

[PROJECT NAME]

**INTEGRATED PROJECT DELIVERY
AGREEMENT**

[Profit Deferred Until Final Completion]



HansonBridgett

[PROJECT NAME]

INTEGRATED PROJECT DELIVERY AGREEMENT

This Integrated Project Delivery Agreement (“**Agreement**”) is entered into on [DATE] (“**Effective Date**”) by and between:

The Owner (“**Owner**”):

[name]
[entity type]
[address]
[city]

The Architect (“**Architect**”)

[name]
[entity type]
[address]
[city]

The Contractor (“**Contractor**”)

[name]
[entity type]
[address]
[city]

1. DEFINITIONS

1.1 Defined terms will be capitalized throughout the Agreement. Most definitions for this Agreement appear in alphabetical order in **Exhibit A** and may also be bolded the first time the term is used. Other terms that are capitalized are described or defined within the Agreement or General Conditions. The Owner, Architect and Contractor may be individually referred to as the **Party** and will be collectively referred to throughout this Agreement as the **Parties**.

2. THE PROJECT AND RELATIONSHIP OF THE PARTIES

2.1 The Project. The Project consists of [insert general project description].

2.2 Project Objective. During the Conceptualization Phase the Parties will jointly develop the Project Objective based upon the Owner’s requirements, goals and limitations. The Project Objective is comprised of the **Validated Target Program (VTP)**, **Validated Target Cost (VTC)**, and **Validated Target Schedule (VTS)**, which establishes the Project requirements and metrics for measuring the Project’s success. If, after development and validation under Section 7.2.1, the Parties agree to the Project Objective it will be incorporated into this Agreement as **Exhibit B**.

The Owner, Architect and Contractor will collaboratively work together to achieve the Project Objective by:

2.2.1 Individually performing the **Contract Tasks** designated as their respective responsibilities in the Contract Task Matrix set forth in **Exhibit C**;

2.2.2 Jointly managing the Project through the **Project Management Team** (“**PMT**”) pursuant to Section 4;

2.2.3 Cooperating with the PMT and the Project Implementation Team (“**PIT**”) described in Section 5, subject to the limits of their respective professional expertise, licensing and abilities; and

2.2.4 Complying with all other obligations, terms and conditions of this Agreement.

3. THE PARTIES

3.1 Relationship of the Parties. Although this Agreement establishes a relationship of mutual trust and good faith among the Parties, who recognize that their individual success is directly tied to the performance of other Project participants, it does not create an agency relationship, fiduciary relationship, partnership, or joint venture between the Parties. The Owner, Architect and Contractor are each independent contractors solely responsible for directing and managing their own forces and services within their respective area of responsibility as described in Section 4. The Parties acknowledge that this Agreement is not a design/build agreement and that each Party is responsible for its own errors, omissions or construction defects to the extent provided in this Agreement. Likewise, nothing contained in this Agreement will make any Party jointly and severally liable for the negligent acts or omissions of any other Party.

3.2 Owner. The Owner is responsible for expressing the requirements, goals and limitations that must be accommodated in the Project and actively participating in developing and documenting the Project Objective. In addition, the Owner will perform and/or provide the following **Work** or services:

3.2.1 Retain the following consultants and contractors:

[Insert consultants]

[Insert contractors]

3.2.2 Provide the PMT with available information regarding the Project and the Project site.

3.2.3 Provide insurance and legal services necessary for the Project;

3.2.4 Perform the Contract Tasks assigned to it in the Contract Tasks Matrix, set forth in **Exhibit C**;

3.2.5 Provide the PMT with timely decisions necessary to support the Project Objective throughout the Project duration;

3.2.6 Make timely payments as required by this Agreement; and

3.2.7 Perform all of its other obligations under this Agreement.

3.3 Architect. The Architect is responsible for designing the Project, except for those portions of the Project that are being designed through design/build subcontractors, in a manner that meets the Project Objective. In addition, the Architect will perform and/or retain the following Work or services:

3.3.1 Retain the following consultants:

[Insert consultants]

3.3.2 Perform all Contract Tasks assigned to it under the Contract Tasks Matrix set forth in **Exhibit C**.

3.3.3 Manage and coordinate all design submissions, questions and responses to all applicable **Governmental Authorities** and all other reviewing and permitting agencies.

3.3.4 Sign and affix its professional seal on all documents prepared by it and arrange for its consultants to do the same for all documents prepared by each of them, to the extent required by the **Project State**.

3.3.5 Perform all services and furnish all reports, affidavits, certificates, and other documents required by Governmental Authorities pursuant to the building code or other codes, statutes or regulations of the Project State and other applicable laws and regulations relating to those portions of the Project designed by the Architect, and will require its consultants to do the same with respect to portions of the Project designed by them.

3.3.6 Perform all of its other obligations under this Agreement.

3.4 Contractor. The Contractor is responsible for constructing the Project in accordance with the Implementation Documents and for supervising, directing, managing and performing construction work in a manner that meets the Project Objective. In addition, the Contractor will perform and/or retain the following Work or services:

3.4.1 Retain all design/build subcontractors and all other standard subcontractors required for the Project, except for those separate contractors retained directly by the Owner. All design/build subcontractor services will be provided by a Project State licensed professional and all design/build documents will be stamped and signed by the registered engineer and/or architect. In addition, the design/build subcontractors will furnish all reports, affidavits, certificates, and other documents required by and Governmental Authority that are required by the applicable building codes, laws and regulations governing those portions of the Project.

3.4.2 Perform all Contract Tasks assigned to it under the Contract Tasks Matrix set forth in **Exhibit C**.

3.4.3 Assist the Architect during all phases of design by providing cost and constructability information that will support **Target Value Design** and will coordinate design information between design/build subcontractors and the **Project Implementation Team (PIT)**.

3.4.4 Manage Project information by using a **Building Information Model** or Models linked to Project cost and schedule databases.

3.4.5 During the Construction Phase, the Contractor will manage, perform, oversee and direct all construction work in accordance with the Implementation Documents through Final Completion of the Project.

4. PROJECT MANAGEMENT TEAM

4.1 Project Management Team (PMT). The PMT includes representatives of the Owner, Architect and Contractor. The PMT provides executive level guidance for collaborative planning, design management and construction of the Project to achieve the Project Objective. The PMT is responsible for reviewing Project progress and for developing benchmarks, metrics, or standards for progress evaluation.

4.2 Authority and Responsibility. The PMT will manage and coordinate implementation of the Project Objective and provide direction to the Parties and to the PIT. Subject to the requirement that its decisions be unanimous, it is authorized to manage and direct the Project. The PMT is not, however, authorized to direct the actions of Architect's or Contractor's employees and is not responsible for any failure of Contractor or Architect to perform their respective obligations.

4.3 Reliable Participation. Fundamental to the success of the PMT is the willingness and ability of each member to participate reliably throughout the Project by providing dependable commitments, promises, and information in the best interest of the Project. The Parties commit to supporting the full engagement of their PMT representative and to providing the necessary resources to allow the PMT member to meet or exceed it's commitments.

4.4 Interpretation of Implementation Documents. The PMT has the sole authority to interpret the Implementation Documents and will review and respond to all written requests for information or clarification. A Party may not proceed with any work related to a request for clarification until a written response is received from the PMT pursuant to Section 4.7. The PMT will resolve all questions, discrepancies, ambiguities and other clarifications regarding the requirements of the Implementation Documents in accordance with this Agreement and the Project Objective.

4.5 Project Meetings. The PMT will hold Regular Meetings and Special Meetings as set forth below. The PMT will designate a party to facilitate communications between the Project participants, lead Regular and Special Meetings and prepare minutes of all PMT meetings (**Meeting Facilitator**).

4.5.1 Regular Meetings. The PMT will establish a regular meeting schedule, which in general should be no less frequently than [weekly]. Regular Meetings will be held to review, discuss and evaluate the current status of the Project with respect to design issues, cost, and schedule and implement programs to improve overall Project performance. The Regular Meetings will be held separately from other meetings to assure proper management of the Project and encourage candor among the Parties. The Regular Meetings may include Senior Management Representatives from each of the Parties as determined by the PMT members.

4.5.2 Special Meetings. Special Meetings may be requested by any PMT member to allow the PMT to address a matter of urgency. The Party requesting the Special Meeting will provide at least 3 business days written notice, unless all PMT members agree to a shorter timeframe. Notice of a Special Meeting will identify the issues to be addressed. If a PMT member is not able to attend either a Regular Meeting or Special Meeting because of a scheduling conflict, an alternate member of the Party may be designated pursuant to Section 4.8.1.

4.6 Direct Communications. The PMT members, and their employees, are encouraged to communicate directly as necessary to efficiently manage the Project and to execute each individual PMT member's responsibilities. All decisions affecting design, cost or schedule, however, must be made by the PMT jointly in accordance with Section 4.7 and confirmed in writing in a **PMT Directive**.

4.7 Decision Making. Decisions of the PMT will be by unanimous agreement. If the PMT is unable to reach agreement, the PMT will refer the issue to the Senior Management Representative level under Section 4.9, who will first attempt to reach a consensus and only if a consensus is not reached, will decide the issue by majority vote. Notwithstanding the above, the Owner will have the right to make decisions that are opposed by all non-Owner members of the PMT by issuing a written **Owner's Directive**. If an Owner's Directive causes the cost of the Project or the **Contract Time** to be increased, the VTC or VTS will be adjusted accordingly. Any dispute resulting from an Owner's Directive may be pursued under the Dispute Resolution provisions set forth in Section 15 of this Agreement.

4.8 Parties' Representatives. The PMT will include a representative from each Party as identified below. Each Party will assure that its PMT representative attends all PMT meetings, has authority to act on behalf of the Party, and fulfills his or her responsibilities as a PMT representative. The PMT may approve any representative's designation of an alternate representative but any proposed replacement of a PMT representative will be subject to the PMT's approval, which will not be unreasonably withheld.

4.8.1 The Owner's PMT representative is [name]

4.8.2 The Architect's PMT representative is [name]

4.8.3 The Contractor's PMT representative is [name]

4.9 Senior Management Representatives. Each Party will be represented by a Senior Management Representative who will act on its behalf with respect to the Dispute Resolution Procedures set forth in Section 15 and, upon request, to meet with the PMT at any Regular and/or Special Meetings. A Party may appoint a replacement Senior Management Representative by providing written notice to the other Parties.

4.9.1 The Owner's Senior Management Representative is [name].

4.9.2 The Architect's Senior Management Representative is [name].

4.9.3 The Contractor's Senior Management Representative is [name].

4.10 Written Confirmation of Decisions. PMT decisions affecting design, cost, schedule or reallocation of the Work will be recorded in writing by a PMT Directive and will be

issued directly to the Contractor or Architect for distribution to the appropriate subcontractors and consultants. PMT Directives must be signed by all PMT members to signify their concurrence with the decision. PMT Directives that increase or decrease the VTC or VTS will be further documented by Change Order executed by the Parties. All other decisions will be recorded through written minutes. PMT decisions and meeting minutes will be circulated to the Parties' members and maintained on a collaborative web portal.

4.11 Personnel Management. The PMT will not supervise or control any person employed by Owner, Architect or Contractor in connection with the Project. The PMT may, however, require any Party to remove any person employed in connection with the Project if it determines that the presence of that person is detrimental to achievement of the Project Objective. The Owner, Architect and Contractor will provide personnel in accordance with the Staffing Plan set forth in **Exhibit D**. The Staffing Plan will list all individuals assigned to the Project and the percentage of time each individual will devote to working on the Project. The Parties will not remove or reduce involvement of any personnel set forth in the Staffing Plan, without the PMT's written consent, which will not be unreasonably withheld.

5. PROJECT IMPLEMENTATION TEAM

5.1 Project Implementation Team (PIT). The Project Implementation Team includes Party representatives as well as the consultants, design/build subcontractors, certain subcontractors, and others that may have a significant impact on the Project outcome. The PIT is responsible for designing and implementing the Project consistent with the Project Objective. The composition of the PIT, and the participation of its members, is determined by the PMT and will vary depending upon the stage of the Project and the utility of involving a particular participant at a specific meeting or during a specific period of the Project. The PIT will be directed by the PMT and will meet regularly to discuss and address issues relating to design and construction of the Project. The PMT may further subdivide the PIT into taskforces focused on specific Project elements and issues. Unlike the PMT, the PIT can not issue directives. Although the PMT retains authority for project decisions, it will actively seek and consider the input and counsel of the PIT.

6. AWARD OF SUBCONTRACTS AND CONSULTING AGREEMENTS

6.1 Bid List. During the Conceptualization Phase, each Party will provide the PMT, in writing, with the names of persons or entities proposed to perform any portion of the Work. Within days receipt, the PMT will provide a written response if it has a reasonable objection to any proposed entities submitted by any Party. Failure of the PMT to timely object or recommend other potential subcontractors or consultants will constitute the PMT's acceptance.

6.2 Contract Award. Upon completion of the bidding process for each subcontractor and/or consultant, the Contractor and/or Architect will make a written recommendation to the PMT for contract award. If the PMT members reasonably object to a person or entity proposed by the Party, the PMT member will propose another person or entity for which the PMT has no reasonable objection. A Party will not contract with a proposed person or entity reasonably and timely objected to by the PMT. If the proposed but rejected subcontractor or consultant was qualified to perform that portion of the Work and submitted a bid that conforms to the Project Objective and Implementation Documents, the VTC and the VTS will be adjusted accordingly through a PMT Directive and Change Order. Substitutions of a subcontractor or consultant previously selected and approved by the PMT will not be made without PMT approval.

6.3 Licensing Requirements. All subcontractors and consultants will be properly licensed by the Project State for the portion of the Work they are performing.

6.4 Required Subcontract and Consultant Pass Through Provisions. The Parties will endeavor to pass the following provisions through to subcontractors and consultants as set forth below.

6.4.1 Cost Reimbursable Subcontractors and Consultants.

6.4.1.1 Waiver of Liability and Claims. The Contractor and Architect will incorporate clauses substantially similar to Sections 13.1 and 13.2 regarding waiver of liability and claims against the Parties and any other Cost Reimbursable Subcontractors or design consultants working on the Project.

6.4.1.2 Indemnification. Substantially similar indemnity provisions to those set forth in Section 13.4 will be incorporated into all subcontracts and consulting agreements. The Owner, Contractor and Architect will be indemnified parties under all such provisions.

6.4.1.3 Compensation and ICL. The Cost Reimbursable Subcontractors and design consultants will be subject to substantially similar compensation and ICL provisions set forth in Sections 8 and 9.

6.4.1.4 Change Orders and Permitted Delays. The Cost Reimbursable Subcontractors and design consultants will be tied to similar provisions governing Time under Section 11 and Change Order provisions under Section 12.

6.4.2 All Subcontracts and Consulting Agreements.

6.4.2.1 Assignment. All subcontracts and consulting agreements will include assignment of the contract by the PMT member to Owner provided that the assignment is effective only after termination of this Agreement by the Owner for cause pursuant to Section 16.3 and only for those subcontract and consulting agreements that the Owner accepts by written assignment of the subcontractor and/or consulting agreement. If the subcontract is assigned pursuant to this Section, and the Work has been suspended for more than 30 calendar days, the subcontractors' and/or consultants' compensation will be equitably adjusted for increases in cost resulting from the suspension.

6.4.2.2 Insurance. The applicable insurance requirements set forth in Section 13.3 and **Exhibit K** will be included in all subcontracts and consulting agreements. The Parties will be named additional insured under all subcontractor commercial general liability policies and auto insurance policies.

6.4.2.3 Contract Flow-through. By appropriate written agreement, the Contractor and Architect will require each subcontractor and consultant, to the extent of the Work to be performed by the subcontractor or consultant, to be bound to the Contractor and/or Architect by terms of the Project Objective, the Contract Task Matrix, and the Implementation Documents, and to assume toward the Contractor and/or Architect all the obligations and responsibilities that the Contractor and/or Architect assumes toward the Owner through those documents. Each subcontract and consulting agreement will preserve and protect the rights of the Parties under this Agreement with respect to the Work to be performed by the subcontractor

and/or consultant so that subcontracting will not prejudice the Parties rights. Where appropriate, the Contractor and Architect will require each subcontractor and consultant to enter into similar agreements with tier-subcontractors and tier-consultants.

6.4.2.4 **Indemnification.** The Contractor will include indemnification provisions into each Fixed Price subcontract that indemnify the Owner, Architect and Contractor from all claims, damages and liability arising out of or related to the subcontractor's construction work including breach of contract, personal injury and property damage.

6.4.2.5 **Dispute Resolution Proceedings.** All subcontractors and consultants are subject to the dispute resolution proceedings set forth in Section 14.

7. RESPONSIBILITIES BY PHASE

7.1 **Contract Task Matrix.** Throughout all phases, the Parties, the PMT and PIT will perform the specific Contract Tasks designated as their responsibility pursuant to the Task Matrix set forth in **Exhibit C**. The PMT will administer performance of the specific Contract Tasks by continuously:

7.1.1 Developing management protocols and monitoring compliance with the management protocols;

7.1.2 Evaluating progress toward the achievement of the Project Objective;

7.1.3 Providing directions, approvals and decision making needed to achieve the Project Objective; and

7.1.4 Actively promoting an environment of cooperation, collaboration and mutual respect in furthering the best interests of the Project.

7.2 Conceptualization Phase.

7.2.1 **Contract Task Matrix.** The Parties will perform their respective Contract Tasks set forth in **Exhibit C**.

7.2.2 **Deliverables.** The Project deliverables include:

7.2.2.1 **Validation of Project Objective.** The PMT will confirm the Validated Target Price (**VTP**), the Validated Target Schedule (**VTS**) and the Validated Target Cost (**VTC**), in writing as the Project Objective and the Parties will incorporate the executed Project Objective document into this Agreement as **Exhibit B**. Once the Project Objective is executed, the VTP, VTC and the VTS are the sole criteria for measuring the Project Objective and cannot be modified, except as provided under Section 12.

7.2.2.1.1 **Notice of Impasse.** If the Parties are unable to reach an agreement to the Project Objective, a Party may declare an impasse by issuing a written **Notice of Impasse**. Unless the Project Objective is agreed to within 14 calendar days' receipt of a Notice of Impasse, this Agreement will terminate for convenience and the Owner will only be responsible for paying non-Owner PMT member's the **Allowable Costs** incurred prior to the Notice of Impasse, including demobilization costs, if any, or costs of subcontractor or consultant contract obligations that could not be avoided by the Contractor or Architect.

Termination costs do not include any overhead, profit, lost opportunity, or any other costs caused by or related to the termination. All designs, models, drawings, calculations or reports prepared by the PMT or its members prior to termination will be delivered to the Owner for its use, at its discretion, for the continuation of the Project. If the Owner uses these materials, it will indemnify, defend and hold harmless Contractor and Architect from any liability arising from the use of these materials.

7.2.2.2 **Incentive Compensation Layer.** The PMT will set the Incentive Compensation Layer and the ICL Distribution Percentage pursuant to Section 9.

7.2.2.3 **Management Protocols.** If the Project Objective is confirmed, the Parties will develop Management Protocols consisting of: (i) Cost Management Strategy set forth in **Exhibit E**; (ii) PMT Work Plan set forth in **Exhibit F**; and (iii) BIM Workflow Plan set forth in **Exhibit G**.

7.2.2.4 **Joint Site Investigation.** The PMT will conduct Joint Site Investigations in accordance with Section 3.2 of the General Conditions to this Agreement.

7.2.2.5 **Project Manual.** The PMT will develop a Project Manual in accordance with Section 2.2 of the General Conditions to this Agreement.

7.3 Criteria Design Phase.

7.3.1 **Contract Task Matrix.** The Parties will perform their respective Contract Tasks set forth in **Exhibit C**.

7.3.2 **Deliverables.** Criteria Design deliverables consist of:

7.3.2.1 **Building Information Model.** Development of the BIM in accordance with Section 4 of the General Conditions.

7.3.2.2 **Conceptual Drawings and Specifications.** Development of conceptual drawings, outline specifications, reports and other documentation required by the PMT.

7.3.2.3 **Procurement Schedule.** Development of a Project Procurement Schedule that complies with the requirements of the VTS and sets forth the timeframe to purchase subcontracts and release fabrication or purchase long lead items.

7.3.2.4 **Independent Assessor.** Appointment of an Independent Assessor who will make the Quality Adjustment decisions under Section 9.5 if the Parties cannot reach agreement regarding the Quality Adjustment of the ICL or the proportion of ICL payable if Owner terminates for convenience under Section 16.1.2.

7.3.3 The Criteria Design deliverables will illustrate development of the VTP and describe in sufficient detail the final criteria for design and implementation of the Project in a manner consistent with the Project Objective. The PMT will determine the method for delivery of the Criteria Design Deliverables.

7.3.4 **Monitoring.** The PMT will coordinate and track compliance with the Project Objective through adherence to the Management Protocols set forth in **Exhibits F-H**.

PMT and PIT members will provide prompt written notice to the PMT of any deviations or other variations from the Management Protocols. PMT and PIT members will deliver periodic written reports (including cost reports), in a form and as frequently as required by the PMT, indicating compliance with, or deviations from, the Management Protocols. The Management Protocols will be revised by the PMT prior to commencement of the next phase as necessary to achieve the Project Objective.

7.4 Detailed Design Phase.

7.4.1 **Contract Task Matrix.** The Parties will perform their respective Contract Tasks set forth in **Exhibit C**.

7.4.2 **Deliverables.** The Detailed Design deliverables consist of:

7.4.2.1 **Building Information Model.** Further development of the **Model** in accordance with Section 4 of the General Conditions to this Agreement.

7.4.2.2 **Project Drawings and Detailed Specifications.** Further development of the Project drawing and specifications to provide detailed layouts for architectural, structural and mechanical, electrical and plumbing system design including all sections, elevations, and typical construction details. The Project drawings and specifications will demonstrate the development of the approved Criteria Design deliverables and will fix the size, form and character of the building assemblies, systems and other components; specify materials and systems and establish their performance requirements and quality levels; and provide other information necessary and appropriate to implement the Project in a manner consistent with the Project Objective. The PMT will determine the method for delivery of the Detailed Design deliverables.

7.4.2.3 **Project Reports.** Procurement or creation of other relevant Project reports and documents as determined by the PMT.

7.4.2.4 **Procurement Schedule.** Further refinement of the Procurement Schedule developed in the Criteria Design Phase.

7.4.3 **Monitoring.** The PMT will coordinate and track compliance with the Project Objective through adherence to the Management Protocols set forth in **Exhibits F-H**. PMT and PIT members will provide prompt written notice to the PMT of any deviations or other variations from the Management Protocols. PMT and PIT members will deliver periodic written reports (including cost reports), in a form and as frequently as required by the PMT, indicating compliance with, or deviations from, the Management Protocols. The Management Protocols are revised by the PMT prior to commencement of the next phase as necessary to achieve the Project Objective.

7.5 Implementation Documents Phase.

7.5.1 **Contract Task Matrix.** The Parties will perform their respective Contract Tasks set forth in **Exhibit C**.

7.5.2 **Deliverables.** The deliverables consist of the following:

7.5.2.1 **Construction Model.** The BIM will be augmented and coordinated to include all shop drawing, product data and other submittal information required for fabrication and installation of the Work together with detailed drawings, specifications and other documents required to complete Agency Review, Project Purchasing and construction of the Work.

7.5.2.2 **Implementation Documents.** The Implementation Documents will illustrate the development of the approved Detailed Design deliverables and will include the final plans, sections, elevations, typical construction details together with dimensions and layouts for architectural and structural design and mechanical, electrical, and plumbing systems. The Implementation Documents will describe in detail the requirements for construction of the Work and provide information necessary and appropriate to implement the Project in a manner consistent with the Project Objective. The PMT will determine the method for delivery of the Implementation Documents.

7.5.2.3 **Prefabrication.** The PMT may authorize prefabrication of systems that are fully described as well as early procurement of materials and equipment.

7.5.3 **Monitoring.** The PMT will coordinate and track compliance with the Project Objective through adherence to the Management Protocols set forth in **Exhibits F-H**. PMT and PIT members will provide prompt written notice to the PMT of any deviations or other variations from the Management Protocols. PMT and PIT members will deliver periodic written reports (including cost reports), in a form and as frequently as required by the PMT, indicating compliance with, or deviations from, the Management Protocols. The Management Protocols are revised by the PMT prior to commencement of the Construction Phase as necessary to achieve the Project Objective.

7.6 Agency Review.

7.6.1 **Contract Task Matrix.** The Parties will perform their respective Contract Tasks set forth in **Exhibit C**.

7.6.2 **Deliverables.** Agency Review deliverables consist of all approvals, consents and permits required by the governing agencies who have jurisdiction over the Project for design and construction of the Work.

7.6.3 **Commencement and Completion.** Agency Review commences with the Criteria Design Phase and is completed on or before the date of commencement of the Work set forth in the Owner's **Notice to Proceed**.

7.7 Project Purchasing.

7.7.1 **Contract Task Matrix.** The Parties will perform their respective Contract Tasks set forth in **Exhibit C**.

7.7.2 **Deliverables.** The purchasing deliverables consist of:

7.7.2.1 **Procurement of Subcontracts and Purchase Orders.** The Contractor will procure all labor, materials and equipment necessary to complete construction in accordance with the Implementation Documents and the Project Objective. The PMT will direct and oversee the Contractor's selection and procurement of subcontractors and suppliers and

authorize the Contractor to enter into the necessary written subcontract agreements and purchase orders. The PMT will have appropriate commitments for labor, materials, equipment and construction-related services in place prior to commencement of the Work to permit the timely and orderly sequencing of the Work.

7.7.2.2 **PIT Subcontractors.** To enable early involvement of PIT-subcontractors, the Contractor may, subject to approval by the PMT, award PIT subcontracts at any time after commencement of Criteria Design Phase.

7.7.2.3 **Procurement Schedule.** The procurement of all labor, materials and equipment will comply with the Procurement Schedule.

7.7.3 **Commencement and Completion.** The Project Purchasing process commences with the Criteria Design Phase and is completed on or before the commencement date set forth in the Notice to Proceed issued by the Owner.

7.7.4 **Monitoring.** The PMT will coordinate and track compliance with the Project Objective through adherence to the Management Protocols set forth in **Exhibits E-G**. PMT and PIT members will provide prompt written notice to the PMT of any deviations or other variations from the Management Protocols. PMT and PIT members will deliver periodic written reports (including cost reports), in a form and as frequently as required by the PMT, indicating compliance with, or deviations from, the Management Protocols. The Management Protocols are revised by the PMT prior to commencement of the Construction Phase as necessary to achieve the Project Objective.

7.8 Construction and Construction Administration.

7.8.1 **Contract Task Matrix.** The Parties will perform their respective Contract Tasks set forth in **Exhibit C**.

7.8.2 **Deliverable. Final Completion** of the Work.

7.8.3 **General Conditions.** The terms and conditions governing administration and construction of the Work are stated in the General Conditions to this Agreement.

7.8.4 **Monitoring.** The PMT will coordinate and track compliance with the Project Objective through adherence to the Management Protocols set forth in **Exhibits F-H**. PMT and PIT members will provide prompt written notice to the PMT of any deviations or other variations from the Management Protocols. PMT and PIT members will deliver periodic written reports (including cost reports), in a form and as frequently as required by the PMT, indicating compliance with, or deviations from, the Management Protocols.

7.8.5 **Commencement and Completion.** Construction Phase commences on the date for commencement of the Work set in the Notice to Proceed issued by the Owner and must be completed on or before the **Substantial Completion Date** established in the VTS.

7.9 Commissioning and Closeout.

7.9.1 **Contract Task Matrix.** The Parties will perform their respective Contract Tasks set forth in **Exhibit C**.

7.9.2 **Deliverables.** Closeout Phase deliverables include:

7.9.2.1 **Close-Out Documents.** Operation and Maintenance manuals, as-built drawings, the **Record Model**, warranties, keying schedules, attic stock, and any other items required under the Implementation Documents.

7.9.2.1.1 **Approval.** Within 7 calendar days receipt of the Close Out Documents, the Owner will provide the Architect and Contractor with written notice of its approval and/or identify the items requiring correction. The Contractor and/or Architect will correct any non-conforming items within 7 business days receipt of notice.

7.9.2.2 **Lien Releases.** The Architect and Contractor will provide the Owner with the unconditional lien releases and waivers required under Section 10.5.

7.9.2.3 **ICL Determination and Adjustment.** The PMT will complete a final accounting of project costs and determine whether and to the extent the Project Objective was achieved. The Incentive Compensation Layer available for distribution will then be determined and adjusted in accordance with Section 8.

8. COMPENSATION

8.1 **General.** The Architect's and Contractor's compensation for the Project includes Allowable Costs specifically set forth in **Exhibits H and I**, and subject to the quantitative and qualitative success of the Project and achievement of the Project Objective, their respective percentage of the adjusted and available **Incentive Compensation Layer (ICL)**.

9. INCENTIVE COMPENSATION LAYER

9.1 **Incentive Compensation Layer.** At the conclusion of the Conceptualization Phase, and at the same time the Project Objective is validated, the Parties will set the Incentive Compensation Layer and the ICL Distribution Percentages, recording them in **Exhibit B**. The ICL is an amount agreed by the Parties, but is normally based on the amount of Architect's and Contractor's usual profit (all or a portion) that is not included in their respective Allowable Costs. The ICL is at risk if the VTC is exceeded, the VTS is exceeded, and/or the Quality Adjustment is negative, but may also be increased, depending upon Project success, as described below.

9.2 **ICL Adjustments.** Within 14 calendar days after Final Completion, the PMT will meet and adjust the ICL by first applying the Project Cost Adjustment per Section 9.3 and then the Schedule Adjustment under Section 9.4. If there is ICL remaining after these two adjustments, the PMT will meet within an additional 7 calendar days to consider and determine the Quality Adjustment per Section 9.5.

9.3 Project Cost Adjustment.

9.3.1 **Project Cost Under VTC.** If at Final Completion, the total Allowable Costs incurred by Contractor and Architect are less than the VTC, the ICL is increased by 50% of the difference between the total Allowable Costs incurred and the VTC.

9.3.2 **Project Cost Exceeds VTC.** If at Final Completion, the total Allowable Costs incurred by the Contractor and Architect are more than the VTC, the ICL will continue to be reduced to cover the Project Allowable Costs until the ICL is exhausted. Once the ICL is

exhausted the Owner will continue to compensate the Architect and Contractor for Allowable Costs until Final Completion.

9.4 Schedule Adjustment.

9.4.1 **VTS Accelerated.** If Substantial [Final] Completion is achieved before the milestone Substantial [Final] Completion Date established in the VTS, the ICL will be increased by \$ [redacted] for each day that the Substantial [Final] Completion date established in the VTS is accelerated.

9.4.2 **VTS Exceeded.** If Substantial [Final] Completion is achieved after the milestone Substantial Completion Date established in the VTS, the ICL will be decreased by \$ [redacted] for each day that the Substantial [Final] Completion date established in the VTS is delayed.

9.5 Project Quality Adjustment.

9.5.1 **Quality Rating.** Any ICL remaining after applying the Project Cost and Schedule Adjustments will be distributed to the Architect and Contractor based on an assessment of the Quality Criteria listed in the table below. If the sum of the Quality Rating is positive, the ICL will be increased by [redacted] % per Quality Rating point and if negative, the ICL will be decreased by [redacted] % per Quality Rating point. The rating for an individual Quality Criterion may be any integer between -5 to +5 with -5 being substantially worse than required by the Project Objective, 0 being adequate to meet the Project Objective and + 5 being substantially better than required by the Project Objective.

Standard	Quality Criteria	Potential Quality Points
Quality	Materials: Are the materials installed of the quality, durability and maintainability required by the VTP?	[-5 to +5]
	Workmanship: Is the workmanship of the completed Work consistent with the VTP?	[-5 to +5]
	Performance: Are the building systems operational and functioning in accordance with the performance requirements stated in the VTP?	[-5 to +5]
Functionality	Spatial: Does the Project provide the spaces required by the VTP?	[-5 to +5]
	Functional: Does the arrangement of spaces comply with the VTP so that it meets the needs of the Owner's staff and assist them in carrying out their responsibilities?	[-5 to +5]
	Usability: Does the arrangement of spaces comply with the VTP so that it meets the needs of the Owner's clients and others that will use the space?	[-5 to +5]
Aesthetics	Visual Appeal: Does the completed Work provide the visual appeal required by the VTP?	[-5 to +5]
	Cultural Expression: Does the completed Work express the Owner's culture and uniqueness as stated in the VTP?	[-5 to +5]
Sustainability	Sustainable Design Objective Achieved: Has the Sustainable Design Objective stated in the VTP been achieved?	[-5 to +5]
	Sustainable Design Innovation: Does the completed Work provide sustainable design solutions that are innovative?	[-5 to +5]
QUALITY RATING:		[-50 to +50]

9.5.2 PMT Assessment. The PMT will meet no later than 14 calendar days after finalizing the Project Cost and Schedule Adjustments to attempt to agree upon a Quality Adjustment. If the PMT does not reach consensus within 7 calendar days after the first Quality Adjustment meeting, any Party may demand in writing that the adjustment be made by Independent Assessment under Section 9.5.3.

9.5.3 Independent Assessment. During the Criteria Design Phase, the Parties will appoint an Independent Assessor to make the Quality Adjustment, if required. If the Parties failed to appoint an Independent Assessor or the Independent Assessor is no longer willing or able to make the assessment, and the Parties cannot agree upon a replacement Independent Assessor, then the Quality Assessment will be made by an arbitrator appointed using the procedures in section 15.7.

9.5.3.1 Within 30 calendar days after demand for Independent Assessment, the Parties will meet with the Independent Assessor or arbitrator to present any information a Party believes will aid the Independent Assessor. The Party presentation will not exceed one hour per Party. The Independent Assessor or arbitrator will be provided with a copy of this Agreement, will be given an opportunity to inspect the project, and may request any other information the Independent Assessor or arbitrator believes necessary to make the assessment.

9.5.3.2 Within 7 calendar days after the assessment hearing, the Independent Assessor or arbitrator will issue a written decision stating the number of Quality Rating Points awarded (positive or negative) and a brief statement setting forth the rationale for the award. The Independent Assessor's or arbitrator's award is final and not subject to review or modification.

10. PAYMENT

10.1 Allowable Costs. The Architect's Allowable Costs are set forth on **Exhibit H**. The Contractor's Allowable Costs are set forth on **Exhibit I. Cost Reimbursable Subcontractors** Allowable Costs will use the same categories as those for the Architect and Contractor, respectively.

10.2 Periodic Payments. Payment Applications will be prepared by the Architect and Contractor in the format agreed by the PMT and submitted for approval no later than the 25th day of the month. The period covered by each Payment Application will be one calendar month. The Payment Application will include all Allowable Costs earned or projected by the Architect and Contractor for that calendar month. The PMT will approve all or part of the Payment Application within 5 business days of receipt. The Owner will make payment for all approved amounts within 30 calendar days.

10.3 Final Payment. The Owner will make Final Payment 30 calendar days after Final Completion of the Work, receipt of all close-out phase deliverables and determination of the ICL adjustment per Section 9. The PMT must approve the Final Payment Application. Final Payment does not waive Owner's right to later object to defective design, materials or workmanship; waive any warranty rights the Owner may have; or release any Party from its indemnification obligations set forth in Section 13.4.

10.4 Materials and Equipment. Periodic Payment Applications may include materials and equipment delivered and suitably stored on-site for subsequent incorporation into the Work or, with PMT's prior approval, suitably stored off-site at a bonded or insured warehouse that is approved by the PMT. The risk of loss will remain on Contractor for all materials and equipment stored off-site. Payment for materials and equipment stored on or off site will be conditioned upon compliance with procedures that protect the Owner's interest and establish Owner's title to the materials and equipment. Stored material costs will include the costs of applicable insurance, storage, and transportation to the site, if stored off-site. Contractor will not make advance payments to subcontractors or suppliers for stored materials or equipment without PMT approval.

10.5 Supporting Documents. Each Payment Application will be accompanied by the following:

10.5.1 Sufficient documentation supporting the Allowable Costs claimed in the Payment Application including, without limitation, receipts, purchase orders, contracts, time reports and other documentation reasonably required by the PMT or the Owner.

10.5.2 A duly executed conditional waiver and release forms complying with applicable law covering all services and work performed during the billing period by the Architect, Contractor, subcontractors, consultants, suppliers or any other party entitled to record or serve a stop notice or mechanics' lien.

10.5.3 Certification that Architect and Contractor have no knowledge of any recorded stop notices or mechanics' liens with respect to the Work performed by others and that all subcontractors, consultants and vendors have been paid to date or will be paid with the proceeds for Work covered under the Payment Application.

10.5.4 In addition to the above, within 5 calendar days after receipt of Final Payment, the Architect and Contractor will provide Owner a duly executed unconditional waiver and release form complying with applicable law covering all services and work performed by subcontractors, subconsultants or other suppliers or any other party entitled to record or serve a stop notice or mechanics' lien with respect to any services, work, equipment or material rendered or provided for the Project.

10.6 Right to Withhold. Owner may refuse to approve a Payment Application or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or any part of a prior Payment Application to the extent the PMT determines, or the Senior Representatives determine by majority vote, is necessary to protect Owner from loss arising out of or resulting from:

10.6.1 Nonconforming Work not remedied.

10.6.2 Third-party claims filed against Owner or the Project or reasonable evidence indicating probable filing of the claims, unless security acceptable to Owner is provided.

10.6.3 Failure of Contractor to make timely payments to subcontractors or for labor, materials or equipment.

10.6.4 Failure of Architect to make timely payments to its consultants for design services rendered in connection with the Project.

10.6.5 Damage to Owner or Owner's separate contractors if the Contractor, Architect, or any entity working directly for Contractor or Architect is potentially liable.

10.6.6 Failure to carry out the Work in accordance with the Implementation Documents.

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

10.7 No Right to Stop Work. If a Party disputes any determination with respect to any Payment Application, the Party will nevertheless expeditiously continue to prosecute the Work, provided amounts not in dispute are timely paid. Owner will not be deemed to be in default or breach of this Agreement for withholding of any payment under Section 10.6.

10.8 Reliance. In taking action on Payment Applications, the PMT may rely on the accuracy and completeness of the information furnished by the Architect and Contractor and will not be deemed to represent that the PMT has made: (i) a detailed examination, audit or arithmetic verification of the documentation or supporting data; (ii) exhaustive or continuous on-site inspections; or (iii) examinations to ascertain how or for what purposes the Architect and Contractor have used amounts previously paid.

10.9 Warranty of Title. Contractor warrants that title to all construction work, materials and equipment covered by a Payment Application, whether incorporated in the Project or not, will pass to Owner at the time of payment by Owner, free and clear of all liens, claims, security interests or encumbrances in favor of Contractor, subcontractors, suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials or equipment relating to the work. Contractor will defend, indemnify and hold Owner harmless from any and all liens, claims, security interests or encumbrances filed by Contractor, subcontractors, suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the work, provided Contractor has received payment pursuant to this Agreement.

10.10 No Waiver. Payment by Owner will not constitute approval or acceptance of any item of cost in the Payment Application or final acceptance of approval of that portion of the Work to which the partial payment relates.

10.11 Payments to Subcontractors. Neither Owner, nor Architect will have an obligation to pay nor to see to the payment of money to a subcontractor or supplier except as may otherwise be required by law.

10.12 Payment to Consultants. Neither Owner, nor Contractor will have an obligation to pay nor to see to the payment of money to a consultant except as may otherwise be required by law.

10.13 Audit Right. The Owner, at its expense, may audit Architect's or Contractor's financial information related to (i) direct costs, profit and overhead calculations provided in establishing the VTC; (ii) any application for payment or calculation of amounts owed by Owner; and/or (iii) subcontractor or consultant costs submitted as Allowable Costs. The PMT

member being audited will reasonably cooperate and make its financial information available for inspection and audit.

10.14 Disputes. Claims for payment including, without limitation, those regarding amounts withheld pursuant to Section 10.6 will be resolved under Section 14.

11. CONTRACT TIME

11.1 Contract Time. The Contract Time is the time allotted in the VTS to achieve Substantial Completion [Final Completion] of the Work. The Substantial Completion and Final Completion dates may only be extended by mutual agreement of the PMT through the Change Order process for Permitted Delays.

11.2 Validated Target Schedule. The VTS will be based on critical path or network precedence methodologies coordinating all major components of the design and construction work including governmental agency deadlines, procurement, submittal and long lead item schedules, construction work by trade, and Owner's occupancy requirements projecting a milestone Substantial Completion Date and Final Completion Date.

11.2.1 Monthly Project Schedules. The Contractor will provide Project schedule updates to the PMT indicating the status of construction and the projected milestone dates for Substantial Completion and Final Completion. If the Project schedule update indicates that the milestone dates established in the VTS may be exceeded, the Contractor will submit a recovery plan to the PMT pursuant to Section 11.3.

11.2.2 Interim Project Schedules. The Contractor, with the assistance of the its subcontractors and suppliers, will also use Interim Project Schedules, that provide a 3 week look ahead for the performance of upcoming design and construction requirements and document all construction work performed during the prior 3 week period. The Interim Project Schedule is to be used as a working tool to evaluate any schedule slippages and collaborate on methods for labor efficiency. Work flow will be scheduled based on providing information, material and resources as required by the user of the information, material or resources, optimizing the flow of Work through the Project and reducing bottlenecks and activity that will not advance the Project schedule.

11.3 Schedule Slippage. The Contractor and/or Architect will notify the PMT within 48 hours of any slippage in the VTS as a result of its Work and must submit a detailed recovery plan for evaluation and approval by the PMT.

11.4 Acceleration. The PMT may determine that it is in the best interest of the Project to direct certain subcontractors to work overtime in an attempt to recapture any delays to the VTS.

11.5 Permitted Delays. If the Architect or Contractor are delayed, obstructed, hindered or interfered with in the commencement, prosecution or completion of their Work by: (i) delays in issuance of governmental permits; (ii) **Adverse Weather**; (iii) a **Force Majeure Event**; (iv) **Unforeseen and Differing Site Conditions**; (v) a PMT Directive; or (vi) an **Owner's Directive** and the critical path of the VTS is impacted extending the Substantial Completion [Final Completion] date, then the Architect and Contractor will be entitled to an extension of the Contract Time for the same period of time that the Substantial Completion [Final Completion] date was delayed provided that the delay, obstruction, interference or hindrance was not caused, in whole or in part by any fault, neglect, act or omission of the Architect, Contractor, or their respective employees, subcontractors, suppliers, or consultants. Notwithstanding the above, the Architect and Contractor will not be entitled to an

extension of time unless they notify the PMT in writing of the cause or causes of the delay, obstruction, hindrance or interference within 3 business days of the commencement of the delay and demonstrate that the delay could not have been anticipated or avoided and was not concurrently caused by a condition, event or occurrence that is not a Permitted Delay..

11.6 Unforeseen and Differing Site Conditions. Any Party who claims that a Differing Site Condition exists must notify the PMT in writing within 3 business days of first discovering the conditions and before the condition is disturbed. The PMT will promptly investigate whether a Differing Site Condition exists and the effect, if any, on VTS and/or VTC and render its decision pursuant to Section 4.7. Claims by any Party in opposition of the findings must be made within 21 calendar days after the PMT has given notice of its findings. If the Parties cannot agree whether the conditions are materially different or cannot agree on an adjustment in the VTC and/or VTS, the matter will be subject to the Dispute Resolution Process under Section 15.

12. CHANGE ORDERS

12.1 Change Orders. Change Orders will be used to document changes to the VTP, VTC, VTS, or ICL. Change Orders are limited to the following conditions:

12.1.1 PMT Directives. Additional Work that is not reasonably necessary to meet the intent of the Project Objective or elimination of Work that was reasonably necessary to meet the intent of the Project Objective, which affects the VTP, VTC or VTS and is agreed to by the PMT.

12.1.2 Permitted Delays. Permitted Delays pursuant to Section 11.5; and

12.1.3 Owner's Directives. An Owner's Directive to the extent that it results in changes to the Work that increase the VTC or impact the critical path of the VTS and is disputed by the Architect or Contractor after Senior Representative decision under Section 4.7;

12.2 Change Order Procedure. Any Party may request a Change Order to this Agreement by providing the PMT with a written Change Order request (**Change Order Request**) setting forth the nature of the change, the reason for the change, and the effect, if any, on the VTC, VTS, VTP, or ICL. All Change Order Requests must be submitted to the PMT within [redacted] calendar days of the discovery of the occurrence of the event or circumstance necessitating the change. Failure to submit the Change Order within this deadline waives and releases any claim for a Change Order related to the facts or circumstances that allegedly support the Change Order Request. The PMT will promptly review the Change Order Request and (i) accept the request, (ii) accept the request in part or with modification, (iii) request additional information or perform its own investigation, or (iv) deny the Change Order Request. If a Change Order Request is accepted by the PMT, then a Change Order will be executed by the PMT members formally modifying this Agreement. If the PMT does not act on a Change Order Request within [redacted] days of its submission, it will be deemed denied. Any disagreements with regard to a Change Order Request will be determined in accordance with the PMT procedures set forth in Section 4.7.

13. LIABILITY ALLOCATION

13.1 Waiver of Liability. The Parties waive and release all claims and liability between and among each other except for the **Excluded Claims** set forth in Section 13.2. However, this liability waiver is void as to any Party that is in **Willful Default** of this Agreement.

13.2 Excluded Claims. Excluded claims include the following:

13.2.1 Warranty Claims. Contractor and its subcontractors and suppliers will remain liable for all warranty obligations under Section 15.

13.2.2 Project Performance. Claims for (i) personal injury or property damage caused by the failure of the construction work to be executed in conformance with the Implementation Documents; (ii) personal injury or property damages caused by negligent errors or omissions in the design of the Project or its component systems; and (iii) claims for the repair, modification, or replacement of components or systems that do not meet the functional and performance requirements of the Implementation Documents and the Project Objective.

13.2.3 Non Payment. Failure of Owner to pay undisputed amounts due under this Agreement.

13.2.4 Indemnity. Claims to enforce indemnification obligations set forth in Section 13.4.

13.2.5 Insurance. Claims for failure to procure the insurance required under Section 13.3.

13.2.6 Dispute Resolution. Claims to enforce the Dispute Resolution Provisions set forth in Section 14 and civil actions necessary to enforce mechanics' liens and/or stop notice rights.

13.3 Insurance. Owner, Architect and Contractor will purchase and maintain insurance of the type and in the amounts set forth in **Exhibit J**. The Parties agree that their respective insurance companies will have, to the extent available and to the extent coverage is not impaired, no right of subrogation against any other Party on account of any losses arising under insurance maintained or required to be maintained pursuant to this Agreement. Contractor will name the Owner and Architect as additional insureds under its Commercial General liability policy. The Owner, Contractor and its subcontractors will be insureds under the Builder's Risk insurance policy.

13.4 Indemnification.

13.4.1 Contractor's Indemnification. The Contractor will defend, indemnify and hold the Owner and Architect harmless from and against any and all claims, losses, damages, liabilities and expenses (including legal, expert witness and consulting fees and costs) by any third parties (including indemnifying Party's employees), arising out of, or resulting from, bodily injury (including death) or damage to tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the indemnifying Party or anyone directly or indirectly employed by it or anyone for whose acts it may be liable.

13.4.2 Owner's Indemnification. The Owner will defend, indemnify and hold the Architect and Contractor harmless from and against any and all claims, losses, damages, liabilities and expenses (including legal, expert witness and consulting fees and costs) alleged by their respective employees arising out of, or resulting from, bodily injury (including death) but only to the extent caused by the negligent acts or omissions of the indemnifying Party or anyone directly or indirectly employed by it or anyone for whose acts it may be liable.

13.4.3 Architect's Indemnification. The Architect will defend, indemnify and hold the Owner and Contractor harmless from and against any and all claims, losses, damages, liabilities and expenses (including legal, expert witness and consulting fees and costs) alleged by their respective employees arising out of, or resulting from, bodily injury (including death) but only to the extent caused by the negligent acts or omissions of the indemnifying Party or anyone directly or indirectly employed by it or anyone for whose acts it may be liable.

13.4.4 Patent and Copyright. Contractor and Architect represent and warrant that designs used by each for the Project do not and will not violate any patents, copyrights or trademarks. Contractor and Architect each indemnify Owner from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, attributable to patent, copyright or trademark violations from the use of infringing patents, copyrights or trademarks in violation of applicable law.

13.4.5 Lien Free Obligation. If any subcontractor, supplier or consultant record or file, or maintain any action on or respecting a claim of mechanics' lien, stop notice or lis pendens, relating to the Work, the Contractor and/or Architect will immediately procure, furnish and record appropriate statutory release bonds, which will extinguish or expunge the mechanics lien, stop notice or lis pendens, provided that the Owner has paid the Contractor and/or Architect for the Work and Contractor and/or Architect failed to pay its respective consultants, subcontractors or suppliers. If Architect or Contractor fail to make payments to its respective consultants, subcontractors and suppliers as required by the payment provisions of this Agreement, the Owner may settle or bond over those claims or take such other actions necessary to prevent a default under any other agreement affecting the Project, and Contractor and Architect will upon written demand reimburse Owner for any substantiated amounts that were necessary to satisfy Architect's and/or Contractor's obligation to satisfy, discharge or defend against any such claim of lien or stop notice. The Architect and/or Contractor will indemnify and hold the Owner harmless from any claims filed by their respective consultants, subcontractors or suppliers for foreclosure on mechanics liens or stop notices provided the Owner has made payment to the Architect and Contractor for such services and/or work. Nothing contained in this Section will be construed to require the Contractor or Architect to provide release bonds for any valid mechanics lien, stop notice, lis pendens or other claim due to non-payment by Owner or a valid dispute between the Parties.

13.5 Site Safety. The Contractor is solely responsible for training, initiating, maintaining and supervising safety precautions and programs in connection with performance of the construction work. The Contractor will defend, indemnify and hold the Owner and Architect harmless from and against all demands, causes of action and other claims for damage, loss and expense, including but not limited to attorneys' fees, resulting from bodily injury, sickness, disease, death, injury and/or tangible property damage (other than to the Work itself) caused, in whole or in part, from actual or alleged failure to train, initiate, maintain or supervise safety precautions and programs in connection with construction of the Project.

13.6 Joint Defense Approach to Third Party Claims. Because the Parties have a similar interest in the outcome of the Project, the Parties will endeavor to resolve any third party claims (including subcontractor and consultant claims) in accordance with a joint defense agreement. To the greatest extent possible, the Parties will jointly address, investigate, manage, defend, settle and/or otherwise resolve all third party claims arising from or related to the Project or this Agreement subject to applicable legal and ethical considerations including the need for independent legal counsel. If the Parties determine that legal counsel is required to settle the claim, and that it is in their best interest to provide a joint defense, the Parties will execute any required conflict waivers associated with using the same legal counsel and enter into a joint defense agreement establishing the procedures and rights of the Parties.

14. WARRANTY

14.1 Contractor warrants all construction work for a period of 1 year commencing from the Substantial Completion Date of the Project or the date of repair, whichever is later, and for longer periods specified in the Implementation Documents for certain equipment manufacturers or suppliers. The Contractor will repair or replace any and all deficient or defective construction work, provided that the work was properly maintained and/or used, together with any other work that is displaced during repair or replacement without expense to Owner. Contractor's warranty excludes improper or insufficient maintenance, improper operation, normal wear and tear and normal usage. Contractor will procure all subcontractor and manufacturer express warranties required under the Implementation Documents on the Owner's behalf and will transmit the warranties to Owner before Final Completion and Project close-out. Establishment of the 1 year express warranty period for correction of construction work relates only to the specific obligation of the Contractor to correct defective or non-conforming work, and has no relationship to statute of limitations periods for legal claims arising from this Agreement.

15. DISPUTE RESOLUTION

15.1 Scope. All Disputes between the Parties arising from or in connection with this Agreement will be resolved as provided in this Section

15.2 Continued Performance. At all times during the pendency of a Dispute or a Dispute Resolution Proceeding, Work will continue. Provided the Owner continues to comply with its obligations under this Agreement, the parties to the Dispute Resolution Proceeding will continue to comply with any Owner's Directives.

15.3 Disputes. The Parties have waived all claims between themselves, subject only to those exceptions set forth in Section 13.2 and the indemnification provisions in Section 13.4. Nonetheless, issues may arise with regard to such exceptions or to the interpretation of this Agreement that require resolution between the Parties. Only the following claims may be made pursuant to this Section as all other claims, disputes and matters in controversy have been waived by the Parties:

15.3.1 Claims related to determination of the dates for Substantial and Final Completion;

15.3.2 Claims related to application of the Incentive Compensation Layer;

15.3.3 Claims for Allowable Costs;

- 15.3.4 Claims for unresolved Change Order Requests under Article 12;
- 15.3.5 Claims for indemnification under Section 13.4;
- 15.3.6 Claims resulting from termination or suspension under Article 16; and
- 15.3.7 Third party claims by subcontractors or consultants.

15.4 Notice. A Party may initiate the dispute resolution procedures stated in this Section by providing all PMT members with written notice of a potential Dispute which specifies in reasonable detail the basis of the Dispute and the remedy sought. Notice of a Dispute will occur within _____ calendar days following the occurrence of the event or condition or circumstance giving rise to the Dispute. Under no circumstances will a claim be made if it is barred by applicable statutes of limitation and/or repose.

15.5 Senior Representative Meeting. If the PMT is unable to resolve the Dispute, any party may request Senior Management Representatives to meet with the PMT and attempt in good faith to resolve the Dispute. Senior Management Representative from each PMT member will then review the claim in detail and meet face-to-face to discuss and resolve the matter (**Senior Representative Meeting**). This Senior Representative Meeting will occur no later than 14 calendar days after the PMT has declared an impasse in its efforts to resolve the dispute, unless the Parties agree upon a longer period of time. This meeting will be for the express purposes of: (i) exchanging and reviewing all pertinent non-privileged documents and information relating to the matters and issues in dispute; (ii) freely and candidly discussing each party's position; and (iii) reaching agreement upon a reasonable, compromise resolution of the Dispute. If during a Special Meeting a negotiated settlement is reached, the terms of the settlement will be recorded in a written Change Order signed by the parties.

15.6 Mediation. If the dispute is not resolved by the conclusion of the Senior Representative Meeting, any party may request mediation of the Dispute in writing. If the Parties agrees to mediate, the mediation will be conducted by a third party mediator who is acceptable to all PMT members and experienced in resolving design and construction-related disputes on projects of similar type, sizes, quality and complexity. The mediator will be given written statement(s) by each Party and may inspect the Project site, Project Objective, Implementation Documents and other information reasonably required to understand the factual and legal basis of the Dispute. The mediator will schedule a mediation session within ___ days of the PMT's agreement to mediate. The mediation will be attended by representatives from each Party who has authority sufficient to resolve the Dispute, together with any other Party who has an interest in the Dispute. The cost of the mediation will be borne equally by the Parties involved in the Dispute. The mediation proceeding will be confidential and not admissible except as provided below. The mediation process must be completed within 60 calendar days of the initial PMT meeting regarding the Dispute, unless all Parties involved in the Dispute extend the mediation period. If, as a result of the mediation, a negotiated settlement is reached, the Parties will enter into a written settlement agreement that will be enforceable in a court of competent jurisdiction.

15.7 Arbitration. All Disputes arising out of or related to this Agreement that are not resolved will be subject to binding arbitration. Any party to the Dispute may serve the other Parties a written demand for arbitration within 30 calendar days after conclusion of mediation required under Section 15.6 or within the applicable statute of limitations if the claim were to be litigated, whichever is sooner. Disputes involving claims of \$1,000,000 or less will be subject to

arbitration before a single arbitrator. Those involving claims in excess of \$1,000,000 will be subject to arbitration before a panel of 3 arbitrators. Within 15 calendar days after service of a demand for arbitration, the Parties or their attorneys will meet and confer in an attempt to select an arbitrator or arbitrators. If the Parties fail to reach agreement, the Party who served the demand for arbitration will file the demand with the American Arbitration Association and the Dispute will be resolved in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The parties further agree that this arbitration may include, by consolidation or joinder, consultants to Owner or Architect and subcontractors or suppliers to Contractor. The award rendered by the arbitrator or arbitrators will be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

16. DEFAULT, SUSPENSION AND TERMINATION

16.1 Termination for Convenience. The Owner may terminate this Agreement for convenience upon 30-days written notice at any time before 75% completion of construction of the Project.

16.1.1 Notice. The notice will state the extent and effective date of the termination, and on the effective date the PMT members affected will (i) to the extent directed, stop Services under this Agreement; (ii) terminate or assign all subcontract and consulting agreements to Owner unless otherwise directed; (iii) take other actions as may be necessary or requested by Owner to protect and preserve the Work and any other property in a PMT member's possession, in which Owner has or may acquire an interest.

16.1.2 Payment Upon Termination for Convenience. If the Owner terminates this Agreement for convenience, the Owner will pay the Architect and Contractor the (i) Allowable Costs incurred by the Architect and Contractor prior to the effective date of termination; (ii) all reimbursable expenses related to the termination and demobilization; and (iii) a portion of the ICL per Section 8 based on the percentage of the Project completed, as determined by the Independent Assessor, prior to termination. In no event will the total amount paid to the Architect and Contractor exceed the VTC. Any payment under this Section is subject to Owner's receipt of all requested statutory lien waiver and release forms as well as other documentation required for payment under Section 10.5, subject to withholding by Owner for reasons and in the manner provided in connection with Final Payment. Any dispute over the amount to be paid upon termination will be resolved in accordance with the Dispute Resolution Procedures set forth in Section 14.

16.2 Suspension. The Owner may, without cause, order the PMT to suspend, delay or interrupt the Project for as long as the Owner may determine. In the event the Project is suspended pursuant to this Section, the VTS will be extended for a period reasonably caused by the suspension. In the event the suspension results in an increase in the cost of the Project, the VTC will also be increased by the amount reasonably caused by the suspension. No adjustment will be made to the extent that performance was suspended, delayed or interrupted by acts or omissions of the Architect, Contractor, or any entity or persons working directly for either of them and for whom they are responsible. In the event the suspension of the Project is longer than 45 consecutive days, the Agreement will terminate automatically unless the Owner provides for reinstatement.

16.3 Owner Termination for Cause. The Owner will have the right to terminate this Agreement, or a Party to this Agreement, upon 15 calendar days written notice, and an

additional 15 calendar days to cure, in the event of any of the following. The effective date of termination will be 30 calendar days from the date of the Notice.

16.3.1 Failure of one or more Parties to this Agreement to provide adequate labor and resources to achieve the VTS and VTC;

16.3.2 Refusal by a Party to rectify Work that is not in accordance with this Agreement, the Project Objective, and Implementation Documents;

16.3.3 Failure of a Party to work cooperatively with the PMT for the benefit of the Project;

16.3.4 Failure of the Architect and/or Contractor to properly pay their respective subcontractors, suppliers and consultants;

16.3.5 Bankruptcy or insolvency of a Party to this Agreement;

16.3.6 Acts of Willful Default;

16.4 Architect/Contractor Termination for Cause. The Architect and/or Contractor may terminate this Agreement for cause upon 15 calendar days notice and an additional 15 calendar days to cure if any of the following occur: (i) The Owner fails to pay undisputed amounts due pursuant to this Agreement; (ii) Owner's suspension of the Project under Section 16.2 exceeds 45 consecutive days; or (iii) Willful Default.

16.4.1 **Effective Date.** Termination is effective 30 days after the date on the notice.

16.4.2 **Payment.** If the Agreement is terminated, the Owner will pay the Architect and Contractor the (i) Allowable Costs incurred by the Architect and Contractor prior to the effective date of termination; (ii) all reimbursable expenses related to the termination and demobilization; and (iii) a portion of the ICL per Section 8 based on the percentage of the Project completed, as determined by the PMT or the Independent Assessor, if the PMT is unable to agree, prior to termination. Any payment under this Section is subject to Owner's receipt of all requested statutory lien waiver and release forms as well as other documentation required for payment under Section 10.5. Any dispute over the amount to be paid upon termination will be resolved in accordance with the Dispute Resolution Procedures set forth in Section 14.

17. MISCELLANEOUS PROVISIONS

17.1 License. The Architect and Contractor represent that they are properly licensed in the Project State to perform the Work required under this Agreement and the Implementation Documents, and that each Party's business entity, is in good standing and qualified to do business in the Project State.

17.2 Standard of Care. The Architect will perform its services using that skill and care used by other competent Architects skilled in designing projects similar to this Project. Contractor will perform all Work using its best skill and attention and all Work will be performed in a timely workman-like manner consistent with the degree of care and skill customarily exercised by contractors constructing facilities of this size, and complexity in the location where the Project is

situated. All Work performed in connection with this Agreement must be in accord with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities. No party assumes any responsibility for tasks outside of its professional expertise or capability and outside of the scope of its license.

17.3 Notices. Any notice required to be given by this Agreement will be in writing and deemed effective upon personal delivery, or 1 business day after being sent via registered or certified mail return receipt requested or by overnight commercial courier providing next business day delivery and addressed to the following respective parties:

Owner:

[name]
[address]
[city]

Architect:

[name]
[address]
[city]

Contractor:

[name]
[address]
[city]

17.4 Governing Law. This Agreement will be governed and construed in accordance with the laws of the Project State without giving effect to any choice of law rule that would cause the application of the laws of any other jurisdiction.

17.5 Commencement of Statute of Limitations. Causes of action between the Parties to this Agreement 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 either the date of Substantial Completion for the Project, or the date of a recorded Notice of Completion, whichever is later.

17.6 No Solicitation of Employees. Owner will not solicit or employ any of Contractor's or Architects personnel for the duration of the Project and then for a period of 1 year after Final Completion.

17.7 Assignment. The Parties respectively bind themselves, their partners, successors, assigns and legal representatives to the other Parties to this Agreement. Neither Owner, Contractor or Architect will assign this Agreement without the written consent of the other Parties.

17.8 Severability. The terms and conditions of this Agreement will be interpreted in accordance with their plain meaning, and not strictly for or against any Party. Any rule of construction or interpretation to the contrary will be of no force or effect with respect to this

Agreement. If a court of competent jurisdiction finds any term or provision of this Agreement to be void or unenforceable for any reason the term or provision will be deemed severed, and the remainder of the Agreement will remain in full force and effect according to its terms and provisions, to the maximum extent permitted by law.

17.9 No Third Party Beneficiaries. Nothing contained in this Agreement creates a contractual relationship with, or a cause of action in favor of a third party against, either the Owner, Architect or Contractor. The Parties acknowledge and agree that the obligations of the Architect and Contractor are solely for the benefit of the Owner and are not intended in any respect to benefit any third parties.

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

17.11 Survival. The following provisions will survive the termination or expiration of this Agreement: (i) Waiver of liability under Sections 13.1 and 13.2; (ii) Insurance requirements under Section 13.3 and **Exhibit K**; (iii) Indemnity provisions under Section 13.4; (iv) warranty obligations under Section 14; and (v) the Dispute Resolution Process under Section 15.

17.12 Waiver. No action or failure to act by a Party will constitute a waiver of a right or duty afforded them under this Agreement, nor will such action or failure to act constitute approval of or acquiescence in a breach of this Agreement, unless specifically agreed to in writing by the Parties.

17.13 Execution. By executing this Agreement, each of the individuals represent that he or she has authority to bind the Party on whose behalf his or her execution is made.

17.14 Counterparts. This Agreement may be executed simultaneously in multiple counterparts, each of which will be deemed an original. When proving this Agreement, it will only be necessary to produce or account for the counterpart signed by the party against whom enforcement is sought.

17.15 Exhibits. The Exhibits referred to in this Agreement and listed below are incorporated into this Agreement by reference as though set forth in full:

Exhibit A	Definitions
Exhibit B	Project Objective and ICL
Exhibit C	Contract Task Matrix
Exhibit D	Staffing Plan
Exhibit E	Cost Management Strategy
Exhibit F	PMT Work Plan
Exhibit G	BIM Work Plan
Exhibit H	Architect's Allowable Costs
Exhibit I	Contractor's Allowable Costs
Exhibit J	Insurance

17.16 Entire Agreement. This Agreement constitutes the entire integrated agreement between the Parties and supersedes all prior oral and written negotiations, representations or agreements by the Parties with respect to this subject matter.

This Agreement is entered into as of the Effective Date first written above.

Owner

Architect

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Contractor

By: _____

Name: _____

Title: _____

Contractor State License No.: _____

Integrated Project Delivery Agreement Exhibit A – Definitions

1. **"Adverse Weather"** is inclement temperatures, wind or rain that prevents or substantially impedes the Contractor's ability to perform construction work and impacts the critical path of the VTS causing a delay in the Contract Time. Work is substantially impeded if the Contractor loses more than half of a planned and otherwise available workday. The VTS assumes Adverse Weather days.
2. **"Agreement"** means the Integrated Project Delivery Agreement executed by the Parties, all of the Exhibits referenced in the Agreement, and the General Conditions to the Agreement.
3. **"Allowable Costs"** includes all Architect and Contractor costs incurred in the performance of the Work (excluding profit) as more specifically defined in Exhibits H and I. The Architect and Contractor will endeavor exclude profit or contingency from Allowable Costs of any subcontractors and consultants.
4. **"Building Information Model" (BIM) or "Model"** is a parametric, computable representation of the Project design developed by the Architect, its consultants, and any design/build subcontractors, and includes construction details developed by the Parties and their respective consultants and subcontractors. As used in this Agreement, references to Building Information Model, BIM, or the Model, include the primary design model or models and all linked, related, affiliated or subsidiary models developed for design, estimating, detailing, fabrication, or construction of the Project, or any portion or element of the Project. The portions of the BIM prepared by the Architect, its consultants and the design/build subcontractors are Contract Documents. The portions of the BIM prepared by the Contractor or its subcontractors to illustrate how they will construct, fabricate or install the Project are contractor submittals detailing how they will implement the Contract Documents.
5. **"Close-Out Documents"** include Operation and Maintenance manuals, as-built drawings, the Record Model, warranties, keying schedules, attic stock and any other close-out documentation required under the Agreement and Implementation Documents.
6. **"Contract Documents"** include the Agreement, the Building Information Model, the Implementation Documents, and all other documents issued by the Architect and design/build subcontractors for construction of this Project, and any subsequent modifications and/or Change Orders. The documents included in the Contract Documents are complementary and what is required by one is required by all. If there are conflicting requirements between the various documents, the PMT will determine which requirements will better achieve the Project Objective set forth in Exhibit B.
7. **"Contract Tasks"** are the performance obligations of each Party, as described in the Contract Task Matrix set forth in Exhibit C.
8. **"Cost Reimbursable Consultants"** may be engaged by the Architect to perform portions of the Work per the obligations stated in their consulting agreements and will share in the risk and rewards of Project's success by: (1) placing a portion of their profit at risk to help fund the Architect's Incentive Compensation Layer contribution; (2) receiving an agreed portion of the Architect's distribution of the Incentive Compensation Layer at Final Payment, and (3) being included within the waiver of liability and indemnity provisions set forth in the Agreement.



- 9. "Cost Reimbursable Subcontractors"** refers to all subcontractors engaged by the Contractor on a cost reimbursable basis. Cost Reimbursable Subcontractors will perform the obligations stated in their subcontract with the Contractor and will share in the risk and rewards of Project's success by: (1) placing a portion of their profit at risk to help fund the Contractor's Incentive Compensation Layer contribution; (2) receiving an agreed portion of the Contractor's distribution of the Incentive Compensation Layer at Final Payment; and (3) being included within the waiver of liability and indemnity provisions set forth in the Agreement.
- 10. "Final Completion"** occurs on the date when all Work has been completed in accordance with the Contract Documents; all punch list items have been completed and accepted by the PMT; the Project has been commissioned; all Close-Out Documents have been transmitted to the Owner; and a certificate of occupancy has been issued by the public agency having jurisdiction over construction of the Project.
- 11. "Final Payment"** means Owner's payment of all amounts due and owing to the Architect and Contractor, including ICL, after Final Completion of the Project and receipt of all required lien waivers and releases.
- 12. "Fixed-Price"** refers to subcontractors engaged by the Contractor or consultants engaged by the Architect on a fixed-price basis. Fixed-price subcontractors and consultants do not place a portion of their profit at risk and they do not share in the distribution of the ICL or the waiver of liability.
- 13. "Force Majeure"** means a natural disasters; labor strikes that cannot be resolved through a dual gate or other measures; disruptions in utility service and/or connections not caused by the Contractor; governmental agency actions other than permitting, design review or inspection of construction; civil disobedience, an act of terror, or unavoidable casualties or catastrophic events beyond the Architect and Contractor's control, and not due to any act or omission of the Architect and/or Contractor, that impacts the critical path of the VTS and extends the Contract Time.
- 14. "Governmental Authority" or "Governmental Authorities"** include all Federal, State, County or Municipal boards, departments, offices or agencies that have jurisdiction over the project and whose approval is required for the design, construction or use of the project.
- 15. "Incentive Compensation Layer" (ICL)** is a fund that is increased or decreased based on Project outcome that is distributed upon Final Completion to the Architect, Contractor, and their respective Cost-Reimbursable Subcontractors and Cost Reimbursable Consultants in accordance with their respective percentages. Payment of the ICL is contingent upon achieving the aesthetic, environmental and functional goals of the Project Objective and Implementation Documents, the VTP, VTC and VTS, which cannot be sacrificed to increase the amount of ICL funds available. Design and construction innovations that are consistent with the Project Object and VTP, and reduce cost or schedule without sacrificing quality, can increase the ICL funds available for distribution.
- 16. "Notice to Proceed"** is a written document issued by the Owner or the PMT to set the date of commencement of the Project.

17. **"Owner's Directive"** is a written directive from the Owner that directs Work that is not required by the Project Objective or Implementation Documents and is opposed by either the Architect and/or Contractor. An Owner's Directive may affect the VTC and/or VTS.
18. **"PMT Directive"** is a written directive from the Project Management Team derived from a unanimous vote that affects reallocation of the Work, design, cost and/or schedule. A PMT Directive may affect the VTC and/or VTS.
19. **"Project Objective"** is a jointly agreed statement of the functional, aesthetic, environmental and business goals that this Project seeks to achieve and is comprised of the VTP, VTC and VTS. The Project Objective guides the Parties in developing and implementing the Project design and is the primary standard for measuring project success. Achieving the Project Objective requires achieving the goals set in each of its component parts.
20. **"Project State"** means the state where the Project is located.
21. **"Record Model"** is the version of the BIM that has been updated to reflect the as-built condition of the Project at Final Completion.
22. **"Senior Representative Meeting"** is a meeting of the Senior Representatives that has been called to resolve an issue that the PMT could not resolve.
23. **"Substantial Completion"** occurs on the date when the Project is sufficiently complete to allow the Owner to occupy or utilize the Project for its intended purpose, all systems are operational as designed or required, all inspections and tests required under the Contract Documents have been completed successfully, and all governmental agencies have issued approval for occupancy.
24. **"Target Value Design"** is a forward focused design process that uses constructability and cost information from key project participants before the design is developed, together with rapid evaluation of cost impacts as design decisions are made, to allow designing to a cost target.
25. **"Unforeseen and Differing Site Conditions"** means discovery of an unknown, subsurface or otherwise concealed physical condition that differs materially from those indicated in the Implementation Documents; an unknown physical condition of an unusual nature that differs materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character and nature provided for in the Implementation Documents; or an unknown, existing hazardous substance that requires removal or remediation.
26. **"Validated Target Cost" (VTC)** is the amount that the PMT believes is sufficient to achieve design and construction of Project in accordance with the Validated Target Program and within the Validated Target Schedule. The VTC is determined by the PMT during the Conceptualization Phase of the Project and is a part of the Project Objective. The VTC measures whether the Project meets the Owner's financial expectations and is a factor in determining the amount of ICL funds paid to the Architect, Contractor and their respective Cost Reimbursable Subcontractors and Cost Reimbursable Consultants.

27. "Validated Target Program" (VTP) defines the final quality, quantity, functionality, aesthetics, sustainability and other requirements for the Project that are confirmed by the PMT during the Conceptualization Phase. The Project scope includes all elements explicitly included in the VTP and those that are reasonably necessary to accomplish the VTP.

28. "Validated Target Schedule" (VTS) is the baseline critical path schedule for the Project that defines the Contract Time and is unanimously agreed to by the PMT during the Conceptualization Phase. The VTS will include all major components of the design and construction work including governmental agency deadlines, procurement, submittal and long lead item schedules, construction work by trade and the Owner's occupancy requirements projecting a milestone Substantial Completion Date and Final Completion Date.

29. "Willful Default" is a default by a Party to the Agreement caused by one of the following events: (i) actual or constructive abandonment of the Project; (ii) failure of a Party to correct Work that significantly and materially deviates from the Implementation Document or applicable laws, codes or regulations; (iii) fraud, gross negligence or willful misconduct. Actual abandonment occurs if the Contractor or Architect, without legal justification, ceases performing Work for a period of 21 consecutive days. Constructive abandonment occurs if the Contractor or Architect, without justification, expends so little effort on the Project that there is no meaningful progress.

30. "Work" includes all design services necessary to meet the Project Objective, all labor, materials, equipment and appurtenances required to construct the Project in accordance with the Contract Documents, and commissioning of the Project.

Integrated Project Delivery Agreement

Exhibit B – Project Objective and ICL

1. PROJECT OBJECTIVE

The Project Objective is comprised of the Validated Target Cost (VTC), Validated Target Schedule (VTS); and the Validated Target Program (VTP).

1.1 The Validated Target Cost is \$_____. The VTC is further detailed in _____.

1.2 The Validated Target Schedule consists of the Substantial Completion date of _____ and the Final Completion date of _____. The VTS is further detailed in the baseline schedule dated _____.

1.3 The Validated Target Program consists of the report dated _____, drawings _____ dated _____, and the _____ file dated _____ all of which are complementary.

2. INCENTIVE COMPENSATION LAYER

2.1 The base Incentive Compensation Layer (ICL) is \$_____ and will be adjusted, as described in the Agreement prior to distribution to Architect and Contractor in accordance with their applicable ICL percentages.

2.2 The Architect's percentage of the ICL is _____. The Architect will share its portion of the ICL with its Cost Reimbursable Consultants in percentages agreed between the Architect and the Cost Reimbursable Consultants.

2.3 The Contractor's percentage of the ICL is _____. The Contractor will share its portion of the ICL with its Cost Reimbursable Subcontractors in percentages agreed between the Architect and the Cost Reimbursable Subcontractors

Integrated Project Delivery Agreement

Exhibit C – Contract Task Matrix

1. MATRIX KEY

“S” indicates Sole responsibility for the task.

“P” indicates Primary responsibility for the task. Parties with primary responsibility are responsible for the task, but will be assisted by others.

“J” indicates Joint responsibility. Parties with Joint responsibility are equally responsible for the task.

“C” indicates Contributing responsibility. Parties with contributing responsibility participate in a task, but are not jointly responsible.

“DA” indicates Design Assist responsibility. Contractor and subcontractors with design assist responsibility will assist the design team by providing constructability and cost consultation and analysis, but do not have responsible charge of the elements being designed.

“DB” indicates Design/Build. Contractor and subcontractors with design/build responsibility for the design, engineering, detailing and implementation of a building component system are responsible for coordinating the design/build component or system within the overall project design. The Design/Builder will be the architect or engineer of record or will retain licensed professionals to perform all design services.

2. CONTRACT TASK MATRIX

Project Task	Owner	Architect	Contractor	Other	Other
General					
Building Information Model					
Conceptualization					

Project Task	Owner	Architect	Contractor	Other	Other
Criteria Design					
Detailed Design					
Implementation Documents					
Agency Review					
Project Purchasing					

Project Task	Owner	Architect	Contractor	Other	Other
Construction & Administration					
Commissioning and Closeout					

**Integrated Project Delivery Agreement
Exhibit D – Staffing Plan**



**Integrated Project Delivery Agreement
Exhibit E – Cost Management Strategy**



**Integrated Project Delivery Agreement
Exhibit F – PMT Work Plan**



**Integrated Project Delivery Agreement
Exhibit G – BIM Work Plan**



Integrated Project Delivery Agreement

Exhibit H – Architect’s Allowable Costs

1. GENERAL

Architect’s Allowable Costs are only those costs reasonably and necessarily incurred by Architect in performance of its obligations under this Agreement and consist of the following categories of items.

2. HOURLY RATES OF ARCHITECT’S EMPLOYEES AND COST REIMBURSABLE CONSULTANTS

The allowable cost for Architect’s employees and the employees of Cost Reimbursable Consultants will be charged at the product of the employee’s direct salary cost and the agreed multipliers. The Multiplier to VTC is used until the sum of Contractor and Architect’s Allowable Costs equals the VTC and the Multiplier after VTC is used thereafter. The direct salary cost is the amount paid to the employee as wages, exclusive of any benefits, taxes, or profit sharing plans.

Firm	Multiplier to VTC	Multiplier after VTC
Architect	____%	____%
Structural Engineer	____%	____%
Mechanical Engineer	____%	____%
Electrical Engineer	____%	____%
Other	____%	____%

3. COST OF CONSULTANTS

Amounts paid by Architect to consultants for services directly related to this Project without mark-up. The invoices of Cost Reimbursable Consultants will be calculated using each employee’s direct salary cost and the firm’s multiplier as listed in Section 2 above.

4. ACTIONS BY OR AGAINST FIXED PRICE CONSULTANTS

If any action is instituted by or against a Fixed Price Consultant with the concurrence of the PMT, the amount of any payment to the Fixed Price Consultant, and the legal fees and costs incurred in defending or prosecuting the action are Allowable Costs. If there is a financial recovery against a Fixed Price Consultant, the net recovery (actual recovery less prosecution costs) will be paid to the Owner. Any net recovery will first be used to pay for remedying or replacing the Fixed Price Consultant’s deficient services or any loss caused by those services. Any amount of net recovery remaining is then paid to Owner and used to pay Architect’s and/or Contractor’s Allowable Costs.

5. REIMBURSABLE EXPENSES

The following reimbursable expenses are Allowable Costs at the rates agreed below:

Item	Rate

6. TRAVEL EXPENSES

Travel expenses necessary for the Project and incurred with the concurrence of the PMT are reimbursable as Allowable Costs. Air travel is at economy rates unless the travel exceeds 6 aloft hours, in which case travel may be at business class, or if business class is not available, first class. Food and lodging will be reimbursed as Allowable Costs, but the PMT may establish a per diem rate for food and lodging as an alternative to actual costs.

Integrated Project Delivery Agreement

Exhibit I – Contractor’s Allowable Costs

1. GENERAL

The Contractor’s Allowable Costs are limited to those costs reasonably and necessarily incurred by Contractor in performance of its obligations under the Agreement, and that are consist with the following categories of items.

2. DIRECT COSTS

2.1 Direct Costs. The term “**Direct Costs**” means all Labor, material, equipment, appurtenances, and “**Miscellaneous Costs**” necessarily incurred by the Contractor for the proper performance of the construction work in strict accordance with the Contract Documents.

2.2 Labor.

2.2.1 Field Labor. Field Labor includes all labor performed by workers directly employed by the Contractor to perform construction work on-site as documented [by weekly certified] payroll reports or written subcontract.

2.2.2 Subcontractor Costs. Payments made by Contractor to subcontractors or design consultants in accordance with the requirements of their written subcontract agreements. All written Cost Reimbursable Subcontracts or Cost Reimbursable Consulting agreements will include an Allowable Cost section that specifically defines the categories of labor and the rates in dollar amount per hour.

2.3 Materials and Equipment Incorporated Into The Project.

2.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated into the Project.

2.3.2 Costs of materials described in Section 2.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, will become the Owner’s property at Final Completion or, at the Owner’s option, will be sold by the Contractor. Any amounts realized from the sales will be credited to the Owner.

2.4 Other Materials and Equipment, Temporary Facilities and Related Items.

2.4.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of construction materials, supplies, temporary facilities, communication radios (direct-connect), machinery, equipment, and hand tools not customarily owned by field labor, that are provided by the Contractor at the site and fully consumed in the performance of the construction work. If items are not fully consumed, the cost less salvage value, whether sold to others or retained by the Contractor, will be included. Salvage value will be the fair market value.

2.4.2 All rental charges for items included in Section 2.4.1 that are provided by the Contractor at the site, whether rented from the Contractor or others, including costs for transportation, installation, minor repairs and replacements, dismantling and removal provided that such costs: (i) do not exceed 50% of the cost of purchasing the equipment, and the rental rates (exclusive of all installation, maintenance, dismantling, removal, transportation and delivery costs) for the equipment do not exceed 85% of the lower of the Associated Equipment Distributors value or Blue Book Value, of the equipment; and (ii) all equipment owned by the Contractor or any affiliate of Contractor, if intended for rental, will receive prior written approval of the PMT before being allowed

as an Allowable Cost. Rates for equipment that is owned by the Contractor or an affiliate and rented will be subject to the PMT's prior approval and will be at rental rates consistent with those prevailing in the area.

2.4.3 Costs of materials and equipment suitably stored off-site at a mutually acceptable location, if approved in advance by the PMT.

2.5 Miscellaneous Costs.

2.5.1.1 Sales, use, gross receipt, or similar taxes imposed by a governmental authority that are related to the construction work.

2.5.1.2 Fees and assessments for the building permit and for other permits, licenses and inspections that Contractor is required to pay under the Contract Documents.

2.5.1.3 Fees of laboratories for tests required by the Contract Documents.

2.5.1.4 All royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents.

2.5.1.5 Costs of removal and disposal of debris from the site and recycle costs not offset by recycle fees or rebates as required by any Sustainability requirements set forth in the General Conditions.

2.5.1.6 Cost of document reproduction necessary for proper execution of the construction work.

2.5.1.7 That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work in excess of 50 miles or \$200 if approved in advance by the PMT.

2.5.1.8 Costs incurred in taking action to prevent threatened damage, injury, or loss in case of an emergency that threatens the safety of persons and/or property as directed by the PMT.

2.5.1.9 Actions instituted by or against a Fixed Price subcontractor with the concurrence of the PMT, the amount of any payment to the Fixed Price subcontractor, and the legal fees and costs incurred in defending or prosecuting the action. If there is a financial recovery against a Fixed Price subcontractor, the net recovery (actual recovery less prosecution costs) will be included in the VTP. Any net recovery will first be used to pay for remedying or replacing the Fixed Price subcontractor's deficient work or any loss caused by that work. Any amount of net recovery remaining will be placed in the VTP.

2.5.2 Cost of repairing or correcting damaged or non-conforming construction work executed by the Contractor, its subcontractors or suppliers, provided that the damaged or non-conforming work was not caused by negligence or failure to fulfill a specific responsibility of the Contract Documents and only to the extent that the cost of repair or correction is not recoverable by the Contractor's or its subcontractors insurance or sureties.

2.5.3 Cash discounts obtained on payments made by the Contractor will accrue to the VTP. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment will likewise accrue to the VTP.

3. INDIRECT COSTS

3.1 Labor for Contractor’s project management, superintending, preconstruction services, accounting, engineering, design, planning and scheduling, purchasing, estimating, accounting, IT, and data processing for payroll, payables and receivables specifically assigned to this Project, whether performed at the site or off-site offices.

3.2 Expenses associated with Contractor’s on-site office such as temporary facilities (including trailers, power, utilities, telephone, internet), temporary office furniture and equipment (including cost of computers and software purchased solely for this Project with the concurrence of the PMT and inclusive of all software, applications, systems, and support), devices, servers, printers, copiers, plotters, cell phones, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, digital cameras etc.; including costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof.

3.3 General Requirement costs such temporary toilets, barricades, fences, security and site-safety.

3.4 Insurance expense allocable to this Project, including any required bonds and subcontractor default insurance.

3.5 Labor by Contractor’s supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, with prior approval by the PMT.

4. FEE ON DIRECT AND INDIRECT COSTS

4.1 The Contractor’s Allowable Costs will also receive a Fee as a percentage of the Direct and Indirect Costs. The percentage used depends on whether the VTC has been exceeded. The Cost Reimbursable Subcontractors’ Allowable Costs are calculated using the Fee percentages below on the Cost Reimbursable Subcontractors’ Direct and Indirect Costs.

Firm	Fee % if Project costs are below VTC	Fee % used after Project costs exceed VTC
Contractor	____%	____%
Cost Reimbursable Subcontractor 1	____%	____%
Cost Reimbursable Subcontractor 2	____%	____%

Integrated Project Delivery Agreement

Exhibit J – Insurance

1. PROVISIONS APPLICABLE TO ALL INSURANCE

1.1 Term of Insurance Policies. All liability insurance must be in force prior to any Work under this Agreement and must be maintained in force for 2 years following Substantial Completion. Workers compensation insurance must be in force from the inception of this Agreement through Final Completion and Closeout. Builder's Risk insurance must be in force prior to commencement of construction and if equipment or material is purchased prior to construction, must either be in force prior to the purchase or the purchase must be insured against loss or damage under other property insurance.

1.2 Retroactive Date and Extended Reporting Period. If any required insurance is issued or renewed on a claims-made form, the retroactive date for coverage will be no later than the commencement of design services for the Project and must state that, in the event of cancellation or non-renewal, the discovery period for insurance claims will be at least 3 years after cancellation or non-renewal.

1.3 Standard Forms. To the extent applicable, the amounts and types of insurance will conform to the minimum terms, conditions, and coverages of the Insurance Service Office (ISO) policies, forms, and endorsements in effect when this Agreement is executed.

1.4 Admitted Carriers. All insurance must be placed with insurers that are admitted and licensed to issue insurance in the state where the Project is located.

1.5 Insurer Ratings. All insurance must be issued by insurers rated at least A, XII as rated in the most recent edition of Best's Insurance Reports

1.6 Insurance Certificates and Copies of Policies. Prior to commencing any work or services under this Agreement, Architect and Contractor will provide owner with insurance certificates reflecting the insurance required by this Agreement. Upon written request, Architect and Contractor will provide Owner with complete copies of the insurance policies required by this Agreement. Receipt of insurance certificates or copies of policies without objection by Owner does not constitute acceptance or approval of insurance nor does it relieve Architect or Contractor from their respective obligations to provide the required insurance.

1.7 No Reduction, Modification or Cancellation of Coverage. No insurance required by this Agreement may be reduced in coverage, modified or cancelled (except cancellation for non-payment of premium) without 30 days written notice to Owner. All policy renewals during the Term of Insurance Policies must be equal, or better, in terms and limits.

1.8 Primary Insurance. All liability policies required by this Agreement are primary to any similar insurance maintained by Owner for its own benefit.

1.9 Waivers of Subrogation. All insurers providing insurance required by this Agreement must agree to waive subrogation against the Parties to this Agreement, the Cost Reimbursable Subcontractors and the Cost Reimbursable Consultants.

1.10 Deductibles and Self-Insured Retentions. All deductibles and self-insured retentions are subject to approval by Owner, and unless approved in writing, are the sole responsibility of the first named insured and not Allowable Costs.

Architect's Allowable Costs are only those costs reasonably and necessarily incurred by Architect in performance of its obligations under this Agreement and consist of the following categories of items.

2. PROVISIONS APPLICABLE TO COMMERCIAL GENERAL LIABILITY, AUTOMOBILE INSURANCE POLICIES, AND UMBRELLA/EXCESS POLICIES.

2.1 Commercial General Liability (CGL). Primary CGL coverage must be issued on policies at least as broad as the most current version of ISO form CG 00 01 with combined single limits in the amounts listed in Sections__ and with excess coverage in the amounts listed in Sections __. Coverage must include, but is not limited to:

2.1.1 Claims for damages caused by negligent acts, errors and omissions resulting in bodily injury, sickness, disease or death, personal injury, or injury to or destruction of property including loss of use resulting therefrom.

2.1.2 Contractual Liability.

2.1.3 Products/Completed Operations Liability Insurance

2.1.4 Broad Form Property Damage

2.1.5 Explosion, collapse and underground hazards, if such exposure exists

2.1.6 Independent subcontractors.

2.1.7 Severability of interests.

2.1.8 Cross Liability

2.1.9 Limited Pollution as provided on CG 00 01.

2.2 Automobile Liability. Commercial Automobile Liability Insurance must cover accidents occurring on-site and off site with combined single limits and excess limits as stated in Section __ and Section __. This insurance must apply to all owned, leased, if any, non-owned or hired vehicles to be used by the insured in performance of its obligations under this Agreement. The insurance must include uninsured and underinsured coverage and any statutorily required "No Fault" benefits.

2.3 Umbrella/Excess Policies. Umbrellas/Excess policies must be following form or written on policies with coverage at least as broad as each and every one of the underlying policies.

2.4 Occurrence Basis. All Commercial General Liability, Commercial Automobile Liability and any Umbrella/Excess policies must be written on an occurrence basis.

2.5 Additional Insureds. Owner, its directors, officers and employees will be included on Architect's and Contractor's Commercial General Liability, Commercial Automobile Policy and Excess/Umbrella Liability policies on a primary basis for work performed under or incident to this Agreement. If the additional insured has other insurance applicable to the loss, it will be on an excess or contingent basis. The form of additional insured endorsement on the

Commercial General Liability and Excess/Umbrella policies will be ISO CG 20 10 07 04 and ISO CG 20 37 07 04 or their equivalent and must be maintained for 2 years after Substantial Completion of the Project. The Architect, its directors, officers and employees will be included as additional insureds on the Contractor's policies to the same extent as Owner.

3. CONTRACTOR'S INSURANCE

3.1.1 **Commercial General Liability** with combined single limits of _____.

3.1.2 **Commercial Automobile Liability** with combined single limits of _____.

3.1.3 **Excess/Umbrella** liability with limits of _____.

3.1.4 **Professional Liability.** If Contractor or its subcontractors are engaged in design/build activities, it must have coverage for damages caused by negligent acts, errors or omissions arising out of the performance of professional services for which Contractor is legally liable with a minimum limit of _____, including pollution coverage and having a retroactive date preceding any design work by Contractor or its design/build subcontractors. In addition, Contractor must have Contractor's Professional Liability coverage with a minimum limit of _____ covering Contractor's pre-construction and design assist activities.

3.1.5 **Valuable Papers.** Insurance with limits of _____ covering loss, destruction, damage, injury or corruption of valuable papers, records, digital media, plans, specifications, drawings, CAD drawings, Building Information Models, reports, maps, books, blueprints, and other printed and electronic documents and data.

3.1.6 **Workers Compensation.** Coverage for claims under applicable worker's compensation acts and under employer's liability, both with statutory minimum limits. Coverage must include:

3.1.6.1 Voluntary Compensation and EL Coverage Endorsement; and

3.1.6.2 Coverage for claims by employees under the U. S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations or statutes applicable to maritime employees if the employees work is subject to the jurisdiction of those laws, regulations or statutes.

4. ARCHITECT'S INSURANCE

4.1.1 **Commercial General Liability** with combined single limits of _____.

4.1.2 **Commercial Automobile Liability** with combined single limits of _____.

4.1.3 **Excess/Umbrella** liability with limits of _____.

4.1.4 **Professional Liability.** Claims for damages caused by negligent acts, errors or omissions arising out of performance of professional services for which the Architect is legally liable, with a minimum limit of \$_____, including but not limited to the following coverages:

4.1.4.1 Insured's interest in joint ventures, if applicable;

4.1.4.2 Pollution coverage;

4.1.4.3 Retroactive date prior to design work; and

4.1.4.4 If Project specific insurance is required, an extended reporting period of 3 years following substantial completion of construction.

4.1.5 **Valuable Papers.** Insurance with limits of _____ covering loss, destruction, damage, injury or corruption of valuable papers, records, digital media, plans, specifications, drawings, CAD drawings, Building Information Models, reports, maps, books, blueprints, and other printed and electronic documents and data.

4.1.6 **Workers Compensation.** Coverage for claims under applicable worker's compensation acts and under employer's liability, both with statutory minimum limits. Coverage must include:

4.1.6.1 Voluntary Compensation and EL Coverage Endorsement; and

4.1.6.2 Coverage for claims by employees under the U. S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations or statutes applicable to maritime employees if the employees work is subject to the jurisdiction of those laws, regulations or statutes.

5. BUILDER'S RISK INSURANCE

5.1 Contractor will purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a replacement cost basis without optional deductibles in the amount of the Validated Target Cost. The property insurance must be maintained until Final Payment has been made or until no person or entity other than the Owner has an insurable interest in the property required to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, subcontractors and sub-subcontractors in the Project, all of whom must be included as additional insureds under the builder's risk policy.

5.2 The Builder's Risk insurance must be on an "all-risk" or equivalent policy form and include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements. and must cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of an insured loss.

5.3 Deductibles under the Builder's Risk policy, if any, will be paid by Contractor and are reimbursable as an Allowable Cost without Fee and count against the Validated Target Cost.

6. ANCILLARY INSURANCE

Ancillary exposures that may require additional insurance for the Work include the following:

6.1 Aircraft Liability. If aircraft are used in the performance of the Work, the Contractor will maintain aircraft liability coverage including owned and non-owned, in the minimum amount of \$_____. Such insurance will include the following:

6.1.1 Additional insured endorsement for Owner;

6.1.2 Specific waiver of subrogation;

6.1.3 Contractual liability;

6.1.4 If aircraft is not owned by the Contractor, the Contractor shall cause the aircraft owner and/or operator to provide the minimum coverages and limits as stated above.

6.2 Watercraft Liability. If watercraft are used in the performance of the Work, the Contractor will maintain watercraft liability coverage including owned and non-owned, in the minimum amount of \$_____. Such insurance will include the following:

6.2.1 Additional insured endorsement for Owner;

6.2.2 Specific waiver of subrogation;

6.2.3 Contractual liability.

6.3 Railroad Protective Liability. The Contractor will purchase and maintain a railroad protective liability policy if the Work is on or within 50 feet of a railroad or affects any railroad property including but not limited to tracks, bridges, tunnels, and switches. If such coverage is required and commercially available with the described terms and conditions.

General Conditions of the Integrated Project Delivery Agreement

1. TERMS

1.1 Defined Terms. Capitalized terms used in the General Conditions are either defined in the Integrated Project Delivery Agreement, this General Conditions or Exhibit A to the Agreement.

2. PROJECT ADMINISTRATION

2.1 Progress Monitoring. The PMT is responsible for developing and updating the Cost Management Strategy, PMT Workflow Plan, BIM Workflow Plan, and the Project Schedule. These Management tools will be used to track the status of the Project against achievement of the Project Objective. If it appears that the Project Objective is not being met, the PMT will develop a recovery plan to enable the Project to achieve the Project Objective.

2.2 Project Manual. The PMT will develop a Project Manual that documents the quality assurance plan, safety plan, work hours and work restrictions, communication protocols, specifications, Project terminology, forms and similar administrative and procedural requirements. The Project Manual will incorporate information obtained from the Joint Site Investigation. In addition, the PMT, with the assistance of the PIT as required, will meet in a BIM workshop to discuss the technical and procedural issues required in Section 2.4. The decisions reached and protocols developed will be documented in the Project Manual.

2.3 Target Value Design. The PMT will develop protocols for using Target Value Design to develop a project that can be constructed within the VTC. The Target Value Design process will emphasize providing guidance to the Architect and its consultants regarding the relative value of different design options before they are designed, as well as the cost implications of design decisions as they are being made. The PMT will determine which specialty contractors and consultants will be responsible for developing and optimizing specific systems and sub-systems and making recommendations regarding those systems to the PMT.

2.4 Requests for Information.

2.4.1 Informal Resolution. To the greatest extent possible, Requests for Information should be resolved directly between the requesting party and the responder. If the response results in a change or modification to the Contract Documents, it should be documented in writing.

2.4.2 Electronic Submission and Archiving. The PMT will establish a centralized system to track information requests and responses that are available to all Project participants. Information requests and responses will be sent electronically and archived in the centralized system.

2.4.3 RFI Scheduling. RFIs must indicate what specific information is required and when the response must be received to avoid delaying the Work. Upon receiving an RFI, the responder must provide an immediate response either indicating the date when the response will be issued, or requesting further information necessary before it can respond. If the requesting party and responder cannot resolve differences between when the information is needed and when it can be provided, they will submit the issue to the PMT for resolution.



2.5 Submittals and Shop Drawings.

2.5.1 Submittals. Submittals include Shop Drawings, Product Data and Samples, but are not Contract Documents. To the extent required by the Contract Documents, Submittals demonstrate how the Contractor and subcontractors propose to execute the Work shown by the Contract Documents.

2.5.1.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a subcontractor, tier subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

2.5.1.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

2.5.1.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

2.5.2 Electronic Submission and Archiving. The PMT will establish a centralized system to track Submittals and submittal reviews that are available to all Project participants. Whenever possible, Submittals will be submitted electronically and archived on the centralized system.

2.5.3 Submittal Scheduling. Contractor will provide a schedule that indicates when Submittals will be issued and when approval must be received to avoid delaying the Work. Disputes regarding the Submittal schedule will be referred to the PMT for resolution.

2.5.4 Architect's Review. The Architect will review the Contractor's Submittals for conformance with the Contract Documents and approve or take other appropriate action. Approval of a Submittal does not relieve the Contractor from any of its obligations under the Agreement or of any construction means, methods, techniques, sequences or procedures unless otherwise specifically stated by the Architect. The Architect's approval of a specific item is not approval of an assembly of which the item is a component.

2.6 Inspection and Certificate of Substantial Completion. When the Contractor believes that the Project has achieved Substantial Completion, it will notify the PMT which will review the entire Project. If the Project has achieved Substantial Completion, the PMT will issue a Notice of Substantial Completion and provide the Contractor with a list of items that must be completed, repaired, or replaced before Final Completion (**Punch List**). If the Project has not achieved Substantial Completion, the PMT will provide the Contractor with a punch list that must be completed, repaired, or replaced before Substantial Completion and the Contractor after completing those items, will notify the PMT that the Project is ready to be re-inspected. Unless otherwise agreed, the Certificate of Substantial Completion establishes the date when responsibility for security, maintenance, heat, utilities, damage to the construction work and insurance transfers from Contractor to Owner.

2.7 Final Inspection and Punch List. Prior to Final Completion, the PMT will review the entire Project and prepare a list of items that need to be completed, repaired, or replaced (**Final Punch List**). Correction of all Final Punch List items to the PMT's satisfaction is a condition precedent to Final Completion of the Project.

3. JOINT SITE INVESTIGATION

3.1 Access to Existing Documents. At its expense, Owner will provide the PMT with access to all documents Owner possesses related to the condition of the Project site that are requested and reasonably required by the PMT. This information includes:

3.1.1 Information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, data or drawings depicting existing conditions, subsurface conditions (geotechnical engineering survey and report) and environmental studies, reports and investigations;

3.1.2 Tests, inspections and other reports dealing with environmental matters, Hazardous Materials and other existing conditions, including structural, mechanical and chemical tests, required by the PMT or by law; and

3.1.3 Any other information or services reasonably requested in writing by the PMT that are relevant to the planning, design and construction of the Project.

3.2 Joint Site Investigation. During the Conceptualization Phase, the PMT will conduct investigations at or concerning the Project site ("**Joint Site Investigation**"). The Owner will make the Project site available for the Joint Site Investigation and will provide information in its possession that is required by this Section or otherwise requested by the PMT. During the Joint Site Investigation, the PMT will:

3.2.1 Document all information that is needed from the PMT and the PIT to design the Project.

3.2.2 Verify existing conditions within the Project site, including all points of connection, and verify the accuracy of existing "As-Built" documents, as provided by the Owner through field investigations with proper due diligence to eliminate major unforeseen conditions that will result in a Change Order. If "As-Built" documents are insufficient, inaccurate or incomplete, the PMT will recommend a surveying program to provide required information.

3.2.3 Notify the Owner of the need to view inaccessible spaces (i.e. spaces containing Hazardous Materials, hard lid ceilings, buried utilities, occupied spaces, etc.) to allow the Owner an opportunity for field verification.

3.2.4 Review any existing information and determine to what extent additional investigations should be pursued and identify, in writing, any apparent deficiencies or discrepancies in the information provided by the Owner during each Phase.

3.2.5 Describe additional investigations or information reasonably required to prepare the Construction Documents, including recommending surveys, subsoil investigations, analyses, tests and reports relative to the Project site.

3.2.6 Evaluate the need for air balance reports, electrical load tests, gas and utility reports to verify the condition and capacity of existing systems.

3.2.7 Upon completion of the Joint Site Investigation, reasonably recommend that the Owner may proceed.

3.2.8 Recommend additional surveying or testing necessary to effectively design or construct the Project.

3.3 Reliance on Information. Provided that a Party has diligently participated in the Joint Site Investigation:

- (i) it may rely upon the completeness and accuracy of the information provided by the Owner, to the extent it is not contradicted by the Joint Site Investigation; and
- (ii) any conditions that are later discovered to differ from the provided information, as amended and augmented by the information developed during the Joint Site Investigation, are deemed Unforeseen and Differing Site Conditions under the Agreement.

4. BUILDING INFORMATION MODEL

4.1 Software. The Project will be designed and implemented using _____ Building Information Models and the subsidiary models as are necessary for design, fabrication and construction. All subsidiary modeling software must be interoperable with _____ or support robust data exchange with the _____ model(s). Clash detection will use _____.

4.2 Model Administrator. Each Party is responsible for maintaining any individual design or analysis models and providing their modeling information, at appropriate intervals, to the administrator of the Model (**Model Administrator**). During Process Design, the PMT will select a Model Administrator who is responsible for receiving modeling information from the Project Information Team and incorporating the information into a master Building Information Model. Unless otherwise agreed, the Model Administrator will host and manage the modeling information.

4.3 Modeling Goals. To the greatest extent practical, all Project information will be developed and maintained through the use of the Building Information Models. The design will be developed in the Model, constructability and cost information will be incorporated through the Model, conflict resolution will occur through the Model, Shop Drawings will be submitted and reviewed through the Model, and the Model will be kept current to reflect as constructed conditions.

4.4 Building Information Modeling Workshop. The Project Implementation Team will meet during the Conceptualization Phase to develop detailed protocols for the use of Building Information Modeling on this Project, which will be documented in the BIM Workflow Plan. Among other things, the protocols developed will:

4.4.1 Specify where and how the Model will be maintained including the Parties with substantive responsibility for controlling the information within specific models or model elements.

4.4.2 Specify protocols for version control, roll-back, gate keeping, and archiving.

4.4.3 Specify the level of detail that will be modeled and incorporate appropriate allowances for differing construction tolerances.

4.4.4 Specify when and how information regarding constructability and cost will be derived from the models and provided to the designers to inform design.

4.4.5 Specify when and how existing site information is incorporated into the Model.

4.4.6 Specify how RFIs, clarifications, Shop Drawing and Submittal information will be reviewed and incorporated into the Model.

4.4.7 Specify when and how conflict resolution sessions will occur.

4.4.8 Determine what information is more efficiently developed and conveyed using traditional 2D design tools and develop protocols for assuring consistency between the BIM and ancillary 2D information.

4.4.9 Specify how the BIM will be updated and function as a Record Model; and

4.4.10 Specify what design information, if any, must be developed or maintained outside of the BIM.

4.4.11 The BIM workshop will be scheduled by the Project Facilitator at the commencement of the Conceptualization Phase. Any disagreement regarding protocols, will be decided by the PMT. The Project Facilitator will document the decisions reached and the BIM protocols will be incorporated into the Project Manual as the BIM Protocol Exhibit.

4.5 Ownership of the Building Information Model.

4.5.1 **Ownership.** The master Building Information Model, the subsidiary models necessary for design and construction of the Project, and any related two dimensional drawings, calculations, schedules or specifications created for the Project will, upon completion of the Project, become the property of the Owner and the Parties agree to provide the Owner, as a deliverable before Final Completion, the most recent version of all Building Information Modeling files. Notwithstanding the above, design elements that were created by the PMT or PIT members, before execution of the Agreement, as extensions to commercially available building information modeling software will remain the property of the respective PIT or PMT member that created the extension, regardless of whether it was used in a Building Information Model for this Project.

4.5.2 **Licensing.** The Parties grant a non-exclusive, limited license to each other, to use any BIM information solely for the purpose of designing, analyzing, or constructing this Project. Owner grants the Parties with a non-exclusive, perpetual license solely for use, or display of, the Project BIM information for educational or promotional purposes.

4.6 **Status of the Building Information Model.** Contractor will construct the Project in accordance with the BIM and other Contract Documents deemed necessary by the PMT at the conclusion of the Implementation Documents Phase, subject to any subsequent modifications. Elements necessary for a fully functional Project, but not modeled due to their size or level or detail, will be provided by the Contractor as part of its construction work without any change to the VTC and with a level of quality consistent with the Project and the Implementation Documents. It is anticipated that some design information, such as construction details, will not be incorporated into the BIM, but will be provided to the Contractor as

conventional 2D or CAD files. Some design information will only be contained in the written specifications. The BIM, the 2D drawings, and the written specifications are all Contract Documents, which are complementary, and what is required by one is required in all.

4.7 Conflicts Between Documents. If a conflict arises between the BIM, the 2D drawings, and/or the written specifications, the Contractor will notify the PMT of the conflict and the PMT will decide which requirement is most consistent with the Project Objective.

4.8 Submission of Signed and Stamped Drawings. In order to obtain necessary permits and to comply with professional registration statutes, 2D drawings, calculations and specifications must be generated, reviewed, sealed and submitted to reviewing agencies and authorities. The Architect and the design/build subcontractors will each be responsible for, and will sign and stamp, the drawings, specifications and calculations prepared by them. To the greatest extent possible, the 2D drawings will be generated from the Model, and after incorporation of any agency review comments and requirements, the Model will control the construction of the Project.

5. OWNER'S SEPARATE CONSULTANTS AND CONTRACTORS

Owner may retain separate consultants and contractors to perform work and services that are related to Work being performed under the Agreement. The Owner is responsible for the timeliness and quality of the work and services of its separate consultants and contractors. The Contractor and Architect will coordinate their Work with the work and services of the separate consultants and contractors and will accommodate the work and services of the separate consultants and contractors to effect smooth and efficient workflow. Contractor will include Owner's separate consultants and contractors in scheduling, conflict resolution, and site safety programs. However, the Contractor will not be the "controlling employer" as defined by Cal/OSHA for work performed by Owner's separate contractor or responsible for separate contractor's compliance with the safety program.

6. INSPECTIONS

6.1 Notice and Preparation for Inspections. When work is ready for inspection, the Contractor will notify the Architect and the PMT. The PMT will arrange for the required inspections. Contractor will provide any labor necessary to make the construction work ready for inspection, including labor necessary to cover and uncover any construction work.

6.2 Cost of Inspections. The Owner will pay for inspection of construction work completed by the Contractor and for reinspection of that work. However, if reinspection is caused by the negligence of the Contractor or because the work was not ready for inspection, then the cost of reinspection will be treated as an Allowable Cost included in the VTC.

7. NON-CONFORMING WORK

7.1 Rejection of Work. The PMT will reject construction work that is not in conformance with the Contract Documents.

7.2 Cost of Correction. Non-conforming construction work must be promptly corrected, repaired, or replaced. Correction of non-conforming work that was performed or installed by a Fixed Price subcontractor will be remedied at the Fixed Price subcontractor's own expense. If not promptly corrected, repaired or replaced, the Owner or Contractor may correct

the non-conforming work and backcharge the Fixed Price subcontractor. Correction of non-conforming work that was performed or installed by a Cost Reimbursable Subcontractor is an Allowable Cost in the VTC.

8. SAFETY PRECAUTIONS AND PROGRAMS

8.1 Responsibility. The Contractor is responsible for initiating, maintaining and supervising all safety precautions and programs in connection with performance of the construction work. This requirement applies continuously and is not limited to normal working hours. The Contractor must take reasonable precautions for safety of, and will provide reasonable protection to prevent damage, injury or loss to:

8.1.1 Personnel performing construction work and other persons who may be affected by the construction work;

8.1.2 Materials and equipment to be incorporated into the Project, whether stored on-site or off-site and whether or not under the care, custody or control of the Contractor or its subcontractors or tier-subcontractors; and/or

8.1.3 Other property at or adjacent to the site, such as structures and utilities not designated for removal, relocation or replacement in the course of construction.

8.2 Safety Program and Safety Manager. Contractor will develop a written Safety Program applicable to this Project site and will designate a senior employee as the Site Safety Manager. The Site Safety Manager will be responsible for conducting regular Site Safety meetings for all persons located at the Project site and for monitoring compliance with the Safety Program.

8.3 Safety Notices. The Contractor will give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. The Contractor will maintain on-site all Material Safety Data Sheets for material or products brought to the Project site.

8.4 Barriers & Warnings. The Contractor will erect and maintain, as required by existing conditions and performance of the construction work, all necessary barricades and signage for safety and protection and will notify owners and users of adjacent sites and utilities.

8.5 Emergencies. In an emergency affecting safety of persons or property, the Contractor must act, at Contractor's discretion, to prevent or mitigate threatened damage, injury or loss. Additional compensation or extension of Contract Time claimed by Contractor on account of an emergency will be determined by the PMT.

8.6 Accidents. The Contractor must promptly report in writing to the PMT all accidents arising out of, or in connection with, the construction work that result in death, personal injury or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries or serious property damages are caused, the accident must be reported immediately by telephone or messenger to the PMT members and to all applicable governmental agencies.

8.7 Fines & Penalties. The Contractor is responsible for the payment of all fines levied against it or against Owner arising from or related to violation of safety rules, regulations

or statutes except for safety violations arising from Owner's separate Contractor's work. These fines and penalties are not Allowable Costs under the Agreement.

9. PROTECTION OF UTILITIES AND ADJACENT PROPERTIES

9.1 Site Utilities. The Contractor will contact a site utility location service before excavating at the Project site and will not undertake any site activities that could damage utilities until they have been located and marked.

9.2 Adjacent Properties. The Contractor will give 48 hours written notice before breaking ground, to all persons having interests on or near the site, including utility companies, adjacent property owners, superintendents, inspectors, or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads or otherwise who may be affected by Contractor's operation, so they may remove any obstruction that they are responsible for and have a representative on-site to see that their property is properly protected.

10. PERMITS AND FEES

10.1 Contractor will secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the construction work. Permits and fees are Allowable Costs.

11. HAZARDOUS MATERIALS

11.1 Defined. Hazardous Materials means any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous or toxic materials, hazardous or toxic wastes, hazardous or toxic substance or contaminant and all other materials governed by the Comprehensive Environmental Response, Compensation and Liability Act (**CERCLA**), the Resources Conservation and Recovery Act (**RCRA**), or other applicable federal, state or local law or regulation or any substance or material which has been determined or during the time of performance of the Work is determined to be capable of posing a risk of injury to health, safety, property or the environment by any federal, state or local governmental authority.

11.2 Pre-existing Conditions. Owner is responsible for all Hazardous Materials existing at the site prior to inception of the Project and will indemnify and hold harmless Architect and Contractor from any claims, damages and liability arising from the pre-existing Hazardous Materials. Notwithstanding the above, Contractor will defend, indemnify and hold harmless Owner and Architect from any claims, demands and liability arising from Contractor's negligent handling, transporting, treating or disturbing of pre-existing Hazardous Materials.

11.3 Introduction of Hazardous Materials. Unless specifically required by the Contract Documents, Contractor may neither use or introduce to the Project Site, nor incorporate into the Project any Hazardous Materials. If Hazardous Materials are specifically required by the Contract Documents, the Contractor will take all necessary precautions to protect workers and the public from deleterious exposure to the Hazardous Materials and will properly and lawfully dispose of any residual Hazardous Materials.

11.4 Reporting of Hazardous Materials Release. If Hazardous Materials are released at or from the Project site, the Contractor will immediately notify all governmental agencies having jurisdiction over the release and the PMT.

12. CLEANING UP AND RECYCLING

12.1 Material Recycling. The Contractor will endeavor to reduce the amount of waste material generated during construction. Construction waste that is unavoidably generated will be segregated into recyclable and non-recyclable materials. Recyclable materials will preferably be reused during construction of the Project, but if Project reuse is not practical, will be recycled rather than being transported to a landfill.

12.2 Cleaning Up. The Contractor will keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement. At completion of the construction work, the Contractor is responsible for removing waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project. If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost associated with the clean-up will be charged to the Contractor.

13. SUSTAINABILITY

[insert any sustainability requirements and/or LEED certification goals.]