or the additional cost is incurred, with a specific request that a response be provided by the date identified in order to avoid the harm contemplated by the Notice of Potential Claim.

41.6. Special Meeting. Owner, Architect and CM/GC shall attempt to resolve their disputes by reasonable business-like negotiations in accordance with the following procedures, and without resorting to litigation. Upon receipt of a Notice of Potential Claim, the affected parties shall attempt to resolve it through direct negotiations at a special meeting ("**Special Meeting**") which is called solely for the resolution of disputes. The Special Meeting shall be held at the Project site within a reasonable time not to exceed fourteen (14) days of a written request for the meeting, which request shall specify the nature of the dispute to be resolved. The Special Meeting shall be attended by non-attorney project representatives of the affected parties, who shall attempt in good faith to resolve the dispute and have authority sufficient to do so.

41.7. Core Group Consideration. If the parties are unable to resolve the Claim at the Special Meeting, then the Claim shall be submitted to the Core Group at its next meeting or at a special meeting requested by any party. The Core Group will review Claims and take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) request a technical analysis of the Claim from any IPD Team member; (3) proceed in an effort to achieve a negotiated resolution of the Claim. The Core Group may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Core Group in issuing a technical interpretation or recommendation.

41.8. Senior Executive Meeting. If the Core Group is unable to resolve the Claim, any party may request a Senior Management Meeting with the Core Group. Upon such a request, a Senior Management Representative from CM/GC, Owner and Architect each shall review the

claim in detail and then meet face-to-face to discuss and resolve the matter. ("**Senior Executive Meeting**") This meeting of Senior Management Representatives shall occur no later than fourteen (14) days after the Core Group has declared an impasse in its efforts to resolve the dispute, unless the parties agree upon a longer period of time. This meeting shall be for the express purposes of (1) exchanging and reviewing all pertinent non-privileged documents and information relating to the matters and issues in dispute, (2) freely and candidly discussing each party's position, and (3) reaching agreement upon a reasonable, compromise resolution of the Claim.

41.9. Independent Expert. If the Claim is not resolved within seven (7) days after the Senior Executive Meeting, then the Core Group may appoint one or more independent, third-party experts ("**Independent Expert**") to review the Claim. Once appointed, the Independent Expert shall review any technical analysis or recommendation, review material submitted by the parties and, as the Independent Expert deems appropriate, meet with the parties and other persons having information relevant to the issues in dispute before rendering an opinion as to an appropriate resolution of the Claim, giving consideration to the factual and contractual issues involved. Within twenty-one (21) days after appointment by the Core Group, Independent Expert shall deliver a written recommendation to the Core Group and the other parties to the Claim. The Core Group, and each of its members, may utilize Independent Expert's report as it deems appropriate in responding to claims or in assessing withholds or backcharges. The Independent Expert's fees shall be borne initially by each of the Core Group members, but the Core Group may decide to apportion the fee among the parties to the dispute based upon the percentage of responsibility assessed to each party in the matter. Independent Expert's opinion, conclusions and findings shall not be deemed inadmissible in evidence in any subsequent dispute resolution proceeding as privileged or part of a mediation process.

41.10. Non-Binding Mediation. If the dispute has not been resolved as provided above, any party may, at its option, initiate mediation proceedings in which the remaining parties shall participate. These proceedings shall be conducted by a third-party mediator who is acceptable to all of the parties to the mediation and experienced in design and construction in State in which the Project is located on projects of similar type and scope. The mediator shall be given written statement(s) of the parties and may inspect the Project site and other documents. The mediator shall schedule a mediation session, to be attended by Owner, Architect and CM/GC, together with any other party who has an interest in the Claim, within a reasonable time of the mediator's selection. The mediation shall be attended by representatives of Owner, CM/GC and Architect with authority sufficient to resolve the dispute. The cost of the mediation shall be borne equally by the parties to the dispute, i.e., if only Owner and CM/GC are involved in the dispute, then only the two of them shall share the cost. No minutes shall be kept and the proceeding shall be confidential. The entire mediation process must be completed within thirty (30) days of the Special Meeting, unless all parties involved in the dispute extend the mediation period.

41.11. This section not used.

41.12. Unresolved Impasse. If the foregoing procedure cannot resolve the dispute, the parties are free to pursue the legal and equitable remedies available to them, except that the parties waive any right to seek an injunction, temporary restraining order, stop payment or other relief which would stop or delay the Work.

41.13. Application of Procedures. CM/GC and Architect shall cause the provisions of this Article 41 to be incorporated in contracts with all Subcontractors, Suppliers, and Architect's

Consultants, so that all such parties shall also be bound to this dispute resolution procedure. This dispute resolution procedure shall not in any way affect any statutes of limitation relating to any Claim, dispute or other matter arising out of the Contract Documents.

42. MISCELLANEOUS PROVISIONS

42.1. Notices. All notices, requests, documents, approvals and other instruments made, given or delivered pursuant to and in connection with this Contract shall be in writing or electronically and shall be deemed to have been duly given (1) when delivered, if delivered in person or by reputable overnight courier, (2) as evidenced by a facsimile or electronic mail confirmation, on the date transmitted by facsimile or electronic mail if between the hours of 8:00 a.m. and 5:00 p.m. Central Time on a business day, otherwise on the next business day, (3) three business days after deposit in the United States Mail, registered or certified mail, return receipt requested, postage prepaid, to the last business address known to party giving notice, or to such address as the parties may designate from time to time; or (4) upon receipt if sent by any other method. Any party may change its address or facsimile number, as set forth herein, upon notice to the other in the manner forth set above.

42.2. Governing Law. This Agreement shall be governed by the laws of the State in which the Project is located and is deemed entered into and executed in the County where the Project is located.

42.3. Extent of Contract. This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between Owner and CM/GC, and Owner and Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by the parties whose rights are affected or according to the Change procedures outlined in Article 24. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern. Except as expressly provided elsewhere, the Contract Documents shall not be construed to create a contractual relationship of any kind (1) between Architect and CM/GC or (2) between Owner and a Subcontractor, Supplier, or Architect's Consultant.

42.4. Assignment. Each party respectively binds itself, and each of its partners, successors, assigns and legal representatives to the other parties hereto and to partners, successors, assigns and legal representatives of such other parties in respect to covenants, agreements and obligations contained in the Contract Documents. Neither CM/GC or Architect shall assign this Agreement, or rights hereunder, in whole or in part, without Owner's prior written consent. Owner may, with advance written notice to CM/GC and Architect, assign this Agreement to wholly owned subsidiaries, parents, affiliates, merger partners of Owner, or others with whom Owner enters into a legal relationship before or after this Agreement is made. Assignment by Owner shall only become binding if: (1) Assignee cures any existing Owner default, (2) Assignee provides proof of financial resources to fulfill its financial obligations with respect to the Project, (3) Assignee assumes all responsibilities of the Owner under the terms of this Agreement, and (4) Assignee continues to make payment as required by this Agreement.

42.5. Rights and Remedies. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law or in equity.

42.6. Waiver. No action or failure to act by Owner, Architect or CM/GC shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach, except as may be specifically agreed in writing.

42.7. Interest. Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at one percent (1%) per annum over the prime rate.

42.8. Attorneys' Fees. In the event any party to the Contract commences any action or proceeding against the other for any reason arising out of, in connection with, or related to the Contract, the prevailing party in such action or proceeding shall be entitled to recover such amount as the court or arbitrator may judge to be reasonable attorneys' fees, together with all costs, charges and expenses related to the suit, including all expert and consultant fees, provided that such party is determined to have made a reasonable and good faith effort to fully comply with the Dispute Resolution Provisions of the Contract Documents. For purposes of this Contract, to be deemed the prevailing party, the party asserting the claim must be awarded an amount not less than sixty percent (60%) of the original claim amount net of any counterclaim unless the original claim amount is increased in which event the party asserting the claim must be awarded sixty percent (60%) net of any counterclaim of the increased claim amount. If the party asserting the claim is not awarded sixty percent (60%) then the other party shall be deemed to be the prevailing party.

42.9. Severability. The invalidity of any covenant, restriction, condition, limitation or any other part or provision of the Contract Documents shall not impair or affect in any manner the validity, enforceability or effect of the remainder of the Contract Documents, except when such invalidity would constitute a material deviation from the general intent and purpose of the parties as reflected in the Contract Documents.

42.10. Equal Opportunity. IPD Team members shall maintain policies of employment that fully comply with all applicable legal requirements. At a minimum:

42.10.1. IPD Team members shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. IPD Team members shall take action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. IPD Team members agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies of nondiscrimination.

42.10.2. IPD Team members shall, in all locations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

42.11. Royalties & Patents. Each IPD Team member shall warrant to the others that no design, document, process, mean, or method that it prepares or proposes for and nothing else that it contributes to the Project shall infringe any patent, copyright, or other intellectual property right. Such party shall defend suits or claims for infringement of copyrights, patent, or other

intellectual property rights and shall hold the other IPD Team members harmless from loss on account thereof. However, if any IPD Team member has reason to believe that the required design, process or product is an infringement of a copyright or patent, that party shall promptly notify the Core Group in writing. CM/GC shall include in the PCE and pay all royalties and license fees associated with work described in the Contract Documents.

42.12. Conflict of Interest. Each IPD Team member shall comply with the Conflict of Interest and Business Ethics requirements set forth in Exhibit M.

43. CONTRACT SIGNING

By their signature below, each of the following individuals represent that they have authority to execute this Agreement and to bind the party on whose behalf their signature is made.

<p>Owner</p> <p>By: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>Architect</p> <p>By: _____</p> <p>Title: _____</p> <p>Date: _____</p>
<p>CM/GC</p> <p>By: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>By: _____</p> <p>Title: _____</p> <p>Date: _____</p>