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STANDARD MULTI-PARTY INTEGRATED PROJECT DELIVERY (IPD) AGREEMENT



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STANDARD MULTI-PARTY INTEGRATED PROJECT DELIVERY (IPD)
AGREEMENT

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ARTICLE 1 AGREEMENT

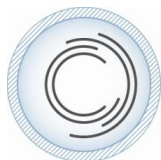
Job Number: [] Account Code: []

This Agreement is made as of this [] day of [] in the year [] by and between the
OWNER, []

and DESIGN PROFESSIONAL, []
Tax identification number (TIN) []
License Identification for the state of the Project []

and CONSTRUCTOR, []
Tax identification number (TIN) []
Contractor License No., if applicable []

for the following PROJECT: []



WORKSITE Location: []

Notice to the parties shall be given at the above addresses.

ARTICLE 2 IPD METHOD AND LEAN CONSTRUCTION PRINCIPLES

2.1 INTEGRATED PROJECT DELIVERY (IPD) The Parties agree that the Project objectives can be best achieved through an IPD method and principles that incorporate Lean Construction principles and tools. The IPD method is based on trust, shared risk and reward, collaborative decision-making, early involvement of the IPD Team, early definition of Project goals, intensified planning, and open communication. The Parties agree to adhere to an IPD method that incorporates Lean Construction principles and acknowledge that each Party's success is tied directly to the success of all other members of the IPD Team. Therefore, according to the terms of this Agreement, each Party pledges to:

- (a) Organize and integrate their respective roles, responsibilities, and expertise;
- (b) Identify and align their respective expectations and objectives;
- (c) Commit to open communication, transparent decision-making, proactive and non-adversarial interaction, problem-solving, and sharing of ideas;
- (d) Continuously seek to improve the Project planning, design, and construction processes; and
- (e) Share both the risks and rewards associated with achieving the Project objectives.

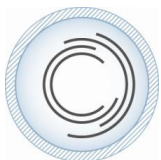
2.2 IPD TEAM The Parties and Joining Parties shall perform as an Integrated Project Delivery Team for the design, construction, and commissioning of the Project. Except as otherwise determined by the Core Group, the Parties shall contractually require, through the execution of a Joining Agreement, their respective consultants and Subcontractors (and require each to bind their respective Subsubcontractors, Suppliers, or consultants) (a) to comply with all the provisions of this Agreement, Contract Documents applicable to consultants or Subcontractors, and (b) to adhere to the principles of collaboration, management, and Target Value Design (TVD) set forth in this Agreement. Also, certain Joining Parties will be designated as Risk Pool Members in their Joining Agreements.

2.3 RELATIONSHIP Each IPD Team member accepts the relationship of mutual trust, good faith, and fair dealings established by this Agreement, and agrees to cooperate and to exercise its skill and judgment to further the interests of the Project. However, no IPD Team member shall be made a fiduciary of another IPD Team member by the terms of this Agreement. The IPD Team will promote harmony and collaboration on the Project. Design Professional and Constructor each represents that it possesses the requisite skill, expertise, and licensing to perform its Work or Services.

2.4 GOAL The IPD Team will seek to maximize efficiencies and minimize waste throughout the design and construction process, improve Project quality and value, increase safety, decrease claims, all while increasing the return on investment for the IPD Team.

2.5 RELIABLE COMMITMENTS IPD Team members will make and secure reliable commitments as the basis for planning and executing the Project. A reliable commitment is one in which (1) the conditions necessary for the satisfaction of the commitment are clear to all involved IPD Team members and (2) the IPD Team member making the commitment:

- (a) Is competent and able to perform the task or has retained individuals or entities with the competence or ability to perform the task;
- (b) Has estimated the time to perform the task, has allocated adequate resources to perform the task, and has properly scheduled time to perform the task;
- (c) Has no current basis for believing that the commitment will not be fulfilled; and
- (d) Is prepared to be accountable if the commitment cannot be performed as promised and shall promptly advise the IPD Team if it believes the task may not be performed as committed.



2.6 PULL PLANNING The IPD Team shall employ a pull scheduling approach to planning and scheduling, which provides that preceding activities are not started sooner than is needed to assure the continuous performance of subsequent activities. Where the work of one IPD Team member is dependent upon the prior performance of another IPD Team member, the IPD Team member whose work follows shall request of, and receive from, the prior performer a commitment as to when the work to be handed-off will be finished. Applicable IPD Team members shall agree upon criteria for the hand-off of items of work.

ARTICLE 3 COLLABORATIVE PROJECT MANAGEMENT

3.1 CORE GROUP The Core Group shall manage and serve as the decision-making body for delivery of the Project employing collaborative methods for achieving the highest value and most efficient and economical delivery of the Project. The Core Group shall be comprised, at a minimum, of an authorized representative of each of Owner, Design Professional, and Constructor. The Core Group may unanimously invite other critical Joining Parties to appoint members of the Core Group, either for a specific duration or until Project completion, for purposes of advancing the overall collaborative approach and the best interests of the Project. Any Joining Party representative added as an additional Core Group member shall be entitled to participate in all Core Group functions and decision-making on an equal basis. The Owner, Design Professional, and Constructor members of the Core Group may unanimously remove any other Core Group member from the Core Group.

3.1.1 CORE GROUP REPRESENTATIVES

Owner's authorized Core Group representative is [____].
Owner's alternative Core Group representative is [____].

Design Professional's authorized Core Group representative is [____].
Design Professional's alternative Core Group representative is [____].

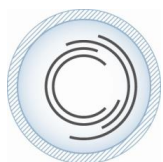
Constructor's authorized Core Group representative is [____].
Constructor's alternative Core Group representative is [____].

A Party's Core Group representative shall possess authority to bind that Party in all matters requiring the Party's approval, authorization, or written notice.

3.1.2 JOINING PARTY REPRESENTATIVE Each Joining Party shall identify in writing a representative who shall possess authority to bind that Joining Party in all Project matters, and who, if applicable, will be that Joining Party's Core Group representative.

3.1.3 REPLACEMENT OF A CORE GROUP REPRESENTATIVE Any company represented on the Core Group may, upon seven (7) Days' written notice, appoint a new authorized representative or alternative representative to the Core Group, provided no other Core Group member has a reasonable objection to the proposed replacement.

3.2 SELECTION AND REPLACEMENT OF BUILDERS AND CONSULTANTS Constructor and Design Professional shall develop consultant, Precon Trade, Subcontractor, and Supplier interest in the Project and, in collaboration with the other IPD Team members, develop a list of potential consultants, Precon Trades, Subcontractors, and Suppliers from whom proposals shall be requested. Proposed consultants, Precon Trades, Subcontractors, and Suppliers must possess the qualifications, experience, and financial resources to complete the Work or Services for which they are being proposed. The Core Group's approval of the inclusion of any consultant, Precon Trade, Subcontractor, or Supplier on the list of potential participants shall not waive the Core Group's right later to object to or reject any proposed



consultant, Precon Trade, Subcontractor, or Supplier. Any replacement of a consultant, Precon Trade, Subcontractor, or Supplier removed by an IPD Team member requires Core Group approval. The Core Group may direct an IPD Team member to replace any consultant, Precon Trade, Subcontractor, or Supplier to whom the Core Group has reasonable objection. All fees and other charges of consultants, Subcontractors, or Suppliers retained by Design Professional or Constructor are included in their respective compensation. The Core Group has the right to approve the terms and conditions of the agreements with consultants, Precon Trades, Subcontractors, and Suppliers.

3.3 SELF-PERFORMED WORK If Constructor proposes to self-perform a particular scope of Work, it shall provide the Core Group with its qualifications to perform the Work. If requested by the Core Group, Constructor shall obtain at least two bona fide price proposals for Work that it proposes to self-perform.

3.4 PARTICIPATION IN COLLABORATION Constructor shall contract with Precon Trades and Suppliers during early Project design to provide preconstruction services and facilitate an integrated, collaborative design process as approved by the Core Group. A Precon Trade providing preconstruction services may continue to serve as a Subcontractor during construction if the Core Group determines that its performance merits continued participation and accepts its price proposal. Approved Precon Trades, Subcontractors, and Suppliers shall contract directly with Constructor.

3.5 MANAGEMENT OF THE IPD TEAM The Core Group may appoint such intermediate project managers of the IPD Team that it deems necessary for effectively managing the Project. The Core Group will assess the experience of the IPD Team with IPD and Lean Construction principles and tools and will retain experts to educate, familiarize, train, and assist the IPD Team to implement them, as needed.

3.6 PROJECT PERSONNEL The Core Group shall designate key Project personnel for the IPD Team in a Project roster. Key personnel shall include those individuals authorized to bind an IPD Team member and those having primary responsibility for the Work or Services to be performed by their respective IPD Team member. No IPD Team Member shall augment, remove, or replace any of its key Project personnel without the Core Group's prior written consent, except in the case of death, disability, or discontinuance of such person from employment, provided that Core Group written approval must be obtained for the replacement. Any replacement personnel shall have substantially equivalent or better qualifications than the individual being replaced.

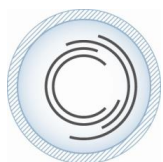
3.7 SUPERVISION The Core Group shall not have any duties of supervision over or control of any person employed or retained on the Project. All Parties, Joining Parties, consultants, Subcontractors, and Suppliers providing labor, services, materials, or equipment to the Project are independent contractors. Each IPD Team member is alone responsible for supervising its own employees.

3.8 OBJECTION TO PERSONNEL Design Professional, Constructor, and Joining Parties shall each remove from the Project any employee, person, or entity retained by it for the Project to which Owner or the Core Group has a reasonable objection.

3.9 DECISION-MAKING Consistent with IPD principles of collaboration and to the greatest extent possible, the Core Group shall diligently seek to make unanimous actions and decisions. The Core Group shall act in the best interest of the Project as a whole and consistent with Laws.

3.10 FAILURE TO REACH UNANIMITY To the extent unanimity cannot be reached among the Core Group, any member of the Core Group may refer the matter to the Senior Executive Team for further consideration.

3.11 SENIOR EXECUTIVE TEAM The Senior Executive Team is responsible for providing executive support and mentoring to the Core Group and for resolving Core Group impasses. Each Party's Senior Executive Team representative shall stay abreast of Project developments, gain a deep familiarity with



the Project, communicate regularly with that Party's Core Group representative, and possess authority to bind that Party in all matters requiring that Party's approval, authorization, or written notice. If a Party's Senior Executive Team representative changes, that Party shall immediately notify the other Parties in writing:

Owner's authorized Senior Executive Team representative is []
Design Professional's authorized Senior Executive Team representative is []
Constructor's authorized Senior Executive Team representative is [].

3.11.1 MEETINGS Each Senior Executive Team member is responsible to periodically attend Core Group meetings. Additionally, upon request of any Core Group member, the Senior Executive Team may be required to attend other meetings or to render decisions in cases where the Core Group reaches an impasse under Section 3.10

3.11.2 DECISIONS The Senior Executive Team will endeavor to resolve Core Group impasses or disputes through unanimous decision or action, in the best interests of the Project. If the Senior Executive Team is unable to reach a unanimous decision or action, Owner shall make a decision in the best interest of the Project. However, decisions implicating life, health, property, and public welfare that are required by Law to be made by a licensed design professional shall be made by Design Professional. If the decision is made by Owner (or Design Professional for decisions described in the previous sentence) following an impasse, Design Professional or Constructor may, if the decision affects Owner's Program, Expected Cost, Target Cost, Estimated Maximum Price (EMP), or Contract Time, request a Change Order under ARTICLE 15.

3.12 PROJECT MEETINGS

3.12.1 CORE GROUP MEETINGS The Core Group shall establish a schedule for regular meetings to review and discuss the Project status and any issues impacting its progress, including conflicts, delays, and their causes and potential claims.

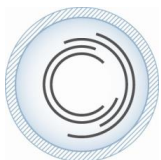
3.12.2 SPECIAL CORE GROUP MEETINGS If a Project matter arises requiring immediate attention, any member of the Core Group may call for a meeting on one (1) Day's written notice. Such notice shall include a thorough description of the issues to be addressed. Special Core Group meetings may be conducted through any medium the Core Group members mutually agree upon, including telephone, video, or web-conferencing.

3.12.3 IPD TEAM MEETINGS The Core Group shall establish a matrix for regular meetings of the IPD Team. This matrix shall include meetings for overall Project planning and weekly Project scheduling and coordination, variance meetings, as well as the record-keeping and reporting requirements for such meetings.

3.12.4 PRECONSTRUCTION MEETINGS During the Preconstruction Phase, the Core Group shall meet regularly (at least every other week) and shall schedule regular meetings for the IPD Team to facilitate collaboration regarding all Project elements, including but not limited to Worksite use and improvements, the selection of materials, building systems, and equipment.

3.13 OPEN COMMUNICATIONS Each IPD Team Member shall communicate in an open, honest, and clear manner that accurately conveys the relevant Project issues, conflicts, deliverables, or reliable commitments.

3.13.1 PROJECT COMMUNICATIONS PROTOCOL After executing this Agreement, the Core Group shall promptly agree on a Communications Protocol. The Communications Protocol shall: (a) identify critical Project personnel and their contact information; (b) provide a detailed Project meeting matrix



with meeting frequency and attendance requirements; (c) allow for direct communication between and among IPD Team members, as necessary, and identify when contemporaneous notification of the content of such communication should be made to the other IPD Team members; (d) establish the exchange of documents and data in electronic form, using the ConsensusDocs 200.2 Electronic Communications Protocol Addendum or a separate addendum; (e) determine the necessary equipment, software, and services; (f) determine acceptable formats, transmission methods and verification procedures; (g) establish methods for maintaining version control; (h) set forth privacy and security requirements; and (i) set forth storage and retrieval requirements. Except as otherwise agreed to by the Parties in writing, the Parties shall each bear their own costs as identified in the Communications Protocol. Absent a written protocol, use of documents and data in electronic form shall be at the sole risk of the recipient.

3.13.2 The Core Group will notify an IPD Team member in writing with any difficulty resulting from the member's failure to comply with the Communications Protocol. Failure of an IPD Team member to timely cure a breach of the Communications Protocol shall be a material breach of this Agreement and grounds for withholding payment.

ARTICLE 4 PROJECT OBJECTIVES AND PARTIES' RESPONSIBILITIES

4.1 **PROJECT OBJECTIVES** Project objectives are to design and construct the Project within the: (a) requirements of the Project Business Case in Exhibit A; (b) Owner's Program and Construction Documents, when approved; (c) Allowable Cost; and (d) the Project Schedule.

4.2 **OWNER'S PROGRAM** Owner's Program includes an initial description of the Project and Owner's objectives, a description of the physical characteristics of the Worksite, and disclosure of all available of the following: surveys; Worksite evaluations; legal descriptions; data or drawings depicting existing conditions; subsurface conditions and environmental studies; reports and investigations, tests, inspections, and other reports dealing with environmental matters; and Hazardous Material and other existing conditions, including structural, mechanical, and chemical tests known to Owner.

4.3 **ALLOWABLE COST** Owner has established an Allowable Cost for Owner's Program. The Allowable Cost is set forth in Exhibit A and cannot be revised without Owner's approval in Owner's sole discretion.

4.4 **OWNER RESPONSIBILITIES** Owner shall work with the IPD Team to identify the Project objectives, including budget and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and Worksite requirements. Owner shall provide full information in a timely manner regarding requirements for the Project, including Owner's Program and other relevant information.

4.4.1 **OWNER'S FINANCING** Owner shall, at the written request of another Party, furnish reasonable evidence of Project financing to the other Parties. Furnishing of such evidence is a condition precedent to commencement or continuation of the Work or Services. After such evidence has been furnished, Owner shall not materially vary such financial arrangements without prior notice to the other Parties.

4.4.2 **OWNER'S SEPARATE CONTRACTORS AND CONSULTANTS** Owner is responsible for the timeliness and quality of the work and services of Others engaged by Owner. The Core Group will coordinate the Work and Services with the work and services of the Others. IPD Team members will participate with the Core Group and Others in reviewing and coordinating plans and schedules for their respective work or services upon request. As directed by the Core Group, Constructor will include Others in scheduling, conflict resolution, and site safety programs. Owner shall be liable to the IPD Team for all third-party claims and safety violations arising from the work or services of Others engaged by Owner.



4.5 DESIGN PROFESSIONAL'S RESPONSIBILITIES Design Professional shall furnish all design and engineering Services necessary to design the Project and provide construction administration in accordance with Project objectives and the DP Work Plan (when approved), except for any design services awarded to design-build trades engaged by the Constructor. Consistent with the collaborative approach set forth in this Agreement, Design Professional shall draw upon the assistance of Constructor and other IPD Team members in developing the Project design, but Design Professional shall retain overall responsibility for all design decisions as required by Laws. Cost and schedule are design criteria and Design Professional, in collaboration with the IPD Team, shall create Design Documents that fully consider cost and schedule implications. In all of its Services, Design Professional shall collaborate with the IPD Team. Design Professional represents that it is an independent contractor and that it shall act as such in performing the Services. Design Professional's duties, responsibilities, and limitations of authority shall not be restricted, modified, or extended without written consent of the Core Group.

4.5.1 DESIGN PROFESSIONAL'S CONTINUING RESPONSIBILITY The Core Group's acceptance of the credentials of any Design Professional's consultant shall not in any way relieve Design Professional of any duty, responsibility, or liability for Services provided by Design Professional or any Design Professional's consultant. Design Professional shall coordinate and be responsible for the Services provided by all Design Professional's consultants.

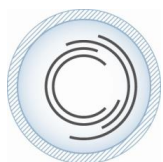
4.6 CONSTRUCTOR'S RESPONSIBILITIES Constructor shall furnish preconstruction and construction administration and management services, collaborate with the IPD Team, and use diligent efforts to promote the delivery of the Project in an expeditious manner. Consistent with the collaborative approach set forth in this Agreement, Constructor shall assist Design Professional in the development of the Project design, but shall not provide professional services which constitute the practice of architecture or engineering unless (a) Constructor needs to provide such services in order to carry out its responsibilities for construction means, methods, techniques, sequences, and procedures, or (b) such services are specifically called for by the Contract Documents. Constructor shall provide all labor, materials, equipment, and services necessary to complete the Work, all of which shall be provided in full accord with, and as reasonably inferable from, the Contract Documents. Constructor shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized. Constructor represents that it is an independent contractor and that in its performance of the Work it shall act as an independent contractor. Constructor's duties, responsibilities, and limitations of authority shall not be restricted, modified, or extended without written consent of the Core Group.

4.7 OWNER APPROVAL All approvals required from Owner shall be in writing. Owner approval shall not constitute a waiver by Owner of any of its rights under this Agreement, nor shall it relieve Design Professional or Design Professional's consultants from any of their obligations or liability for the technical or professional adequacy of their Services, nor Constructor, its Subcontractors, or Suppliers from any of their respective obligations or liability for the performance of the Work.

ARTICLE 5 VALIDATION PHASE

5.1 INITIAL MEETING Following execution of this Agreement, the Core Group shall have an initial meeting to review Owner's Program, to establish the Core Group's goals for the Project, and to begin initial Project planning. If Owner's Program has not been sufficiently established, the Core Group shall meet for the purpose of assisting Owner in the further development of Owner's Program. Owner shall provide any other information or services that the Core Group deems necessary for a fully developed Owner's Program.

5.1.1 Design Professional and Constructor shall each review Owner's Program to ascertain the requirements of the Project, and, together with any other IPD Team members then retained, shall

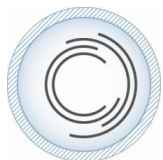


meet to confer on and verify such requirements. The IPD Team shall provide to the Core Group for its written approval a joint preliminary evaluation of Owner's Program and the Project requirements. This evaluation shall address issues bearing upon Project success, including the need for additional study or for testing the Worksite with regard to access, traffic, drainage, parking, building placement, utilities, environmental factors, and other considerations affecting the building, the environment, energy use, as well as information regarding Laws. The joint preliminary evaluation shall also propose alternative architectural, civil, structural, mechanical, electrical, and other systems for review by the Core Group, to determine the most desirable approaches on the basis of cost, technology, quality, and speed of delivery. The IPD Team shall review existing test reports, but shall not undertake any independent testing, unless the Contract Documents expressly provide otherwise. The joint preliminary evaluation shall identify any deviations from Owner's Program.

5.1.2 JOINT WORKSITE INVESTIGATION The Core Group shall review whether additional information or joint investigations are needed concerning the Worksite or reasonably required to validate Owner's Program. The Core Group shall identify in writing any apparent deficiencies or discrepancies in the information Owner provides. Owner shall provide required information in a timely manner and in reasonable detail describing the physical and legal characteristics of the Worksite, including surveys; Worksite evaluations; legal descriptions; data or drawings depicting existing conditions, subsurface conditions, utilities, benchmarks, and adjacent property; and environmental studies, reports, and investigations. The IPD Team members shall suggest options for investigation of existing conditions for Core Group consideration, including the cost and potential benefit of the differing levels of investigation during the Validation Phase. Based on the Core Group's review of the available information and the level of investigation approved by the Core Group, the IPD Team members will conduct Validation Phase joint investigations at or concerning the Worksite. The Core Group will prepare a report of the IPD Team's findings and recommendations from the Joint Worksite Investigation.

5.1.3 VALIDATION STUDY AND EXPECTED COST When Owner's Program is sufficiently defined, the IPD Team shall undertake to confirm and validate whether the Project can be completed for the Allowable Cost and other Project Business Case criteria. The IPD Team shall present a Validation Study to Owner upon Core Group approval. As part of the Validation Study, the Core Group shall develop and approve an estimate of the Expected Cost, which shall include a proposed Project budget including the Payable Costs, all IPD Team compensation and contingencies (including an IPD Team Contingency), a proposed Risk Pool Plan showing participants and their respective risk pool amounts, and a proposed Project Schedule including major milestone dates. After receiving and reviewing the Validation Study, Owner shall provide written notice to the Core Group indicating whether or not it accepts the Validation Study and the Expected Cost set out in that study. Upon Owner's approval of the final Validation Study, the Risk Pool Plan in that Validation Study will become effective.

5.1.4 IPD TEAM CONTINGENCY The IPD Team Contingency is available to cover Payable Costs from unanticipated events or issues such as design development or refinement, coverage for scope gaps during procurement of subcontractors, correction of defects or omissions in the design or in the installed Work that are not covered by applicable professional liability insurance, variations in market conditions, unanticipated field conditions that do not constitute a Change Order, and re-sequencing of the Work or acceleration of the Project schedule for improvement in the Project outcome. The IPD Team Contingency is established as a shared resource in lieu of each Risk Pool Member controlling separate contingency line items in their budgets. The IPD Team Contingency and any other established contingencies are not separate funds, but will be tracked as separate line items in the cost model and used as a cost management tool. The Core Group will determine when and how the IPD Team Contingency or other established contingencies will be used or allocated among cost model line items. However, Owner may not require the IPD Team Contingency to be used for any of the Change Order conditions set forth in Section 15.2.



5.2 If, at any time during validation of Owner's Program, it appears that the Expected Cost will exceed the Allowable Cost:

5.2.1 Owner may give written approval to increase the Allowable Cost;

5.2.2 The Core Group may direct the IPD Team to collaborate on revising the scope of Owner's Program or other criteria of the Project Business Case to bring it within the Allowable Cost, and Design Professional, as necessary, shall revise the drawings and specifications to allow the Expected Cost to be reduced to be equal or less than the Allowable Cost; or

5.2.3 Owner may elect to terminate the Agreement pursuant to Section 17.4.

5.3 **VALIDATION PHASE CONCLUSION** The Validation Phase shall conclude when the IPD Team confirms in the approved Validation Study that it is able to commit to design and construct the current Owner's Program for an Expected Cost that does not exceed the current Allowable Cost and in a way that meets the other current criteria of the Project Business Case. Once confirmed, the IPD Team shall commence the Preconstruction Phase and diligently strive to design the Project so that it may be constructed without exceeding the Expected Cost approved by Owner in the final approved Validation Study.

ARTICLE 6 PRECONSTRUCTION PHASE—TARGET VALUE DESIGN

6.1 **PROJECT SCHEDULE** Early in the Preconstruction Phase, Design Professional and Constructor, based on input from other IPD Team members, shall update for the Core Group's review and approval the Project Schedule included in the approved Validation Study. The updated Project Schedule shall be consistent with the Validation Study and show the timing and sequencing of the design and construction required to meet the time criteria set forth in Owner's Program. The Project Schedule shall be updated for the Core Group's review and approval at appropriate intervals and as the Core Group directs. If any Project Schedule update shows an adverse deviation from a previously approved Project Schedule, Design Professional and Constructor shall make appropriate recommendations to the Core Group.

6.2 RESPONSIBILITY MATRIX

6.2.1 Early in the Preconstruction Phase, the Core Group will prepare a Responsibility Matrix, which the Core Group may update to reflect the status of the Project and assign necessary tasks to the most qualified IPD Team members. IPD Team members shall perform the responsibilities designated to them in the most current Responsibility Matrix.

6.3 DESIGN PROCESS

6.3.1 **GOAL** The extensive preconstruction involvement of Constructor and Precon Trades is aimed to (a) maximize all IPD Team members' understanding of the design requirements, including the design intent and all technical requirements of the Project, prior to field construction, and (b) virtually eliminate requests for information or clarifications ("RFIs") after construction is commenced.

6.3.2 **TARGET VALUE DESIGN PROCESS** The Parties acknowledge that value, cost, schedule, and constructability (including work structuring) are basic components of the design criteria. The intent is to design the Project so it may be completed within the Owner's Program for less than the approved Expected Cost. Target Value Design begins upon conclusion of the Validation Phase and continues through the completion of design.



6.3.3 INTEGRATED DESIGN PRINCIPLES In order to achieve the Project objectives, the design process will proceed in a collaborative manner, informed by a free-flow of accurate information concerning program, quality, cost, and schedule. While retaining overall responsibility for the Project design, Design Professional must work collaboratively with the other members of the IPD Team, drawing on their respective expertise in order to achieve the Project objectives.

6.3.4 PULL-BASED DESIGN PRODUCTION The IPD Team shall use “pull-based” planning in pursuing TVD and producing the Design Documents.

6.3.5 SCOPE OF DESIGN SERVICES The Core Group shall oversee development of the Design Documents for the Project. Design Professional shall prepare a DP Work Plan for the Core Group’s review and approval at the time the Validation Study is submitted to Owner for approval. Design Professional shall update the DP Work Plan for any changes in the Validation Study prior to Owner’s approval or as a result of any approved changes in the Services.

6.3.6 DESIGN DOCUMENTATION STANDARDS The Core Group shall specify the documentation standards with which all Design Documents shall comply.

6.3.7 BUILDING INFORMATION MODELING APPROACH To the extent directed by the Core Group, the IPD Team shall use building information modeling (“BIM”) to design and construct the Project in order to provide continuous, immediate, and reliable information regarding design, scope, schedule, and cost for integration and coordination by the IPD Team. The Core Group shall establish, as applicable, the BIM parameters, standards, and technological requirements by executing and attaching the ConsensusDocs 301 BIM Addendum or other addendum to this Agreement, as well as requiring the same addendum on applicable subcontracts and consultant agreements.

6.3.8 LAWS AND REGULATIONS Within the applicable standard of care, all Services shall comply with Laws in effect during the preparation of the Contract Documents and the requirements of any governmental authority from whom permits, approvals, or other consents for the Project must be obtained. Each Responsible Design Professional shall, for the portion of the Work it is designing, identify and determine the meaning and effect of all applicable building code provisions and other Laws and requirements and take such measures as may be necessary to meet such Laws and requirements, including filing or revising any required applications, drawings, specifications, calculations, or other documents to the extent necessary to secure any required permits, approvals, or other consents for construction of the Project at the Worksite. Design Professional shall have overall responsibility for coordinating the efforts required to obtain all necessary governmental authority approvals and permits for the Work. Owner shall pay all third-party costs and fees required to secure approvals and permits.

6.3.9 DESIGN-BUILD WORK The Core Group shall designate any Work that is to be performed on a design-build basis. Design Professional shall specify all applicable performance and design criteria for any of the Work being performed by Constructor or a Precon Trade on a design-build basis. Constructor or Precon Trades shall retain appropriately licensed design professionals to provide design services related to the design-build Work. Unless otherwise approved by the Core Group, Work to be performed on a design-build basis shall be fully designed during preconstruction. Design Professional shall coordinate any design-build Design Documents with the other Design Documents and shall fully integrate any design-build Design Documents with the Construction Document submitted for permit or governmental approvals.

6.3.9.1 Design Professional shall be responsible for coordinating and integrating the information provided by Owner, Owner’s Consultants, Design Professional’s consultants, Constructor, Precon Trades, Subcontractors, and Others to prepare complete, coordinated, and integrated Design Documents.



6.3.10 DOCUMENT REVIEW Throughout all phases of the Project, the IPD Team shall carefully study and compare the Design Documents with each other, with the report of the Joint Worksite Investigation, and with any information furnished by Owner as provided elsewhere in the Contract Documents and shall immediately report to the Core Group, in writing, any errors, inconsistencies, or omissions discovered.

6.3.11 With reasonable promptness and without a cost, IPD Team members shall have access to the information described in Section 6.3.10. 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 Constructor, Precon Trades, or Subcontractors to include additional contingency in their estimates or require a Responsible Design Professional to make a design assumption that might prove wasteful if additional investigation was performed. The IPD Team members shall also suggest options for additional preconstruction investigation of existing conditions for Core Group consideration, including the cost and potential benefit of the differing levels of preconstruction investigation.

6.4 VALUE ANALYSIS STRATEGY The Core Group shall develop strategies for value analysis and for avoiding the waste of re-drawing as part of its TVD efforts, including early involvement of Precon Trades who possess information essential to the TVD process, carrying multiple design options forward, and deferring decisions until the last responsible moment.

6.5 COST MODELING Throughout the TVD process and construction of the Project, Constructor shall provide cost modeling on a continuous basis. Constructor shall generate cost model reports at appropriate milestones as designated by the Core Group. Constructor, Precon Trades, and other Subcontractors shall provide cost information and estimates of portions of the Work, systems under consideration, and such other cost information as required by the Core Group.

6.5.1 The Core Group shall establish milestones for updating and reconciling the cost model to assure that the overall cost is trending toward the Target Cost.

6.5.2 CONTINGENCIES IN COST MODEL The Expected Cost, Target Cost, subsequent cost models, and EMP will contain line items for the IPD Team Contingency and an escalation allowance, each in an amount to be agreed upon by the Core Group. Constructor and IPD Team members shall not include separate contingencies to address refinement of designs, materials, or equipment; instead, IPD Team members shall include realistic pricing based upon listed assumptions and understandings concerning the scope of work, labor, materials, and equipment required by the pending design.

6.5.3 COST MODEL RECONCILIATION If at any time cost models exceed the Target Cost, Expected Cost, or Allowable Cost, the Core Group shall give direction on what actions shall be taken by the IPD Team.

6.6 TARGET VALUE PRICING

6.6.1 TARGET COST Using the Target Value Design process, the IPD Team shall diligently strive to design the Project so that it can be constructed for the Expected Cost or less, and with a further goal of delivering the Project for the Target Cost through innovation and collaboration. The Core Group shall establish the Target Cost in the Risk Pool Plan. The Core Group shall jointly manage the budget to further the Project objectives. Once established, a decision that would cause the Target Cost to be exceeded may only be made with the express approval of the Core Group.



6.6.2 Target value pricing is a continuing refinement of the Expected Cost established in the Validation Study and the Target Cost, once established. Depending on the stage of document development, the scope and nature of this ongoing effort may change. Cost analysis shall not be deferred until documents reach a certain stage of development, but rather shall be the by-product of the continuous TVD process. Constructor and Precon Trades shall provide ongoing cost information and estimates of portions of the Work, systems, and details as they are developed or considered. IPD Team members shall participate in all cost exercises that the Core Group deems advisable. The estimates, Expected Cost, Target Cost and EMP shall each include an allowance amount for escalation in labor and material prices only as provided by the Core Group in an escalation management plan. Escalation in labor and material prices on a unit cost basis beyond the unit costs shown in the Contract Documents or escalation management plan will be initially charged to the escalation allowance. At Final Completion, the Expected Cost, Target Cost, and EMP will be adjusted to reflect the difference between the escalation allowance and actual escalation/de-escalation in labor and material prices.

6.6.3 The Core Group shall develop written protocols for TVD, including items such as the following:

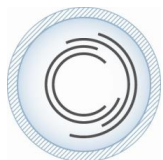
- 6.6.3.1 Method to establish initial target costs for major components and systems;
- 6.6.3.2 Method for determining targets for other cost elements;
- 6.6.3.3 Schedule for selection of Precon Trades during design;
- 6.6.3.4 Method for forming and meeting structure for TVD Clusters for major Project components, processes, systems, or IPD Team deliverables;
- 6.6.3.5 Method to assure continuous cost analysis and reporting procedures within the TVD Clusters for monitoring estimated costs against components of the Expected Cost and Target Cost;
- 6.6.3.6 Protocols for set-based design;
- 6.6.3.7 Creation of a target value team comprised of the leaders of applicable TVD Clusters to meet regularly and frequently, with responsibility for evaluating TVD tradeoffs and opportunities (including function/cost trade-offs) and authority to direct value analysis and adjustments of the component/system costs up or down to maintain or improve on the Target Cost; and
- 6.6.3.8 The frequency of preparing the milestone roll-up estimates.

6.6.4 If, in performing their respective obligations, Constructor, Precon Trades, or Subcontractors discover an error, omission, or inconsistency in the Design Documents, the applicable team member shall promptly notify the Core Group for action by Design Professional. It is recognized that, in their review of the design, Constructor, Precon Trades, and Subcontractors (other than design-build IPD Team members with regard to their own design obligations) are not acting in the capacity of licensed design professionals or assuming any design liability.

6.7 VALUE AND CONSTRUCTABILITY ANALYSES

6.7.1 VALUE ANALYSIS Throughout the Preconstruction Phase and especially during early design, the IPD Team shall identify options for reducing capital or life cycle costs, improving constructability and functionality, and enhancing operational flexibility consistent with Owner's objectives. The IPD Team shall bring forward value analysis proposals ("VAPs") within TVD Clusters, including alternative systems, means, methods, configurations, worksite locations, finishes, equipment, and the like that satisfy the general design criteria of the Project. The VAPs shall (a) create savings of time or money in designing, constructing, or operating and maintaining the Project, or (b) increase quality, constructability, or other measures of values that are cost effective.

6.7.2 The Parties shall use the TVD Clusters to break the work into smaller components for maximizing the benefits of the TVD process. VAPs shall be a primary focus of the TVD Clusters and should be a basis for set-based design. Each VAP shall (a) examine the proposed alternative, (b)



identify all aspects of the Project directly or indirectly affected by the alternative, (c) specify the value to be achieved if the VAP is accepted, and (d) detail any anticipated effect on the Project's service life, economy of operation, ease of maintenance, appearance, design, or safety standards. Each VAP shall be documented using an A-3 Report format that evaluates the VAP's specifics in relation to the value elements identified in the initial value identification report prepared as part of the TVD process. TVD Clusters and the IPD Team shall initially review and consider whether to carry a VAP as a set during design. In case of disagreement concerning whether to carry a VAP, the Core Group shall determine which VAPs to pursue. For each VAP that is carried forward, Design Professional shall ascertain design feasibility, satisfaction of the design concept, and compatibility and compliance with Laws and professional standards of care.

6.7.3 IPD TEAM CONSTRUCTABILITY ANALYSES The IPD Team shall continually review the Design Documents for clarity, consistency, constructability, and coordination among the construction trades and collaborate with the IPD Team in developing solutions to any identified issues. The IPD Team's constructability analysis aims (a) to determine that the design is progressing in a manner that will result in complete, accurate, and coordinated drawings that are sufficiently complete and coordinated for construction, and (b) to reduce the risk of disruption, delay, and changes. Constructor and Precon Trades will focus on accuracy, completeness, sequencing, and coordination. Nothing in this section shall relieve any Design Professional, Constructor, or any Subcontractor, Supplier, or Design Professional's consultant from its obligation to perform its Services or Work in accordance with the terms of this Agreement and the applicable standard of care. Precon Trades shall participate in preparing coordination drawings to identify routing and eliminate conflicts among the Work of various Precon Trades, Subcontractors, and Suppliers. Precon Trade coordination drawings shall be provided to Design Professional, together with other information that should be included in the Design Documents.

6.7.4 CONSTRUCTOR CONSTRUCTABILITY REVIEWS In order to reduce the risk of disruption, delay, rework, or inefficiencies, Constructor shall conduct constructability reviews in collaboration with Design Professional throughout the Project design. The purpose of these reviews is to assure that the Design Documents will result in Construction Documents that are sufficiently complete, accurate, and coordinated. The findings of these reviews shall be recorded and distributed to each IPD Team member. Design Professional shall evaluate the findings of these reviews, incorporate appropriate changes in the Design Documents, and provide notations on the Construction Documents or explain why such action is unnecessary. Constructor and its Subcontractors shall be responsible for determining whether something is constructible. In conducting constructability reviews, Constructor shall not provide professional services which constitute the practice of architecture or engineering. Design Professional is responsible for the completeness and accuracy of the design. Notwithstanding the foregoing, consistent with the collaborative approach in this Agreement, Constructor shall advise Design Professional if Constructor has actual knowledge that the design does not comply with Laws. Nothing in this section shall relieve any Party from their respective obligations to perform in accordance with the terms of their respective duties under this Agreement and the applicable standard of care.

6.8 QUALITY ASSURANCE AND QUALITY PLANNING

6.8.1 QUALITY The IPD Team will work diligently throughout the Project to assure quality in the first instance, avoid defects, and proactively and collaboratively mitigate the impact of any defects that do occur.

6.8.2 BUILT-IN QUALITY PLAN Design Professional and Constructor, in collaboration with the other IPD Team Members, shall develop a plan that addresses issues such as the following:



- (a) Confirming that the Contract Documents clearly communicate to Project participants the conditions necessary for the satisfaction of their commitments;
- (b) Training workers on the benefits of standardized work practices, the continuous improvement of work practices and the negative impact upon the Project of failing to achieve commitments;
- (c) Using mockups, first run studies, early completion of standard work units, and similar efforts to demonstrate and document agreed-upon levels of quality;
- (d) Providing task-based quality checklists for use by trade persons to self-evaluate quality performance, establish benchmarks, and promote continuous improvement;
- (e) Developing methods for onsite managers and others providing quality assurance to review early work product and assure quality performance;
- (f) Integrating quality review and Project planning and scheduling pursuant to Section 13.1;
- (g) Developing protocols for trade persons to discuss and assure quality when Work is being handed off to another;
- (h) Identifying procedures for immediately addressing quality failures by workers originally performing Work to assure minimum cost impact and continuous improvement;
- (i) Developing procedures for recognizing outstanding performance and quality by individual trade persons and the IPD Team members; and
- (j) Creating standards by which to measure and track quality performance.

6.8.3 OPERATIONS QUALITY PLAN Constructor, Precon Trades, and Subcontractors shall submit to the Core Group for its approval a construction operations quality plan that addresses the following:

- (a) The removal of clutter and all unnecessary items from the work environment;
- (b) Placing items that will be used during construction so as to facilitate their efficient and responsible use;
- (c) Creating an orderly and clean workspace with continuous inspection and clean-up;
- (d) Standardizing and constantly improving construction operation practices; and
- (e) Creating a culture of discipline and continuous improvement.

ARTICLE 7 DESIGN PROFESSIONAL'S AND CONSTRUCTOR'S COMPENSATION

7.1 DESIGN PROFESSIONAL'S COMPENSATION

7.1.1 Owner shall pay Design Professional its Payable Costs for the Services plus Design Professional's Profit, subject to the incentive and risk-sharing provisions of ARTICLE 10. Payments will be as provided in ARTICLE 16.

7.1.2 Design Professional's Profit shall be comprised solely of its profit set forth in the Risk Pool Plan, as adjusted per ARTICLE 15. Design Professional's Profit shall be established as a fixed sum at the time of the establishment of the Target Cost and shown in the Risk Pool Plan.

7.2 CONSTRUCTOR'S COMPENSATION

7.2.1 Owner shall pay Constructor its Payable Costs for the Work, plus Constructor's Profit, subject to the incentive and risk-sharing provisions of ARTICLE 10 and the EMP. Payments will be as provided in ARTICLE 16.

7.2.2 Constructor's Profit shall be comprised solely of its profit set forth in the Risk Pool Plan, as adjusted per ARTICLE 15. Constructor's Profit shall be established as a fixed sum at the time of the establishment of the Target Cost and shown in the Risk Pool Plan.

ARTICLE 8 BASIS OF COST BENCHMARKS



8.1 COMPONENTS OF COST BENCHMARKS

8.1.1 Unless the Parties mutually agree otherwise, each of the Expected Cost, Target Cost, and EMP shall be the sum of:

8.1.1.1 Design Professional's estimated Payable Costs and Design Professional's Profit;

8.1.1.2 Constructor's charges plus the contingencies and allowances included in the Expected Cost, consisting of:

- (a) Constructor's estimated Payable Costs;
- (b) The current balance of the IPD Team Contingency;
- (c) Any other contingencies established in the Expected Cost and determined by the Core Group to be carried forward;
- (d) Any remaining allowances that have not previously been reconciled; and
- (e) Constructor's Profit.

8.1.2 FURTHER DESIGN DEVELOPMENT If the Construction Documents are not complete at the time the EMP is developed and submitted to the Core Group, the EMP shall provide for final development of the Design Documents. Such further development does not include the cost of changes in scope, systems, kinds and quality of materials, finishes, or equipment in excess of the remaining balance of any Owner-controlled contingency established for design changes or quality enhancements.

8.2 DOCUMENTING THE BASES OF COST BENCHMARKS The Expected Cost, Target Cost and EMP shall each have a written statement of its basis, which shall include:

8.2.1 A list of the drawings, specifications, and other bases for design, including all addenda used in preparing the cost estimate;

8.2.2 A list of allowances and a statement of their basis;

8.2.3 A description of the assumptions, deviations from Owner's Program, and clarifications upon which the benchmark is based;

8.2.4 The date of Substantial Completion and the date of Final Completion upon which the benchmark is based;

8.2.5 The schedule of the Work and Services prepared by the Design Professional and the Constructor and approved by the Core Group and upon which the date of Substantial Completion and the date of Final Completion are based;

8.2.6 A schedule of applicable alternate prices;

8.2.7 A schedule of applicable unit prices;

8.2.8 The current balance of the IPD Team Contingency;

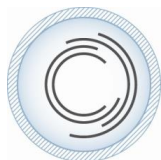
8.2.9 Any other contingencies determined by the Core Group to be carried forward;

8.2.10 A statement identifying any known patented or copyrighted materials, methods, or systems incorporated in the Work that are likely to require the payment of royalties or license fees;

8.2.11 A schedule of values organized by IPD Team member and trade categories, allowances, contingencies permitted by this Agreement, self-performed Work, and any other items that comprise the benchmark; and

8.2.12 A detailed budget and breakdown of all general conditions and jobsite management expenses included within the benchmark.

ARTICLE 9 PAYABLE COSTS



9.1 Subject to the Risk Pool Plan and the EMP, Owner agrees to pay Design Professional and Constructor for their respective Payable Costs and to be responsible for its own Payable Costs. Payment of Payable Costs shall be in addition to Design Professional's Profit and Constructor's Profit.

9.2 COST ITEMS

9.2.1 The following are compensable costs to Design Professional and Constructor, subject to the Risk Pool Plan and the EMP:

9.2.1.1 Constructor's labor shall be compensated on the basis selected below:

Actual wages or salaries, as follows:

(a) Wages paid for field labor in the direct employ of Constructor in the performance of the Work;

(b) Salaries of Constructor's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office, wherever stationed, performing the functions listed below: [____].

(c) Cost of all employee benefits and payroll taxes including but not limited to workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by Laws, labor agreements, or paid under Constructor's standard personnel policy, insofar as such costs are paid to employees who are included in the Payable Costs pursuant to subsections (a) or (b) immediately above; and

(d) If no basis under this Section 9.2.1.1 is selected, then Constructor's labor shall be compensated on the basis of subsections (a), (b), and (c) immediately above.

Agreed fixed billing rates exclusive of home office overhead, as follows:

(a) Labor performed by field laborers in the direct employ of Constructor in the performance of the Work at the fixed billing rates for field labor set forth in Exhibit B;

(b) Labor performed by Constructor's employees when stationed at the field office, in whatever capacity employed, by employees engaged on the road expediting the production or transportation of material and equipment, and by employees from the principal or branch office, wherever stationed, performing the functions listed below, at the fixed billing rates for those employees set forth in Exhibit B: [____];

(c) The cost of all employee benefits and payroll taxes including but not limited to workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by Laws, labor agreements, or paid under Constructor's standard personnel policy is included within the fixed billing rates in Exhibit B; and

(d) The fixed billing rates in Exhibit B do not include compensation for Constructor's home office overhead, which will be separately billed as Payable Costs per Section 9.2.1.24. The fixed billing rates in Exhibit B have been reviewed and agreed with Owner and are not subject to further audit as to the composition or determination of such rates.

Agreed fixed billing rates inclusive of home office overhead, as follows:

(a) Labor performed by field laborers in the direct employ of Constructor in the performance of the Work at the fixed billing rates for field labor set forth in Exhibit B;



(b) Labor performed by Constructor's employees when stationed at the field office, in whatever capacity employed, by employees engaged on the road expediting the production or transportation of material and equipment, and by employees from the principal or branch office, wherever stationed, performing the functions listed below, at the fixed billing rates for those employees set forth in Exhibit B: [].

(c) The cost of all employee benefits and payroll taxes including but not limited to workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by Laws, labor agreements, or paid under Constructor's standard personnel policy is included within the fixed billing rates in Exhibit B; and

(d) The fixed billing rates in Exhibit B also include full compensation for Constructor's home office overhead. The fixed billing rates in Exhibit B have been reviewed and agreed with Owner and are not subject to further audit as to the composition or determination of such rates.

9.2.1.2 Design Professional's labor shall be compensated on the basis selected below:

Actual wages or salaries, as follows:

- (a) Salaries or wages of Design Professional's employees performing Services; and
- (b) Cost of all employee benefits and payroll taxes including but not limited to workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by Laws or paid under Design Professional's standard personnel policy, insofar as such costs are paid to employees who are included in the Payable Costs pursuant to subsection (a) immediately above;

Agreed fixed billing rates inclusive of home office overhead, as follows:

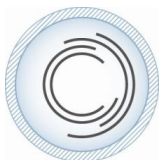
- (a) Labor performed by Design Professional's employees at the fixed billing rates set forth in Exhibit B;
- (b) The cost of all employee benefits and payroll taxes including but not limited to workers' compensation, unemployment compensation, social security, health, welfare, retirement, and other fringe benefits as required by Laws or paid under Design Professional's standard personnel policy is included within the fixed billing rates in Exhibit B;
- (c) The fixed billing rates in Exhibit B also include full compensation for Design Professional's home office overhead. The fixed billing rates in Exhibit B have been reviewed and agreed with Owner and are not subject to further audit as to the composition or determination of such rates; and
- (d) If no basis under this Section 9.2.1.2 is selected, then Design Professional's labor shall be compensated on the basis of subsections (a), (b), and (c) immediately above.

9.2.1.3 Reasonable transportation, travel, hotel, and moving expenses of Design Professional's and Constructor's personnel incurred in connection with the Work;

9.2.1.4 Cost of all materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by Owner, and their transportation, storage, and handling;

9.2.1.5 The expenses of printing, reproductions, postage, express delivery charges, and handling and delivery of drawings and specifications;

9.2.1.6 Cost of renderings, models, presentation materials, and mock-ups required for the Project and approved by Core Group;



9.2.1.7 Payments made by Constructor to Precon Trades, Subcontractors, Suppliers, or consultants for Work performed under this Agreement and payments made by Design Professional to its consultants for Services performed under this Agreement, all in accordance with their written subcontracts, purchase orders, or consulting agreements;

9.2.1.8 Costs for Constructor's self-performed trade Work on either of the following bases: (a) any stipulated sum amounts agreed with Owner for Constructor to self-perform a scope of trade Work; or (b) for self-performed trade Work performed with Owner's approval on a cost-plus-fee basis, the applicable Payable Costs under other subsections of this Section 9.2.1 plus the amount of trade-level overhead and profit agreed with Owner for that scope of self-performed trade Work. Unless otherwise provided in the Risk Pool Plan, the trade-level profit for Constructor's self-performed Work will be part of Constructor's Payable Costs and not part of the Risk Pool;

9.2.1.9 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are not incorporated in the Work but are used or consumed in the performance of the Work, less salvage value or residual value;

9.2.1.10 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Constructor or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from Constructor or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the fair market value of the piece of equipment at the time placed in service;

9.2.1.11 Cost for required insurance shall be compensated on the basis selected below:

Actual cost of insurance required under the Contract Documents. If no basis is selected, this will be the basis for compensating costs of required insurance.

Agreed fixed billing rates for insurance required under the Contract Documents, as follows:

Constructor: [_____]

Design Professional: [_____]

9.2.1.12 Amounts expended to satisfy deductibles or self-insured retentions under required insurance to the extent allowed below: [_____]

9.2.1.13 Sales, use, gross receipts, or other taxes, tariffs, or duties related to the Work or Services for which Constructor or Design Professional is liable;

9.2.1.14 Permits, fees, licenses, tests, royalties, or damages for infringement of patents or copyrights;

9.2.1.15 Losses or damages to the Work to the extent not compensated by insurance or other third parties, and the cost of corrective Work during the Construction Phase;



9.2.1.16 Photographs, videography, mobile phone service, and internet service at the Worksite and reasonable petty cash expenses at the field office;

9.2.1.17 All costs associated with a BIM approach, as required by and approved by the Core Group;

9.2.1.18 All water, power, and fuel costs necessary for the Work;

9.2.1.19 Cost of removal or recycling of all non-hazardous substances, debris, and waste materials;

9.2.1.20 Costs incurred due to an emergency affecting the safety of persons or property;

9.2.1.21 Mediation, arbitration, and legal fees and costs, including attorneys' fees, other than those arising from disputes among IPD Team members, reasonably and properly resulting from performance of the Work or Services;

9.2.1.22 Additional costs resulting from Laws, including taxes, enacted after the date of this Agreement;

9.2.1.23 All other costs directly incurred in the performance of the Work or in connection with the Project, and not included in Design Professional's Profit and Constructor's Profit as set forth in ARTICLE 7, to the extent approved by the Core Group;

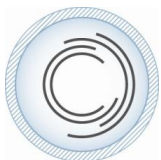
9.2.1.24 Normal, non-Project overhead of Constructor, Design Professional, and Subcontractors and consultants that are being compensated for their portion of the Work or Services on a cost-reimbursable basis as provided below:

9.2.1.24.1 Constructor's non-Project overhead shall be compensated on the basis selected below:

- A mark-up of [_____] percent ([_____]%) of Constructor's Payable Costs other than overhead.
- A stipulated sum for overhead set forth in the Risk Pool Plan and billed on a percentage completion basis. If no basis is selected, this will be the basis for compensating Constructor's home office overhead.
- No separate compensation for overhead, as Constructor's fixed billing rates are inclusive of home office overhead.

9.2.1.24.2 Design Professional's non-Project overhead shall be compensated on the basis selected below:

- A mark-up of [_____] percent ([_____]%) of Design Professional's Payable Costs other than overhead.
- A stipulated sum for overhead set forth in the Risk Pool Plan and billed on a percentage completion basis.
- No separate compensation for overhead, as Design Professional's fixed billing rates are inclusive of home office overhead. If no basis is selected,



this will be the basis for compensating Design Professional's home office overhead.

9.2.1.24.3 Subcontractors compensated on a cost-reimbursable basis shall be compensated for their non-Project overhead on the basis selected below:

- A mark-up on their Payable Costs other than overhead in the percentage set forth in its subcontract.
- A stipulated sum for its overhead set forth in the Risk Pool Plan and billed on a percentage completion basis. If no basis is selected, this will be the basis for compensating Subcontractors' home office overhead.
- No separate compensation for overhead, as the Subcontractors' fixed billing rates are inclusive of home office overhead.

9.2.1.24.4 Consultants compensated on a cost-reimbursable basis shall be compensated for their non-Project overhead on the basis selected below:

- A mark-up on their Payable Costs other than overhead in the percentage set forth in its consulting agreement.
- A stipulated sum for its overhead set forth in the Risk Pool Plan and billed on a percentage completion basis.
- No separate compensation for overhead, as the consultant's fixed billing rates are inclusive of home office overhead. If no basis is selected, this will be the basis for compensating consultants' home office overhead.

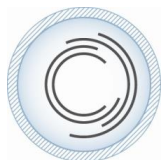
9.2.2 All costs incurred by Owner that are either: (1) in the performance of another Party's duties under this Agreement which the other Party does not timely perform; or (2) provided elsewhere in this Agreement as an Owner cost counted toward the Expected Cost, Target Cost or EMP. However, prior to incurring any such Payable Costs, Owner shall notify the Core Group at least five (5) Days beforehand describing the situation and the amount(s) Owner intends to pay.

9.3 DISCOUNTS All discounts, rebates, and refunds on amounts included in the Payable Costs, and all returns from sale of surplus materials and equipment purchased for the Work, shall be credited to the Payable Costs.

ARTICLE 10 RISK POOL

10.1 RISK POOL The Core Group shall develop a financial incentive program as part of the Risk Pool Plan to encourage superior performance based upon Project objectives and to reward the Risk Pool Members for successfully achieving superior performance and successfully exceeding the Core Group's established expectations and benchmarks. Upon approval by the Core Group, the Risk Pool Plan shall be included in the approved Validation Study and may be amended by Change Order.

10.1.1 The incentive program shall provide a basis for continually monitoring and reviewing the IPD Team's performance. This process will provide the IPD Team with periodic performance information to allow corrections or modifications so as to improve the quality of the Work and Services. The incentive program shall be funded with shared savings as evidenced by contingency preservation and reduction in the Payable Costs or as otherwise agreed among the Owner and Risk Pool Members.



10.2 ESTABLISHMENT OF RISK POOL The "Risk Pool" is the collective pool of the profits put at risk by Risk Pool Members if the Project is delivered for more than the EMP or otherwise fails to achieve established criteria, as more particularly addressed in the Risk Pool Plan. Profit shall be as defined in this Agreement and the Risk Pool Plan. Amounts earned by the Risk Pool Members under the financial incentive program will augment the Risk Pool.

10.3 The Risk Pool Plan will be developed through consensus by Owner and the Risk Pool Members, but the Core Group shall have final authority to determine the basis for participation and percent participation by each Risk Pool Member. Prior to finalization of the Risk Pool Plan, any Precon Trade or consultant proposed to be a Risk Pool Member may refuse participation in the Risk Pool Plan. Such Precon Trade or consultant will instead be compensated on a cost-plus-fee basis, subject to a guaranteed maximum price as set forth in the subcontract, or else replaced, at the discretion of the Core Group.

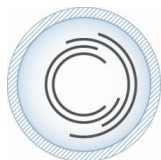
10.4 The Risk Pool Plan shall identify (a) the Risk Pool Members; (b) the incentive amounts and amount of profit that is at risk in the Risk Pool; (c) each Risk Pool Member's interest in the Risk Pool; (d) the Target Cost; (e) any Project success metrics or conditions of satisfaction that must be achieved by the Risk Pool Members as a condition to payment of some or all of the Risk Pool; (f) the manner of sharing savings realized in the final Actual Cost relative to the Expected Cost, Target Cost, and/or EMP; (g) how the Risk Pool shall be augmented and disbursed, including the effect of escalation, Change Orders, and warranty Work on Risk Pool amounts and distributions; (h) provisions for retainage, if any; (i) the impact of termination on the Risk Pool and Risk Pool Members; and (j) the terms and conditions of any other incentives included in the Risk Pool Plan. A major purpose of the Risk Pool Plan is to establish incentives for participants to collectively achieve savings in the Payable Costs relative to the Expected Cost, and to place the Risk Pool Members' profits at risk to fund certain potential cost overruns.

10.5 If during the performance of the Work or Services the total Payable Costs exceed the amount budgeted for the aggregate Payable Costs in the current EMP (excluding IPD Team Contingency), the overrun shall be paid: (1st) from that portion of any amounts recovered from insurance or responsible third parties in reimbursement of Payable Costs until such amounts are fully depleted – see Section 10.5.1; (2nd) from the IPD Team Contingency until it is fully depleted; (3rd) from undistributed amounts of the Risk Pool until it is fully depleted; and (4th) from previously distributed amounts of the Risk Pool, which shall be returned to Owner by the Risk Pool Members. Any Payable Costs which exceed the EMP shall be paid by Owner per ARTICLE 9 unless the EMP Amendment provides otherwise. As part of the process of determining final payment, the Core Group shall determine the total Payable Costs for the Project. The final value of the Risk Pool (including any shared savings) shall be determined as part of final payment in accordance with the Risk Pool Plan and this Agreement.

10.5.1 If at the time for final payment, recoveries of Payable Costs are reasonably anticipated from insurance or third parties, Owner shall make final payment based on the Core Group-approved estimate of the amount of the recovery of Payable Costs. As mutually agreed, the Party receiving the recovery shall either make distribution of the recovery of Payable Costs among the Parties on behalf of Owner or else reimburse Owner in the amount of the recovery of Payable Costs. To the extent the actual recovery differs from the estimated recovery, Owner and Risk Pool Members shall reconcile and adjust past payments to reflect the actual recovery of Payable Costs.

ARTICLE 11 ESTIMATED MAXIMUM PRICE

11.1 ESTIMATED MAXIMUM PRICE The Core Group shall propose the Estimated Maximum Price based on the Project requirements when it determines that the Design Documents are sufficiently advanced for that purpose. If Owner agrees to the EMP, the parties shall execute the EMP Amendment. Upon execution of the EMP Amendment, the Owner's Program will be superseded by the Design Documents defined in the EMP Amendment as the basis for the EMP.



11.2 The EMP shall be adjusted, with consent of the Core Group, for the reasons, and in the same manner, provided in ARTICLE 15 of the Agreement relating to adjustments in the Expected Cost and Target Cost.

11.3 The EMP shall be as determined by the Core Group and is independent of the Expected Cost or the Target Cost. The EMP Amendment shall determine whether the EMP is a maximum price guaranteed by the Risk Pool Members.

ARTICLE 12 RISK IDENTIFICATION, MANAGEMENT, AND ALLOCATION

12.1 RISK IDENTIFICATION

12.1.1 **RISK WORKSHOP** Early in the Preconstruction Phase, the IPD Team shall identify material project risks through one or more workshop sessions involving relevant participants. The Core Group shall select a facilitator to lead the risk workshop. The Core Group may choose to employ an independent risk facilitator or utilize an employee of an IPD Team member.

12.1.2 **RISK IDENTIFICATION PROCESS** The workshop participants shall identify material project risks through a risk matrix/mapping process utilizing brainstorming, checklist, and other appropriate techniques. The risk facilitator shall record and prepare a risk identification report based upon the collective assessment of the risk workshop participants. The Core Group shall, at agreed-upon intervals, update the risk identification report in light of any relevant additional information.

12.1.3 **RISK EVALUATION AND ASSESSMENT** The IPD Team shall assess and rank identified risk in such a way that attention may be focused on those risks assigned a high priority. The IPD Team shall adopt an appropriate scoring system identifying the likelihood of occurrence and impact, paying particular attention to potential cost and time impacts to the Project. Once Project risks have been ranked and scored, the IPD Team shall prepare a risk register identifying the principal Project risks and the team member assigned to lead IPD Team efforts at monitoring and managing each risk.

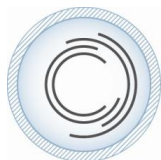
12.2 **RISK MANAGEMENT PLAN** Once the IPD Team has identified material Project risks, it shall develop a risk management plan for addressing the identified risks, subject to Core Group approval. The risk management plan shall (a) set forth contingency plans for addressing identified risks; (b) assign primary responsibility for the management of specific risks; and (c) address the role of others in managing risks.

12.3 **RISK ALLOCATION** Any costs or savings resulting from the occurrence or non-occurrence of identified risks shall be addressed pursuant to the terms of this Agreement.

12.4 INDEMNIFICATION

12.4.1 **OWNER'S INDEMNITY** To the fullest extent permitted by law, Owner shall indemnify and hold Constructor and Design Professional harmless from all loss due to bodily injury and property damage other than to the Work itself or other property insured pursuant to this Agreement, including attorneys' fees and legal costs, but only to the extent caused by the negligent acts or omissions of Owner or anyone for whose acts or omissions Owner may be liable. Owner shall be entitled to reimbursement by the indemnitee of any defense costs paid above Owner's percentage of liability for the underlying claim to the extent provided for in subsections 12.4.2 and 12.4.3. This does not create a duty to defend any professional liability claim.

12.4.1.1 If in accordance with Owner's direction, Constructor or a Subcontractor claims an exemption for taxes, Owner shall indemnify and hold Constructor and Subcontractors harmless



from any liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by Constructor or the Subcontractor as a result of any such action.

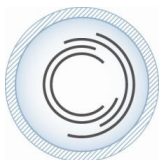
12.4.2 CONSTRUCTOR'S INDEMNITY To the fullest extent permitted by law, but subject to the limitations set forth in Section 12.6, Constructor shall indemnify and hold Owner and Design Professional harmless from all loss due to bodily injury and property damage, other than to the Work itself or other property insured pursuant to this Agreement, including attorneys' fees and legal costs, but only to the extent caused by the negligent acts or omissions of Constructor or anyone for whose acts or omissions Constructor may be liable. Constructor shall be entitled to reimbursement by the indemnitee of any defense costs paid above Constructor's percentage of liability for the underlying claim to the extent provided for in subsections 12.4.1 and 12.4.3. This does not create a duty to defend any professional liability claim.

12.4.3 DESIGN PROFESSIONAL'S INDEMNITY To the fullest extent permitted by Law, but subject to the limitations set forth in Section 12.6, Design Professional shall indemnify and hold Owner and Constructor harmless from all loss due to bodily injury and property damage, other than to the Work itself or other property insured pursuant to this Agreement, including attorneys' fees and legal costs, but only to the extent of the negligent acts or omissions of Design Professional, or anyone for whose acts or omissions any of them may be liable. Design Professional shall be entitled to reimbursement by the indemnitee of any defense costs paid above Design Professional's percentage of liability for the underlying claim to the extent provided for in subsections 12.4.1 and 12.4.2. This does not create a duty to defend any professional liability claim.

12.4.3.1 Without limiting any professional liability of the Design Professional in its obligation to coordinate and integrate the Services and Design Documents, the professional liability for a design error or omission is allocated to the IPD Team member that had the responsible charge under its professional license for the design element(s) associated with such error or omission. However, if any IPD Team member is obligated by Law to overstamp the Design Documents prepared by or for a design-build trade, then the professional liability for such design error or omission is allocated to the applicable design-build trade that was responsible for drafting the applicable Design Documents.

12.4.4 ROYALTIES, PATENTS, AND COPYRIGHTS Constructor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by Constructor and incorporated in the Work. Subject to the limitations set forth in Section 12.6, Constructor shall indemnify and hold Owner and Design Professional harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. Owner agrees to indemnify and hold Constructor and Design Professional harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by Owner. Subject to the limitations set forth in Section 12.6, Design Professional agrees to indemnify and hold Constructor and Owner harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by Design Professional.

12.4.5 JOINT DEFENSE OF THIRD-PARTY CLAIMS Because the Parties and Joining Parties are agreeing to jointly manage the Project's risks, the Parties and Joining Parties will use good faith efforts to resolve any third-party claims affecting multiple parties (including subcontractor and consultant claims) under a joint defense agreement establishing the procedures and rights of the Parties and Joining Parties in which the affected parties will endeavor to jointly address, investigate, manage, defend, settle, or otherwise resolve such third-party claims arising from or related to the Project, subject to applicable legal and ethical considerations, including whether one or more parties require independent legal counsel.



12.5 INSURANCE

12.5.1 EVALUATION OF COORDINATED INSURANCE PROGRAM OPPORTUNITIES At their earliest opportunity, but in no event later than the Preconstruction Phase described at ARTICLE 6, the Core Group shall evaluate coordinated insurance approaches for design and construction of the Project, and they may engage a knowledgeable consultant to advise them. If cost effective, the Parties shall endeavor to develop a coordinated insurance program consistent with the risk allocation set forth in this Agreement and providing, at a minimum, the coverages set forth in this Section 12.5. These coverages shall be procured and maintained as specified if the parties do not proceed with a coordinated insurance program. If a coordinated insurance program is instituted by the Parties and Joining Parties, this Section 12.5 shall be amended to be consistent with such insurance program.

12.5.2 LIABILITY INSURANCE AND BONDS The Parties agree to procure and maintain the following insurance coverages:

12.5.2.1 CONSTRUCTOR'S INSURANCE AND BONDS Before commencing the Work, Constructor shall procure and maintain workers' compensation insurance, employers' liability insurance, business automobile liability insurance, commercial general liability insurance (CGL), and contractor's professional liability insurance. The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. If requested, Constructor shall provide Owner with certificates of the insurance coverages required. Regarding subcontractor default insurance or surety bonds:

Constructor shall provide subcontractor default insurance. Constructor's costs for such insurance shall be Payable Costs as provided in subsections 9.2.1.11 and 9.2.1.12. If a claim is made under such insurance, then Constructor's deductible expense or self-insured retention amount for such claim, up to a maximum of \$[] per claim, shall also be a Payable Cost but will not result in any adjustment of the Expected Cost or EMP. Constructor's subcontractor default insurance is only intended to cover costs incurred by the Constructor (and not additional costs incurred by other IPD Team members) as a result of the default of a subcontractor. Except for the amount of the deductible or self-insured retention allowed above, Constructor is solely responsible for any costs (as non-Payable Costs) in remedying any subcontractor default, but only to the extent such costs are covered by the policy. However, any losses or costs beyond the deductible or self-insured retention that Constructor incurs due to a subcontractor default that are not covered under the policy are also reimbursable as Payable Costs. Constructor may not claim an adjustment to the Expected Cost or EMP because of additional costs resulting from a subcontractor default. Notwithstanding anything to the contrary, nothing in the Contract Documents will waive, limit, or impede in any way the right of an insurer under a subcontractor default insurance policy to recover its damages due to the default of a subcontractor or trade contractor enrolled in such policy.

Constructor shall not provide subcontractor default insurance. Any Payable Costs of Constructor resulting from a default by a subcontractor to the extent not due to the fault of Constructor shall result in an adjustment of the Expected Cost and EMP. Constructor shall reasonably assist Owner in pursuing recovery of costs from the defaulting subcontractor, including assigning to Owner rights against the subcontractor. If no option is marked, this option shall be the one selected.

Constructor or its Subcontractors, or both shall provide surety bonds to the extent and as specified below: []



12.5.2.2 DESIGN PROFESSIONAL'S INSURANCE Before commencing its Services, Design Professional shall purchase and maintain the following insurance: professional liability, CGL, workers' compensation, employer's liability, and automobile liability. The professional liability insurance shall protect Design Professional from claims arising out of the performance of its Services under this Agreement, whether such services are provided by Design Professional or by any of its consultants or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

12.5.2.3 Constructor and Design Professional shall, at a minimum, maintain limits of liability and such policy terms, conditions, and endorsements in a company or companies satisfactory to the IPD Team and as set forth in Exhibit C.

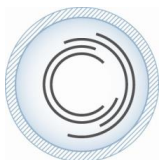
12.5.2.4 OWNER'S LIABILITY INSURANCE Owner shall provide and maintain its own general liability insurance as more specifically set forth in Exhibit C.

12.5.2.5 The insurance required under this subsection 12.5.2 shall be continuously maintained until four (4) years after Substantial Completion or as set forth in Exhibit C.

12.5.3 PROPERTY INSURANCE Before commencement of Construction Phase, the Party designated in the EMP Amendment shall obtain and maintain a builder's risk policy upon the entire Project for the full cost of replacement at the time of loss ("Builder's Risk Provider"). If the Project involves the remodeling or refurbishing of an existing structure or the construction of an addition to an existing structure, the Owner shall ensure that the existing structure is insured against the perils identified below without limitation or exception due to the construction of the Project. The builder's risk insurance shall include Owner, Constructor, Subcontractors, Subsubcontractors, Suppliers, and Design Professional as named insureds. This insurance shall be written as a builder's risk policy or equivalent form to cover all risks of physical loss except those specifically excluded by the policy, and shall insure against at least: (a) the perils of fire, lightning, explosion, windstorm, and hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of Constructor) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind, terrorism, testing if applicable, collapse however caused; and (b) ensuing damage from defective design, workmanship, or material. Owner shall be solely responsible for any deductible amounts or coinsurance penalties, provided that only \$ [] of them shall be deemed Payable Costs. Moreover, this policy shall provide for a waiver of subrogation in favor of Owner, Constructor, Subcontractors, Subsubcontractors, Suppliers, and Design Professional. This insurance shall remain in effect until final payment has been made or until no person or entity other than Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Project shall not commence until Owner has secured the consent of the insurance company or companies providing the coverage required by this subsection 12.5.3. The Core Group shall review and approve all sub-limits and special inclusions or exclusions. The Builder's Risk Provider shall provide to the other Parties a copy of the property policy or policies obtained in compliance with this subsection 12.5.3 prior to commencement of construction. The Builder's Risk Provider shall be responsible for all costs and liability reasonably attributed to its failure or neglect in purchasing or maintaining the coverage described herein.

12.5.3.1 BUSINESS INCOME INSURANCE Owner shall procure and maintain insurance against loss of use of Owner's property caused by fire or other casualty loss.

12.5.3.2 If Owner is the Builder's Risk Provider and does not intend to purchase the property insurance required by this Agreement prior to commencement of construction, Owner shall give written notice to Constructor before commencement of the Construction Phase. In such case, Constructor shall provide insurance to protect its interests and the interests of Design



Professional, Subcontractors, and Subsubcontractors, including the coverage of deductibles. The cost of this insurance shall be charged to Owner and result in an automatic adjustment of the Expected Cost, Target Cost, and EMP in the amount of such cost.

12.5.3.3 The Parties waive all rights against each other and their respective employees, agents, contractors, consultants, subcontractors, and subsubcontractors for damages caused by risks to the extent covered by applicable property insurance except such rights as they may have to the proceeds of the insurance and such rights as they may have for any failure of the Builder's Risk Provider to obtain and maintain property insurance in compliance with this Agreement.

12.6 LIMITATIONS OF LIABILITY

12.6.1 Subject to the exceptions in subsection 12.6.2, notwithstanding anything to the contrary in the Contract Documents, a Risk Pool Member's liability under any legal theory or cause of action to Owner or any other Risk Pool Member, alone or in the aggregate, for any claims, loss, expense, damages, or other liability arising out of or related to this Agreement, the Risk Pool Member's work, or the Project, shall not exceed an amount equal to the sum of:

- (a) that Risk Pool Member's share of the sums distributed or available for distribution from the Risk Pool; and
- (b) savings paid or due the Risk Pool Member under the Risk Pool Plan.

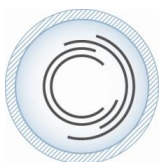
12.6.2 The exceptions to limitation of liability in the subsection immediately above are the following:

- (a) liability arising from the Risk Pool Member's fraud or willful misconduct;
- (b) liability for which proceeds from insurance required under this Agreement are recovered or would have been recovered but for the Risk Pool Member's failure to secure the required insurance;
- (c) liability for which recovery is secured from the Risk Pool Member's subcontractors, suppliers or consultants where such entities are not Risk Pool Members or otherwise expressly included within the scope of this limitation of liability;
- (d) liability for fines or penalties assessed by a governmental authority having jurisdiction over the Project that result from an act or omission of the Risk Pool Member or those for whom it is liable;
- (e) liability arising from the Risk Pool Member's failure to pay sums due under this Agreement for Work or Services; and
- (f) direct remediation costs arising from Constructor's or Subcontractor's failure to comply with its correction of work obligation under subsections 12.7.4 and 12.7.5.

12.7 WARRANTIES AND CORRECTION OF THE WORK

12.7.1 Constructor warrants that all materials and equipment shall be new (unless otherwise specified), of good quality, and in conformance with the Contract Documents. At Owner's request, Constructor shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. Constructor further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. Constructor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal or excessive usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Owner or Others, or abuse. Constructor's warranty pursuant to this Section 12.7 shall commence on the date of Substantial Completion.

12.7.2 With respect to any portion of Work first performed after Substantial Completion, Constructor's warranty obligation shall be extended by the period of time between Substantial Completion and the



actual performance of the later Work. Correction periods shall not be extended by corrective Work performed by Constructor.

12.7.3 Constructor shall obtain from its Subcontractors and Suppliers any special or extended warranties required by the Contract Documents. Constructor's liability for such warranties shall be limited to the one-year correction period. After that period Constructor shall assign them to Owner and provide reasonable assistance to Owner in enforcing the obligations of Subcontractors and Suppliers.

12.7.4 If any Defective Work is found during the one year after the date of Substantial Completion, Owner shall promptly notify Constructor in writing and no later than the first anniversary of the date of Substantial Completion. Unless Owner provides written acceptance of the condition, Constructor shall promptly correct such Defective Work at its own cost and bear the expense of additional Services required for correction of any Defective Work for which it is responsible. If within the one-year correction period Owner discovers and does not promptly notify Constructor of, and give Constructor an opportunity to test or correct, Defective Work, Owner waives Constructor's obligation to correct that Defective Work and its right to claim a breach of warranty for that Defective Work.

12.7.5 If Constructor fails to correct Defective Work within a reasonable time after receipt of Owner's written notice under subsection 12.7.4, Owner may correct it. If Owner's correction of such Defective Work occurs prior to final payment, an appropriate Change Order shall be issued deducting Owner's reasonable cost of correcting that Defective Work from payments then or thereafter due Constructor. In any event, if payments then or thereafter due Constructor, if any, are not sufficient to cover such amounts, Constructor shall pay the difference to Owner.

12.7.6 If, after the one-year correction period but before the applicable limitation period has expired, Owner discovers any Work that Owner considers Defective Work, Owner shall, unless the Defective Work requires emergency correction, promptly notify Constructor and allow Constructor an opportunity to correct the Work. If Constructor elects to correct the Work, it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from Owner and shall complete the correction of Work within a mutually agreed timeframe. If Constructor does not elect to correct the Work, Owner may have the Work corrected by itself or Others. If Owner intends to seek recovery of a reasonable amount of those costs from Constructor, subject to the limitations of Section 12.6, Owner shall promptly provide Constructor with an accounting of the correction costs it reasonably incurred.

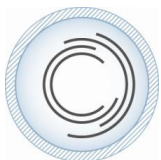
12.7.7 If Constructor's correction or removal of Defective Work causes damage to or destroys other completed or partially completed construction, Constructor shall be responsible for the cost of correcting the destroyed or damaged construction.

12.7.8 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of Constructor's other obligations under the Contract Documents.

12.7.9 Prior to final payment, at Owner's option and with Constructor's agreement, Owner may elect to accept Defective Work rather than require its removal and correction. In such case the amount due Constructor shall be equitably adjusted.

12.8 SAFETY

12.8.1 SAFETY PRECAUTIONS AND PROGRAMS Constructor shall have overall responsibility for safety precautions and programs in the performance of the Work. This section does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with Laws.



12.8.2 Constructor shall seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect:

12.8.2.1 Its employees and other persons at the Worksite;

12.8.2.2 Materials and equipment stored at the Worksite or other locations for use in the Work;
and

12.8.2.3 Property located at the Worksite and adjacent to Work areas, whether or not the property is part of the Work.

12.8.3 Constructor will use diligent efforts to maintain work, materials, and equipment free from injury or damage from rain, wind, storms, frost, or heat. If adverse weather makes it unreasonable to continue operations safely in spite of weather precautions, Constructor shall cease work and notify the Core Group.

12.8.4 Constructor will erect and maintain 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.

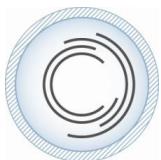
12.8.5 At least forty-eight (48) hours before Constructor breaks ground, Constructor will give written notice to all persons who have an interest on or immediately adjacent to the Worksite. Such persons include utility companies, adjacent property owners, or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads, or otherwise who may be affected by Constructor's operation. Notice is given so they may remove any obstruction for which they are responsible, and so they can have a representative on the Worksite to see that their property is properly protected.

12.8.6 CONSTRUCTOR'S SAFETY REPRESENTATIVE Constructor's Worksite safety representative is [] who shall act as Constructor's authorized safety representative with a duty to prevent accidents in accordance with subsection 12.8.2. If no individual is identified in this subsection 12.8.6, the authorized safety representative shall be Constructor's superintendent. Constructor shall report immediately in writing to Owner all recordable accidents and injuries occurring at the Worksite. When Constructor is required to file an accident report with a public authority, Constructor shall furnish a copy of the report to Owner.

12.8.7 Constructor shall promptly report in writing to the Core Group all accidents arising out of or related to the Work which result in death, personal injury, or property damage. Constructor shall comply with all Laws regarding accidents, including required notices. Constructor shall provide Core Group with copies of such notices.

12.8.8 Constructor shall promptly remedy damage or loss not insured under property insurance which may arise from the Work, to the extent of the negligence attributed to acts or omissions of Constructor, or anyone for whose acts Constructor may be liable.

12.8.9 Constructor will protect the Worksite, its employees, and others from any harmful substances that are brought onto the Worksite by Constructor or any Subcontractor. Constructor will remove and replace any soil or vegetation contaminated by such substances with soil or vegetation of equal quality prior to contamination. When use or storage of Hazardous Materials or equipment or unusual methods are necessary for execution of the Work, Constructor will exercise utmost care and carry on such activities under supervision of qualified personnel.



12.8.10 If Owner deems any part of the Work or Worksite unsafe, Owner, without assuming responsibility for Constructor's safety program, may require Constructor to stop performance of the Work or take corrective safety measures satisfactory to Owner, or both. If Constructor does not adopt corrective measures, Owner may perform them and deduct their cost from the amounts due Constructor. If no amounts are due, Constructor shall reimburse Owner. Constructor agrees to make no claim for damages, for an increase in the Expected Cost or EMP, or for a change in the Contract Time, based on Constructor's compliance with Owner's reasonable request for corrective safety measures.

12.9 EMERGENCIES

12.9.1 In an emergency, Constructor shall act in a reasonable manner to prevent personal injury or property damage.

12.9.2 Constructor will promptly remedy damage and loss to property of Owner or third parties caused in whole or in part by Constructor, a Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which Constructor is responsible under this Agreement. Except to the extent such damage or loss results from Constructor's fraud or willful misconduct, all costs and expenses incurred by Constructor in connection with such remedial work are reimbursable as Payable Costs but will not increase or decrease the EMP, Target Cost, Expected Cost, or Allowable Cost.

12.10 HAZARDOUS MATERIALS

12.10.1 Constructor shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement. If during construction suspected Hazardous Material is discovered at the Worksite, Constructor shall be entitled to immediately stop Work in the affected area. Constructor shall report the condition to Core Group and as required by Law. Constructor shall not be obligated to commence or continue Work until such suspected Hazardous Material has been removed or rendered or determined to be harmless by Owner as certified by an independent testing laboratory and approved by a government agency.

12.10.2 Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures. Such measures shall be the sole responsibility of Owner and shall be performed in a manner minimizing any adverse effects upon the Work. Constructor shall resume Work in the area affected by any suspected Hazardous Material only upon written agreement between the Parties after (a) the suspected Hazardous Material has been removed or rendered or determined to be harmless, and (b) any necessary approval from a governmental agency.

12.10.3 If a Risk Pool Member incurs additional costs or is delayed due to the presence or remediation of suspected Hazardous Material, the Risk Pool Member shall be entitled to an equitable adjustment in the Expected Cost, Target Cost, EMP, and/or the Contract Time.

12.10.4 To the extent not caused by the negligent acts or omissions of Constructor, its Subcontractors, and Subsubcontractors, and the agents, officers, directors, and employees of each of them, Owner shall defend, indemnify, and hold harmless Constructor, its Subcontractors, and Subsubcontractors, Design Professional, and the agents, officers, directors, and employees of each of them, from and against any and all direct claims, damages, losses, costs, and expenses, including but not limited to attorneys' fees, costs, and expenses incurred in connection with any dispute resolution process, arising out of or relating to Hazardous Materials at the Worksite that were not brought to the Worksite by Constructor.



12.11 MATERIALS BROUGHT TO THE WORKSITE

12.11.1 Constructor shall maintain at the Worksite Safety Data Sheets (SDS) required by Law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by Constructor, Subcontractors, Owner, or Others. Constructor shall make SDS available to Owner, Subcontractors, and Others.

12.11.2 Constructor shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Constructor in accordance with the Contract Documents and used or consumed in the performance of the Work.

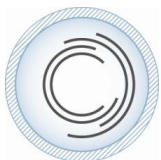
12.11.3 To the extent not caused by the negligent acts or omissions of Owner, its agents, officers, directors, and employees, but subject to the limitations of liability set forth in Section 12.6, Constructor shall defend, indemnify and hold harmless Owner, its agents, officers, directors, and employees, from and against any and all direct claims, damages, losses, costs, and expenses, including but not limited to attorneys' fees, costs, and expenses incurred in connection with any dispute resolution procedure, arising out of or relating to the delivery, handling, application, storage, removal, and disposal of all materials and substances brought to the Worksite by Constructor in accordance with the Contract Documents.

12.12 CONCEALED OR UNKNOWN WORKSITE CONDITIONS If there are (a) subsurface or other concealed physical conditions at the Worksite which are materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions at the Worksite which are materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, Constructor shall stop Work and give prompt written notice of the condition to Core Group. Constructor shall not be required to perform any Work relating to the differing condition without the written mutual agreement of the Parties. The Expected Cost, Target Cost, EMP and Contract Time shall be adjusted as provided in ARTICLE 15. Constructor shall provide Owner with written notice of any claim as a result of such conditions within the time period set forth in Section 15.3.

12.13 DELAYS

12.13.1 If Constructor or Design Professional is delayed in the commencement or progress of the Work or Services by any cause beyond its control, the Contract Time shall be extended by Change Order to the extent of the delay to the critical path of the Project. Examples of causes beyond the control of Constructor or Design Professional include, but are not limited to, the following:

- (a) acts or omissions of Owner or Others;
- (b) changes in the Work or Services or the sequencing of the Work or Services ordered by Owner or arising from decisions of Owner or changes in Law;
- (c) encountering Hazardous Materials or concealed or unknown Worksite conditions;
- (d) delay authorized by Owner pending dispute resolution or suspension by Owner;
- (e) adverse actions or delays by governmental agencies not caused by Constructor or Design Professional;
- (f) transportation delays not reasonably foreseeable;
- (g) general labor disputes impacting the Project but not specifically related to the Worksite;
- (h) fire;
- (i) terrorism;
- (j) epidemics;
- (k) unavoidable accidents; and
- (l) adverse weather conditions not reasonably anticipated. Constructor or Design Professional shall process any requests for extensions of Contract Time in accordance with this Agreement.



12.13.2 In addition, if Constructor or Design Professional incurs additional costs as a result of a delay described in subsection 12.13.1, the Expected Cost, Target Cost, and EMP shall be increased by Change Order to the extent of the additional Payable Costs, but there shall be no increase in the Profit of Risk Pool Members.

12.13.3 NOTICE OF DELAYS If delays to the Work or Services are encountered for any reason, Constructor or Design Professional, as applicable, shall provide prompt written notice to the Core Group of the cause of such delays after it first recognizes the delay. The IPD Team shall take reasonable steps to mitigate the effect of such delays.

12.13.3.1 NOTICE OF DELAY CLAIMS If Constructor or Design Professional requests an extension of Contract Time or an increase in the Expected Cost, Target Cost, and EMP as a result of a delay described in subsection 12.13.1, it shall give the Core Group written notice of such claim for a Change Order as required by Section 15.3. If Constructor or Design Professional causes delay in the completion of the Work or Services, Owner shall be entitled to recover its additional costs subject to Section 12.6.

12.13.4 MITIGATION If delays to the Project are encountered for any reason, the IPD Team shall take reasonable steps to mitigate the effect of such delays. The Core Group may require a Risk Pool Member to accelerate its Work or Services by increasing workers and equipment, working overtime, or scheduling additional shifts. If a Risk Pool Member is behind schedule for reasons other than delays excusable under subsection 12.13.1, the acceleration costs will be borne by that Risk Pool Member, which may request the Core Group, at the Core Group discretion, to allocate IPD Team Contingency in payment of such costs. If a Risk Pool Member is directed to accelerate to overcome a delay that would otherwise entitle a Party to an extension of the Contract Time, then the Risk Pool Member's Payable Costs due to the acceleration will result in a corresponding increase to the Expected Cost, Target Cost, and EMP.

12.14 MEANS AND METHODS Owner and Design Professional shall not have control over, be in charge of, or be liable for, the construction means, methods, techniques, sequences, procedures, or safety precautions and programs utilized in the Work. Owner and Design Professional shall not be liable for Constructor's failure to perform the Work in accordance with the requirements of the Contract Documents. Furthermore, Owner and Design Professional shall not have control over, be in charge of, or be liable for, acts or omissions of Constructor, Precon Trades, Subcontractors, or their agents or employees, or of any other persons performing the Work. Notwithstanding the foregoing, if Design Professional or Owner observes any Defective Work, it shall immediately notify the Core Group.

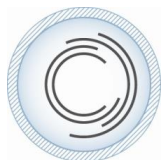
ARTICLE 13 CONSTRUCTION PHASE

13.1 PROJECT PLANNING AND SCHEDULE

13.1.1 PROJECT PLANNING SYSTEM The IPD Team shall employ a system of Project planning that includes the collaborative development of a milestone schedule, phase or progression schedules, "make-ready" look ahead plans, weekly work plans, and methods for recording, measuring, and improving the reliability of Project planning.

13.1.2 PHASE PLANNING Phase planning shall be based on the collaborative efforts of all those performing work during a given period and shall indicate when work will be done to meet milestone dates.

13.1.3 MAKE-READY LOOK AHEAD PLAN Make-ready look ahead plans shall be developed by the IPD Team, identifying (a) each item of work to be performed and completed during the given



planning period; (b) whether factors exist that would impede performance and completion; and (c) the actions to be taken to negate or mitigate any such impediments.

13.1.4 WEEKLY WORK PLANS Weekly work plans will be developed by the IPD Team members on a weekly basis and show the day on which assignments shall be completed. The weekly work plans shall provide an indication as to whether an assignment has been completed as scheduled and, if not, a reason shall be assigned. Unless otherwise agreed upon by the Core Group, the IPD Team will record the current Plan Percent Complete (PPC) for the Project and display this for management review.

13.1.5 CONSTRUCTION SCHEDULE When Project requirements have been sufficiently identified, Constructor shall prepare a preliminary Construction Schedule consistent with the Contract Time and Project Schedule for the review and approval of the Core Group. The Construction Schedule shall coordinate and integrate the services and activities of Owner, Constructor, Design Professional, Subcontractors and the requirements of governmental entities. As design proceeds and at appropriate intervals, Constructor shall update the Construction Schedule for the Core Group's approval to indicate: (a) proposed activity sequences and durations; (b) proposed milestone dates for such activities as receipt and approval of pertinent information; (c) issuance of the Construction Documents; (d) the preparation and processing of shop drawings and samples; (e) delivery of materials or equipment requiring long-lead-time procurement; (f) Owner's occupancy requirements; and (g) estimated date of Substantial Completion of the Project. If Construction Schedule updates indicate that milestone dates contained in prior Construction Schedules will not be met, Constructor shall notify and make recommendations to the Core Group. If the Project is to be completed in phases, Design Professional and Constructor shall make recommendations to the Core Group regarding the phased issuance of Construction Documents.

13.1.5.1 Constructor shall monitor the performance of Subcontractors as it relates to the Construction Schedule; update the Construction Schedule; and if required, recommend corrective alternatives or adjustments to the Core Group.

13.2 CONSTRUCTION OPERATIONS

13.2.1 Constructor shall provide competent supervision of the Subcontractors and the performance of the Work. Before commencing the Work, Constructor shall notify Owner in writing of the name and qualifications of its proposed superintendent(s) and project manager so Owner may review the individual's qualifications. If, for reasonable cause, Owner refuses to approve the individual, or withdraws its approval after once giving it, Constructor shall name a different superintendent or project manager for Owner's review. Any disapproved superintendent shall not perform in that capacity thereafter at the Worksite.

13.2.2 Constructor shall be responsible to Owner for acts or omissions of entities performing portions of the Work for or on behalf of Constructor or any of its Subcontractors.

13.2.3 Constructor shall permit only skilled persons to perform the Work. Constructor shall enforce safety procedures, strict discipline, and good order among persons performing the Work. If Owner determines that a particular person does not follow safety procedures, or is unfit or unskilled for the assigned work, Constructor shall immediately reassign the person on receipt of Owner's written notice.

13.2.4 Constructor shall give public authorities all notices required by Law and, except for permits and fees which are the responsibility of Owner, shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work. Constructor shall provide to Owner copies of all notices, permits, licenses, and renewals required under this Agreement.



13.2.5 Risk Pool Members shall pay all taxes applicable to their Work.

13.2.6 QUALITY OF WORK The Work shall be executed in accordance with the Contract Documents in a skillful manner. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new, except as otherwise expressly provided in the Contract Documents.

13.2.7 MATERIALS FURNISHED BY OWNER OR OTHERS If the Work includes installation of materials or equipment furnished by Owner or Others, it shall be Constructor's responsibility to examine the items so provided and handle, store, and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of Constructor shall be the responsibility of Constructor and may be deducted from any amounts due or to become due to Constructor. Any defects discovered in materials or equipment provided by Others shall be reported at once to Owner. Following receipt of written notice from Constructor of defects in the materials or equipment provided by Others, Owner shall promptly inform Constructor what action, if any, Constructor shall take with regard to the defects.

13.3 REQUESTS FOR INFORMATION (RFIs)

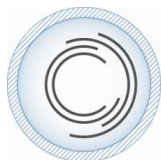
13.3.1 PROCESS The integrated preconstruction process minimizes the need for RFIs. However, to the extent that the need for information or clarification through an RFI does arise, the party seeking clarification should first raise the issue either in a face-to-face conversation or via telephone in accordance with the 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, 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, 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 the plan for resolution. It is the IPD Team's goal that RFIs 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. The Core Group shall establish a process for distributing resolved RFIs to the IPD Team.

13.3.2 TIME LIMITS If the requesting and corresponding parties are unable to reach agreement on the time for a response, they shall notify the Core Group. A phone call shall be scheduled within two (2) Business Days between the Core Group and the requesting and responding parties to arrive at a mutually agreeable time period.

13.3.3 BASIS Interpretations and decisions of the Responsible Design Professional 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.

13.4 SUBMITTALS

13.4.1 Constructor shall submit to Owner and Design Professional, for review and approval, all shop drawings, samples, product data, and similar submittals required by the Contract Documents. Submittals shall be submitted in electronic form if required. Constructor shall be responsible to Owner and Design Professional for the accuracy and conformity of its submittals to the Contract Documents. Constructor shall prepare and deliver its submittals to Owner and Design Professional in a manner consistent with the Project Schedule and in such time and sequence so as not to delay the performance of the Work or the work of Owner and Others. When Constructor delivers its submittals



to Owner and Design Professional, Constructor shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The review and approval of any submittal shall not authorize changes, deviations, or substitutions from the requirements of the Contract Documents without express written approval from Owner. Such approval shall be promptly memorialized in a Change Order and, if applicable, provide for an equitable adjustment in the EMP or Contract Time. Owner shall not make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to Constructor. If the Contract Documents do not contain submittal requirements, Constructor agrees to timely submit for the review and approval of Owner and Design Professional any shop drawings, samples, product data, manufacturers' literature, or similar submittals reasonably required by Owner.

13.4.2 Owner and Design Professional shall be responsible for review and approval of submittals within the time frames mutually agreed with the submitter or else with reasonable promptness to avoid causing delay.

13.4.3 Constructor shall perform all Work strictly in accordance with approved submittals. Approval of shop drawings is not authorization to Constructor to perform a change in the Work, unless the procedures of ARTICLE 15 are followed. Approval does not relieve Constructor from responsibility for Defective Work resulting from errors or omissions of any kind on the approved shop drawings.

13.4.4 Record copies of the following, incorporating field changes and selections made during construction, shall be maintained at the Worksite and available to Owner or Design Professional upon request: drawings, specifications, addenda, Change Orders and other modifications, and required submittals, including product data, samples, and shop drawings.

13.4.5 No substitutions shall be made in the Work unless permitted in the Contract Documents and then only after Constructor obtains any required approvals.

13.4.6 Constructor shall prepare and submit to Owner the items selected below:

- final marked up as-built drawings, or
- updated electronic data, or
- such documentation as defined by the Parties by attachment to this Agreement, in general documenting how the various elements of the Work were actually constructed or installed.

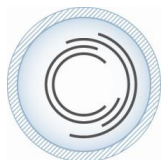
13.5 CUTTING AND PATCHING

13.5.1 Constructor shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Owner or Others.

13.5.2 Cutting, patching, or altering the work of Owner or Others shall be done with the prior written approval of Owner. Such approval shall not be unreasonably withheld.

13.6 CLEANUP

13.6.1 Constructor shall regularly remove debris at the Worksite resulting from the Work. Prior to discontinuing Work in an area, Constructor shall clean the area and remove all debris and its construction equipment, tools, machinery, and surplus materials. Constructor shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, Constructor shall remove from the Worksite all debris and its construction equipment, tools, and surplus materials.



13.6.2 If Constructor fails to commence compliance with cleanup duties within two (2) Business Days after written notification from Owner of non-compliance, Owner may implement appropriate cleanup measures without further notice.

13.7 TESTING

13.7.1 Constructor shall schedule all required tests, approvals, and inspections of the Work at times that do not delay the progress of the Work or other work related to the Project. Constructor shall give proper notice to all required parties of such tests, approvals, and inspections. If feasible, Owner and Others may observe the tests at the normal place of testing. Unless otherwise required by the Contract Documents, required certificates of testing, approval, or inspection shall be secured by Constructor and promptly delivered to Owner.

13.7.2 If Owner or appropriate authorities determine that additional tests, inspections, or approvals beyond those required by the Contract Documents will be necessary, Constructor shall arrange for the procedures and give timely notice to Owner and Others who may observe the procedures. The Expected Cost, Target Cost, and EMP will be equitably adjusted as determined by the Core Group.

13.8 ACCESS TO WORK Constructor shall facilitate the access of Owner, Design Professional, and Others approved by Owner to the Work in progress.

13.9 DESIGNER'S CONTRACT ADMINISTRATION RESPONSIBILITIES

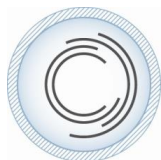
13.9.1 CONSTRUCTION ADMINISTRATION Design Professional shall provide construction administration as set forth in the Contract Documents and the DP Work Plan until final payment is due. Design Professional shall have authority to act on behalf of Owner only to the extent provided in the Contract Documents.

13.9.2 WORKSITE VISITS Design Professional shall visit the Worksite 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, Design Professional shall not be required to make exhaustive or continuous on-Worksite inspections to check quality or quantity of the Work. On the basis of such Worksite observations, Design Professional shall report to the Core Group on the progress and quality of the Work, and promptly alert the Core Group of any observed nonconformance or condition that might adversely affect the Work or the Payable Costs. Design Professional shall submit a written report as required in the Communications Protocol.

13.9.3 ON-WORKSITE REPRESENTATIVE As required by the Core Group, Design Professional shall provide on-Worksite Project representatives to assist in carrying out Design Professional's responsibilities. 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.

13.10 COMMISSIONING Except to the extent otherwise set forth in the Contract Documents or directed by the Core Group, Design Professional shall provide all Construction Documents (including commissioning manuals and instructions for any systems that are part of the Work) necessary for the commissioning of the Work. In addition, the IPD Team shall collaborate and coordinate with any commissioning authority designated by Owner, as well as with Owner's maintenance personnel, in connection with the commissioning of the Work (including set-up, adjustment, balancing, and testing of systems and operating equipment and training of all elements of the Project).

ARTICLE 14 CONTRACT TIME



14.1 DATE OF COMMENCEMENT The Contract Time commences at the beginning of the Preconstruction Phase which commences at the end of Validation Phase as described in Section 5.3.

14.2 Time is of the essence for this Agreement and the Contract Documents.

14.3 SUBSTANTIAL COMPLETION Unless the Core Group establishes otherwise, the date for Substantial Completion shall be established in the EMP Amendment, subject to adjustments as provided for in the Contract Documents.

14.4 FINAL COMPLETION Unless the Core Group establishes otherwise, Final Completion shall be achieved within [] ([]) Days after the date of Substantial Completion, subject to adjustments as provided for in the Contract Documents.

ARTICLE 15 CHANGES

15.1 CHANGES Changes in the Work or Services that are within the general scope of this Agreement shall be implemented, without invalidating this Agreement, by Change Order, or Interim Directed Change.

15.2 LIMITATION ON BENCHMARK CHANGES The Expected Cost, Target Cost, and EMP, as well as the Profit of Risk Pool Members may only be adjusted in the following circumstances:

- (a) changes in scope, systems, kinds and quality of materials, finishes, or equipment the costs of which exceed the remaining balance of any Owner-controlled contingency established within the Expected Cost for design changes or quality enhancements;
- (b) changes in Law affecting Project costs that were enacted subsequent to the effective date of the Agreement;
- (c) concealed or unknown Worksite conditions, including the discovery of Hazardous Materials, pursuant to the terms of Sections 12.10 and 12.12;
- (d) to reconcile allowances, including the escalation allowance; and
- (e) any other circumstance expressly provided in this Agreement as adjusting the Expected Cost, Target Cost, or EMP.

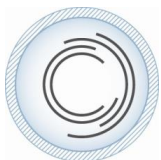
15.3 CLAIMS FOR CHANGES Any Party making a request for a Change Order shall notify the Core Group of the request within fourteen (14) Days after the Party first recognizes the condition or event giving rise to the claim. Except in an emergency, notice shall be given before proceeding with the Work or Services.

15.4 CHANGE ORDER

15.4.1 Any change to the Work or Services that impacts the Expected Cost, Target Cost, EMP, or Contract Time shall be formalized in a Change Order. The Expected Cost and Target Cost shall be adjusted on the same basis as the EMP under this Agreement.

15.4.2 The Parties shall negotiate in good faith to agree on changes to the Contract Documents, including, without limitation, adjustment to the Owner's Program, Construction Documents, Expected Cost, Target Cost, EMP, Contract Time, or any combination of the foregoing. Adjustments to Profit shall be as provided in the Risk Pool Plan. The Parties shall conclude these negotiations as expeditiously as possible after a Change Request is made, and acceptance of the Change Order shall not be unreasonably withheld. The Core Group shall make all necessary adjustments to the Risk Pool, if any, that result from a Change Order.

15.4.3 INCIDENTAL CHANGES Owner or Core Group may direct Constructor to perform incidental changes in the Work, upon concurrence with Constructor that such changes do not involve



adjustments in the Expected Cost, the Target Cost, the EMP, or Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. Owner or Core Group shall initiate an incidental change in the Work by issuing a written order to Constructor. Such written notice shall be carried out promptly and is binding on the Parties.

15.4.4 ALLOWANCE WORK When allowance items are actually incurred or are reasonably subject to construction pricing, such items will be reconciled by Change Order, increasing the Expected Cost, Target Cost, and EMP to the extent the reconciled amount exceeds the allowance amount or decreasing those benchmarks to the extent the reconciled amount is less than the allowance amount. Unspent allowances accrue to the Owner upon reconciliation.

15.5 INTERIM DIRECTED CHANGES

15.5.1 Owner may issue a written Interim Directed Change directing a change in the Work or Services prior to reaching agreement on a Change Order.

15.5.2 The Parties shall negotiate expeditiously and in good faith for appropriate adjustments, if any, to the Expected Cost, Target Cost, EMP, Profit of Risk Pool Members, or Contract Time arising out of Interim Directed Changes, and such agreement shall be documented in a Change Order.

15.5.3 If the Parties do not agree on the increase or decrease pursuant to subsection 15.5.2 and Owner issues an Interim Directed Change, the cost of the change in the Work or Services shall be determined by the reasonable actual Payable Costs incurred and savings realized in the performance of the Work or Services resulting from the change. If there is a net increase in the Payable Costs, the Profit of Risk Pool Members, as applicable, shall be adjusted in accordance with the Contract Documents. In case of a net decrease in the Payable Costs, the applicable Profit amount shall not be adjusted unless ten percent (10%) or more of the Project (by value) is deleted.

ARTICLE 16 PAYMENTS AND FINAL ACCOUNTING

16.1 Should there be any claim, obligation, or lien asserted by those alleging to have provided labor or materials to the Project before or after final payment is made in support of Design Professional's Services, Design Professional shall reimburse Owner for any costs and expenses, including attorneys' fees, costs, and expenses, incurred by Owner in satisfying, discharging, or defending against any such claim, obligation, or lien, including any action brought or judgment recovered, provided Owner has made payments to Design Professional in accordance with the terms of this Agreement.

16.2 Subject to Section 12.6, should Design Professional or its consultants cause damage to the Project, or fail to perform or otherwise be in default under the terms of this Agreement, Owner shall have the right to withhold from any payment due or to become due, or otherwise be reimbursed for, an amount sufficient to protect Owner from any loss that may result. Payment of the amount withheld shall be made when the grounds for the withholding have been removed.

16.3 SCHEDULE OF VALUES Before the first payment application for Work during the Preconstruction Phase, Constructor shall submit a schedule of values allocated to various portions of the Work to the Core Group for approval. This schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Core Group may require. The approved schedule shall be used in conjunction with the Risk Pool Plan as a basis for reviewing Constructor's applications for payment. Each payment application shall be reviewed using the most recent schedule of values approved by the Core Group. The schedule of values will be a management tool only – payments will be made on the basis of actual incurred Payable Costs during the billing period. Constructor shall submit all payment applications in accordance with the Contract Documents. Payment applications shall show the percentage of each



portion of the Work on the schedule of values that has been completed as of the end of the period covered by the payment application.

16.4 PROGRESS PAYMENTS

16.4.1 CONSTRUCTOR APPLICATIONS Constructor shall prepare a monthly application for payment no later than the [] day of the calendar month for the preceding thirty (30) Days, which shall be itemized and supported by the schedule of values, the Risk Pool Plan, and any other substantiating data required by this Agreement or the Core Group. Owner shall pay the amount due on any payment application no later than twenty (20) Days after Constructor has submitted a complete and accurate payment application. Owner may deduct from any progress payment amounts as may be retained pursuant to subsection 16.4.5.

16.4.2 STORED MATERIALS AND EQUIPMENT If approved by the Core Group, Constructor's applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored at or off the Worksite including applicable insurance, storage, and transportation costs to the Worksite. Approval of payment applications for off-Worksite stored materials and equipment shall be conditioned on submission by Constructor of bills of sale and proof of applicable insurance or such other documentation satisfactory to Owner:

- (a) to establish the proper valuation of the stored materials and equipment;
- (b) demonstrating Owner's title to such materials and equipment; and
- (c) to otherwise protect Owner's interests therein.

16.4.3 DESIGN PROFESSIONAL APPLICATIONS Designer shall prepare a monthly application for payment no later than the [] day of the calendar month for the preceding thirty (30) Days, which shall be itemized and supported by the DP Work Plan, the Risk Pool Plan, and any other substantiating data required by this Agreement or the Core Group. Owner shall pay the amount due on any payment application no later than twenty (20) Days after Design Professional has submitted a complete and accurate payment application.

16.4.4 LIEN WAIVERS AND LIENS

16.4.4.1 PARTIAL LIEN WAIVERS AND AFFIDAVITS If requested by Owner, as a prerequisite for payment, Constructor and Design Professional shall provide:

- (a) partial lien waivers and releases in the amount of the application for payment; and
- (b) affidavits from Precon Trades, Subcontractors, Suppliers or consultants, as applicable, for the Work or Services performed through the end of the billing period. Such waivers and releases shall be conditional upon payment. No party shall be required to sign an unconditional waiver of lien, either partial or final, prior to receiving payment or for an amount in excess of what it has been paid.

16.4.4.2 RESPONSIBILITY FOR LIENS If Owner has made payments in the time required, Constructor or Design Professional, as applicable, shall, within thirty (30) Days after filing, cause the removal of any liens filed against the premises or public improvement fund by any party performing labor or services or supplying materials in connection with the Work and covered by such payments to Constructor or Design Professional, as applicable. If the responsible Party fails to take such action on a lien, Owner may cause the lien to be removed.

16.4.5 RETAINAGE Retainage, if any, shall be addressed in the Risk Pool Plan.

16.5 ADJUSTMENT OF CONSTRUCTOR'S PAYMENT APPLICATION Owner may adjust or reject a payment application or nullify a previously approved payment application, in whole or in part, to the extent



reasonably necessary to protect Owner from loss or damage based upon the following, but only to the extent that Constructor is responsible under the Agreement:

16.5.1 Constructor's repeated failure to perform the Work as required by the Contract Documents;

16.5.2 Except as accepted by the insurer providing builder's risk or other property insurance covering the Project, loss or damage to the property of Owner or Others arising out of or relating to this Agreement and caused by Constructor;

16.5.3 Constructor's failure to properly pay Subcontractors and Suppliers following receipt of such payment from Owner;

16.5.4 Rejected, nonconforming, or Defective Work not corrected in a timely fashion; and

16.5.5 Reasonable evidence of delay in performance of the Work such that the Work will not be completed within the Contract Time.

Owner shall give written notice to Constructor at the time of disapproving or nullifying an application for payment of the specific reasons therefore. When the above reasons for disapproving or nullifying an application for payment are removed, payment shall be promptly made for the amounts previously withheld.

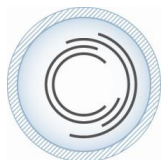
16.6 ACCEPTANCE OF WORK Neither Owner's payment of progress payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work or Services not complying with the Contract Documents.

16.7 PAYMENT DELAY If for any reason that is not the fault of the Party requesting payment, Constructor or Design Professional does not receive a progress payment from Owner within seven (7) Days after the time such payment is due, then, except to the extent of a good faith dispute, such Party, upon giving seven (7) Days' written notice to Owner, and without prejudice to any other legal remedies, may stop its Work or Services until payment of the full amount acknowledged as owing to that Party has been received, including interest for late payment. The Expected Cost, Target Cost, EMP, and Contract Time shall be equitably adjusted by a Change Order for reasonable cost and delay resulting from shutdown, delay, and start-up. A Party may not stop work if all unpaid amounts are withheld pursuant to this Agreement or otherwise subject to a good faith dispute for which that Party has received written notice.

16.8 SUBSTANTIAL COMPLETION

16.8.1 Constructor shall notify the Core Group when it considers Substantial Completion of the Work or a designated portion to have been achieved. The Core Group shall promptly conduct an inspection to determine whether the Work or designated portion meets the requirements for Substantial Completion. If the Core Group determines that the Work or designated portion has not reached Substantial Completion, the Core Group shall promptly compile a list of items to be completed or corrected in order for the IPD Team to achieve Substantial Completion. The IPD Team members shall promptly complete all items on the list that are their respective responsibilities.

16.8.2 When the Core Group has confirmed that Substantial Completion of the Work or a designated portion is achieved, Constructor shall prepare a "Certificate of Substantial Completion" that shall establish the date of Substantial Completion, and the respective responsibilities of Owner and Constructor for interim items such as security, maintenance, utilities, insurance, and damage to the Work, and fixing the time for finishing all items on the list accompanying the Certificate. The Certificate of Substantial Completion shall be submitted by Constructor to the Core Group and Owner for Owner's written acceptance of responsibilities assigned in the Certificate.



16.8.3 Unless otherwise provided in the Certificate of Substantial Completion, warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or a designated portion.

16.9 PARTIAL OCCUPANCY OR USE

16.9.1 Owner may occupy or use completed or partially completed portions of the Project when (a) the portion of the Project is designated in a Certificate of Substantial Completion; (b) appropriate insurer(s) consent to the occupancy or use; and (c) public authorities authorize the occupancy or use. Constructor shall not unreasonably withhold consent to partial occupancy or use. Owner shall not unreasonably refuse to accept partial occupancy.

16.10 FINAL COMPLETION AND FINAL PAYMENT

16.10.1 Upon notification from Constructor that the Work is complete and ready for final inspection and acceptance, the Core Group shall promptly conduct an inspection to determine if the Work has been completed and is acceptable under the Contract Documents.

16.10.2 When the Work is complete, Constructor shall prepare for Owner's acceptance a final application for payment stating that, to the best of Constructor's knowledge and based on Owner's inspections, the Work has reached Final Completion in accordance with the Contract Documents. At such time, Design Professional shall also prepare for Owner's acceptance a final application for payment stating that the Services are complete except those required post-Final Completion.

16.10.3 Owner's accountants or other representatives will endeavor to review and report in writing on the final accounting of each of Constructor and Design Professional within fifteen (15) Days after its delivery to the Core Group. Based upon the Payable Costs as substantiated by Constructor's and Design Professional's final accounting, and provided the other conditions of this Section 16.10 have been met, the Core Group shall, within seven (7) Days after receipt of the written report of Owner's accountants, either approve the application for final payment, or notify the Party in writing of the reasons for withholding approval. If Owner's accountants report the Payable Costs to be less than claimed, the Parties shall proceed to dispute resolution in accordance with ARTICLE 18. Pending a final resolution of the disputed amount, Owner shall pay Constructor and Design Professional the approved amount certified in their respective applications for final payment.

16.10.4 Final payment shall be made to Constructor and Design Professional within twenty (20) Days after the Core Group has approved such Party's application for final payment and the Core Group has executed a certificate of Final Completion.

16.10.5 As a condition precedent to final payment, Constructor shall submit the following to Owner:

16.10.5.1 An affidavit declaring any indebtedness connected with the Work, e.g., payrolls or invoices for materials or equipment, have been paid or satisfied, or will be paid with the proceeds of final payment;

16.10.5.2 As-built drawings, manuals, copies of warranties, and all other close-out documents required of Constructor by the Contract Documents; and

16.10.5.3 Final waiver and release of any liens, conditioned on final payment being received.

16.10.6 As a condition precedent to final payment, Design Professional shall submit the following to Owner:



16.10.6.1 Record drawings and specifications and all other close-out documents required of Design Professional by the Contract Documents; and

16.10.6.2 Release of any liens, conditioned on final payment being received.

16.10.7 If, after Substantial Completion, Final Completion is materially delayed through no fault of Constructor, Owner shall pay the balance due Constructor for the portion of the Work fully completed and accepted. Such payment shall not constitute a waiver of claims, but otherwise shall be governed by Section 16.10.

16.11 RECORDS Each Risk Pool Member shall keep such full and detailed accounts as are necessary for proper financial management under this Agreement. Each Risk Pool Member's records supporting its performance and billings under this Agreement shall be current, complete, accurate, and maintained according to generally accepted accounting principles. Risk Pool Members shall preserve all such records for a period of three years after the final payment or longer where required by Law. Owner and the Core Group shall be afforded access to all records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to this Agreement. Any such review or audit will not involve investigating or reviewing any books, records, or other data to the extent any of them involve the calculation, composition, or determination of any stipulated or fixed sums or rates set forth in the Contract Documents. Owner's accountants shall be subject to acceptance by the Core Group prior to being permitted access to any such records, books, and documents.

16.11.1 Owner and the Core Group may conduct verifications such as counting employees at the Worksite, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with employees, Subcontractors, and Suppliers.

16.11.2 Design Professional and Constructor shall require consultants, Precon Trades, Subcontractors, Subsubcontractors, and Suppliers to comply with these record-keeping and auditing requirements.

ARTICLE 17 SUSPENSION AND TERMINATION

17.1 EVENTS OF DEFAULT The following shall constitute events of default:

17.1.1 Persistent failure to make adequate progress with the Work or Services;

17.1.2 Failure to make timely payment, without cause, as required under the Contract Documents;

17.1.3 Failure to comply with Laws;

17.1.4 Any other material breach of this Agreement.

17.2 DECLARATION OF DEFAULT AND RECOVERY Upon a Party declaring in writing another Party in default, all Parties shall within 24 hours meet and confer as to a mutually agreeable recovery plan to cure the default. The Parties shall adjust compensation to the extent appropriate where costs are incurred by the non-defaulting Parties to assist the defaulting Party in curing the default.

17.3 TERMINATION FOR CAUSE In the event Parties cannot reach agreement on a recovery plan or the defaulting Party fails to materially comply with the agreed recovery plan, the non-defaulting Parties shall confer and agree upon how to proceed in the absence of cure. Any agreement reached shall not, unless it expressly states otherwise, waive or restrict any right or remedy the non-defaulting Parties may have against the defaulting Party.



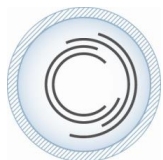
17.3.1 If the non-defaulting Parties cannot agree on how to proceed in the absence of cure, each may exercise any right or remedy available to it under this Agreement, including:

17.3.1.1 If Owner, it may upon seven days' written notice to all Parties terminate the defaulting Party for cause, take possession of all defaulting Party's materials, equipment, tools located on the Worksite, accept assignment of the defaulting Party's subcontracts, materials contracts, and consulting agreements, and perform the defaulting party's obligations under this Agreement by any reasonable method Owner may deem expedient, including retaining others to perform the obligations. If Owner terminates the defaulting Party for cause, the defaulting Party will not receive further payment, if any, until the Project achieves Final Completion. Upon Final Completion, Owner shall pay the defaulting Party for (a) all unpaid Payable Costs incurred by the defaulting Party to the date of termination plus (b) any unpaid amounts of the defaulting Party's Profit on its completed Work or Services (as determined under the Risk Pool Plan without regard to any adjustments based on team performance or shared savings but prorated based on the defaulting Party's percentage completion of Work or Services on the date of termination), less (c) Owner's costs arising out of the defaulting Party's failure to cure, including the costs of completing the defaulting Party's Work or Services and reasonable attorneys' fees. If Owner's costs are greater than the amount due to the defaulting Party, the defaulting Party shall pay the difference to Owner upon demand. If Owner terminates the defaulting Party, then upon the request of the defaulting Party, Owner shall furnish a detailed accounting of Owner's costs arising out of the defaulting Party's failure to cure.

17.3.1.2 If Design Professional or Constructor, it may upon seven Days' written notice to all Parties either:

- (a) if Owner is the defaulting party, terminate the notifying Party's obligations under the Agreement to perform any further Work or Services and pursue any right or remedy available to it under the Agreement, including recovery of any amounts owed for Work or Services provided; or
- (b) if Owner is not the defaulting Party, pursue any right or remedy against the defaulting Party available under this Agreement and make of Owner such request for an equitable adjustment as appropriate under the circumstances and this Agreement. If a Party terminates the Owner for cause, Owner shall pay the terminating Party for
 - i. all unpaid Payable Costs incurred by the terminating Party to the date of termination;
 - ii. any unpaid amounts of the terminating Party's Profit on its completed Work or Services (as determined under the Risk Pool Plan without regard to any adjustments based on team performance or shared savings but prorated based on the terminating Party's percentage completion of Work or Services on the date of termination);
 - iii. Payable Costs required or directed to be performed post-termination and costs reasonably incurred to protect the Work, demobilize operations, and terminate commitments to Subcontractors, Suppliers, and consultants; and
 - iv. the terminating Party's legal costs (inclusive of reasonable attorneys' fees) in terminating Owner for cause.

17.3.1.3 If Design Professional's or Constructor's participation in the Project is terminated, then the Agreement will remain in effect among the remaining Parties if they are able to negotiate in good faith appropriate adjustments to compensation and changes to the terms and conditions of the Contract Documents per Section 17.5.



17.4 TERMINATION FOR OWNER'S CONVENIENCE Owner may without cause terminate the Agreement or the right of one of the other Parties to perform its remaining obligations under the Agreement. Owner shall notify the Parties of the effective date of such termination and give such instructions as necessary as to any Work or Services that are to be provided notwithstanding the termination. If only one Party's right to perform its remaining obligations under the Agreement is terminated, the Agreement will remain in effect among the remaining Parties if they are able to negotiate in good faith appropriate adjustments to compensation and changes to the terms and conditions of the Contract Documents per Section 17.5.

17.4.1 Owner shall pay any terminated Parties within thirty (30) days of the effective date of termination, such sums due each for:

- (a) the Payable Costs for Work or Services performed by or on behalf of the terminated Party prior to the effective date of the termination;
- (b) the Payable Costs required or directed to be performed post-termination and costs reasonably incurred to protect the Work, demobilize operations, and terminate commitments to Subcontractors, Suppliers, and consultants;
- (c) any Profit owed under the Agreement (as determined under the Risk Pool Plan without regard to any adjustments based on team performance or shared savings but prorated based on the terminated Party's percentage completion of Work or Services on the date of termination); and
- (d) a termination fee of \$[_____].

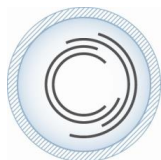
17.4.2 Upon receipt of notice of termination, the terminated Party shall stop all Work or Services, take appropriate actions to protect the Work and Design Documents, terminate all existing contracts, and enter into no further contracts.

17.5 REMAINING PARTIES If only one non-Owner Party is terminated, the Agreement shall remain in effect among the remaining Parties if they are able to negotiate any appropriate adjustments to compensation and changes to the terms and conditions of the Contract Documents in order to proceed with the Project with a replacement for the terminated Party. If the remaining Parties are unable to so agree, then upon thirty (30) Days' written notice to the other remaining Party, either Party may declare the Agreement terminated. Such a termination shall have the same effect as Owner terminating the other remaining Party for convenience under Section 17.4.

17.6 SUSPENSION Owner may, without cause, suspend the Work and Services required for the completion of the Project. Upon receipt of written notice of suspension, Constructor and Design Professional shall promptly suspend operations as directed in the notice. Upon request, Constructor and Design Professional shall provide Owner with an estimate of the impact of the suspension on the Payable Costs and Contract Time. The Target Cost, Expected Cost, EMP, and Contract Time shall be equitably adjusted to the extent affected by the suspension. Any suspension of the Work and Services not caused by Constructor or Design Professional for a period of more than sixty (60) Days shall constitute an event of default by Owner.

ARTICLE 18 DISPUTE RESOLUTION

18.1 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, all Parties and Joining Parties shall continue the Work or Services and maintain the Project Schedule during any dispute resolution proceedings and Owner shall continue to make payments of undisputed amounts in accordance with this Agreement.



18.2 DIRECT DISCUSSIONS If the Core Group cannot reach resolution with the Disputing Parties on a disputed matter within five (5) Business Days of the date of first Core Group discussion, any Party may submit the dispute in writing to the Senior Executive Team for consideration. Submission to the Senior Executive Team shall be a condition precedent to proceeding with any further dispute resolution process. The Senior Executive Team shall review the dispute and take one or more of the following actions:

- (a) negotiate a resolution of the dispute;
- (b) after appropriate discussions, issue a statement that the Parties are at impasse;
- (c) request additional supporting data from the claimant or a response with supporting data from another party; or
- (d) request a technical analysis from any IPD Team member.

The Senior Executive Team may, but shall not be obligated to, consult with or seek information from any Party or Joining Party or from persons with special knowledge or expertise who may assist the Senior Executive Team in resolving the dispute. The cost of such consultation shall be allocated by the Senior Executive Team. Unless the Disputing Parties otherwise agree in writing, if the dispute remains unresolved thirty (30) Days after submission to the Senior Executive Team, any Disputing Party may proceed with the resolution of the dispute pursuant to the following provisions of this ARTICLE 18.

18.3 MEDIATION If direct discussions pursuant to Section 18.2 do not result in resolution of the dispute, any Disputing Party may make written demand that the dispute be mediated under the current Construction Industry Mediation Rules of the American Arbitration Association (AAA), unless the Disputing Parties mutually agree to select another set of mediation rules. The mediator shall be as mutually agreed by the Disputing Parties. Unless otherwise agreed, the mediation shall be convened within thirty (30) Days of the demand for mediation and shall conclude within forty-five (45) Days of the demand. Any Disputing Party may terminate the mediation at any time after the first session, but the decision to terminate shall be delivered in person by the terminating party to the non-terminating parties and to the mediator. The costs of the mediation shall be shared equally by the Disputing Parties.

18.4 BINDING DISPUTE RESOLUTION Unless the Disputing Parties otherwise agree, if the dispute is unresolved after submission of the matter to mediation, a Disputing Party shall submit the matter to the binding dispute resolution procedure designated below:

ARBITRATION. The Disputing Parties choose binding arbitration of any claims and disputes arising out of or relating to this Agreement and each Party understands and **EXPRESSLY AGREES TO WAIVE THE RIGHT TO BE HEARD IN A COURT OF LAW**, either with or without a jury. Arbitration does not involve a judge or jury. Instead, an arbitrator with the power to award damages and other appropriate relief will decide claims and disputes. An award entered in an arbitration proceeding pursuant to this Agreement shall be final and binding upon the Disputing Parties, and judgment may be entered upon an award in any court having jurisdiction.

The arbitration shall use the following rules:

- (a) [] the current AAA Construction Industry Arbitration Rules and AAA administration. AAA Construction Fast Track Rules shall apply to all two-party cases when neither Party's disclosed claim or counterclaim exceeds \$250,000. If arbitration is selected but no rules are selected, then this subsection shall apply by default.
- (b) [] the current JAMS Engineering and Construction Arbitration Rules and Procedures and administered by JAMS; or
- (c) [] the current arbitration rules of [] and administered by [].

LITIGATION in either the state or federal court having jurisdiction on the matter in the location of the Project.



If no selection between arbitration or litigation above is indicated, the default shall be litigation.

18.4.1 COSTS The costs of any binding dispute resolution procedure and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

18.4.2 VENUE To the extent permitted by Law, the venue for any binding dispute resolution procedure shall be the location on the Project.

18.5 MULTIPARTY PROCEEDING All parties necessary to resolve a matter agree to be parties to the same dispute resolution proceeding. Appropriate provisions shall be included in all other contracts relating to the Work or Services to provide for the joinder or consolidation of such dispute resolution procedures.

18.6 LIEN RIGHTS Nothing in this ARTICLE 18 shall limit any lien rights or remedies not expressly waived by Constructor or Design Professional that such Party may have under Laws.

18.7 COMMENCEMENT OF LIMITATIONS PERIOD Causes of action between or among the Parties or Joining Parties pertaining to acts or failures to act will be deemed to have accrued and the applicable statutes of limitations will commence to run not later than the date of Substantial Completion.

ARTICLE 19 CONTRACT DOCUMENTS

19.1 EXISTING CONTRACT DOCUMENTS The Contract Documents in existence at the time of execution of this Agreement are as follows:

Owner's Program:

The Owner-provided information specified below:

Other:

19.2 INTERPRETATION OF CONTRACT DOCUMENTS

19.2.1 The drawings and specifications are complementary. If the Work is shown only on one but not on the other, Constructor shall perform the Work as though fully described on both consistent with, and reasonably inferable from, the Contract Documents.

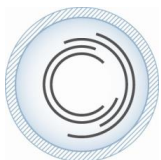
19.2.2 In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings, or specifications, Constructor shall immediately submit the matter to the Core Group for clarification. The Core Group's clarifications are final and binding on all Parties, subject to an equitable adjustment in the Expected Cost, Target Cost, EMP, and Contract Time.

19.2.3 Where figures are given, they shall be preferred to scaled dimensions.

19.2.4 Any terms that have well-known technical or trade meanings, shall be interpreted in accordance with their well-known meanings, unless otherwise specifically defined in this Agreement.

19.2.5 ORDER OF PRECEDENCE In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the following order shall govern:

- (a) Change Orders and written amendments to this Agreement;
- (b) the Risk Pool Plan;
- (c) this Agreement;



- (d) the drawings (large scale governing over small scale), specifications, and addenda issued prior to the execution of this Agreement or signed by both Parties;
- (e) information furnished by Owner that is designated as a Contract Document; and
- (f) other Contract Documents.

Among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control except as provided in subsections 19.2.2 or 19.2.3. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.

19.2.6 TITLES The titles given to the articles and sections are for ease of reference only and shall not be relied upon for interpretation.

19.2.7 JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of any Party, but shall be construed in a neutral manner.

19.3 OWNERSHIP AND USE OF DOCUMENTS

19.3.1 The Project Documents are instruments of service of the respective author. All title to, ownership of, and copyright privileges in the Project Documents are vested in the respective author, subject only to the use provisions set forth below. However, Owner shall own and possess any copyright or trademark embodied in the physical Project.

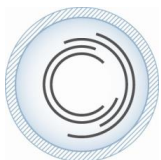
19.3.2 The originals of all Project Documents shall be held by IPD Team members for the benefit of Owner. At Owner's request, any or all Project Documents shall be immediately delivered to Owner in their original form, or in clear, reproducible form, regardless of whether this Agreement is completed,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

19.3.3 OWNER'S USE Owner shall have the right, regardless of whether this Agreement is completed, suspended, or terminated, to use the Project Documents for any Project-related purpose, including any future renovation or remodeling. If Owner uses the Project Documents for construction work without retaining the author for that work, then Owner shall defend, indemnify, and hold the author harmless from liability arising from such use.

19.3.4 AUTHOR'S USE The author of a Project Document may reuse drawings, specifications, and other data prepared for the Project in its practice, but only in their separate constituent parts. Such author shall not use such drawings, specifications, and other data in a manner that would produce a project with substantially similar and distinctive features as this Project unless Owner has given written consent. Any Party using any of the drawings, specifications, and other data in its practice outside the context of this Project shall indemnify, defend, and hold the other Parties harmless from liability arising from such use.

19.3.5 LIMITED USE OF PROJECT DOCUMENTS Design Professional, Constructor, Subcontractors, Subsubcontractors, or Suppliers shall not reuse the Project Documents as a whole in a manner that might infringe Owner's retained copyright and trademark in the completed physical Project, without the specific written consent of Owner. Constructor, Subcontractors, Subsubcontractors, and Suppliers are granted a limited license to use and reproduce applicable portions of the Project Documents not owned by them as appropriate to the execution of their Work.

ARTICLE 20 MISCELLANEOUS PROVISIONS



20.1 EXTENT OF AGREEMENT The Contract Documents represent the entire, integrated agreement between the Parties. They supersede all prior written and oral negotiations, representations, or agreements. This Agreement is for the exclusive benefit of the Parties and Joining Parties and not for the benefit of any third party, except to the extent expressly provided in this Agreement.

20.2 ASSIGNMENT The terms and conditions of this Agreement shall be binding upon the IPD Team members and their respective partners, successors, assigns, and legal representatives. Except as to the assignment of proceeds, an IPD Team member shall not assign its interest in this Agreement without the written consent of the other IPD Team members, except that Owner may assign the Agreement to a wholly owned subsidiary of Owner when Owner has fully indemnified the other Parties or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to the other Parties than this Agreement. In the event of such assignment, Constructor and Design Professional shall execute any consents reasonably required. In such event, the wholly-owned subsidiary or lender shall assume Owner's rights and obligations under the Contract Documents. If any Party attempts to make an assignment without the requisite consent, that Party shall nevertheless remain legally responsible for all obligations under this Agreement, unless otherwise agreed by the other Parties.

20.3 GOVERNING LAW This Agreement shall be governed by the Laws in effect at the location of the Project without giving effect to conflict of law principles.

20.4 SEVERABILITY The partial or complete invalidity of any provisions of this Agreement shall not affect the enforceability of any other provision.

20.5 NO WAIVER OF PERFORMANCE The failure of any Party to insist, in one or more instances, on the performance of any obligation of this Agreement, or to exercise any of its rights, shall not be construed as a waiver of such term, covenant, condition, or right on subsequent occasions.

20.6 NO PARTNERSHIP OR JOINT VENTURE This Agreement shall not be construed to create a partnership or joint venture between the Parties nor the Risk Pool Members. No Party shall conduct itself in any way to suggest that a partnership or joint venture exists.

20.7 The IPD Team shall perform their respective obligations with integrity, requiring at a minimum that:

20.7.1 Conflicts of interest shall be avoided or disclosed promptly to the other IPD Team members; and

20.7.2 Each IPD Team member shall not pay nor receive any contingent fees or gratuities to or from any other IPD Team member or its agents, subcontractors, consultants, or others for whom they may be liable to secure preferential treatment.

20.8 RIGHTS AND REMEDIES The Contract Documents create and define the rights, liabilities, and responsibilities of the Parties and Risk Pool Members as between and among them. The remedies, whether in contract, tort, or otherwise, are expressly limited by this Agreement. In performing its contractual obligations, a Risk Pool Member shall have a duty of care towards Owner and the other Risk Pool Members. A Party shall in good faith take all actions and do all things necessary, proper, or advisable to consummate, make effective, and comply with all the terms of this Agreement applicable to the Party.

20.9 CONFIDENTIALITY Each IPD Team member shall treat as confidential and not disclose to third persons, except as is necessary for the performance of the Work, or use for its own benefit, any of each other's confidential information, know-how, discoveries, production methods, and the like that may be disclosed or which is acquired in connection with the Project, without the written consent of the confiding party. Each IPD Team member shall specify those items to be treated as confidential and shall mark them



as “Confidential.” The duty of confidentiality does not apply to any information that is in the public domain without the fault of the disclosing IPD Team member, was independently developed by the disclosing IPD Team member, or is required to be disclosed by legal process.

20.10 SURVIVAL The following provisions will survive the termination or expiration of this Agreement: Articles 12, 17, 18, 19, 20 and 21; Sections 4.4.2, 4.7, 10.5, 16.1, 16.4.4.2, 16.6, and 16.11; and provisions of the Risk Pool Plan dealing with payment of Risk Pool amounts after a termination.

ARTICLE 21 DEFINITIONS

21.1 “A-3 Report” is a Lean Construction tool. Unless otherwise directed by the Core Group, the A-3 Report template contains seven main elements that follow one another in a natural and logical sequence: background; current situation and problem; goals and targets; root cause analysis; action items and proposed implementation plan; verification measures; and follow-up. The IPD Team will develop a custom A-3 Report template to be used for the Project. An A-3 Report should always address both the current condition and a target condition. In addition, all information should flow and be relatively simple.

21.2 “Actual Cost” means the sum of the Payable Costs plus the Profit of Constructor and Design Professional. For clarity, Profit of other Risk Pool Members would be included in the Payable Costs of Constructor or Design Professional.

21.3 “Agreement” means this ConsensusDocs 300 Standard Multi-Party Agreement for Integrated Project Delivery, as modified, and exhibits and attachments made part of this Agreement.

The following exhibits are part of this Agreement:

Exhibit A: Project Business Case and Objectives [] pages, dated []

Exhibit B: Agreed Billing Rates [] pages, dated []

Exhibit C: Insurance Requirements [] pages, dated []

21.4 “Allowable Cost” means the maximum Actual Cost established by Owner to meet the Project Business Case and objectives as outlined in Exhibit A.

21.5 “Business Day” means all Days, except weekends and official federal or state holidays where the Project is located.

21.6 “Change Order” is a written order approved by the Core Group after execution of this Agreement, indicating changes in the scope of the Work or Services, Expected Cost, Target Cost, EMP, or Contract Time, including substitutions proposed to and accepted by the Core Group.

21.7 “Change Request” is a written notice requesting a change to the Work, Services, or Contract Documents.

21.8 “Communications Protocol” is the written, formal process and standards for Project communications and electronic document and data creation, usage, and retention on the Project.

21.9 “Construction Documents” means the drawings, specifications, and other design documents, in any media, that delineate the design at a level sufficient for permitting and that specify other requirements for the construction of the Project.

21.10 “Construction Phase” is the period of time commencing with the start of construction activities on the Worksite and ending at Final Completion.



21.11 “Construction Schedule” is the schedule approved by the Core Group detailing the services and activities of Owner, Constructor, Design Professional, and Subcontractors in the Construction Phase. The Construction Schedule shall be prepared by Constructor and shall be consistent with the Contract Time and Project Schedule.

21.12 “Constructor” is the person or entity identified in ARTICLE 1.

21.13 “Contract Documents” consist of this Agreement, Risk Pool Plan, the documents listed in Section 19.1, information furnished by Owner pursuant to Sections 4.1 and 5.1, Owner’s Program, BIM addendum, final and approved Construction Documents, EMP Amendment, and other modifications issued in accordance with this Agreement.

21.14 “Contract Time” is the period between the commencement of the Preconstruction Phase and Substantial Completion.

21.15 “Core Group” is the decision-making body for the delivery of the Project comprised of an authorized representative of each Party, and any other IPD Team member invited to join the Core Group.

21.16 “Day” means calendar day unless otherwise specifically defined.

21.17 “Defective Work” is any portion of the Work that is not in conformance with the Contract Documents.

21.18 “Design Documents” are the drawings and specifications, in any media, prepared by licensed design professionals that describe the Work and, when fully developed and approved, will result in Construction Documents.

21.19 “Design Professional” means the architect or engineer identified in ARTICLE 1 and includes Design Professional’s representative, licensed in the state where the Project is located.

21.20 “Disputing Parties” are the IPD Team members involved in a particular dispute relating to the Agreement.

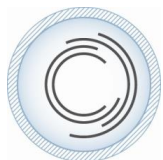
21.21 “DP Work Plan” means the plan prepared by Design Professional and its consultants depicting (a) their activities to be accomplished in each phase of the Project; (b) the Design Documents to be developed during each phase; (c) the anticipated labor (and resulting personnel costs); and (d) the anticipated reimbursable expenses associated with the Services.

21.22 “EMP Amendment” means the formal amendment establishing the Estimated Maximum Price.

21.23 “Estimated Maximum Price” or “EMP” means the amount shown as such in the EMP Amendment, comprised of the costs identified in subsection 8.1.1, and subject to the statement of its basis required in subsection 8.1.2.

21.24 “Expected Cost” is the IPD Team’s best estimate of the final Actual Cost of the Project at the time of the Validation Study, based upon current best practices on similar IPD projects, as adjusted according to this Agreement.

21.25 “Final Completion” is the date when Constructor’s obligations to construct and commission the Project, and deliver close-out documentation under this Agreement, are complete and accepted by Owner. This date shall be confirmed by a certificate of Final Completion signed by the Core Group.



21.26 “Hazardous Material” is any substance or material identified as hazardous under the Laws or any other substance or material that is subject to statutory or regulatory requirement governing handling, disposal, or cleanup of hazardous or toxic materials.

21.27 “IPD Team” means the Parties and the Joining Parties.

21.28 “Interim Directed Change” is a change to the Work directed by Owner pursuant to Section 15.5.

21.29 “IPD Team Contingency” is a line item in the Expected Cost and EMP available to address design and construction errors and omissions and to pay for items that are properly considered Payable Costs, but which were not included in the estimated Payable Costs and are not the result of items specified in ARTICLE 15 that would entitle Constructor or Design Professional to a Change Order.

21.30 “Joining Agreement” is an agreement by any Design Professional’s consultant, Owner’s Consultant, or any Subcontractor for participation in the IPD Team and/or the Risk Pool Plan. Unless otherwise agreed, the form of the Joining Agreement shall be the ConsensusDocs 396 Standard IPD Joining Agreement as modified by the Parties.

21.31 A “Joining Party” is a person or entity that has signed a Joining Agreement, though it is not necessarily a Risk Pool Member. A Joining Party becomes a Risk Pool Member only when the Joining Agreement specifically so provides.

21.32 “Joint Worksite Investigation” means the Worksite investigation carried out by the IPD Team pursuant to subsection 5.1.2.

21.33 “Laws” mean federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Work or Services that are enacted as of the Agreement date.

21.34 “Lean Construction” means striving to implement the best practices, tools, methods, and techniques of the lean construction movement in order to maximize value, minimize waste, and improve total project performance with a particular emphasis on collaboration, open communication, and the reliable release of work between specialists during design, supply, and construction of the Project.

21.35 “Others” means other contractors, suppliers, entities, and persons at the Worksite who are not directly or indirectly employed by Constructor, Subcontractors, or Design Professional.

21.36 “Owner” is the person or entity identified in ARTICLE 1.

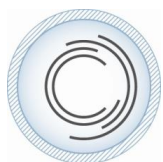
21.37 “Owner’s Consultants” means those consultants retained by Owner, other than Design Professional, who will assist Owner in executing the Project.

21.38 “Owner’s Program” is an initial description of the Project and Owner’s objectives, including the Allowable Cost, space requirements and relationships, time requirements, flexibility and expandability requirements, special equipment and systems, and Worksite requirements.

21.39 “Party” means any one of Owner, Design Professional, or Constructor.

21.40 “Payable Costs” means the direct and indirect costs incurred in connection with the performance of the Project by Owner or a Risk Pool Member pursuant to ARTICLE 9, but does not include Profit.

21.41 “Preconstruction Phase” is the period commencing with the Owner’s approval of the Validation Study and ending at the approval of the Construction Documents for construction by the governmental authority or authorities having jurisdiction.



21.42 A “Precon Trade” is a Subcontractor retained by Constructor to provide collaboration and services during the Validation Phase or Preconstruction Phase of the Project. It is anticipated that a Precon Trade shall continue to serve as a Subcontractor during the Construction Phase provided that the Core Group determines that its performance merits continued participation and accepts its price proposal.

21.43 “Profit” is the portion of a Risk Pool Member’s compensation in addition to its Payable Costs.

21.44 “Project” is the construction of the building, facility, or other improvements outlined in Owner’s Program.

21.45 “Project Documents” are all the drawings, models, specifications, and other documents, whether electronic or paper, prepared by IPD Team members for the Project.

21.46 “Project Schedule” is the document initially set forth in the approved Validation Study that shows the timing and sequencing of the design and construction required to meet the time criteria set forth in Owner’s Program.

21.47 “Responsibility Matrix” is a matrix setting forth the relative roles and responsibilities of IPD Team members as to matters not already addressed in this Agreement, such as which entities are responsible for designing, installing, or advising on certain project components or systems or which entities are responsible for designing, reviewing, or approving various construction documents.

21.48 “Responsible Design Professional” shall mean the person or entity that has the legal responsibility for preparing the design, including drawings or specifications, for a particular portion of the Work.

21.49 “Risk Pool” – see Section 10.2.

21.50 “Risk Pool Members” are the Design Professional, Constructor, and those of the Design Professional’s consultants and Precon Trades who participate in the Risk Pool Plan.

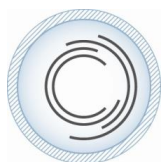
21.51 “Risk Pool Plan” is the plan for how the Risk Pool Members agree to share risk and rewards as established in the approved Validation Study and amended from time to time.

21.52 “Senior Executive Team” is comprised of a representative from each company represented in the Core Group. At a minimum, each Senior Executive Team member must have full authority at a regional or business-unit level within its company to make decisions regarding this Agreement. Senior Executive Team members do not have full-time, day-to-day responsibility for the Project, but have direct oversight and periodic involvement with the IPD Team’s performance.

21.53 “Services” means the services required of Design Professional or of consultants retained by Design Professional for the Project pursuant to the Contract Documents.

21.54 “Subcontractor” is a person or entity retained by Constructor as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor shall include a Precon Trade.

21.55 “Substantial Completion” of the Work, or of a designated portion, occurs on the date when the Work is sufficiently complete so that Owner may occupy or utilize the Project, or a designated portion, for the use for which it is intended. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond Constructor’s control. This date shall be confirmed by a Certificate of Substantial Completion signed by the Core Group.



21.56 "Subsubcontractor" is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's Work.

21.57 A "Supplier" is a person or entity retained by Constructor, a Subcontractor, or a Subsubcontractor to provide material or equipment for the Work.

21.58 "Target Cost" is the IPD Team's specific and documented goal for the final Actual Cost, which reflects a reduction in the Expected Cost.

21.59 "Target Value Design" or "TVD" is a design methodology that requires Project values, cost, quality, schedule, and constructability to be basic components of the design criteria, and uses cost targets to drive innovation in designing a project that provides optimum value to Owner.

21.60 A "TVD Cluster" is a cross-functional team of designated representatives of the IPD Team collaborating on the design or implementation of major Project components, systems, or processes or to develop certain IPD Team deliverables.

21.61 "Validation Phase" is that portion of the Work and the Services to be performed under this Agreement up through Owner's approval of the Validation Study.

21.62 "Validation Study" is the written report prepared by the IPD Team during the Validation Phase addressing whether the Project can be designed and constructed within the Allowable Cost and other parameters set forth in Owner's Program.

21.63 "Work" means the construction and services required of Constructor for the Project pursuant to the Contract Documents. The Work may refer to the whole Project or only a part of the Project.

21.64 "Worksite" means the location identified in ARTICLE 1 where the Work is to be performed.

This Agreement is entered into as of the date entered in ARTICLE 1.

OWNER: []

BY: _____ NAME: _____ TITLE: _____
WITNESS: _____ NAME: _____ TITLE: _____

CONSTRUCTOR: []

BY: _____ NAME: _____ TITLE: _____
WITNESS: _____ NAME: _____ TITLE: _____

DESIGN PROFESSIONAL: []

BY: _____ NAME: _____ TITLE: _____
WITNESS: _____ NAME: _____ TITLE: _____

END OF DOCUMENT.

