

# Not for Distribution



*Sutter Health*

Community Based, Not For Profit

## Integrated Agreement for Lean Project Delivery Between Owner, Architect & CM/GC RD\_\_\_\_\_

### AGREEMENT

made as of the \_\_\_ day of \_\_\_\_\_ in the year Two Thousand Seven

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A Venn diagram consisting of three overlapping circles. The top circle is labeled 'Owner:'. The bottom-left circle is labeled 'Architect:'. The bottom-right circle is labeled 'CM/GC:'. Each circle contains fields for 'Telephone:' and 'Facsimile:'. The circles overlap in the center and at the intersections between adjacent circles.

Owner:

Telephone:  
Facsimile:

Architect:

Telephone:  
Facsimile:

CM/GC:

Telephone:  
Facsimile:

## **Project Summary**

**Project Description:**

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**Exhibits**

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This AGREEMENT is between Owner, Architect and CM/GC, who state and agree as follows.

## 1. **DEFINITIONS**

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

**"Actual Cost"** means the sum of the total Cost of the Work actually incurred by Architect and CM/GC in connection with the performance of all Phases of the Project, plus the CM/GC's Fee.

**"Affiliate Representative"** has the meaning set forth in Section 4.1.

**"Agreement"** means this Integrated Agreement for Lean Project Delivery, by and among Owner, Architect and CM/GC.

**"Amendment No. 1"** means that amendment to this Agreement entered into by the Parties pursuant to Section 12.5.

**"Approved Validation Study"** has the meaning set forth in Section 9.11.

**"Architect"** means the Party identified as such on the cover page of this Agreement.

**"Architect's Consultants"** means those design or construction professionals identified on the Project Roster as an **"Architect's Consultant"** and retained to perform a portion of the Services under a subcontract with Architect or another of Architect's Consultants.

**"Architect's Profit"** means collectively,

**"Architect's Representative"** has the meaning set forth in Section 4.8.

**"Architect's Supplemental Instruction"** or **"ASI"** has the meaning set forth in Section 24.8.

**"At-Risk Amounts"** means, collectively, that portion of the CM/GC's Overhead & Profit, of the Architect's Profit, and of the amounts payable to other Risk Pool IPD Team Members that, pursuant to this Agreement or the Subcontracts or other agreements with such other Risk Pool IPD Team Members, is payable into the IPD Team At-Risk Pool Account.

**"Basic Warranty"** has the meaning set forth in Section 36.1.

**"Building Regulations"** has the meaning set forth in Section 10.6.

**"Change Order"** has the meaning set forth in Section 24.3.

**"Change Proposal Request"** or **"CPR"** has the meaning set forth in Section 24.9.

**"Claim"** has the meaning set forth in Section 41.3.

**"CM/GC"** means the Party identified as such on the cover page of this Agreement.

**"CM/GC's Fee"** means the fee paid to CM/GC during the Construction Phase-as set forth in Section 27.2.

**"CM/GC's Representative"** means the individual identified as such on the Project Roster.

**"Compensable Delay"** has the meaning set forth in Section 22.10.

**"Construction Administration"** means assisting the CM/GC in implementing the final Drawings and Specifications in the performance of the Work and timely providing to CM/GC and its Subcontractors any and all information necessary to achieve the foregoing.

"**Construction Change Directive**" has the meaning set forth in Section 24.3.

"**Construction Documents**" means the documents, consisting of the Drawings and Specifications, to be prepared or assembled by Architect to define the Work to be constructed as part of the Project.

"**Construction Performance Incentive Payment**" has the meaning set forth in Section 14.6.

"**Construction Phase**" means that portion of the Work and the Services to be performed under this Agreement beginning upon commencement of the Construction Phase pursuant to Section 12.6 and through Final Completion.

"**Contract Documents**" means this Agreement, together with all exhibits hereto, the Construction Documents, Schedules, and any Modification validly executed after execution of the Agreement.

"**Contract Time**" has the meaning set forth in Section 22.1.

"**Core Group**" has the meaning set forth in Section 4.1.

"**Cost of the Work**" means all direct and indirect costs incurred in connection with the performance of the Project by Architect and CM/GC, but not Architect's Fee or CM/GC/s Fee or the fee component of any Risk Pool IPD Team Member, as more particularly set forth in **Exhibit 7**.

"**Date of Commencement**" has the meaning set forth in Section 22.2.

"**Deliverables**" means the documents or other instruments of service to be prepared by a Responsible Designer, including without limitation those documents identified in **Exhibit 1**.

"**Design-Build Work**" has the meaning set forth in Section 7.5.

"**Differing Site Conditions**" has the meaning set forth in Section 23.1.

"**Dispute Resolution Proceeding**" means a proceeding between or among two or more of the Parties pursuant to any of the mechanisms set forth in Article 41 to resolve Claims.

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

"**Escalation Contingency**" has the meaning set forth in Section 9.5.

"**Estimated Maximum Price**" or "**EMP**" has the meaning set forth in Section 12.1.

"**Event of Default**" has the meaning set forth in Section 39.1.

"**Excusable Delay**" has the meaning set forth in Section 22.9.

"**Expected Cost**" has the meaning set forth in Section 2.1.

"**Final Completion**" has the meaning set forth in Section 29.7.

"**FPD**" has the meaning set forth in Section 4.1.

"**Fraud or Willful Misconduct**" with respect to any Party means the fraud or willful misconduct of any of such Party's Senior Officers or employees.

"**General Conditions**" has the meaning set forth in Section 12.1.2.

"**Hazardous Materials**" has the meaning set forth in Section 21.1.

"**Independent Expert**" has the meaning set forth in Section 41.9.

"**Inexcusable Delay**" has the meaning set forth in [Section 22.11](#).

"**IOR**" has the meaning set forth in [Section 25.3](#).

"**Integrated Project Delivery Team**" or "**IPD Team**" has the meaning set forth in [Section 2.3](#) and [Article 3](#).

"**IPD Team Risk Pool Plan**" has the meaning set forth in [Section 14.1](#).

"**IPD Team At-Risk Pool Account**" has the meaning set forth in [Section 14.1](#).

"**IPD Team Contingency**" has the meaning set forth in [Section 9.8](#).

"**Joining Agreement**" means an Agreement to be signed by Architect's Consultants and major Subcontractors and Suppliers and providing for participation in the IPD Team and the IPD Team At-Risk Pool Account. The form of the Joining Agreement shall be agreed by the Parties on or before the date of execution of the IPD Risk Pool Plan.

"**Joint Site Investigation**" has the meaning set forth in [Section 8.2](#).

"**Lean Project Delivery**" has the meaning set forth in [Section 2.3](#).

"**Lien**" has the meaning set forth in [Section 32.4](#).

"**Modification**" means (1) a written amendment to this Agreement signed by all Parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by Architect.

"**Nonconforming Work**" has the meaning set forth in [Section 36.1](#).

"**Non-Risk Pool Consultant**" means any Consultant that is not a Risk Pool IPD Team Member.

"**Non- Risk Pool Subcontractor**" means any Subcontractor that is not a Risk Pool IPD Team Member.

"**Notice of Potential Claim**" has the meaning set forth in [Section 22.14](#).

"**Owner**" means the Party identified as such on the cover page of this Agreement.

"**Owner's Consultants**" means those consultants retained by Owner to assist Owner in carrying out the Project and who are identified in the Project Roster.

"**Owner Indemnitees**" has the meaning set forth in [Section 32.2](#).

"**Owner's Representative**" has the meaning set forth in [Section 4.1](#).

"**Risk Pool Consultant**" means any Consultant that is a Risk Pool IPD Team Member.

" **Risk Pool IPD Team Member**" has the meaning set forth in [Section 14.3](#).

"**Risk Pool Subcontractor**" means any Subcontractor that is a Risk Pool IPD Team Member.

"**Party**" means any of Architect, CM/GC and Owner.

"**Payment Application**" means an application for payment submitted by Architect and CM/GC to Owner.

"**Payment Protocol**" has the meaning set forth in [Section 12.4.2](#).

"**Pencil Draw**" has the meaning set forth in [Section 28.4](#).

"**Permitting Contingency**" has the meaning set forth in [Section 12.1.1](#).

"**Phases**" means, collectively, the Validation Phase, the Preconstruction Phase and the Construction Phase.

"**Preconstruction Phase**" means that portion of the Work and the Services to be performed under this Agreement beginning upon commencement of the Preconstruction Phase pursuant to Section 9.3 and prior to the commencement of the Construction Phase pursuant to Section 12.6.

"**Principal**" has the meaning set forth in Section 4.8.

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

"**Fee**" means that portion of the total compensation under this Agreement to a Risk Pool IPD Team Member deemed to be, or allocated to, the profit or corporate overhead of such Party pursuant to the IPD Risk Pool Plan. The portion of total compensation allocated to profit or corporate overhead may be different in the Validation and Preconstruction Phases than in the Construction Phase.

"**Project**" means the all programming, planning, design and construction of the Work, and the performance of all requirements set forth in this Agreement during all Phases.

"**Project Evaluation Criteria**" means, collectively, benchmarks, metrics, or standards of evaluation developed by the Core Group and used throughout the Project as a basis for evaluating the IPD Team and continuously improving Project performance.

"**Project Documents**" has the meaning set forth in Section 38.1.

"**Project Executive**" has the meaning set forth in Section 4.9.

"**Project Roster**" means the list of representatives of Core Group members and IPD Team Members, which is maintained and updated from time to time by the Core Group. The initial Project Roster is attached hereto as **Exhibit 11**.

"**Proprietary Information**" has the meaning set forth in Section 37.1.

"**Punch List**" has the meaning set forth in Section 29.2.

"**Records**" has the meaning set forth in Section 31.1.

"**Reimbursable Costs**" means costs incurred by Architect or CM/GC to be reimbursed as Costs of the Work in accordance with the provisions of **Exhibit 7**.

"**Reimbursable Expenses**" has the same meaning as Reimbursable Costs.

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

"**RFI**" means a request for information regarding an uncertainty with respect to any portion of the Work submitted in writing by CM/GC to Owner or Architect.

"**Risk Pool Consultant**" means any Consultant that is a Risk Pool IPD Team Member.

"**Risk Pool IPD Team Member**" has the meaning set forth in Section 14.3.

"**Risk Pool Subcontractor**" means any Subcontractor that is a Risk Pool IPD Team Member.

"**RLWP**" has the meaning set forth in Section 26.2.

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

**"Senior Executive Meeting"** has the meaning set forth in Section 41.8.

**"Senior Officers and Employees"** means, with respect to any IPD Team Member, (i) persons who have been appointed to a corporate office of such Party; (ii) persons designated as Core Group Representatives; (iii) persons designated as Senior Management Team Representatives; and (iv) the most senior person employed by such party who is directly responsible for day-to-day supervision of the party's activities on the Project.

**"Services"** means those services to be performed by Architect pursuant to this Agreement and as described in **Exhibit 3** and the Work Plan.

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

**"Site Documents"** has the meaning set forth in Section 19.3.

**"Special Meeting"** has the meaning set forth in Section 41.6.

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

**"Subcontractor(s)"** means the individuals or firms retained by CM/GC, or by a subcontractor or Supplier of CM/GC, to install or furnish and install work, labor or materials or provide other services for which a contractor's license is required under applicable law or otherwise provide on-site labor in connection with the Work. The term Subcontractor shall include Trade Contractors and Suppliers to the extent that they furnish on-site labor or installation services. To the extent the term Subcontractor is referred to as if singular in number it shall include the plural and shall mean a Subcontractor or an authorized representative the Subcontractor.

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

**"Substantial Completion"** has the meaning set forth in Section 29.1.

**"Substantial Completion Date"** has the meaning set forth in Section 22.3.

**"Suppliers"** means material and equipment suppliers engaged by CM/GC or Subcontractors of any tier.

**"Target Cost"** has the meaning set forth in Section 9.4.

**"Target Value Design Plan"** means the plan developed as described in Section \_\_\_\_\_.

**"Termination for Convenience"** has the meaning set forth in Section 39.6.1.

**"Trade Contractor"** means the individuals or firms retained by CM/GC or a Subcontractor to provide collaboration and services during the Preconstruction Phase. It is anticipated that a Trade Contractor will continue to serve as Subcontractor during the Construction Phase provided that the Core Group determines that its performance during pre-construction merits continued participation and accepts its price proposal.

**"Validation Phase"** means that portion of the Work and the Services to be performed under this Agreement prior to the commencement of the Preconstruction Phase pursuant to Section 9.3.

**"Validation Study"** means the written report prepared by the IPD Team addressing whether a facility can be designed and constructed to deliver the services described in Owner's Business Case within the Expected Cost and within the completion date described in the Business Case.

**"Value Engineering Proposal"** or **"VEP"** has the meaning set forth in Section 11.2.

**"Warranty Reserve"** means a dollar sum certain, which shall comprise that portion of each of the Target Cost and the Estimated Maximum Price as set forth in each applicable cost proposal pursuant to Section 9.4 and

Section 12.1, respectively, and which, as set forth in the description of the Estimated Maximum Price adopted pursuant to Amendment No. 1.

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

**"Work Authorization"** means a document executed by the Parties to authorize and agree to a limited scope of services during the Validation Phase, the Preconstruction Phase or the Construction Phase.

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

## **2. PROJECT FUNDAMENTALS**

2.1. Project Parameters. The Project consists of programming, planning, designing, constructing, and commissioning of the Project more specifically described in **Exhibit 2**. Owner's business case for the Project is predicated upon (a) the requirements of Owner's master facility business plan referenced in **Exhibit 2**; (b) the maximum design and construction cost that the business plan will support set forth in **Exhibit 2** (the "Expected Cost"); and (c) the Conceptual Project Schedule set forth in **Exhibit 2**. The Expected Cost will be the subject of the Validation Study efforts of the Parties during the Validation Phase as described in Section 9.2. Assuming that the IPD Team can develop a design solution that meets the requirements of the business case within the Expected Cost (and subject to the conditions precedent contained in Section 9.3), then the Core Group shall develop, review and approve a Target Cost as described under Section 9.4. During the Preconstruction Phase, the IPD Team will, using the principles of Target Value Design, as more specifically described in Articles 10 and 11, design the Project so that it can be constructed for not more than the Target Cost. At the end of the Preconstruction Phase, as one of a number of conditions precedent to the commencement of the Construction Phase, the Core Group shall develop, review and approve an Estimated Maximum Price, as described in Section 12.1. The Estimated Maximum Price shall serve as the baseline for determining incentive compensation to the Risk Pool IPD Team Members or the sharing by the Risk Pool IPD Team Members in Owner's cost overruns, as further described in Article 13.3, which in either case shall be determined after completion of the construction of the Project during the Construction Phase and determination of the Actual Cost of the Project to the Owner.

2.2. Value Definition. The Owner's basic value proposition is to build the facilities called for in master facility business plan, for no more than the Expected Cost, within the time frame established by the Conceptual Project Schedule. Changes to the basic value proposition may not be approved by any Party other than the Owner.

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

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

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

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

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

2.4.4. The performer/promissor is sincere in the moment that the promise is made – only making the promise if it believes that the promise reasonably can be fulfilled.

2.4.5. The performer/promissor is prepared to accept the legal and reasonable consequences that may ensue if the promise can not be performed as promised and will promptly advise the IPD Team if confidence is lost that the task can be performed as promised.

### **3. THE IPD TEAM**

3.1. **Integrated Project Delivery Team Formation.** The Architect, Owner, and CM/CG agree to form an IPD Team to facilitate design, construction and commissioning of the Project. The IPD Team members, including Architect and Architect's Consultants, and CM/CG, Subcontractors and Suppliers, and the Owner, and the Owner's selected consultants and separate contractors will be expected to reasonably share information and cooperatively collaborate for the benefit of the Project. In forming an Integrated Project Delivery Team, Architect and CM/CG expect that major Subcontractors will be selected to provide pre-construction services in the Validation Phase or early in the Preconstruction Phase and will sign Joining Agreements as they become members of the IPD Team. Architect's Consultants are also expected to sign Joining Agreements and become members of the IPD Team.

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

3.3. **Trust.** The Parties accept the relationship of mutual trust and confidence established with each other by this Agreement, and promise to furnish their professional skill and judgment and to collaborate and cooperate with each other and with other project participants in actively pursuing an integrated project and furthering the interests of the Project. Notwithstanding this commitment, no fiduciary relationship is intended or created. The Parties recognize that each of their opportunities to succeed on the Project is directly tied to the performance of other Project participants. The Parties shall therefore work together in the spirit of cooperation, collaboration, and mutual respect for the benefit of the Project, and within the limits of their professional expertise and abilities. Throughout the Project, the Parties shall use their best efforts to perform the Work in an expeditious and economical manner consistent with the interests of Project. Nothing in this paragraph shall create a fiduciary relationship among the Parties.

3.4. **Standard of Care.** Each of the Parties acknowledges that Owner, not being skilled in such matters, is relying upon each professional for the technical and professional adequacy of its services. Neither Owner nor Owner's Consultants shall perform any duties of Architect, Architect's Consultants, CM/CG or Subcontractors, or assume any responsibility or liability for the professional or technical adequacy of the Drawings and Specifications prepared by Architect or Architect's Consultant. As provided throughout the Contract Documents, each Party shall perform its designated services in a competent professional manner in accordance with the standards of experienced professionals in metropolitan areas of California experienced in providing services for healthcare facilities of this size, complexity, and construction process.

### **4. FORMATION AND FUNCTIONING OF THE CORE GROUP**

4.1. **Purpose of Core Group.** The coordination and overall management and administration of the Project consistent with Lean Project Delivery principles shall be conducted by the group of Party representatives identified in this **Section 3.1** (the "**Core Group**"). The Core Group shall include, at a minimum, the Sutter Health Facility, Planning & Development ("**FPD**") representative (the "**Owner's Representative**"), the representative of the Affiliate identified on the coversheet as the owner (the "**Affiliate Representative**"), the Architect's Representative, and the CM/CG's Representative. The meetings of the Core Group shall be facilitated by the Owner's Representative. This initial Core Group may invite others to become members of the Core Group and may also remove added members from the Core Group. The Core Group shall exercise its authority in the best interest of the Project and within the bounds of the rights and obligations of the Parties under this Agreement. Each IPD Team Member shall assure that its Core Group representative, if any, attends all Core Group meetings and fulfills his or her responsibilities as a Core Group Member. The Core Group may approve any member's designation of an alternate representative; any proposed replacement of a Core Group representative shall be subject to the Core Group's approval.

4.2. **Regular Meetings.** The Core Group shall establish a regular meeting schedule, which in general should be no less frequently than monthly. The Core Group shall be responsible for reviewing and stimulating the progress of the Project and developing and pursuing the Project Evaluation Criteria. The Core Group shall also review the periodic project evaluations and shall plan and implement programs to improve Project performance and performer satisfaction on the Project. The Core Group meetings shall be held separately from other meetings for the purpose of ensuring their importance and the candor of the exchange at the Core Group meeting. On a quarterly basis, the Core Group Meeting should include a Senior Management Representative from each of the Core Group member firms.

4.3. **Special Meetings.** In addition to the regularly scheduled meetings, a Core Group Meeting may also be set at the request of any Core Group Member, to allow the Core Group to address a matter of urgency. A Special Meeting shall be convened as quickly as all Core Group members can be assembled. Notice of a special meeting shall identify the issues to be addressed. If a Core Group member is not able to attend either a regular or special meeting because of a scheduling conflict, an alternate may be designated in advance to attend.

4.4. Authority. The Core Group shall have the authority expressly granted it by this Agreement.

4.5. Decision Making. The Core Group shall endeavor to make decisions by consensus. In the event of impasse, the Owner may issue directions that it believes to be in the best interest of the Project, subject to further resolution pursuant to the dispute resolution provisions of Article 41.

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

4.7. Owner's Representative and Affiliate Representative. Owner shall designate in writing a representative authorized to act on its behalf with respect to the Project. Owner's authorized representative shall be responsible for coordinating action among the Project participants, including any additional Owner personnel who must participate in decision making on the Project. Owner's Representative shall be identified on the Project Roster and shall coordinate the activities of the Core Group. In addition to this individual, the Owner shall also designate the Affiliate Representative to participate as a Core Group member. The Affiliate Representative shall also be identified on the Project Roster. The initial Project Roster shall be revised from time to time in accordance with changes in Core Group representatives, consultants and Subcontractors pursuant to the terms of this Agreement.

4.8. Architect's Project Personnel. Architect has appointed the individual listed on the Project Roster as Architect's Principal (the "**Principal**") whose duties shall include, without limitation, directing and coordinating the work of Architect and Architect's Consultants. Architect has also designated the other individuals designated on the Project Roster to provide the Services required by this Agreement. Architect's Core Group member ("**Architect's Representative**") shall be the individual so designated on the Project Roster. Architect shall not remove or replace any of the above individuals without the Core Group's prior written consent. Any replacement Principal or employee presented to the Core Group for approval shall have substantially equivalent or better qualifications than the Principal or employee whom he or she replaces. The designated Core Group member shall represent Architect.

4.9. CM/GC's Project Personnel. CM/GC has appointed the individual listed on the Project Roster as CM/GC's Project Executive (the "**Project Executive**") whose duties shall include, without limitation, directing and coordinating the work of CM/GC and the Subcontractors. CM/GC has also designated the other individuals designated on the roster as Project Manager and Project Superintendent to provide services required by this Agreement. CM/GC's Project Manager and Project Superintendent shall possess a record of experience and performance on construction projects of comparable scope to the Project. CM/GC's Core Group member shall be the individual so designated on the Project Roster. CM/GC shall not remove or replace any of the above individuals without the Core Group's prior written consent. Any replacement presented to the Core Group for approval shall have substantially equivalent or better qualifications than the individual whom he or she replaces. The designated Core Group member shall represent CM/GC. CM/GC shall designate the persons authorized to represent CM/GC who will generally be in attendance at the Project Site during performance of the Work.

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

4.11.

## **5. ADDING SUBCONTRACTORS, SUPPLIERS AND CONSULTANTS TO THE IPD TEAM**

5.1. Early Involvement. It is anticipated that CM/GC will contract with necessary Subcontractors and Suppliers, as approved by the Core Group, to provide services during Validation and Preconstruction as described in this Agreement and applicable Work Authorizations. It is anticipated that key trades will be retained during Validation or early in Preconstruction to facilitate an integrated, collaborative design process. For these key trades, Owner anticipates that proposals for prospective IPD Team members will be solicited on a Request for Proposal basis and that selections will be made in collaboration with the Core Group. It is anticipated that a Subcontractor will continue to serve during the Construction Phase provided that the Core Group determines that its performance during preconstruction merits continued participation and accepts its price proposal.

5.2. Selection. CM/GC shall seek to develop subcontractor interest in the Project and shall collaborate with the Core Group to develop a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. Before proposing any Subcontractor or Supplier, CM/GC shall satisfy itself that the proposed firm has the financial resources, qualifications, and experience to complete the Work for which it is proposed and is available to do

so. The Core Group will promptly review the qualifications and decide whether to add the proposed firm to the list. The "pre-qualification" of proposed firms shall not waive the right of the Core Group later to object to or reject any proposed Subcontractor or Supplier. If CM/GC intends to perform a particular scope of Work using its own forces, CM/GC shall provide the Core Group with its qualifications to perform the Work.

5.3. Replacement. Subject to modification at the Core Group's direction, CM/GC may propose Subcontractors and Suppliers to replace any Subcontractor or Supplier, which will be approved by the Core Group provided the request is in the best interest of the Project.

5.4. Coordination Drawings. In addition to other pre-construction services outlined elsewhere in the Contract Documents, Subcontractors are expected to prepare and participate in developing "coordination drawings" or similar input into an electronic model during the Preconstruction Phase to identify routing and eliminate conflicts among the work of the various trades. The "coordination drawings" or similar input shall be provided to Architect and Architect's Consultants, and necessary information shall be reflected and included in the Design Documents, including the Construction Documents that are submitted for permitting.

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

5.6. Integration of Design. Scopes of work that are being performed on a design-build or design-assist basis, including those which traditionally have been OSHPD "**deferred approval**" items, shall be fully designed during the Preconstruction Phase and shall be fully coordinated and integrated with the Construction Documents that are submitted for permit or other governmental approvals. Unless otherwise agreed in writing by the Core Group, Architect shall be responsible for coordinating the design being provided by Architect and Architect's Consultants pursuant to the terms of this Agreement with the Design-Build Work.

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

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

## **6. COLLABORATION; INTEGRATED PRECONSTRUCTION SERVICES AND WORK AUTHORIZATIONS**

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

6.2. Role of Cost & Schedule. Cost and schedule are design criteria, and it will not be tolerated to only have those issues reviewed at the milestones described below. The Core Group shall establish protocols and procedures to ensure that design proceeds fully informed by the cost and schedule implications of the design.

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

6.4. Work Authorizations; Authorized Scope of Work. No Work or Services shall be performed in the Validation or Preconstruction Phases except pursuant to a Work Authorization and Notice to Proceed signed by all Parties. Each Work Authorization and Notice to Proceed shall set forth the following: (a) the specific scope of Work and Services authorized, (b) the deliverables required in connection with such scope of Work and Services, (c) the expiration date of the Work Authorization, if any, and (d) any other matters the Core Group deems important. Compensation for all Work and Services performed during the Validation and Preconstruction Phases shall be paid as set forth in Articles 26 and 27.

## **7. PROJECT PLANNING AND SCHEDULING**

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

7.2. Phase Planning. The Phase Plan must be based on collaborative planning by all IPD Team members who will perform in a phase, who, working backwards from the milestone, create collaborative phase schedules indicating when work should be done. In developing that Phase Schedule, IPD Team members who understand how the work will be performed should be in direct conversation with the other IPD Team members from whom they will receive work or to whom they will deliver work, whether this work is physical work or information. The purpose of this conversation is to put the performers in action making direct requests and promises to each other, and specifically discussing and negotiating the hand-off criteria or conditions of satisfaction that are then mutually understood and agreed upon.

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

7.4. Weekly Look Ahead Meetings. The Core Group will determine the frequency of look ahead meetings during the planning phase of the Project, and will determine when weekly look ahead meetings will be initiated for the Project. Once the weekly look Ahead Planning meetings are initiated, the weekly look ahead plan for the coming week should be reviewed to assess any remaining constraints that would keep someone from making a reliable promise on the coming week's work plan. For any remaining constraints, promises for removal must be solicited, and available work for the coming week confirmed. Then, the subsequent week is reviewed to assess whether work in that week can be made available as workable backlog. The IPD Team should evaluate what unconstrained work could be performed early if either a performer gets ahead or if there is some reason that would prevent the performer from doing the work as promised. This work is identified as workable backlog. Only work authorized by the IPD Team is to be considered workable backlog; work that has not been released as workable backlog is considered out of sequence as it would cause difficulty or rework for themselves or others.

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

7.5. Weekly Work Planning Meetings. The Core Group will determine the frequency of work planning meetings during the planning phases of the Project, and will determine when weekly planning meetings will be

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

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

Throughout the Project, CM/GC, in collaboration with all IPD Team members, shall update the Preliminary Milestone Schedule monthly; focusing on major milestones relied upon for tracking purposes. CM/GC shall coordinate and integrate the Preliminary Milestone Schedule with the services and activities of Owner, Architect and CM/GC. As the Project proceeds, the Preliminary Milestone Schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of the Estimated Maximum Price proposal, delivery of materials or equipment requiring long-lead time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed dates of Substantial and Final Completion.

## **8. OWNER PROVIDED INFORMATION**

8.1. Project Business Case. Attached as **Exhibit 2** is a copy of non-confidential portions of the Owner's Project Business Case.

8.2. Joint Site Investigation Plan. The Core Group shall develop a plan for developing the scope of pre-construction investigations at or concerning the site (collectively, the "**Joint Site Investigation**"). During the Preconstruction Phase, the IPD Team shall advise the Core Group in writing of all information which is needed from others to design the Project. The Core Group will review any existing information and assess to what extent additional investigations should be pursued and shall identify in writing any apparent deficiencies or discrepancies in the information Owner provides during each Phase. The IPD Team members shall describe and advise the Core Group of additional investigations or information reasonably required to prepare the Construction Documents. During each of the Preconstruction Phase and the Construction Phase, Owner shall make the Project Site available to Architect, Architect's Consultants, CM/GC and Subcontractors at all times.

8.3. Pre-construction Information. Owner shall provide anticipated pre-construction information, which shall include the following:

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

8.3.2. Surveys describing physical characteristics, legal limitations and utility locations for the site, and a written legal description of the site. The surveys and legal information may include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a Project benchmark.

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

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

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

8.4. Access to Existing Documents. To the extent that documents exist, the Owner shall provide interested parties access to the documents with reasonable promptness, and without cost or expense. IPD Team members shall review the information furnished with reasonable care and advise the Core Group in writing of any errors, inconsistencies, inaccuracies, or incompleteness which would prompt CM/GC or the Subcontractors to include

additional contingency in their estimates or require a designer to make a worst case assumption that might prove wasteful if additional investigation was performed. Each IPD Team member shall submit a reasonable set of options for additional preconstruction investigation of existing conditions for Core Group consideration, including the cost and potential benefit of the differing levels of pre-construction investigation, which the proponent believes is prudent. To the extent an IPD Team member has performed as described above, it shall be entitled to rely upon the accuracy of the information described above to the extent that it is not contradicted by the Contract Documents.

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

8.6. Soils Report. Owner shall furnish reports and appropriate professional recommendations and other services of soils, geotechnical, environmental, and other engineers or professionals for use by Architect and Architect's Consultants, as necessary for proper design of the Project. Such services may include but shall not be limited to test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, including necessary operations for determining subsoil, air and water conditions. Architect shall review the information provided in these reports and shall coordinate with Architect's Consultants to confirm that the information provided is adequate for preparation of the design documents (but not for technical adequacy). Architect and Architect's Consultants shall conform their design to the geotechnical recommendations and shall, after submitting the final design to the geotechnical engineer for review and comment, provide written certification that final design does conform. The geotechnical engineer shall review the final Construction Documents for conformance to the report. Verification of the submittal to the geotechnical engineer shall be made in writing to Owner.

8.7. Coordination/Cooperation. Architect shall be responsible for coordinating the information provided by Owner, Owner's Consultants, CM/GC, Subcontractors and Suppliers, and Architect's Consultants to prepare coordinated Design Documents pursuant to this Agreement. Pursuant to this coordination obligation, Architect shall meet, confer, cooperate and collaborate, as necessary or appropriate, with the other IPD Team members, including Owner's Consultants and subsequently hired consultants (if any). The Core Group shall develop a communications plan which shall address how information developed in those meetings is recorded and distributed. All persons currently proposed as members of the IPD Team have reviewed this Agreement and understand the level of cooperation, collaboration, and pre-construction services that Owner anticipates from all IPD Team Members.

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

8.9. Division of Responsibility. Attached as **Exhibit 9** is a matrix setting forth the relative roles and responsibilities of FPD and the Affiliate for Owner actions and decisions under this Agreement as well as other IPD Team Members. IPD Team Members shall be entitled to rely upon any person identified in that matrix, as may be modified in writing during the Project, as having apparent authority to act on behalf of a Party with respect to any subject matter identified as such person's responsibility in the matrix.

8.10. Project Metrics. The Core Group, as a basis for performing Target Value Design, shall assist the Owner in developing a defined list of specific values, goals, outcomes, objectives and other such metrics which will serve as the basis for establishing the specific parameters for the Project.

## **9. VALIDATION, TARGET COST AND RELATED COST MODELING**

9.1. Expected Cost Parameters. Owner has established the Expected Cost in accordance with extensive internal procedures, including approval by the Sutter Health Finance and Planning Committee, which is responsible for allocating available funds for projects undertaken by all Sutter Health affiliates. Owner has advised Architect and CM/GC that the Expected Cost cannot be revised without resubmitting the Project to that Committee for approval, which approval could be withheld. This process would result in significant delays for the Project. Therefore, after concluding the Validation Phase and confirming that, absent causes for which Owner is expressly assuming the risk, it is able to design and construct the Project for no more than the Expected Cost, the IPD Team shall design the Project so that it may be constructed without exceeding the Expected Cost.

9.2. Validation. During the Validation Phase, the IPD Team shall undertake to conform and validate whether the Project can be completed for the Expected Cost and shall present a Validation Study to the Owner. The Validation Study shall include each item identified in **Exhibit 1**. After receiving and reviewing the Validation Study, Owner shall provide a written notice to Architect and CM/GC indicating whether or not it accepts the Validation Study.

9.3. Conditions Precedent to Commencement of the Preconstruction Phase. In order to authorize commencement of the Preconstruction Phase (i) Owner shall notify the Core Group in writing that it accepts the Validation Study (ii) Owner shall issue a signed Work Authorization and Notice to Proceed authorizing the expenditure of funds in support of all or a designated portion of the Preconstruction Phase and (iii) the Parties shall have entered into a written agreement regarding the schedule for completion of the Work and Services to be performed during the Preconstruction Phase or the portion authorized by the Work Authorization and Notice to Proceed. The IPD Team shall not incur any cost to be reimbursed as part of the Preconstruction Phase, except as Owner may specifically authorize in writing, prior to satisfaction of each of the conditions precedent set forth in this section.

9.4. Target Cost. The Core Group, in conjunction with the Senior Management Team, shall establish a milestone date for development of the Target Cost for the Project. The IPD Team shall develop and the Core Group shall approve the Target Cost, as well as the other elements of value to be pursued in designing the Project, as all more specifically described in the approved Target Value Design Plan. The Target Cost shall be based upon the Project Business Case, the Validation Study, and the Target Value Design Plan. The Target Cost and the CM/GC's cost models developed pursuant to Sections 9.7 and 9.8, shall include the following:

- (a) Total cost to Owner of all elements of the Cost of the Work for the Project, including the total costs of professional services, labor, materials and supervision to be furnished by Architect and CM/GC (or anyone engaged by either of them) during the Preconstruction and Construction Phases;
- (b) Architect's Fee and the Fee of Risk Pool Consultants;
- (c) CM/GC's Fee and the Fee of Risk Pool Subcontractors;
- (d) Escalation Contingency (see Section 9.5);
- (e) IPD Team Contingency (see Section 9.8);
- (f) Permitting Contingency (see Section 12.1.1);
- (g) Warranty Reserve;
- (h) General Conditions (see Section 12.1.2); and
- (i) Allowances.

The Target Cost shall not include the cost of labor, materials or equipment relative to Owner-supplied equipment for the Project (except the cost of installation by CM/GC of any Owner-supplied equipment as provided in the Construction Documents), or the costs of land, rights of way, financing or other items for which Owner is responsible. The Target Cost shall guide the IPD Team's development of the design for the Project and the Drawings and Specifications.

9.5. Target Value Design. CM/GC and the Subcontractors will provide Target Value Design support services throughout development of the design. Depending on the stage of document development, the scope and nature of this on-going effort may change. The specific estimates listed below are "roll-up estimates" or "gate estimates" to provide Owner the opportunity to confirm that the entire Project, at those milestones, is proceeding within the approved budget parameters. Those estimates shall be the by-product of the continuous Target Value Design process and are not intended to be performed by progressing the documents to a certain stage of development and then requesting that the CM/GC and Subcontractors provide pricing information. As noted, CM/GC and the Subcontractors will also be expected to provide on-going cost information and estimating of portions of the Work, systems being considered, details as they are developed, and other cost exercises that the Core Group deems advisable. Formal estimates should include amounts for escalation in labor and material prices in the Preconstruction and Construction Phases only as provided by the Core Group (the "Escalation") In connection with the establishment of the Estimated Maximum Price, the Core Group may determine to fix the Construction Phase Escalation associated with certain commodities by use of commonly accepted price indexes or other price-based measures.

9.6. Target Value Design Process. The Parties acknowledge that Target Value Design is intended to make explicit that value, cost, schedule, and constructability (including work structuring) are basic components of the design criteria. The intent is to design the Project to a detailed estimate. The Core Group shall develop written guidelines or protocols for use of Target Value Design principles throughout the design process. At a minimum, these protocols should address the following:

- 9.6.1. Method to establish initial target costs for major components and systems
- 9.6.2. Method for determining other value elements of Target Value Design
- 9.6.3. Schedule for selection of Subcontractors during design

9.6.4. Method for forming and meeting structure for cross-functional teams (clusters) of designers and builders for major components and systems of the site and structures.

9.6.5. Method for aligning all IPD Team members behind the cardinal rule of Target Value Design: the Project's Target Cost shall never be exceeded without express approval of the Owner.

9.6.6. Method to assure continuous cost analysis and reporting procedures within the cross-functional teams (clusters) for monitoring estimated costs against target costs.

9.6.7. Creation of a Target Value team comprised of the cross-functional/cluster leaders to meet regularly and frequently, with responsibility for evaluating Target Value Design tradeoffs and opportunities, (including function / cost trade-offs) and authority to direct value engineering and adjustments of the component / system costs up or down to maintain total project target cost.

9.6.8. The frequency or preparing the milestone roll-up estimates described in Section 9.7.

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

9.8. Contingencies in Cost Model. In the Target Cost and its Cost Models, CM/GC shall carry the "IPD Team Contingency," an Escalation Contingency and, if applicable, a Permitting Contingency, each in an amount to be agreed upon by the Core Group. The "**IPD Team Contingency**" is a contingency amount that is available to address design errors and omissions and to pay for items that arise during the Construction Phase that are properly considered a Cost of the Work, but which were not included in the amount described in Section 12.1(a) and are not the result of items specified in Article 24 as entitling CM/GC to a Change Order. CM/GC and IPD Team Members shall not include separate contingency in the Project cost model to address refinement of designs, materials, or equipment; instead, CM/GC and IPD Team Members shall include realistic pricing based upon listed assumptions and understandings concerning the scope of work, labor, materials, and equipment required by the pending design.

9.9. Cost Model Reconciliation. The Project cost model will continuously be reviewed for conformance with the Target Cost. If the anticipated Project costs as shown in the Project cost model fail to align with the Target Cost, the Core Group shall determine what actions to take in order to align the cost model and the Target Cost. The Target Cost will be adjusted for additions and deductions by changes in Owner's program, on the same basis under Section 24 as had those changes been issued during the Construction Phase.

9.10. Review of Estimated Maximum Price Proposal. At the direction of the Core Group, the CM/GC shall oversee development of the Estimated Maximum Price Proposal, and shall include a written statement of its assumptions. The Estimated Maximum Price Proposal shall be reviewed by Core Group and approved by the Core Group. The Estimated Maximum Price shall be subject to additions and deductions by changes in Owner's program, on the same basis under Section 24 as had those changes been issued during the Construction Phase.

## **10. DEVELOPMENT OF DESIGN DOCUMENTS**

10.1. Scope. The Core Group shall oversee development of the design documents for the Project. A description of the scope of services to be provided by Architect and Architect's Consultants, and the design information to be developed during each task of the design is set forth in **Exhibit 3**. In developing the milestone schedules for Preconstruction Phase, the Core Group shall determine how to integrate actual or simulated OSHPD reviews or other plan reviews and milestone budget confirmations.

10.2. Information. Owner shall provide full information regarding requirements for the Project and access to operational personnel in order to permit the IPD Team to understand Owner's design objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, special equipment and systems and site requirements. The IPD Team shall assist Owner in identifying and determining the necessary information and requirements.

10.3. Government Regulations. All design services, whether provided by Owner's Consultants, Architect, Architect's Consultants, CM/GC, Suppliers, or Subcontractors, shall comply with all applicable legal requirements in effect during the Preconstruction Phase and any governmental authority from whom permits, approvals or other consents for the Project may be required, including the local Fire Marshal. Responsible Designer shall use due care in identifying and determining the meaning and effect of all applicable building code provisions and other applicable building requirements and restrictions, including, without limitation, those which are listed in **Exhibit 4**, and take such measures as may be necessary to meet such requirements. Such measures shall include, without limitation, filing and/or revising any required applications, drawings, specifications, calculations or other documents, and complying with all applicable conditions precedent to the extent necessary to secure any required permits, approvals or other

consents for construction of the Project at the Project Site. Owner shall pay all costs and fees required to secure necessary permits, approvals and other consents.

10.4. Pull-based Design Production. In order for CM/GC and the Subcontractors to provide full value during the Preconstruction Phase, it is important to develop a flow to development of the Design Documents that is based upon "pull based" planning as described elsewhere in the Contract Documents. The design team must avoid "advancing" aspects of the design beyond what has been anticipated and approved for any given time period by way of the Core Group's approved planning process. Parties shall only pursue work that is shown on the applicable Project work plan as being performed in that week or that has been identified as "**workable backlog.**"

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

10.6. Role of CM/GC and Subcontractors. It is not CM/GC's or Subcontractors' responsibility to ascertain that design documents prepared by Architect or Architect's Consultants are in accordance with laws, statutes, ordinances, building codes, and rules and regulations applicable to the design and construction of the Project (collectively, "**Building Regulations**"). However, if CM/GC or any Subcontractor observes at any time that portions of the Contract Documents are at variance with Building Regulations, it shall promptly notify Architect and Owner in writing, and necessary changes shall be accomplished by appropriate modification.

10.7. Responsibility for Design-Build Work. If any portion of the Project is proceeding as Design-Build Work by a Subcontractor, Owner and Architect shall timely specify all applicable performance and design criteria. The Subcontractor shall retain appropriately licensed design professionals to provide all design services related to the Design-Build Work. Each proposed Subcontractor or design professional performing any design-related services for Design-Build Work shall maintain professional errors and omissions insurance in an amount not less than the limits set forth in **Exhibit 5**, or such other amount as may be specifically approved in writing by Owner, which insurance shall be maintained in effect for at least four (4) years after Substantial Completion of the Project.

10.8. Design Drawing or Modeling Standards. All design documents shall comply with any drawing or building information modeling standards reasonably required by the Core Group (including Computer-Aided Design) and each IPD Team Member shall require each of its subcontractors or consultants, in writing, to conform to such standards in the development of all Drawings and Specifications. Architect shall provide for the Core Group's review, comment and reasonable approval, examples of the styles, methods and systems proposed to be used by Architect in the preparation of drawings and specifications to be included in the Construction Documents.

## **11. VALUE ENGINEERING, CONSTRUCTABILITY AND WORK STRUCTURING**

11.1. Value Analysis Strategy. Throughout the Preconstruction Phase, with particular attention during the early stages of design, and as part of the Target Value Design process, CM/GC and the Subcontractors shall continuously be pursuing opportunities to create additional value by identifying options to reduce capital or life cycle cost, improve constructability and functionality, or provide operational flexibility, while satisfying Owner's programmatic needs and project values. In order to avoid waste associated with re-drawing aspects of the Work, the emphasis on deep value analysis and the opportunity for set-based design (carrying multiple design options forward and deferring decisions until the last responsible moment) must be emphasized early in the design process. In order for these efforts to be effective, the project must gain the early involvement of the Subcontractors who possess information essential to the value engineering process. The Core Group should focus on developing strategies to include value analysis as part of its Target Value Design efforts.

11.2. Value Engineering Analysis. CM/GC and the Subcontractors shall bring forward within the design clusters, alternative systems, means, methods, configurations, site locations, finishes, equipment and the like that satisfy the general design criteria of the Project, but which result in savings of time or money in constructing or operating and maintaining the Project, or increasing quality, constructability, or other measures of value and are cost neutral (each, a "**Value Engineering Proposal**" or "**VEP**"). Value Engineering Proposals shall be a primary focus of the Target Value Design Clusters and should be the basis of set-based design. Each Value Engineering Proposal shall examine the proposed change, identify all aspects of the Project directly or indirectly affected by the change, specify the cost or time savings to be achieved if the VEP is accepted, and detail any anticipated effect on the Project's service life, economy of operation, ease of maintenance, appearance, design or safety standards. It shall be documented using an A-3 Report format that evaluates the proposal's specifics in relation to the value elements identified in the initial value identification report prepared as part of the Target Value Design process. Target Value Design Clusters and the IPD Team shall initially review and consider whether to carry a VEP as a set during design. In case of disagreement concerning whether to carry a VEP, the Core Group shall determine which VEPs to pursue. For each VEP that is carried forward, the Responsible Designers shall ascertain design feasibility, satisfaction of the design concept, compatibility and compliance with Building Regulations, and professional standards of care.

11.3. **Constructability.** CM/GC and Subcontractors shall continually review the Design Documents for clarity, consistency, constructability and coordination among the construction trades and collaborate with the IPD Team in developing solutions to any identified issues. The purpose of the Constructability Reviews is to determine that the design is progressing in a manner that will result in complete, accurate and coordinated drawings which are sufficiently complete and coordinated for construction, and thereby reduce the risk of disruption, delay, change orders and potential claims. CM/GC and the Subcontractors will focus on accuracy, completeness, sequencing and coordination. These reviews will also seek out alternative construction materials, sequences, details, pre-fabrication opportunities, and systems that may result in a cost or time savings to Owner, or increased quality. Nothing in this section shall relieve Architect, CM/GC or any Subcontractor, Supplier or Architect's Consultant from its obligation to perform its services or work in accordance with the terms of its contract and the applicable standard of care.

11.4. **Document Review.** Throughout all Phases of the Project, CM/GC and Subcontractors shall carefully study and compare the Design Documents with each other, with the report of the Joint Site Investigation, and any information furnished by Owner as provided elsewhere in the Contract Documents and shall immediately report to Architect and Owner in writing any errors, inconsistencies or omissions discovered. CM/GC shall not independently be liable to Owner for damages resulting from errors, inconsistencies or omissions in the Contract Documents unless CM/GC or Subcontractors recognized, or reasonably should have recognized, such error, inconsistency or omission and failed to report it to Architect and Owner. CM/GC, Subcontractors, and Suppliers shall not perform any construction activity which involves an error, inconsistency or omission in the Contract Documents of which CM/GC, Subcontractors, or Suppliers, as applicable, knew of, or reasonably should have known of, without such notice to Architect and Owner.

## **12. ESTIMATED MAXIMUM PRICE PROPOSAL AND RELATED OBLIGATIONS**

12.1. **Estimated Maximum Price Proposal.** When the Core Group determines that the Drawings and Specifications are sufficiently complete, Architect and CM/GC shall propose an estimated maximum price for the Project (the "**Estimated Maximum Price**"), which shall comprise the following:

- (a) Total cost to Owner of all elements of the Cost of the Work for the Project, including the total costs of professional services, labor, materials and supervision to be furnished by Architect and CM/GC during the Preconstruction and Construction Phases;
- (b) Architect's Fee and the Fee of Risk Pool Consultants;
- (c) CM/GC's Fee and the Fee of Risk Pool Subcontractors;
- (d) Escalation (but only for commodities for which a price index has not been adopted) (see Section 9.5);
- (e) IPD Team Contingency (see Section 9.8);
- (f) Permitting Contingency, if any (see Section 12.1.1);
- (g) Warranty Reserve;
- (h) General Conditions (see Section 12.1.2); and
- (i) Allowances.

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

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

The "**General Conditions**" portion of the Estimated Maximum Price includes all general and administrative expenses for the Project, including foreseeable delays and interferences, which CM/GC may experience on the Project, for the duration of the schedule which is attached to the EMP proposal. CM/GC will be entitled to use the IPD Team Contingency to augment the General Conditions unless the Core Group determines otherwise.

12.1.3. The EMP proposal shall include in its assumptions and clarifications the number of "weather days" that are included as an allowance in the proposed schedule and Amendment No. 1 shall specify the agreed

number of weather days. Weather impacts will only constitute Excusable Delays to the extent they exceed the allowance in Amendment No. 1 and otherwise meet the criteria for an Excusable Delay.

12.1.4. The EMP proposal shall include in the Cost of the Work only those taxes which are enacted at the time the EMP proposal is submitted to the Owner.

12.2. Allowances. The Core Group shall include in each of the Target Cost and the EMP proposals all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Core Group may direct. Unless otherwise provided in the Contract Documents:

12.2.1. Allowances shall cover the cost of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

12.2.2. Costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the EMP, but not in the Allowances;

12.2.3. Whenever costs are more than or less than the applicable allowance, the Target Cost and Estimated Maximum Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the applicable allowance and (2) changes in CM/GC's costs under Section 12.2.2, but only to the extent caused by the change under Section 12.2.1; and

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

12.3. Documentation of EMP. CM/GC shall include with the EMP proposal a written statement of its basis, which shall include:

12.3.1. A list of the Drawings and Specifications, including all addenda, that were used in preparation of the EMP proposal.

12.3.2. The total proposed EMP, including a statement of the estimated cost and a schedule of values organized by trade categories, allowances, contingencies permitted by this Agreement, self-performed work, and other items and the Profit of Architect and CM/GC that comprise the total EMP.

12.3.3. A list of the clarifications and assumptions made by CM/GC in preparing the EMP proposal to supplement the information contained in the Drawings and Specifications.

12.3.4. The Date of Commencement and the date of completion upon which the proposed EMP is based and a schedule of the Construction Documents' issuance dates upon which the date of completion is based.

12.3.5. A list of Allowances and a statement of their basis.

12.3.6. A detailed budget and breakdown of all general conditions and jobsite management expenses included within the EMP proposal for the duration identified in the proposed Milestone Schedule.

12.4. Other Actions to Occur Prior to Submission of EMP Proposal.

12.4.1. Prior to submission of the EMP proposal, the Core Group shall identify each of the material first-tier Subcontractors to be involved with the Project during the Construction Phase and establish the details of the optimal subcontracting format (including the forms of subcontract agreements) to be used with first-tier Subcontractors (and potentially other subcontractors) during the Construction Phase.

12.4.2. Prior to submission of the EMP proposal, the Core Group shall develop a set of procedures and protocols (the "**Payment Protocol**") to be followed by the Parties and first-tier Subcontractors and Consultants during the Construction Phase for the invoicing, processing and payment of Architect's and CM/GC's payment requests under the Agreement in order to optimize the goals identified by the Core Group. Among other goals identified by the Parties, it is intended that the Payment Protocol shall ensure that Architect and CM/GC are promptly paid during the Preconstruction and Construction Phases to enable them to promptly satisfy the Project-related payment requests of first-tier Subcontractors and Consultants (and others).

12.4.3. Prior to submission of the EMP proposal, the Core Group shall establish a program for providing performance and completion assurances to Owner, potentially including subcontractor bonds and payment retention provisions for Subcontractors not participating in the IPD Team At-Risk Pool Account, completion insurance, and/or other similar programs. No payment and performance bonds will be required of the CM/GC.

12.5. Amendment No. 1. Upon acceptance by Owner of the EMP proposal and completion of each of the items set forth in Section 12.4, the following shall be set forth in or attached to Amendment No. 1: (i) the Estimated Maximum Price and its basis; (ii) the construction documents developed during the Preconstruction Phase through the date of the EMP proposal; (iii) each of the deliverables required under Section 12.34; and (iv) such items as are referred to in Section 12.6 and are reasonably designated for attachment to Amendment No. 1 by any of the Parties.

12.6. Conditions Precedent to Commencement of the Construction Phase. Subject to Section 12.7, none of Owner, Architect and CM/GC shall have any obligation to undertake work or other obligations to be performed during the Construction Phase unless and until each of the following conditions have been completed to the satisfaction of each Party: (i) execution of Amendment No. 1 by each Party; and (ii) the issuance by Owner of a Notice to Proceed. CM/GC shall not incur any cost to be reimbursed as part of the Cost of the Work during the Construction Phase, except as Owner may specifically authorize in writing, prior to satisfaction of each of the conditions precedent set forth in the immediately preceding sentence.

12.7. Commencement of Construction Prior to Amendment No. 1. Notwithstanding Sections 12.5 and 12.6, the Parties acknowledge that pursuant to a duly executed Work Authorization and Notice to Proceed, the Construction Phase may be commenced prior to the execution of Amendment No. 1 and the satisfaction of all conditions precedent set forth in Section 12.6. If the Construction Phase is commenced prior to the agreement on and execution of Amendment No. 1 and/or the satisfaction of all conditions precedent set forth in Section 12.6, then Owner, CM/GC and Architect shall not be bound by, obligated to perform or otherwise prejudiced by any other provision of this Agreement that is dependent upon execution of Amendment No. 1.

### **13. FINANCIAL RESPONSIBILITIES**

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

13.2. Project Risk Assessment. During the Preconstruction Phase, and before submitting the EMP proposal, the IPD Team will carefully examine the site at which the Work will be performed and all of the documents included in the Contract Documents available at the time; recommend performance to the Core Group of reasonable investigations essential to a full understanding of the difficulties that may be encountered in performing the Work; be familiar with the terms and conditions thereof; and acquaint itself with and advise the Core Group concerning the conditions under which the Work is to be performed, including, without limitation, laws, codes and other restrictions on CM/GC's and Subcontractors' operations, local labor conditions, local weather patterns, restriction in access to and from the Project Site, prior work performed by others on the Project, and obstructions and other conditions relevant to the Work, the site of the Work and its surroundings. With the exception of conditions which qualify as Differing Site Conditions, and subject to its right to access the IPD Team Performance Contingency, neither CM/GC nor Architect shall be entitled to an adjustment in Target Cost or Estimated Maximum Price in connection with any variance between actual conditions, either discovered or discoverable through reasonable investigation in the performance of contractual obligations under the Contract Documents and the Joint Site Investigation, and the conditions shown or represented in the Contract Documents; provided, however, that any costs actually incurred by CM/GC or Architect in connection with any such variance shall be reimbursed as a Cost of the Work.

13.3. Design Error/Omissions. If, during construction of the Project, Owner incurs additional costs as a result of errors or omissions of IPD Team Members (whether violating the standard of care or not), in excess of the IPD Team Contingency, CM/GC and Architect shall pay all such extra costs, including all construction costs incurred by Owner to the extent caused by IPD Team Members' errors or omissions; provided, however, that for purposes of calculating additional construction costs, CM/GC and Architect shall only be responsible as follows:

(a) for delays caused by IPD Team Members' errors or omissions, the actual costs paid or reasonably incurred by Owner to the extent caused by the delay to the extent caused by the delay;

(b) for errors or omissions that cause additional costs that would not have been incurred had the error or omission been corrected prior to completion of the Design Documents, 100% of the actual costs paid or reasonably incurred by Owner to the extent caused by the error or omission;

(c) for errors or omissions that cause additional costs that, at least in part, would have been incurred had the error or omission been corrected prior to completion of the Design Documents but which are presumed to be more costly as a result of being added during the Construction Phase, the percentage set forth in the Project Summary multiplied by the costs paid or reasonably incurred by Owner for performance of that work.

Any costs incurred by an IPD Team Member pursuant to this section shall be subject to any limitation of liability set forth elsewhere in the Agreement.

### **14. IPD TEAM AT-RISK POOL ACCOUNT; DETERMINATION OF ACTUAL COST**

14.1. At-Risk Pool. The Parties have agreed to create an IPD Team At-Risk Pool Account in order to promote Lean Project Delivery principles among the Risk Pool IPD Team Members, and in order to be available to partially fund certain Project cost overruns. As of the date of execution of this Agreement, certain details related to the creation and administration of the IPD Team At-Risk Pool Account have not been finalized. Based on the

foregoing, the Core Group, in collaboration with the Risk Pool IPD Team Members shall address each of the items set forth in **Exhibit 10** (entitled "**Principles for Risk Pool Structure and Procedures**") in preparing a plan for funding, administering and disbursing IPD Team At-Risk Pool Account (the "**IPD Team Risk Pool Plan**"). The Parties shall endeavor to complete and adopt the IPD Team Risk Pool Plan by Change Order no later than the date of the adoption of the Target Value Design Plan.

14.2. Escrow of At Risk Pool. A portion of Profit otherwise payable to Risk Pool IPD Team Members for all Services and Work performed in the Preconstruction and Construction Phases shall be paid into an escrow account (the "**IPD Team At-Risk Pool Account**") to be established at the Escrow Bank. The amount to be deposited into the IPD Team Risk Pool Account shall be established in the IPD Team Risk Pool Plan. The amounts paid into the IPD Team At-Risk Pool Account shall be subject to repayment to Owner, or payment to CM/GC and Architect, in accordance with the IPD Team Risk Pool Plan. No escrowing deposits hereunder shall occur until all of the Parties have signed the IPD Risk Pool Plan.

14.3. Risk Pool IPD Team Members. "**Risk Pool IPD Team Member**" shall initially refer to each of Architect and CM/GC. Additional persons and firms may be added as Risk Pool IPD Team Members, including those identified in the immediately preceding sentence, as agreed by Architect and CM/GC. Each Risk Pool IPD Team Member shall share in the IPD Team At-Risk Pool Account on the terms and conditions set forth in the IPD Risk Pool Plan. IPD Team members that have not been added as Risk Pool IPD Team Members shall have no right or obligation to share in the IPD Team At-Risk Pool Account.

14.4. Allocation of At-Risk Pool Account. The allocation of the At-Risk Pool Account, the investment of funds held in the At-Risk Pool Account, and the release of funds therefrom shall be addressed in the IPD Risk Pool Plan.

**15. CONSTRUCTION PHASE-OPERATIONS**

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

|                          |  |
|--------------------------|--|
| Sort:                    | Removing clutter and all unnecessary items from the work environment; items are brought or stored only when they are needed and are removed from the site when no longer required. Applies to paper, drawings, and other office items, as well as materials and equipment. |
| Set in Order:            | Identifying the location where items will be used and placing those items close at hand; creates a place for everything, and requires that everything be put in its place. Items and storage vessels are clearly labeled or marked.  |
| Shine/Sweep:             | Creating an orderly and clean workspace with continuous clean-up; visual and physical protocol for continuous disposal of refuse; schedule for regular clean-up; visual displays to support.   |
| Standardize:             | Publishing "standard practices" for implementing the 5S program, but constantly looking to improve   |
| Sustain/Self-Discipline: | Creating the expectation that the satisfying the plan covering the first four elements is the minimum, and that performers are expected to continually evolve and improve the systems.   |

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

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

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

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

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

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

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

15.8. Field Measurements. To allow Architect to make corrections, CM/GC and Subcontractors shall, sufficiently in advance of undertaking Work, take field measurements and verify field conditions and carefully compare such field measurements and conditions and other information known to CM/GC or Subcontractors with the Contract Documents. Errors, inconsistencies or omissions discovered shall be reported immediately to Architect and Owner in writing. CM/GC and Subcontractors shall not perform any construction activity which involves an error, inconsistency or omission in Contract Documents of which CM/GC or the applicable Subcontractor knew of, or should reasonably have known of, without such notice to and approval of each of Architect and Owner.

15.9. Supervision and Oversight. CM/GC shall supervise and direct the Work using CM/GC's best skill and attention. CM/GC shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, including safety procedures, and for coordinating all portions of the Work, unless the Contract Documents give other specific instructions. Subject to the limitations of liability set forth in Article 33, CM/GC shall be responsible to Owner for acts and omissions of CM/GC's employees, Subcontractors, Suppliers, and any of their agents and employees, and other persons or entities performing portions of the Work for or on behalf of CM/GC or any of its Subcontractors or Suppliers.

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

15.11. Compliance with Law. CM/GC shall conduct its operations to comply, at its own expense, with all applicable federal, state and local laws, codes, rules, regulations, and orders (as well as any judgments and decrees of which Owner has made CM/GC aware) which are in effect at any time prior to or during the performance of Work, including without limitation, the requirements of the Hospital Safety Act and all applicable requirements of OSHPD to the extent such laws, codes, rules, regulations, orders, judgments and decrees govern CM/GC's performance of the Work. All changes to the Drawings and Specifications are subject to the approval of the applicable authorities having jurisdiction. Should any laws or ordinances that affect CM/GC's operations, costs or expenses be enacted after acceptance of the Estimated Maximum Price which cause CM/GC to bear additional costs, a Change Order shall be issued to cover the resulting change to the Estimated Maximum Price and the Contract Time, and Owner shall reimburse CM/GC for all such additional costs.

15.12. OSHPD. CM/GC represents and acknowledges that (1) CM/GC is familiar with the Hospital Safety Act and the regulations thereunder that are applicable to it as CM/GC on this Project, (2) Drawings and Specifications will have to be reviewed, approved and accepted by OSHPD, and (3) changes in the Work subject to OSHPD's jurisdiction shall not commence until the change has been authorized by Owner as provided in Article 24 and approved by OSHPD, except as otherwise permitted under 24 C.C.R § 7-153(c)(2).

15.13. Instructions. Where specific instructions are given in the Contract Documents, CM/GC shall review the instruction, including those of manufacturer's, and promptly notify Architect and Core Group in writing if the specific instruction or procedure deviates from accepted construction practice or normal procedure, or may affect warranties or other responsibilities of CM/GC. CM/GC's notification shall include reasonable alternatives for the Core Group's consideration.

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

15.15. Labor and Materials. Unless otherwise provided in the Contract Documents, CM/GC shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or

permanent and whether or not incorporated or to be incorporated in the Work, and all such costs shall be reimbursed to CM/GC as Cost of the Work in accordance with **Exhibit 7**. CM/GC shall order the material and equipment in accordance with an agreed-upon material logistics plan and the current Look Ahead Plan in an effort to promote just-in-time deliveries to the site and minimize handling costs and provide the least obstruction of the premises and any adjoining property. CM/GC may make substitutions only with the consent of the Core Group. Acceptance of materials by or on behalf of Owner does not bar future rejection if subsequently found to be defective, inferior in quality or uniformity to material specified, or not as represented.

15.16. Personnel. CM/GC shall enforce strict discipline and good order among CM/GC's employees and other persons carrying out the Work. CM/GC shall utilize all reasonable efforts to prevent employment of unfit persons or persons not skilled in tasks assigned to them and shall replace individuals upon request of the Core Group. CM/GC shall utilize all reasonable efforts to provide and maintain at all times a sufficient number of properly trained, skilled and qualified personnel to complete the Work within the Contract Time. CM/GC and Subcontractors shall comply with Owner's reasonable requirements for employee background checks.

15.17. Taxes. CM/GC shall pay sales, consumer, use and similar taxes for the Work provided by CM/GC which are legally enacted when Amendment No. 1 is executed, whether or not yet effective or merely scheduled to go into effect, and all such costs shall be reimbursed to CM/GC as Cost of the Work.

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

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

## **16. ARCHITECT'S ADMINISTRATION OF THE CONTRACT**

16.1. Duties. Duties, responsibilities and limitations of authority of Architect as set forth in the Contract Documents shall not be restricted, modified or extended without the consent of each member of the Core Group, which consent may be withheld in such member's sole discretion. If the employment of Architect is terminated, Owner shall employ a new architect, whose status under the Contract Documents shall be that of the former architect.

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

16.3. Site Visits. Architect will visit the site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. However, Architect will not be required to make exhaustive or continuous on-site inspections to check quality or quantity of the Work. On the basis of such on-site observations as an architect, Architect shall prepare site observation reports concerning the progress and quality of the Work, and promptly alert the Core Group to any nonconformance or condition which might, in Architect's professional opinion, adversely affect the Work or Estimated Maximum Price. Architect shall submit a written report to the Core Group within five (5) days after each site visit.

16.4. On-Site Representative. Unless otherwise directed by the Core Group, Architect will provide one or more on-site project representatives to assist in carrying out Architect's responsibilities at the site during the Construction Phase. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth **Exhibit 9**.

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

## **17. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

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

17.2. **Submittal Review.** The Core Group shall develop a submittal review process that seeks to assure that the goals described in Section 17.1 are achieved, that submittals are reviewed only by the necessary parties, while minimizing the waste of the traditional submittal bureaucracy. The plan should identify items for which traditional submittals may not be required, the potential for electronic submittals, and the direct submittal from the relevant Subcontractor directly to the appropriate Architect's Consultant. Submittals should be delivered at a time and in a sequence that conforms to the Phase Schedule and Look Ahead Plan. By reviewing and submitting Submittals, the submitting party represents that it has determined and verified materials, field measurements and related field construction criteria, and has checked and coordinated the information contained within such Submittals with the requirements of the Work and the Contract Documents.

17.3. **Transmittal.** Submittals shall be accompanied with a request that they be reviewed and returned by a date stated in the transmittal that is related to the ordering or fabrication of the material or equipment or a need to begin the work covered by the Submittal. The party designated to review the submittal shall discuss the date with the submitting party and make a reliable commitment concerning the date by which the Submittal will be returned. This commitment will be recorded and will be reflected in the planning system.

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

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

17.6. **Architect's Review.** Architect and Architect's Consultants will review and approve or take other appropriate action upon Submittals for the purpose of checking for compliance with the Contract Documents and determining whether, when completed, the Work as described in the Submittal will comply with the requirements of the Contract Documents. If a Submittal is rejected, the rejecting party shall discuss with the submitting party the reason for the rejection and describe the modifications required in order to gain acceptance, as well as returning the Submittal.

17.7. **Re-Submittals.** Any re-submittal shall direct specific attention, in writing, to revisions other than those requested in the response to previous Submittals. In the absence of such written notice, approval of a resubmission shall not apply to such revisions. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of installing party and the CM/GC as required by the Contract Documents. However, when such revisions are accompanied by such written notice, approval of a resubmission shall constitute an approval of such revisions, but only for general conformance with the design concept of the Project and the information given in the Contract Documents.

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

## **18. REQUESTS FOR INFORMATION**

18.1. **Goal.** The goal of Integrated Project Delivery and the extensive pre-construction involvement of CM/GC and Subcontractors is to maximize all Project participants' understanding of the design requirements, including the design intent and all technical requirements of the Project, prior to field construction. If the Parties have maximized

this opportunity, there will be no need for requests for information or clarifications ("**RFIs**") after construction is commenced.

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

18.3. Time Limits. If the requesting and responding parties are unable to reach agreement on the time for a response, they shall notify the Core Group, and a telephone call shall be scheduled within two (2) business days between the Core Group members and the requesting and responding parties to arrive at a mutually agreeable time period.

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

## **19. DOCUMENTS AND SAMPLES AT THE SITE**

19.1. Site Documents. The Project Communication Protocol shall specify who shall prepare and maintain on a current basis an accurate and complete set of:

(a) Record Drawings clearly showing, to the extent reasonably possible, all significant changes, revisions and substitutions made to the Construction Drawings during the Construction Phase, including without limitation field changes and the final location of all mechanical equipment, utility lines, ducts, outlets, pipes, structural members, walls, partitions and other significant features; and

(b) Annotated Specifications showing clearly all changes, revisions and substitutions during construction.

Copies of these Record Drawings and Annotated Specifications shall be available at the Project Site, and they shall be updated as specified in the Project Communication Protocols and as directed by the Core Group to keep them current. The Record Drawings and Annotated Specifications shall be available for inspection by Owner, CM/GC, and any governmental or quasi-governmental authority with jurisdiction over the Work.

19.2. Final Record Set. Not later than the effective date of Amendment No. 1, the Core Group shall determine the Party responsible for preparation of the Record Drawings and Annotated Specifications (the "**Record Drawing Party**"). At the time of its Final Payment Application, Record Drawing Party shall provide one (1) complete set of Record Drawings and Annotated Specifications to Architect, certifying them to be a complete and accurate reflection in all material respects of the actual construction conditions of the Work. Owner shall provide reproducible documents for Record Drawing Party's use in preparing the Project record drawings referred to above. At Owner's request, and at a price approved by the Core Group, Record Drawing Party shall provide the Record Drawings and Annotated Specifications in an electronic format specified by Owner.

19.3. Other Documents. CM/GC shall also maintain one (1) record copy of Change Orders and Construction Change Directives, and approved Shop Drawings, Product Data, Samples and similar required submittals at the Project Site ("**Site Documents**"). These items shall be available for inspection by IPD Team Members, Architect and any governmental or quasi-governmental authority with jurisdiction over the Work. CM/GC shall provide to Owner a complete set of Site Documents, in good condition and certifying them to be complete and accurate in all material respects, at the time of its Final Payment Application.

## **20. SAFETY PRECAUTIONS AND PROGRAMS**

20.1. Responsibility. CM/GC shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with performance of the Work. This requirement applies continuously and is not limited to normal working hours. CM/GC shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

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

20.1.2. The Work and materials and equipment to be incorporated, whether in storage on or off the site, under care, custody or control of CM/GC or any Subcontractor;

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

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

20.2. Safety Notices. CM/GC shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss, including, without limitation, the California Safe Drinking Water and Enforcement Act of 1986.

20.3. Fines & Penalties. CM/GC shall be responsible for the payment of all fines leveled against Owner from or related to activities over which CM/GC has responsibility under the Contract Documents, or for Work which does not conform to the Contract Documents, without reimbursement as a Cost of the Work. Notwithstanding the foregoing, correction or repair of any such non-conforming Work shall be treated as a Cost of the Work for reimbursement, except where it results from Fraud or Willful Misconduct.

20.4. Adjacent Owners. Owner shall give notice in writing at least forty-eight (48) hours before CM/GC breaks ground, to all persons having interests on or immediately adjacent to the site, including utility companies, owners of property having structures or improvements immediately adjacent to the site, superintendents, inspectors, or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads or otherwise who may be affected by CM/GC's operation, in order that they may remove any obstruction for which they are responsible and have a representative on site to see that their property is properly protected.

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

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

20.7. Remedying Damage. CM/GC shall promptly remedy damage and loss to property referred to in this Article caused in whole or in part by CM/GC, a Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which CM/GC is responsible under this Agreement without increase in the EMP. Except to the extent such damage or loss results from CM/GC's Fraud or Willful Misconduct, all costs and expenses incurred by CM/GC in connection with such remedial work are reimbursable as Costs of the Work under **Exhibit 7**.

20.8. Safety Representative. CM/GC shall designate the Project Superintendent, or such other qualified member of CM/GC's organization at the site as may be approved by Owner, to be primarily responsible for the prevention of accidents. If Owner, Architect or any public agency with jurisdiction notifies CM/GC of any claimed dangerous condition at the site which is within CM/GC's care, custody or control, CM/GC shall take immediate action to rectify the condition. CM/GC shall be responsible for the payment of all fines levied against Owner for deficiencies relating to CM/GC's supervision or conduct of the Work, which shall not be reimbursed as a Cost of the Work.

20.9. Safety of Persons or Property. In performing the Work required by the Contract Documents, CM/GC shall employ all reasonable efforts to avoid endangering the safety of persons or property.

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

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

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

20.13. Streets. CM/GC shall return all improvements on or about the site and adjacent property which are not shown to be altered, removed or otherwise changed, to conditions which existed previous to starting performance of the Construction Phase.

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

20.15. Emergencies. In an emergency affecting safety of persons or property, CM/GC shall act, at CM/GC's discretion, to prevent threatened damage, injury or loss.

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

## **21. HAZARDOUS MATERIALS**

21.1. Hazardous Materials. CM/GC shall not cause or permit any Hazardous Materials to be generated, released, disposed, discharged, or brought onto or stored at the Project Site or used in the construction of the Work, except for specified materials and commonly used construction materials for which there is no reasonable substitute. All such materials shall be handled in accordance with all manufacturer's guidelines, warnings and recommendations and in full compliance with all applicable federal, state and local laws, rules and regulations. All notices required to be given with respect to such materials shall be given by CM/GC with a copy to Sutter Health. All environmental permits and surveys necessary for performance of the Work shall be obtained and paid for by CM/GC. CM/GC shall not intentionally or accidentally release or dispose of Hazardous Materials at the Project site or into the soil, drains, surface or ground water, or air, nor shall CM/GC allow any Subcontractor, Sub-subcontractor or Supplier or any other person for whose acts CM/GC or any Subcontractor, Sub-subcontractor or Supplier may be liable, to do so. CM/GC shall indemnify, defend, protect and hold Owner, Sutter Health, Architect, Architect's Consultants and the employees of all of them harmless from all costs, expenses, claims, damages, penalties, judgments, liabilities and assessments (including environmental consultants' and attorneys' fees) arising from or in any way connected to any Hazardous Material (other than any material specified for incorporation into the Work or use in construction of the Work) introduced, released, disposed, or discharged at or into the site or into the soil, drains, surface or ground water, or air, but only to the extent caused by or arising out of the negligent acts or omissions, fault or misconduct of CM/GC, or the negligent acts or omissions, fault or misconduct of anyone directly or indirectly employed by it or anyone for whose acts it may be liable. Any cost or expense incurred by CM/GC in connection with the foregoing indemnity shall be treated as a Cost of the Work. For purposes of Contract Documents, "**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 federal Comprehensive Environmental Response, Compensation and Liability Act (commonly known as CERCLA), the federal Resources Conservation and Recovery Act (commonly known as RCRA), or other applicable federal, State or local law or regulation or any substance or material which has been determined as of the time of performance of the Work to be capable of posing a risk of injury to health, safety, property or the environment by any federal, state or local governmental authority including but not limited to, asbestos, asbestos-containing materials, petroleum, petroleum products, polychlorinated biphenyl (PCB) or PCB-containing materials. For the avoidance of doubt, the determination as to whether any material is or is not a Hazardous Material for the purposes of this Article 21 shall be made based upon the laws and regulations in effect and the knowledge generally in the possession of persons in positions comparable to that of CM/GC as of the date CM/GC brought such material to the Project Site.

21.2. Border Zone. CM/GC shall immediately notify Owner and Architect in writing if CM/GC becomes aware of the presence of any Hazardous Materials in, on, migrating from, under or about the premises or of any occurrence or condition on any real property adjoining or in the vicinity of the premises which could cause the Project or any portion of it to be classified as "border-zone property" under the provisions of California Health and Safety Code Sections 25220, et seq., or any regulation adopted in accordance therewith.

21.3. Existing Material. In the event Hazardous Materials or contamination therefrom are found as an existing condition at the site, Owner shall be responsible for all such existing Hazardous Materials and conditions. CM/GC may coordinate any necessary abatement efforts with Owner at Owner's request. However, Owner shall contract directly with licensed and qualified entities to perform all necessary abatement work. Notwithstanding any other term or provision of the Contract Documents, Owner agrees to indemnify, hold harmless, and defend CM/GC from and against any and all claims, liability, fines, penalties, response costs, damages or judgments, associated with the presence, discharge, release or escape of such materials of contamination; provided, however, that the provisions of this sentence shall be inapplicable to any materials brought onto the site by CM/GC or any Subcontractor or any person or entity under the direct or indirect control of any of them, which are or become Hazardous Materials or contamination therefrom, or as to which CM/GC or any Subcontractor negligently permits or causes the discharge,

release or escape, or fails to give notice in accordance with Section 21.5, to the extent that the failure to give such notice materially affects Owner's interest.

21.4. New Material. In the event materials are brought onto the site by CM/GC, any Subcontractors or any person or entity under the direct or indirect control of either of them, which are or become Hazardous Materials or contamination therefrom, and notwithstanding any other term or provision of the Contract Documents, CM/GC agrees to indemnify, hold harmless and defend Owner from and against any and all claims, liability, fines, penalties, assessments, response costs, damages or judgments, associated with the presence, discharge, disposal, release or escape of such materials or contamination, but only to the extent caused by or arising out of its negligent acts or omissions, fault or misconduct, or the negligent acts or omissions, fault or misconduct of anyone directly or indirectly employed by it or anyone for whose acts it may be liable. Any cost or expense incurred by CM/GC in connection with the foregoing indemnity shall be treated as a Cost of the Work. Upon the request of Owner, CM/GC shall take such steps at its own expense as are reasonably necessary to remove from the site the Hazardous Materials or contamination brought onto the site by CM/GC, any Subcontractors or any person or entity under the direct or indirect control of any of them.

21.5. Discovery. This subparagraph shall not apply to materials brought onto the site by CM/GC or any of its Subcontractors. In the event Hazardous Materials or contamination therefrom are encountered on the site, CM/GC shall immediately notify Owner and Architect and temporarily suspend performance of the Work on the portion of the Project affected by the Hazardous Materials or contamination as reasonably determined by CM/GC or as directed by Owner or Architect. Promptly after providing notice to Owner, CM/GC and Owner shall meet and attempt to agree upon whether the Work or any part thereof can proceed, and if so, under what terms and conditions. If, after making a good faith attempt to agree, CM/GC and Owner are unable to agree upon any such matters, CM/GC may require by written notice to Owner that Owner remove all such Hazardous Materials from the site. If Owner does not cause such Hazardous Materials to be removed from the site within sixty (60) days of the notice from CM/GC, then CM/GC may terminate this Agreement by providing written notice of such intent to terminate to Owner. This Agreement shall be terminated fifteen (15) days following the giving of such notice of intent to terminate, provided the Hazardous Materials have not then been removed. In the event of such termination, CM/GC shall recover payment, as provided in Section 39.11. In the event any individual (including but not limited to employees of CM/GC or any Subcontractor or Supplier) asserts a toxic exposure or personal injury claim related to Hazardous Materials generated, released, disposed, or discharged by CM/GC in, on, under, or about the Project, CM/GC will provide immediate notice to Owner. CM/GC agrees to indemnify, hold harmless, and defend Owner Indemnitees from and against any and all such claims, liability, fines, penalties, assessments, response costs, damages or judgments, including environmental consultants' fees and attorneys' fees, associated with the alleged exposure or personal injury, but only to the extent caused by or arising out of the negligent acts or omissions, fault or misconduct of CM/GC, or the negligent acts or omissions, fault or misconduct of anyone directly or indirectly employed by it or anyone for whose acts it may be liable.

## 22. TIME

22.1. Contract Time. The "**Contract Time**" is the period of time allotted in Amendment No. 1, as increased by adjustments authorized or required hereunder, to achieve Final Completion of the Work. The Contract Time shall have no applicability to any Phase other than the Construction Phase.

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

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

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

22.5. General. Subject to the provisions hereof, the Contract Time is of the essence of the Agreement. CM/GC shall proceed expeditiously with adequate forces and shall achieve Substantial and Final Completion within the Contract Time.

22.6. Substantial & Final Completion. CM/GC shall achieve Final Completion of the Work prior to expiration of the Contract Time and within the number of days after Substantial Completion established by the Core Group in accordance with Amendment No. 1. To the extent Substantial Completion or Final Completion is delayed as a result of a governmental agency's refusal to accept the Project and the refusal is not caused by CM/GC's performance or failure to perform the Work, or to satisfy its obligations under the Contract Documents, the Core Group shall grant CM/GC an Excusable Delay and a time extension.

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

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

22.9. Excusable Delay. "Excusable Delay" means any delay in Substantial Completion or Final Completion of the Work caused by (i) conditions or events beyond the reasonable control and without the fault or negligence of CM/GC, including, acts of God, strikes, unavailability of labor or supplies, embargoes, casualties, unusual delays in transportation, national emergency, and changes in the Work required by OSHPD which were not and could not in the exercise of reasonable diligence have been avoided by CM/GC or (ii) conditions or events identified in Section 22.10. If a delay occurs that would otherwise be an Excusable Delay but for the existence of schedule float when the delay occurs, the Core Group shall re-assess whether to grant a time extension based upon the cause of other delays which ultimately contribute to any delay in Project completion beyond the Contract Time. An Excusable Delay may also be due to adverse weather, provided CM/GC satisfies the provisions of this Article. The financial inability of CM/GC or any Subcontractor or Supplier and any default of any of them, without limitation, shall not be deemed conditions beyond CM/GC's control. To the extent Final Completion is delayed as a result of a governmental agency's refusal to issue any permit or accept the Project and the refusal is unrelated to CM/GC's performance or failure to perform the Work, or to satisfy its obligations under the Contract Documents, the Core Group shall grant CM/GC an Excusable Delay. An Excusable Delay will entitle CM/GC to an extension of the Contract Time, in accordance with this subparagraph, but shall not entitle CM/GC to any adjustment of the Estimated Maximum Price.

22.10. Compensable Delay. "Compensable Delay" means any delay in Substantial Completion or Final Completion of the Work beyond the expiration of the Contract Time to the extent caused by the wrongful acts or omissions of Owner or Architect, or issuance of Change Orders or directions to suspend the Work not attributable to the fault or neglect of CM/GC or any Subcontractor or Supplier. Provided that CM/GC complies with the requirements of this Article 22, a Compensable Delay shall entitle CM/GC to an extension of the Contract Time and an adjustment of the Estimated Maximum Price.

22.11. Inexcusable Delay. "Inexcusable Delay" means any delay in Substantial Completion or Final Completion of the Work resulting from causes other than those which are excusable or compensable pursuant to Sections 22.9 and 22.10, above. An Inexcusable Delay shall not entitle CM/GC to an extension of the Contract Time and/or an adjustment of the Estimated Maximum Price.

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

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

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

22.13. No Waiver. No extension of time granted CM/GC pursuant to this article shall constitute a waiver by Owner, or a release of CM/GC from its obligations to perform the Work in the time specified by the Contract Documents, except as modified by the particular extension in question. Except where required by this Agreement, granting of a time extension due to one circumstance on one request shall not guarantee an extension of time for any other circumstance or the same circumstance occurring at some other time, and shall not be viewed by CM/GC as a precedent for any other request for extension.

22.14. Notice of Potential Claim. If any Party contemplates making a Claim for an increase in the Contract Time, such Party shall give written notice of such Claim as provided in Article 41 (each, a "Notice of Potential Claim"). The Notice of Potential Claim shall include an estimate of cost and probable effect of the delay on progress of the Work. Claims for extension of time shall include written justification as required by this Agreement, as well as sufficient extraction and analysis of the Construction Schedule as may be required to verify the claimed effect on

completion. Approved changes in the Contract Time shall be incorporated by Change Order. Only delay impacting the critical path of the Work shall be considered when determining if CM/GC is entitled to additional time.

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

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

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

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

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

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

22.17. Liquidated Damages and Early Completion Incentive. As part of negotiating Amendment No. 1, the parties shall determine whether including a liquidated damages provision or an early completion bonus is in the best interest of the Project.

### **23. DIFFERING SITE CONDITIONS**

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

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

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

23.3.1. A description of the unknown or concealed condition;

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

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

### **24. CHANGES IN THE WORK OR ADDITIONAL SERVICES**

24.1. General. Adjustments to the Expected Cost, Target Cost, Estimated Maximum Price or the Contract Time on account of changes in the Work shall be determined as provided in this Article 24. In calculating adjustments to Subconsultant agreements and subcontracts, Architect and CM/GC are limited to their respective Fee amounts, together with documented added Costs of the Work. Adjustments to subcontracts awarded with Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

24.2. Process. Changes in the Work may be accomplished after execution of the Agreement, and without invalidating the Agreement, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 24 and elsewhere in the Contract Documents. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and CM/GC shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. No change in the Work shall be the basis of adjustment to the Expected Cost, Target Cost, Estimated Maximum Price or the Contract Time unless and until authorized by a Change Order, Construction Change Directive or Change Proposal Request executed and issued in accordance and in strict compliance with the requirements of the Contract Documents.

24.3. Benchmark Cost Increases During the Preconstruction Phase. No increase in the Expected Cost or the Target Cost will be made during the Preconstruction Phase for changes that Architect, CM/GC or any other IPD Team Member claims as a Change Order unless Architect or CM/GC establishes that the additional cost is the result of one of the following: (a) a change in the scope of work directed or authorized by Owner during the Preconstruction Phase; or (b) changes in laws or regulations affecting the Project, enacted or promulgated after the execution of this Agreement.

24.4. Benchmark Cost Increases During the Construction Phase. As CM/GC will be involved in the Validation and Preconstruction Phases, CM/GC agrees, for itself and on behalf of its Subcontractors and Suppliers, that no increase in the Expected Cost, the Target Cost, or the Estimated Maximum Price will be made during the Construction Phase for work that CM/GC or any other IPD Team Member claims as a Change Order or extra work unless CM/GC establishes that the additional cost is the result of one of the following: (a) a change in the scope of work directed or authorized by Owner during the Construction Phase (including any change that is required as a result of a design error or omission, to the extent not contributed to by the failure of CM/GC or its Risk Pool Subcontractors to properly perform their preconstruction services); (b) a change required by regulatory authorities (including inspections and including OSHPD and the State Fire Marshal) during the Construction Phase that was not reasonably ascertainable from the Contract Documents and not reasonably inferable from CM/GC's or Subcontractor's actual knowledge of local practices or circumstances; (c) Differing Site Conditions; (d) Compensable Delays, including delays authorized by Owner pending mediation or dispute resolution; (e) changes in laws or regulations affecting the Project, enacted or promulgated after the execution of Amendment No. 1; (f) any wrongful acts or omissions of Owner or a separate contractor employed by Owner which disturb, disrupt or interfere with CM/GC's performance of the Work and increase the costs of CM/GC's performance of the Work, where such additional costs is not described elsewhere in this Section 24.4; (g) damage to the Work caused by fire or other reasonably unavoidable casualties not the fault of the CM/GC or Subcontractors, Suppliers or Architect or Architect's Consultants.

24.5. Documentation. A "**Change Order**" is a written order to CM/GC signed by Owner, Architect and CM/GC issued after the execution of this Agreement, authorizing a change in the Work or the method or manner of performance and an adjustment in one or more of the Expected Cost, the Target Cost, the Estimated Maximum Price and the Contract Time and shall reflect agreement between Owner and CM/GC with respect to such changes. A "**Construction Change Directive**" is a written order to CM/GC signed by Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in one or more of the Expected Cost, the Target Cost, the Estimated Maximum Price and the Contract Time, and shall be used in the absence of agreement to its terms by CM/GC. Owner may by Construction Change Directive, without invalidating this Agreement, order changes in the Work within the general scope of the plans and specifications adopted pursuant to Amendment No. 1 consisting of additions, deletions or other revisions, the Expected Cost, the Target Cost, the Estimated Maximum Price and the Contract Time being adjusted accordingly. An order for a minor change in the Work that does not involve a change in the Expected Cost, the Target Cost, the Estimated Maximum Price or the Contract Time may be issued by Architect alone.

24.6. Effect of Change Order. Agreement on any Change Order, Construction Change Directive or Change Proposal Request shall constitute a final settlement of all matters related thereto, including but not limited to, all direct and indirect costs associated with such change and all adjustments to the Expected Cost, the Target Cost, the Estimated Maximum Price or the Contract Time; provided, however, that this Section 24.6 shall have no application in the case of any change in the Work that, together with all prior changes in the Work, would in the reasonable opinion of CM/GC cause the Actual Cost to exceed by more than ten percent (10%) the Estimated Maximum Price as originally set forth in Amendment No. 1. This requirement is of the essence to the Contract Documents.

24.7. OSHPD Changes. Changes in the Contract Documents after OSHPD approval but prior to execution of Amendment No. 1 shall be made by Addenda signed by Architect, and approved by OSHPD, State Fire Marshal and all other regulatory authorities having jurisdiction over those changes. Changes to Contract Documents after execution of Amendment No. 1 shall be made by Change Orders or Construction Change Directives signed by Architect and CM/GC, and approved by Owner and OSHPD. CM/GC shall not commence with changes to the Work without OSHPD's approval of the change, except as otherwise permitted under 24 C.C.R § 7-153(c)(2).

24.8. Minor Changes. Architect will have authority to order minor changes in the Work not involving adjustment in the Expected Cost, the Target Cost, the Estimated Maximum Price or the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written direction of Architect to CM/GC (each, an "**Architect's Supplemental Instruction**" or "**ASI**") and, where possible should be issued with prior notice to Owner. CM/GC shall promptly review ASIs and determine whether they will result in an increase in the Expected Cost, the Target Cost, the Estimated Maximum Price or the Contract Time. If CM/GC contends the ASI will result in an increase in the Expected Cost, the Target Cost, the Estimated Maximum Price or the Contract Time, CM/GC shall proceed as specified for a Change Proposal Request. In the absence of prompt notice, the work specified in the ASI shall be performed without increase in the Estimated Maximum Price or the Contract Time.

24.9. Change Proposal Request. A "**Change Proposal Request**" (or "**CPR**") is a document issued by Owner or Architect to CM/GC that sets forth proposed changes in the Work and requests CM/GC's estimate of pricing and resulting schedule impact. Promptly upon determining that a change in the Work is being considered and prior to issuing a CPR, Owner shall discuss the proposed CPR with CM/GC and Architect in order to determine the potential impact on the current plan for execution of the Work. After such conversation and provided Owner determines that issuance of the CPR is in the best interest of the Project, a CPR will be delivered to CM/GC.

24.10. CPR Response. Upon receipt of a CPR, CM/GC and the affected Subcontractors and Suppliers shall review and evaluate such CPR's scope and if any potential time, cost, constructability or similar impact on the Project is determined, shall notify Owner within seven (7) days of receipt of such CPR. Owner may direct CM/GC to stop Work in the area affected by the CPR to minimize the cost impact or may direct CM/GC to proceed with the change in the Work. The CPR shall include a request that CM/GC provide, within a time frame set forth in the CPR, a date by which it will be able to respond to the CPR, giving due consideration to the current Project plan and schedule. CM/GC shall thereafter make a reliable commitment of a date by which the proposal will be submitted, which absent approval of the Core Group, shall be within twenty-one (21) days after receipt of a CPR. CM/GC's proposal shall substantiate requested adjustments in the Expected Cost, the Target Cost, the Estimated Maximum Price and/or the Contract Time (including complete labor and material itemization). Methods used to determine adjustment shall be limited to those listed in this Article. In the event CM/GC becomes aware of a change in the Work, a request or instruction by Owner or Architect, a change in applicable law, a force majeure event or any other matter or occurrence that will require an adjustment of the Expected Cost, the Target Cost, the Estimated Maximum Price or the Contract Time for which a CPR has not been issued by Owner or Architect, CM/GC shall issue a combined CPR and CPR Response.

24.11. Resolution of CPR. A Change Order shall be prepared if CM/GC's proposal is acceptable to and agreed upon by Owner. CM/GC is authorized to proceed with work once the Change Order has been fully executed and approved by OSHPD, except as otherwise permitted under 24 C.C.R § 7-153(c)(2). A Construction Change Directive shall be prepared if Owner (or Architect if the change is within its sole authority as set forth in Section 24.3) desires for a change in the Work to be made, but CM/GC's proposal is not acceptable, or to expedite any such change.

24.12. Pricing of Changes. If a Construction Change Directive or Change Order provides for an adjustment to the Expected Cost, the Target Cost, or the Estimated Maximum Price, the adjustment shall be based on the Cost of the Work to be determined in accordance with **Exhibit 7** plus CM/GC's Fee thereon, unless the Parties have:

24.12.1. Mutually accepted a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; or

24.12.2. Mutually agreed upon unit prices stated in the Contract Documents.

24.13. Response to Construction Change Directive. Subject to any required approvals of OSHPD, upon receipt of a Construction Change Directive, CM/GC shall promptly proceed with the indicated change and advise Architect of CM/GC's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment of the Expected Cost, the Target Cost, the Estimated Maximum Price or the Contract Time. A Construction Change Directive signed by CM/GC indicates CM/GC's agreement therewith, including adjustment of the Expected Cost, the Target Cost, the Estimated Maximum Price and the Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

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

24.15. Price Disagreement. Failure of CM/GC and Owner to agree on an adjustment of the Expected Cost, the Target Cost, the Estimated Maximum Price or the Contract Time shall not excuse CM/GC from proceeding with prosecution and performance of the Work, including the Work covered by the Construction Change Directive. CM/GC and Subcontractors shall handle all disputes in a manner which will permit the Work to proceed on schedule while the matter in dispute is being resolved. Notwithstanding the foregoing provisions of this Section 24.15, CM/GC shall have no obligation to proceed with any change in the Work that, together with all prior changes in the Work, would in the reasonable opinion of CM/GC cause the Actual Cost of unresolved changed work to exceed by more than five percent (5%) the Estimated Maximum Price as originally set forth in Amendment No. 1, unless and until all Parties have signed a Change Order with respect to such change in the Work.

24.16. Credit Changes. The credit to be allowed for a deletion or change in the Work which results in a net decrease in the Expected Cost, the Target Cost, or the Estimated Maximum Price shall be actual net decrease, calculated according to this Article. When both additions and credits covering related Work or substitutions are involved in any change in the Work, adjustment of the Expected Cost, the Target Cost, and the Estimated Maximum Price shall be figured on the basis of net increase, if any, with respect to such change in the Work, including an adjustment in the CM/GC's Fee.

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

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

24.19. Core Group Root-Cause Assessment. During the Preconstruction and Construction Phases, the Core Group shall meet at least monthly, beginning with commencement of construction to assign Change Orders to specific categories as defined and listed in **Exhibit 6**. Depending on the causes of a particular issue, there may be an apportionment between or among the multiple causes or categories specified in **Exhibit 6**.

## **25. QUALITY OF THE WORK AND SERVICES**

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

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

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

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

25.2.3. Developing the use of mock-ups, first-run studies, early completion of standard work units, and similar efforts to physically document acceptable levels of quality;

25.2.4. Effective use of any permit-processing period to enhance quality initiatives;

25.2.5. Providing quality checklists (specific, task-based) for use by workers to self-evaluate quality, establish benchmarks, and structure continuous improvement;

25.2.6. Design of feed-back mechanisms for on-site managers, IOR, and other quality assurance or inspection entities to review early work product and assure completion according to conditions of satisfaction;

25.2.7. Integration of quality review and assurance with hand-off criteria and the Six Week Look Ahead Plan;

25.2.8. Protocols for trades to discuss and assure quality at hand-off of work;

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

25.2.10. Procedures for recognizing outstanding performance and quality according to the conditions of satisfaction; and

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

25.3. Inspector of Record. Owner will engage services of an Inspector of Record ("IOR") who will be assigned to the Work in accordance with California Health & Safety Code section 129825 and California Administrative Code, Title 24. The Work shall be subject to the personal continuous observation of IOR. Inspection of the Work shall not relieve any Party from the obligation to comply with all requirements of the Contract Documents, nor shall it excuse or relieve any Party from any duty, obligation or liability to Owner. Except as expressly provided in the Contract Documents, IOR shall not be a representative of Owner where the Contract Documents require action or approval by Owner or Architect. The IOR shall not be authorized to reject any portion of the Work.

25.4. Testing. Owner shall furnish structural, mechanical, electrical, chemical, and other laboratory tests, inspections, and reports during the Construction Phase, as required by law and unless otherwise provided in the Contract Documents. Owner shall arrange and pay for the special tests and inspections required by building codes. Architect shall identify mandatory tests required to meet all applicable laws and regulations. Owner shall supply a Radiation Shielding Report for all Radiographic Equipment that is to be incorporated into the Project.

25.5. Testing and Inspection Requests. Tests, inspections, reports and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be arranged for and made at an appropriate time in the progress of the Work so as to cause no delay. CM/GC shall give Architect or, if applicable, IOR sufficient advance notice of when all tests and inspections are to be made so Architect, IOR (if applicable) or designated inspection agency may observe such procedures, regardless if the tests and inspections are Owner's or CM/GC's responsibility. Unless otherwise provided in Contract Documents, CM/GC shall make arrangements for such tests, inspections, reports and approvals with the independent testing agency or entity selected by Owner and with the appropriate public authority. Except as provided in the Contract Documents, Owner will pay for, tests, inspections, reports and approvals. Owner shall pay for those tests, inspections, reports and approvals required by OSHPD, and CM/GC shall provide sufficient advance notice to Architect or, if applicable, IOR or its designated representative to permit arrangements to be made for such tests at the time appropriate to the quality assurance measures to be accomplished by such test. Requests for tests and inspections should be included in the pull planning process. Sufficient advance notice shall include adequate time after receipt of CM/GC's written notice of readiness for Architect or, if applicable, IOR to provide written forty-eight (48)-hour (or such longer period as may be communicated to CM/GC) advance notice to OSHPD, or other agency as appropriate. If Architect or, if applicable, IOR is to observe tests, inspections or approvals required by the Contract Documents, Architect or, if applicable, IOR will do so promptly and, where practicable, at the normal place of testing.

25.6. Additional Testing. If Architect or, if applicable, IOR, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included elsewhere in the Contract Documents, Owner will request CM/GC to make arrangements for such additional testing, inspection or approval by an entity acceptable to Owner, and CM/GC shall give timely notice to Architect or, if applicable, IOR of when and where tests and inspections are to be made so Architect, IOR (If applicable) or designated inspection agency may be present for such procedures. If such procedures for testing, inspection or approval reveal that portions of the Work fail to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures shall be borne by CM/GC without increase in the Estimated Maximum Price and shall be paid by Owner to CM/GC as a Cost of the Work.

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

25.8. Uncovering Work. If a portion of the Work is covered contrary to the request of Owner, Architect, or any governmental authority or to requirements specifically expressed in the Contract Documents or the built-in quality plan, the Work, if required in writing by Architect, Owner, or any governmental authority, shall be uncovered for observation and replaced. If a portion of the Work has been covered which Architect, Owner or any governmental authority has not specifically requested to observe prior to its being covered, Owner may request to see such Work and it shall be uncovered by CM/GC. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be added to the Target Cost and the Estimated Maximum Price. If such Work is not in accordance with the Contract Documents, correction shall be without increase in the Target Cost or the Estimated Maximum Price, unless the condition was caused by Owner or a separate contractor in which event a Change Order shall be issued to cover such costs and the Contract Time shall be adjusted accordingly.

25.9. Correction of Rejected Work. CM/GC shall promptly correct Work rejected by Architect or Owner if failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work shall be reimbursed as a Cost of the Work but shall not increase the Expected Cost, the Target Cost, or the Estimated Maximum Price.

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

25.11. Right to Correct Nonconforming Work. If CM/GC fails within a seven (7) day period after receipt of written notice from Owner to commence and continue correction of Nonconforming Work with diligence and promptness, Owner shall have the right, but not the obligation, to immediately cause that work to be corrected by Owner's separate contractors. In such case, a Change Order shall be issued reducing the Target Cost, and the Estimated Maximum Price by the Owner's reasonable cost of correcting such Nonconforming Work.

25.12. Acceptance of Nonconforming Work. If Owner prefers to accept Nonconforming Work, Owner may do so instead of requiring its removal and correction, in which case a Change Order shall be issued reducing the Target Cost and the Estimated Maximum Price by an amount which fairly and equitably reflects the reduced value of the Project with the Nonconforming Work or saved costs, whichever is less.

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

## **26. ARCHITECT'S COMPENSATION**

26.1. Total Compensation to Architect. For Architect's performance of Services in all Phases pursuant to this Agreement, Owner shall pay Architect a total amount consisting of Architect's Cost of the Work plus Architect's Fee. Architect's Cost of the Work shall be determined in accordance with **Exhibit 7**. Architect shall be paid the sum of the hours expended by its personnel and by Architect's Consultant's personnel calculated in accordance with the direct and indirect labor costs plus costs reimbursable to the Architect pursuant to **Exhibit 7**. Architect's total compensation pursuant to the immediately preceding sentence shall be allocated between Architect's Cost of the Work and Architect's Fee pursuant to the IPD Risk Pool Plan. Charges for Architect's Consultants shall be included without additional mark-up by Architect.

26.2. Resource-Loaded Work Plan. Architect shall collaborate with other IPD Team Members in developing and provide to Owner, on a date established by the Core Group, a resource-loaded work plan ("**RLWP**") describing the work to be performed by Architect and Architect's Consultants in each of the following:

|   |                                    |  |
|---|------------------------------------|--|
| Validation (Task I):                              | Detailed Design (Task IV):         | Permitting/Pricing (Task VI):                    |
| Values Workshops and Conceptualization (Task II): | Implementation Documents (Task V): | Construction (Task VII):                         |
| Preliminary Design(Task III):                     |                                    | Commissioning and Project Close-Out (Task VIII): |

Administration and coordination of Architect's Consultants and integration with all other IPD Team Members shall be reflected in the RLWP. At the direction of the Core Group, the required RLWP may be developed and approved in phases, depending on the needs of the Project.

## **27. CM/GC'S COMPENSATION**

27.1. Compensation to CM/GC During the Preconstruction and Construction Phases. For CM/GC's performance of Work during the Preconstruction Phase and in the Construction Phase, Owner shall pay CM/GC a total amount consisting of CM/GC's Cost of the Work, as determined in accordance with **Exhibit 7**, plus CM/GC's Fee. CM/GC's Fee shall be        % of its Cost of the Work. CM/GC shall collaborate with other IPD Team Members in developing and shall provide to Owner, on a date established by the Core Group, a resource-loaded work plan ("**RLWP**") describing the work to be performed by CM/GC and CM/GC's Subcontractors who will participate in the Preconstruction Phase through completion of Phase VI as described in Section 26.2.

## **28. PROGRESS PAYMENTS**

28.1. Payments. Payment Applications shall be prepared by Architect and CM/GC each in a format approved by the Core Group. During all Phases, the period covered by each Payment Application and the ending date of each payment period shall be established in the Payment Protocol adopted by the Core Group. The payment period should be no less frequently than monthly and should be established in order to maximize the benefit to the Owner of making prompt payments for amounts incurred, without generating significant waste in the process. Provided a

Payment Application is timely submitted, satisfies all requirements of the Contract Documents, and is approved by the Core Group, Owner shall make progress payments within ten (10) days of submission to the Core Group and otherwise in accordance with the Payment Protocol.

28.2. Schedule of Values. Before the first Payment Application for Work performed in the Construction Phase, CM/GC shall submit to the Core Group a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Core Group may require. This schedule, approved by the Core Group, shall be used as a basis for reviewing CM/GC's Applications for Payment. Each CM/GC Payment Application during construction shall be based on the most recent schedule of values submitted by CM/GC in accordance with the Contract Documents. Payment Applications shall show the percentage of each portion of the Work as of the end of the period covered by the Payment Application completed in accordance with the planning documents approved by the Core Group. At the discretion of the Core Group, payment applications for IPD Team Members working on a Cost-of-the-Work-plus-a-fee basis shall be based upon the Cost of the Work incurred during the payment period, together with the applicable fee, rather than a schedule of values.

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

28.4. Pencil Draw Procedure. Prior to submission of the formal Payment Application, Architect and CM/GC shall schedule a meeting with the Core Group and the IOR, if applicable. CM/GC shall prepare and prior to such meeting distribute a draft payment application that projects completion in accordance with the current planning documents through the end of the billing period (the "**Pencil Draw**"). The Parties shall review the draft in an effort to avoid and attempt to resolve any disagreements concerning the formal Payment Application and the percentages of completion CM/GC intends to pursue for the month. Notwithstanding any position taken at that meeting, Architect, Owner and IOR, if applicable, reserve all rights afforded by this Agreement in subsequently reviewing and processing the formal Payment Application.

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

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

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

28.6.2. duly executed conditional waiver and release forms which comply with Civil Code Section 3262 from CM/GC and from Subcontractors and Suppliers that have served preliminary twenty (20)-day notices, for the portion of the Work covered by such payments.

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

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

28.9. Retainage for Subcontractors. Unless otherwise provided in Amendment No. 1, during the Construction Phase Owner may withhold from amounts to be paid pursuant to any Payment Application an amount equal to ten percent (10%) of the amount then payable on account of work performed by any Subcontractor, as retainage.

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

28.10.1. Defective Work of a Non-Risk Pool Subcontractor not remedied;

28.10.2. Third-party claims filed against Owner or the Project or reasonable evidence indicating probable filing of such claims, but only where CM/GC has failed to take appropriate action as described in the Agreement with respect to such claims;

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

28.10.4. Damage to Owner or another contractor for which CM/GC is potentially liable and for which an insurance company has not accepted responsibility;

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

28.10.6. Insufficient documentation, erroneous estimates of value of the Work performed or other incorrect statements in the Application, but only to the extent such documentation is insufficient, such estimates are erroneous or other statements are incorrect.

When the above reasons for withholding payment are removed, payments will be made for amounts previously withheld. Payments wrongfully withheld shall bear interest from the date due the payment was originally to the date paid at the rate set forth in Section 45.7.

28.11. No Right to Stop Work. Subject to Section 39.6.2, if CM/GC disputes any determination with respect to any Payment Application or any Certificate for Payment, CM/GC nevertheless expeditiously shall continue to prosecute the Work, provided amounts not in dispute are timely paid.

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

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

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

28.15. Contractor's Trust. Payments received by CM/GC for Work properly performed by Subcontractors and Suppliers shall be held in trust by CM/GC for those Subcontractors or Suppliers who performed work or furnished materials, or both, under contract with CM/GC for which payment was made by Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of CM/GC, shall create any fiduciary liability or tort liability on the part of CM/GC for breach of trust or shall entitle any person or entity to an award of punitive damages against CM/GC for breach of the requirements of this provision.

28.16. Payments to Subcontractors and Architect's Consultants. CM/GC shall pay each Subcontractor and Supplier, and Architect shall pay Architect's Consultants within-three (3) days of receipt of payment from Owner and otherwise in accordance with the Payment Protocol, the amount to which each Subcontractor, Supplier, or Architect's Consultant is entitled. CM/GC and Architect shall, by appropriate agreement with each Subcontractor or Consultant, require each to make payments to sub-subcontractors or subconsultants in a similar manner. Neither Owner nor Architect shall have an obligation to pay nor to see to the payment of money to a Subcontractor or Supplier except as may otherwise be required by law.

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

## **29. SUBSTANTIAL & FINAL COMPLETION**

29.1. Defined. "**Substantial Completion**" is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so Owner can occupy or utilize the Work for its intended use, and only minor corrective Work remains to be performed, all required approvals, certificates of occupancy and other sign-off from any public agencies with jurisdiction have been obtained (except where such approvals are delayed as a result of causes unrelated to CM/GC's or its Subcontractors' or Suppliers' performance or failure to perform the Work or to satisfy its obligations under the Contract Documents), and CM/GC has cleaned up and removed all equipment, tools and other materials from the Work area. CM/GC shall secure and deliver to Owner written warranties and guaranties from its Subcontractors and Suppliers bearing the Substantial Completion Date or some other date as may be agreed to by Owner and stating the period of warranty as required by the Contract Documents.

29.2. Notice. At a date established by the Core Group, and in accordance with the Built-In Quality Plan described in Section     , the IPD Team shall develop a phase plan that addresses completion, commissioning, and close-out. The plan shall include a process for assuring that the Project, at the date of Substantial Completion, will satisfy the conditions of satisfaction established in the Contract Documents, without relying on a traditional "punch list process." If according to that plan, the Owner will take beneficial occupancy of all or any portion of the Project prior to Final Completion, CM/GC shall prepare and submit to the Core Group [and, if applicable, the IOR] a comprehensive list of items to be completed or corrected after Substantial Completion and before Final Payment (the "**Final Completion List**"). Failure to include an item on the Final Completion List does not alter the responsibility of CM/GC to complete all Work in accordance with the Contract Documents. When the CM/GC believes that the Work, of a portion which Owner agrees to accept separately, is Substantially Complete, it shall notify the Core Group, in writing.

29.3. Inspection. Upon receipt of the Notice prepared by CM/GC, the Core Group and [if applicable, the IOR] Owner will promptly make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the inspection discloses any item, whether or not included in any Final Completion List, which indicates that Substantial Completion has not been achieved, the Core Group shall, not later than five (5) days following the inspection shall schedule a Core Group meeting and deliver to CM/GC a written list indicating the elements of the Work which are not Substantially Complete. CM/GC shall, before submitting another request for an inspection to determine Substantial Completion, complete or correct each such item. When Substantial Completion is acknowledged by the Core Group, Architect will issue a Certificate of Substantial Completion which shall establish the Substantial Completion Date, responsibilities of Owner and CM/GC for security, maintenance, heat, utilities, damage to the Work and insurance, and shall identify the agreed-upon time within which CM/GC shall finish any items on the Final Completion List which can not be completed prior to the date scheduled for Final Completion. Warranties and guaranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to Owner and CM/GC for their written acceptance of responsibilities assigned to them in such Certificate. Nothing in these provisions shall preclude the Architect from certifying to OSHPD that the project is substantially complete under the applicable regulations before certifying that the Work is Substantially Complete under the rigorous definition included in this Agreement.

29.4. Partial Occupancy or Use. Owner may occupy or use any completed or partially completed portion of the Work at any stage, provided that such occupancy or use (i) is authorized by public authorities having jurisdiction over the Work and (ii) does not hinder the timely completion of the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided Owner and CM/GC have agreed in writing on the responsibilities assigned to each of them for security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. Immediately prior to such partial occupancy or use, Owner, CM/GC and Architect [or, if applicable, the IOR] shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. Unless otherwise agreed upon, partial occupancy or use of any portion of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

29.5. Use of HVAC System. CM/GC may use portions of the new heating, cooling, or ventilation systems to provide temporary heat, cooling or ventilation prior to Substantial Completion. Any systems so used shall be provided with temporary filters and the systems shall be cleaned and restored to prime condition and new filters installed prior to acceptance. Such use shall not operate to commence the contractually required warranties.

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

### **30. FINAL PAYMENT**

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

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

30.2.1. CM/GC's and Architect's total Costs of the Work (including any amount retained pursuant to Section 28.9), plus the portion of CM/GC's Fee and Architect's Fee.

30.2.2. Subtract amounts, if any, which the Core Group withholds pursuant to the provisions of this Agreement.

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

30.3. Other Actions in Connection with Final Payment. Pursuant to the terms and procedures set forth in Article 13.3 or the IPD Risk Pool Plan Owner shall: (i) authorize release of the applicable portion of each Risk Pool IPD Team Member's Fee that may have been escrowed in the IPD Team At-Risk Pool Account; and (ii) if applicable, pay to each Risk Pool IPD Team Member its share of the Incentive Savings Plan on the Project.

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

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

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

30.7. Pre-Conditions to Final Payment. Final Payment shall not become due until Architect and CM/GC submit to the Core Group (1) affidavits that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, excepting only amounts to be paid out of Final Payment, for which Owner or Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied; (2) certificates evidencing that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Owner; (3) written statements that Architect and CM/GC know of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (4) consent of surety, if any, to Final Payment; (5) Conditional Waiver and Release Upon Final Payment Forms from CM/GC and from Subcontractors and Suppliers that have served preliminary twenty (20)-day notices, to the extent and in such form as may be designated by Owner; (6) a Certificate of Completion certifying that Work has been completed in accordance with the Contract Documents; (7) the Record Drawings and Annotated Specifications required by the Contract Documents; (8) the warranties, Submittals, and operations and maintenance data required by the Contract Documents; and (9) a Final Verified Cost Report, accompanied by an affidavit from officers of Architect and CM/GC and any other company that has performed its work on a cost-plus-a-fee basis certifying the accuracy of the final Cost of the Work.

30.8. Missing Release. If a Subcontractor or Supplier refuses to furnish a release or waiver required by Owner, CM/GC may furnish a bond or other security acceptable to Owner. The Core Group will determine the extent to which the costs, expenses, damages and liability incurred by CM/GC in connection with the bond or other security are reimbursable as Costs of the Work under **Exhibit 7**.

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

### **31. RIGHT TO AUDIT**

31.1. Availability of Records. IPD Team Members' records, which shall include but not be limited to accounting records (hard copy, as well as computer readable data if it can be made available), written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; Change Order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other supporting evidence deemed necessary by Owner to substantiate charges related to this Agreement (collectively hereinafter referred to as "**Records**") shall be open to inspection and subject to audit and/or reproduction by Owner's agent or its authorized representative upon Owner's reasonable request. Owner may also conduct verifications such as counting employees at the Project Site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with employees, Subcontractors and Suppliers.

31.2. Other Documents. Such audits may require inspection and copying from time to time and at reasonable times and places of any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and all other agreements, sources of information and matters that may in Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Records subject to audit shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this Agreement.

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

31.4. Medicare Audit. Upon written request of Owner, CM/GC, and any entity providing work, labor, materials, or equipment to the Work, shall make available to the Secretary of Health and Human Services or the Comptroller General, or any of their duly authorized representatives, this Agreement and books, documents and Records that are necessary to verify the nature and extent of the cost of the services provided hereunder for a period of four (4) years from the furnishing of such services when required by Section 952 of the Omnibus Budget Reconciliation Act of 1980 and the regulations promulgated thereunder. CM/GC shall require each Subcontractor and Supplier to comply with this provision.

### **32. INSURANCE, BONDS AND INDEMNITY**

32.1. Insurance. During all Phases of the Project, Architect and Architect's consultants shall purchase and maintain insurance as set forth in **Exhibit 5A**; CM/GC and Subcontractors shall purchase and maintain insurance as set forth in **Exhibit 5**. Payment of any deductible or self-insured retention amount shall be the responsibility of the Party required to maintain the policy of insurance hereunder and shall be payable by such Party on the same terms and conditions as if such Party were the insurer thereunder and the policy of insurance contained no provisions for a deductible or self-insured retention. Any such payment of a deductible or self-insured retention amount by Architect or CM/GC shall be treated as a Cost of the Work.

32.2. CM/GC's and Architect's Comparative Indemnity. To the fullest extent permitted by law, and without limiting indemnity provisions contained elsewhere in this Agreement, Architect and CM/GC shall defend, indemnify and hold harmless Owner, Sutter Health and each of their officers, directors, employees, agents and representatives (collectively, "**Owner Indemnitees**") from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Project in connection with this Agreement, provided that such claim, damage, loss or expense is attributable to (a) breach of this Agreement or (b) to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work

itself), but only to the extent caused by or arising out of their respective negligent acts or omissions, fault or misconduct, or the negligent acts or omissions, fault or misconduct of anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a person described in this Section 32.2. Nothing in this provision shall be construed to provide indemnification to any Owner Indemnitees for claims, damages, losses, and expenses to the extent caused by or arising out of any Owner Indemnitee's actively negligent acts or omissions, fault or misconduct.

32.3. Employee Claims. In claims against any person or entity indemnified under this Article by an employee of Owner, CM/GC, Architect, or any Subcontractor, Supplier, or Architect's Consultant, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Article shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for or under any workers' compensation acts, disability benefit acts or other employee benefit acts.

32.4. Indemnity Against Liens. Provided Owner is not in default of its payment obligations pursuant to this Agreement, CM/GC shall indemnify and protect Owner from and against all Liens recorded in connection with the performance of the Work by CM/GC's Subcontractors or. For any such Lien, CM/GC shall, within ten (10) days after the date that CM/GC receives written notice that the Lien was recorded, (a) pay or discharge, and discharge of record, any such Lien for or in respect of the Work, (b) pay the appropriate amount into court in order to have the Lien vacated or (c) provide, in CM/GC's sole discretion, a bond or letter of credit from a surety or commercial bank in an amount and on terms and conditions reasonably acceptable to Owner to protect against such Lien. The Core Group will determine the extent to which the costs, expenses including attorney's and consultant's fees, damages and liability incurred by CM/GC in connection with such liens and actions are reimbursable as shall be Costs of the Work pursuant to **Exhibit 7**.

32.5. Limitation on Indemnity. Architect's and CM/GC's indemnity obligations shall be limited in accordance with the limits of liability set forth in Article 33.

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

32.7. Right to Demand Bonds. Before commencing the Construction Phase, CM/GC, at Owner's request, shall furnish Owner with bonds covering faithful performance of the Contract and payment of obligations arising thereunder in the full amount of the EMP. The forms of bonds and sufficiency of sureties shall be subject to Owner's approval. The Surety providing such bonds shall be licensed to do business in California. The bonds shall provide that no change or alteration of the Contract Documents or any subcontract (including without limitation any change in the Contract Sum, Contract Time, Scope of Work, terms or conditions of payment of any subcontract) shall release any surety from its obligations to Owner under the bonds. The bonds shall have an effective date not later than the first day the Construction Phase Work is performed so that all Work performed under the Contract shall be subject to the bonds. The cost of such bonds, if required, shall be included in the Contract Sum.

32.8. Bonds for Subcontractors. The Core Group shall decide whether to require bonds or default insurance to cover the obligations of any or all of the Subcontractors on the Project. The costs associated with these decisions shall be handled as provided in the description of the Cost of the Work.

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

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

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

### **33. LIMITS OF LIABILITY**

33.1. General Limitation on Liability. Notwithstanding anything to the contrary contained in this Agreement, in no event shall any of Architect, CM/GC and all other Risk Pool IPD Team members be liable, alone or in the aggregate on a cumulative basis, to Owner or any other entity affiliated with or related to owner, for any damages, claims, demands, suits, causes of action, losses, costs, expenses and/or liabilities in excess of total IPD Team Risk Pool amount, regardless of whether such liability arises out of breach of contract, guaranty or warranty, tort, product liability, indemnity, contribution, strict liability or any other legal theory; provided, however, that the preceding limitation of liability shall not apply to, and no credit shall be issued against such liability limitation for liabilities (a) to the extent satisfied directly or indirectly from insurance claims actually paid to any party, regardless of whether the

party directly paid by the insurer on the claim was the party that originally sustained the covered loss; (b) arising from fraud or willful misconduct of Architect, CM/GC,, or their respective consultants, subcontractors or suppliers; (c) arising from claims directly against subcontractors or suppliers who are not IPD Risk Pool Members; (d) for fines or penalties assessed against any IPD Risk Pool Member in connection with the Project; (4) arising from any party abandoning completion of the project.

33.2. Architect's Limitation of Liability Relative to Consultants. If Architect or Architect's Consultants are required to over-stamp a design-build or design-assist Subcontractor's documents to meet the requirements of any governmental authority (including OSHPD and the State Fire Marshal), neither Architect nor Architect's Consultants shall assume responsibility for authorship of those documents-

### **34. SUBCONTRACTS**

34.1. Subcontracts. CM/GC and Architect shall require each Subcontractor, Supplier or Architect's Consultant to enter into an appropriate written agreement obligating them to comply will all requirements of the Contract Documents. Each subcontract or consulting agreement shall preserve and protect the rights of each of the Parties under the Contract Documents with respect to the Work to be performed or Services to be provided by the Subcontractor, Supplier, or consultant, so that subcontracting will not prejudice those rights. The agreement shall allow to the Subcontractor, Supplier, or Architect's Consultant, unless specifically provided otherwise in the Contract Documents, the benefit of all rights, remedies and redress against the Party it is in contract with, that such Party, by the Contract Documents, has against Owner. Where appropriate, the subcontract or consulting agreement shall require each Subcontractor, Supplier, or Architect's Consultant to enter into similar agreements with lower tier performers. CM/GC and Architect shall make available to each proposed Subcontractor, Supplier, or Architect's Consultant, prior to the execution of its agreement, copies of the Contract Documents to which it will be bound. Subcontractors, Suppliers, and Architect's Consultants will similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors.

34.2. Owner Review of Agreement Form. Notwithstanding any provision of the preceding section, CM/GC and Architect shall submit their standard proposed subcontract(s) or consulting agreement(s), in electronic format, for Owner's review and comment. The final form must be consistent with Lean Project Delivery principles and acceptable to Owner in all respects. Each such agreement shall, where the context so requires, contain provisions that:

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

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

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

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

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

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

34.2.7. Require that each Subcontractor, Supplier, or Architect's Consultant only subcontract portions of its work to the extent approved by the Core Group and then only by way of a written subcontract or consulting agreement which complies with the requirements of this provision;

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

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

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

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

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

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

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

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

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

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

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

### **35. SEPARATE CONTRACTORS**

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

35.2. Coordination. The Core Group shall provide for coordination of the activities of Owner's own forces and of each separate contractor with the Work. Representatives of the IPD Team shall participate with other separate contractors and Owner in reviewing and coordinating their planning and schedules when requested to do so. The Parties shall cooperate in developing coordinated planning documents as provided in Article 5.4.

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

35.4. Quality Assurance. If part of the Work or Services depends, for proper execution or results, upon construction or operations by Owner or a separate contractor, all parties involved shall coordinate the conditions of satisfaction and hand-off criteria, and shall be jointly responsible for confirming that predecessor work meets the conditions of satisfaction. IPD Team members shall, prior to proceeding with that portion of the Work, promptly report to CM/GC or Architect, who shall report to the Core Group, apparent discrepancies or defects in such other construction or services. Failure to so report shall constitute an acknowledgment that Owner's or separate contractor's completed or partially completed work or services are fit and proper to receive follow-on work, except as to defects not then reasonably discoverable.

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

### **36. WARRANTY**

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

36.2. **Scope.** CM/GC is responsible for the warranty of all Work, whether performed by it or by Subcontractors or Suppliers. The foregoing warranty also applies to any and all products or procedures specified in the Contract Documents.

36.3. **Correction.** If, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established at Substantial Completion, any of the Work is found to be Nonconforming Work, Owner shall provide written notice and CM/GC shall promptly investigate the condition and advise Owner concerning the proposed remedial course of action. CM/GC shall prosecute and complete any necessary corrections within the shortest time reasonably practicable. If Owner's operations or use are impaired by the Nonconforming Work or its correction, CM/GC shall use such off-hours labor and timesaving procedures as Owner may request. Owner shall reimburse CM/GC and Architect for all costs arising out of Nonconforming Work, including without limitation all costs of correction, testing and inspection costs as Cost of the Work to be compensated under and in accordance with Articles 26 and 27, however, that Owner shall have no obligation to reimburse CM/GC or Architect for such costs to the extent they result from Fraud or Willful Misconduct of CM/GC or Architect, as applicable, or if the Nonconforming Work was performed by a Non-Risk Pool IPD Team Member. If the aggregate reimbursable cost of correcting Nonconforming Work exceeds the Warranty Reserve amount set forth in Amendment No. 1, the remaining amount shall be funded from the IPD Team At-Risk Pool. CM/GC and Architect shall be responsible for correction of latent defects (meaning any defects discovered subsequent to the expiration of the one-year warranty period), subject to the limitation of liability set forth in Section 33.1.

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

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

36.6. **No Limitation.** Payment of any deductible or self-insured retention amount shall be the responsibility of the Party required to maintain the policy of insurance hereunder and shall be payable by such Party on the same terms and conditions as if such Party were the insurer thereunder and the policy of insurance contained no provisions for a deductible or self-insured retention. Any such payment of a deductible or self-insured retention amount by Architect or CM/GC shall be treated as a Cost of the Work.

### **37. PROPRIETARY INFORMATION**

37.1. **Definition.** For purposes of this Agreement, "**Proprietary Information**" shall be all information identified as such by Owner to the other Parties in writing and shall include all information provided to any IPD Team member in the course of providing Services or performing Work pursuant to this Agreement that directly concerns the business operations and strategic plans of Owner and/or its affiliates.

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

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

37.4. **Documents.** Each IPD Team Member shall take all reasonable precautions to safeguard any Proprietary Information. Each IPD Team Member may make copies of such documents only to the extent necessary

for performance of its obligations. Each IPD Team Member agrees to return to Owner, upon completion of the Project, all proprietary documents supplied by Owner and at such time to return or destroy all copies thereof.

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

### **38. OWNERSHIP AND USE OF DOCUMENTS**

38.1. Definition. Provided Owner is in compliance with all payment provisions under this Agreement, (except as may be subject to a good faith dispute) all drawings, plans, specifications, calculations, notations, data bases, physical or electronic models, BIM or other electronic data, and other documents prepared by Architect, Architect's Consultants, CM/GC, Subcontractors or other IPD Team members in connection with the Project (and any electronic media upon which they were prepared or stored) (the "Project Documents"), including, without limitation, the Design Documents and the Construction Documents, are prepared as Instruments of Service, and all title, ownership, and copyright privileges are and at all time shall be vested in Owner and the Responsible Designer, subject only to the use provisions set forth below.

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

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

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

38.5. Author's Use. The author of a Project Document may reuse plans, drawings, specifications and other data prepared pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole. In the event any Party uses any of the plans, drawings, specifications and other data in its practice, that Party shall indemnify, defend, protect and hold Owner free and harmless from liability, if any, arising from the use of such plans, drawings, specifications and other data, including, without limitation, any liability to third parties for personal injury, death, or property damage.

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

### **39. DEFAULT, SUSPENSION AND TERMINATION**

39.1. Events of Default. The occurrence of any of the following events with respect to either CM/GC or Architect shall be an "Event of Default" with respect to such Party:

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

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

39.1.3. Such Party abandons the Work or Services; or persistently and without justification (a) fails to prosecute promptly and diligently the Work or Services, excluding all cases for which extension of time is provided hereunder, or (b) supply enough properly skilled workers or proper materials for the Work or Services;

39.1.4. Such Party submits a Payment Application, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is intentionally falsified;

39.1.5. Such Party persistently and without justification fails to make reasonably prompt payment, without just cause, to Subcontractors, Suppliers, or Architect's Consultants, or for materials or labor;

39.1.6. In the case of CM/GC, such Party fails without justification to cure a breach of Section 32.4 within thirty (30) days following receipt of notice from Owner of such breach;

39.1.7. Such Party in any material respect intentionally disregards laws, statutes, ordinances, rules, regulations or orders of any governmental body or public or quasi-public authority having jurisdiction over those activities for which such Party is responsible under the Contract Documents or the site of the Project; or

39.1.8. Such Party otherwise materially breaches the Agreement.

39.2. Notice of Default. Upon the occurrence of any Event of Default, Owner may provide written notice of such Event of Default to the defaulting Party, with copies to other Party and to the other members of the Core Group. Owner shall promptly attempt to schedule a meeting of the Core Group, including each Party's Senior Management Representative, to be held within seven days of the notice. Any such notice of an Event of Default shall describe the nature of the default and identify a period within which the defaulting Party shall cure the default, which period (i) shall be at least seven (7) days after the applicable meeting of the Core Group and (ii) shall be extended as reasonably necessary for the cure of the particular Event of Default, so long as the defaulting Party commences and pursues the cure with reasonable diligence during the identified time period.

39.3. Failure to Cure Default. If the defaulting Party fails to cure a default within the cure period established in the notice given pursuant to Section 39.2, as such period is extended pursuant to Section 39.2, with respect to the applicable Event of Default, Owner may terminate the Agreement with respect to such defaulting Party, without prejudice to any other right or remedy that may be available to it under this Agreement, at law or in equity. In addition, if CM/GC is the defaulting Party, Owner may, without prejudice to any other available rights or remedies, as deemed appropriate in Owner's sole discretion:

39.3.1. Take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by CM/GC;

39.3.2. Accept assignment of CM/GC's subcontracts pursuant to Article 34; and

39.3.3. Finish the Work or Services of CM/GC by whatever reasonable method Owner may deem expedient.

39.4. Payments Held. If Owner terminates the Agreement with respect to CM/GC or Architect for such Party's Event of Default, the terminated Party shall not be entitled to receive further payment until the Work or Services are completed. Upon completion of the Project, Owner shall, upon the request of the terminated Party, furnish an accounting of the relevant costs incurred by Owner in finishing the Project, including all Owner's overhead and administrative expenses caused by the default. Upon completion of the Project, Owner shall pay to the terminated Party all amounts remaining due for performance by the terminated Party prior to termination (including without limitation unreimbursed Costs of the Work, retainage and Fee).

39.5. Conversion of Improper Termination. If it is determined, by litigation, arbitration or otherwise, that a termination by Owner of another Party for default was unjustified hereunder and that Owner was in breach of the Agreement for so terminating such Party and was not the result of Fraud or Willful Misconduct, the termination shall be deemed a Termination for Convenience and such Party's remedies shall be limited to those provided for a Termination for Convenience.

39.6. Suspension.

39.6.1. Owner may, without cause, order the IPD Team to suspend, delay or interrupt the Project, in whole or in part, for such period of time as Owner may determine. If Owner expressly provides notice of its intent to suspend the Project, CM/GC and Architect shall promptly provide Owner with an estimate of any impact on (i) during the Construction Phase, the EMP, or (ii) during either of the Validation or Preconstruction Phases, the Target Cost that will result from the suspension. Based upon that response, if Owner elects to suspend the Project, the Target Cost and the Estimated Maximum Price shall be adjusted for increases in the cost of performance caused by suspension, delay or interruption, and the Contract Time shall be extended by the period of the suspension. No adjustment of the Target Cost, the Estimated Maximum Price or the Contract Time shall be made to the extent that

performance is, was or would have been so suspended, delayed or interrupted by another cause for which CM/GC or Architect is responsible.

39.6.2. CM/GC and Architect may, in addition to any other rights afforded under this Agreement or at law, suspend performance of the Work and the Services if any of the following conditions occur: (a) during the Validation or Preconstruction Phases, more than sixty (60) days elapse following the expiration of the most recently effective Work Authorization and prior to the execution of a new Work Authorization, (b) during the Construction Phase, Owner does not, upon receipt of written request from CM/GC or Architect, provide adequate assurance of funding for the unperformed and unpaid portion of the Work, or (c) failure of the Owner to timely pay undisputed amounts due under any Payment Application,. Should any of the events set forth in the immediately preceding sentence occur, CM/GC or Architect, as applicable, may provide written notice to Owner of the occurrence of an event entitling such Party to suspend performance unless such event is cured within seven (7) days following Owner's receipt of such notice. If Owner fails to cure such event within such seven (7) day period, CM/GC or Architect, as applicable, may suspend performance of the Work and the Services until the event is cured. In any such case, the suspending Party shall be entitled to make a claim for adjustment to the Target Cost, the Estimated Maximum Price and the Contract Time.

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

39.8. Payment to CM/GC and Architect Following Termination for Convenience. In the event of Termination for Convenience, Owner shall pay to CM/GC and Architect, as the sole and exclusive remedy, (1) that portion of the Cost of the Work allocable to the portion of the Project performed by CM/GC and Architect prior to the effective date of termination; (2) such other costs which CM/GC and Architect may incur as a result of such termination; (3) CM/GC's Fee and Architect's Fee (including any escrowed portion thereof) applied to the costs determined under (1) and (2); (4) retainage being held by Owner pursuant to the direction of CM/GC in accordance with Section 28.9; Any payment under this Section shall be made only upon the expiration of the period within which liens or stop notices may be recorded or served under the laws of the State of California, or Owner's receipt of all requested statutory lien waiver and release forms, subject in either case, however, 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 shall be resolved in accordance with the dispute resolution procedures set forth in Article 41.

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

39.10. No Affect on Other Obligations. Termination of the Agreement, either for default or Convenience, shall not constitute a release of continuing performance obligations that would otherwise survive completion of the Project, including without limitation, claims for personal injury or property damage occurring prior to termination or to indemnity claims.

39.11. Termination by CM/GC or Architect. CM/GC or Architect may terminate the Agreement if the Project is suspended for a cumulative total of 90 days within any twelve month period through no act or fault of the Party seeking to terminate or a Subcontractor, Supplier, Consultant or any of their agents or employees, or any other person for whom such Party is responsible under the Contract Documents, for any of the following reasons:

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

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

39.11.3. Because Owner has not made payment of an amount due (and not subject to a right to withhold payment) within the time stated in the Agreement; or

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

39.12. Payment to CM/GC and Architect Following Termination By Such Parties. In the event of a termination of the Agreement pursuant to Section 39.11, Owner shall pay to CM/GC and Architect, as the sole and exclusive remedy, the amounts that would be due to Architect and CM/GC pursuant to Section 39.8 upon a Termination for Convenience by Owner.

39.13. Certain Terminations of Either CM/GC or Architect. In the event of any termination of this Agreement with respect to either Architect or CM/GC (a "Terminated Party") for any reason in any circumstance where the other one of such Parties (a "**Non-Terminated Party**") is not at the same time terminated by Owner for an Event of Default, then, (i) the Owner and the Non-Terminated Party shall negotiate in good faith over a replacement for the Terminated Party, and (ii) unless the Owner and the Non-Terminated Party agree to an appropriate replacement of the Terminated Party and Change Orders and other changes to this Agreement as are mutually acceptable to the Non-Terminated Party and Owner, the Non-Terminated Party shall have the right to terminate this Agreement with respect to itself and such termination shall be treated as a Termination for Convenience by Owner.

#### **40. CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

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

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

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

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

- 40.4.1. Fully executed Change Orders;
- 40.4.2. Amendment No. 1;
- 40.4.3. The Agreement; and
- 40.4.4. Drawings and Specifications.

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

40.6. Words and Principles of Interpretation. The following principles of interpretation shall apply to this Agreement (including the recitals), unless the context clearly requires otherwise:

- 40.6.1. A reference to a person includes its successors and permitted assigns.
- 40.6.2. The singular shall include the plural and the masculine shall include the feminine, and vice versa.
- 40.6.3. The word "or" is not exclusive.
- 40.6.4. References in this Agreement to Architect shall, unless the context clearly indicates otherwise, include Architect's Consultants.
- 40.6.5. References in this Agreement to CM/GC shall, unless the context clearly indicates otherwise, include Subcontractors.
- 40.6.6. Whenever the consent or approval of any Party is required as a condition of any right, obligation, action or event, such Party's consent may not be unreasonably withheld, conditioned or delayed except where this Agreement expressly provides otherwise.

#### **41. DISPUTE RESOLUTION**

41.1. Scope. All claims, disputes or other matters in question among the Parties which arise from or in connection with this Agreement shall be resolved as provided in this Section.

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

41.3. Definitions. A "Claim" is a request, demand or assertion by one or more of the Parties seeking an adjustment or interpretation of the terms of this Agreement, payment of money, extension of time, or other relief with respect to its obligations under the Contract Documents. The term "**Claim**" also includes other disputes and matters in question among the Parties arising out of or relating to the Contract Documents. The responsibility to substantiate a Claim rests with the Party or Parties making the Claim.

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

The Notice of Potential Claim must be made by written notice and shall contain the information listed below; provided that, if any of the required information is not available at the time the Notice of Potential Claim is submitted, claimant shall provide all information which is available and a statement indicating when the remaining information will be provided.

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

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

41.4.3. Identification of the contractual provisions affected and an explanation of how the Claim relates to those provisions;

41.4.4. An estimate of effect upon the Expected Cost, Target Cost or Estimated Maximum Price, including an itemized breakdown of additional cost, if any; and

41.4.5. An estimate of the effect, if any, upon the Construction Schedule and the Contract Time, including a comparison of the Construction Schedule and schedules prepared in connection with the Claim.

41.5. Time Limits on Claims. Notice of Potential Claim by any Party must be initiated within fourteen (14) days after occurrence of the event giving rise to such Claim or within seven (7) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. To the maximum extent possible, Notice of Potential Claim shall be provided before the additional work is performed or the additional cost is incurred, with a specific request that a response be provided by the date identified in order to avoid the harm contemplated by the Notice of Potential Claim.

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

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

41.8. Senior Executive Meeting. If the Core Group is unable to resolve the Claim, any Party may request a meeting of the Senior Management Representatives with the Core Group. Upon such a request, a Senior Management Representative from each of CM/GC, Owner, FPD, and Architect shall review the claim in detail and then meet face-to-face to discuss and resolve the matter (any such meeting, a "**Senior Executive Meeting**"). This Senior Executive Meeting shall occur no later than fourteen (14) days after the Core Group has declared an impasse in its efforts to resolve the dispute, unless the Parties agree upon a longer period of time. This meeting shall be for the express purposes of (1) exchanging and reviewing all pertinent non-privileged documents and information relating to the matters and issues in dispute, (2) freely and candidly discussing each Party's position, and (3) reaching agreement upon a reasonable, compromise resolution of the Claim.

41.9. Independent Expert. If the Claim is not resolved within seven (7) days after the Senior Executive Meeting, then the Core Group may appoint one or more independent, third-party experts ("**Independent Expert**") to review the Claim. Once appointed, the Independent Expert shall review any technical analysis or recommendation,

review material submitted by the parties and, as the Independent Expert deems appropriate, meet with the parties and other persons having information relevant to the issues in dispute before rendering an opinion as to an appropriate resolution of the Claim, giving consideration to the factual and contractual issues involved. Within twenty-one (21) days after appointment by the Core Group, Independent Expert shall deliver a written recommendation to the Core Group and the other parties to the Claim. The Core Group, and each of its members, may utilize Independent Expert's report as it deems appropriate in responding to claims or in assessing withholds or backcharges. The Independent Expert's fees shall be shared equally by each of the Core Group members (with FPD and Owner being treated as one entity). Independent Expert's opinion, conclusions and findings shall be admissible in any subsequent dispute resolution proceeding only to the extent agreed by all Parties and so ordered by a court pursuant to the California Evidence Code or the Federal Rules of Evidence as appropriate.

41.10. Non-Binding Mediation. If the dispute has not been resolved as provided above, any Party may, at its option, initiate mediation proceedings in which the remaining Parties shall participate. These proceedings shall be conducted by a third-party mediator who is acceptable to all of the parties to the mediation and experienced in design and construction in California on projects of similar type and scope. The mediator shall be given written statement(s) of the parties and may inspect the Project Site and other documents. The mediator shall schedule a mediation session, to be attended by Owner, Architect and CM/GC, together with any other person who has an interest in the Claim, within a reasonable time of the mediator's selection. The mediation shall be attended by representatives of Owner, CM/GC and Architect with authority sufficient to resolve the dispute. The cost of the mediation shall be borne equally by the parties to the dispute, i.e., if only Owner and CM/GC are involved in the dispute, then only the two of them shall share the cost at 50% each. No minutes shall be kept and the proceeding shall be confidential and not admissible except as provided below. The entire mediation process must be completed within thirty (30) days of the initiation of mediation proceedings, unless all parties involved in the dispute extend the mediation period.

41.11. Confidentiality. The Mediation shall be treated as confidential and privileged, pursuant to California Evidence Code Sections 1115 through 1128. If, as a result of the mediation, a negotiated settlement is reached, the Parties agree that such settlement shall be reduced to writing and that the Parties waive the protection of Evidence Code Sections 1115 through 1128 to the extent necessary to enforce the mediated settlement.

41.12. Unresolved Impasse. If the foregoing procedure cannot resolve the dispute, the Parties are free to pursue the legal and equitable remedies available to them.

41.13. Application of Procedures. CM/GC and Architect shall cause the provisions of this Article 41 to be incorporated in contracts with all Subcontractors, Suppliers, and Architect's Consultants, so that all such parties shall also be bound to this dispute resolution procedure. This dispute resolution procedure shall not in any way affect any statutes of limitation relating to any Claim, dispute or other matter arising out of the Contract Documents.

## **42. REPRESENTATIONS AND WARRANTIES OF THE OWNER**

42.1. General. Owner represents and warrants to each of Architect and CM/GC that (a) Owner is a corporation, validly existing and in good standing under the laws of the State of California; (b) Owner has the power under its organizational documents to execute and deliver this Agreement and to perform its obligations hereunder; (c) Owner has taken all actions necessary under its organizational documents to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder; (d) neither the execution and delivery of this Agreement, nor the performance of, or compliance with, the terms and provisions hereof, will conflict with, result in the breach of, or require any consent under (i) to its knowledge, any provisions of applicable Law or (ii) the organizational documents of Owner, or any agreement, instrument, decree or judgment to which Owner is a party or by which Owner is bound, or constitute a default thereunder; (e) this Agreement constitutes a legal, valid and binding obligation of Owner enforceable against Owner in accordance with its terms, except as enforceability may be (i) limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting the enforcement of creditors' rights generally, or (ii) subject to the effect of general principles of equity.

## **43. REPRESENTATIONS AND WARRANTIES OF THE ARCHITECT**

43.1. General. Architect represents and warrants to each of Owner and CM/GC that (a) Architect is a corporation, validly existing and in good standing under the laws of the State of Michigan; (b) Architect has the power under its organizational documents to execute and deliver this Agreement and to perform its obligations hereunder; (c) Architect has taken all actions necessary under its organizational documents to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder; (d) neither the execution and delivery of this Agreement, nor the performance of, or compliance with, the terms and provisions hereof, will conflict with, result in the breach of, or require any consent under (i) to its knowledge, any provisions of applicable Law or (ii) the organizational documents of Architect, or any agreement, instrument, decree or judgment to which Architect is a party or by which Architect is bound, or constitute a default thereunder; (e) this Agreement constitutes a legal, valid and binding obligation of Architect enforceable against Architect in accordance with its terms, except as enforceability

may be (i) limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting the enforcement of creditors' rights generally, or (ii) subject to the effect of general principles of equity.

43.2. Licensure and Qualifications. Architect represents that Architect and Principal are duly licensed to provide architectural design services in California and that each Consultant is duly licensed in California to provide the professional services being provided by such Consultant to the Project as of the date of such Consultant's agreement with the Architect.

#### **44. REPRESENTATIONS AND WARRANTIES OF THE CM/GC**

44.1. General. CM/GC represents and warrants to each of Owner and Architect that (a) CM/GC is a joint venture duly formed under the laws of the State of California; (b) CM/GC has the power under its organizational documents to execute and deliver this Agreement and to perform its obligations hereunder; (c) CM/GC has taken all actions necessary under its organizational documents to authorize the execution and delivery of this Agreement and the performance of its obligations hereunder; (d) neither the execution and delivery of this Agreement, nor the performance of, or compliance with, the terms and provisions hereof, will conflict with, result in the breach of, or require any consent under (i) to its knowledge, any provisions of applicable Law or (ii) the organizational documents of CM/GC, or any agreement, instrument, decree or judgment to which CM/GC is a party or by which CM/GC is bound, or constitute a default thereunder; (e) this Agreement constitutes a legal, valid and binding obligation of CM/GC enforceable against CM/GC in accordance with its terms, except as enforceability may be (i) limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting the enforcement of creditors' rights generally, or (ii) subject to the effect of general principles of equity.

44.2. Licensure and Qualifications. CM/GC represents that CM/GC is a duly licensed construction contractor in California. CM/GC's Project Manager and Project Superintendent shall possess a record of experience and performance on California construction projects of comparable scope to the Project.

#### **45. MISCELLANEOUS PROVISIONS**

45.1. Notices. All notices, requests, documents, approvals and other instruments made, given or delivered pursuant to and in connection with this Agreement shall be in writing (which shall include electronic transmission) to the address stated below, or to such other at any other address duly notified by the applicable Party to the other Parties at their respective addresses for service, and shall be deemed to have been duly given (1) when delivered, if delivered in person or by reputable overnight courier, (2) if transmitted before 5:00 p.m. Pacific Time on a business day on the date transmitted by electronic mail or facsimile, in the case of facsimile, if, as evidenced by a facsimile confirmation, , otherwise on the next business day, (3) three business days after deposit in the United States Mail, registered or certified mail, return receipt requested, postage prepaid.

The Parties addresses for notice and service are:

Owner:

Architect:

CM/GC:

45.2. Governing Law. This Agreement shall be governed by the laws of the State of California, shall be interpreted and enforced in accordance with the laws of the State of California (without respect to its choice of law rules), and is deemed entered into and executed in the City and County of San Francisco, where the Project is located. Any litigation arising out of or related to this Agreement or its breach, or the Project, shall be commenced in a court of competent jurisdiction located in the City and County of San Francisco. All work shall conform to Titles 22 and 24, California Code of Regulations, and CM/GC shall maintain a copy of Title 24 on the job site at all times.

45.3. Integrated Agreement; Modification. This Agreement represents the entire and integrated agreement between Owner and CM/GC, and Owner and Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended or otherwise modified only by written instrument signed by each of the Parties or pursuant to the change procedures set forth in Article 24. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern. Except as expressly provided elsewhere, the Contract Documents shall not be construed to create a contractual relationship of any kind (1) between Architect and CM/GC or (2) between Owner and a Subcontractor, Supplier, or Architect's Consultant.

45.4. No Joint Venture. Each of Architect, CM/GC and Owner is an independent contractor for all purposes, and nothing contained in this Agreement shall be construed to create an association, joint venture, trust or partnership, or impose a fiduciary duty, trust, or partnership obligation or liability on or with regard to any of the Parties. Each of Architect, CM/GC and Owner shall be individually responsible for its own covenants, obligations and

liabilities under this Agreement. Except where otherwise expressly approved by another Party in writing, each Party shall act hereunder only on an individual basis and shall not be authorized to act as agent or representative of any other Party nor have the power or authority to bind any other Party for any purpose. No Party shall so bind any other Party, or represent to anyone that it has the authority to bind any other Party, or make any other representation about or on behalf of any other Party. Nothing in this section shall affect or negate the operation of the IPD At-Risk Pool.

45.5. Assignment. Each Party respectively binds itself, and each of its partners, successors, assigns and legal representatives to the other Parties and to partners, successors, assigns and legal representatives of such other Parties in respect to covenants, agreements and obligations contained in the Contract Documents. Neither CM/GC or Architect shall assign this Agreement, or rights hereunder, in whole or in part, without Owner's prior written consent, except as provided below in this Section 45.5. Owner may, with advance written notice to CM/GC and Architect, assign this Agreement to wholly owned subsidiaries, parents, affiliates, merger partners of Owner, or others with whom Owner enters into a legal relationship before or after this Agreement is made, provided such assignee is reasonably acceptable to CM/GC and Architect following review of such proposed assignee, including without limitation its ability to perform the obligations of Owner under this Agreement, either alone or with guaranty of its performance by Owner.

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

45.7. Interest. Payments due and unpaid under the Agreement shall bear interest from the date payment is due at ten percent (10%) per annum.

45.8. Attorneys' Fees. In the event any Party commences any action or proceeding against any other Party for any reason arising out of, in connection with, or related to the Agreement, the prevailing Party in such action or proceeding shall be entitled to recover such amount as the court or arbitrator may judge to be reasonable attorneys' fees, together with all costs, charges and expenses related to the suit, including all expert and consultant fees, provided that such Party is determined to have made a reasonable and good faith effort to fully comply with the Dispute Resolution Provisions of the Contract Documents

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

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

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

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

45.11. Royalties & Patents. Each Party warrants to the others that no design, document, process, mean, or method that it prepares or proposes for and nothing else that it contributes to the Project shall infringe any patent, copyright, or other intellectual property right. Each such Party shall defend suits or claims for infringement of copyrights, patent, or other intellectual property rights and shall hold the other Parties harmless from loss on account thereof. However, if any Party has reason to believe that the required design, process or product is an infringement of a copyright or patent, that Party shall promptly notify the Core Group in writing. CM/GC shall include in the proposed -Estimated Maximum Price and pay all royalties and license fees associated with work described in the Contract Documents.

45.12. Conflict of Interest. Architect and CM/GC shall cause each IPD Team member to comply with the Conflict of Interest and Business Ethics requirements set forth in **Exhibit 8**.

**[SIGNATURES ON FOLLOWING PAGE]**

**46. EXECUTION**

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

Contractors are required by law to be licensed and regulated by the Contractors' State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within 4 years of the date of the alleged violation. a complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors' State License Board, P.O. Box 26000, Sacramento, California 95826.

# EXHIBIT 1

## VALIDATION STUDY AND DELIVERABLES

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Each of the items listed below shall be included in the Validation Study delivered to the Owner pursuant to Section 9.2 of the Agreement.

1. **VALUE MODEL AND MODEL OF CARE**
2. **PROGRAM SUMMARY**
  - 2.1. Operational Assumptions
  - 2.2. Departmental Areas
  - 2.3. Operational Workshop Meeting Notes
3. **PLANNING SUMMARY**
  - 3.1. Space Program
  - 3.2. Stacking and Blocking Analysis
4. **DESIGN NARRATIVES AND SYSTEMS VALIDATION**
  - 4.1. Site Validation
    - 4.1.1. General Site Conditions and Constraints
    - 4.1.2. Vehicular Access and Parking
    - 4.1.3. Pedestrian Access and Accessibility
    - 4.1.4. Site Utilities
  - 4.2. Exterior Architecture
    - 4.2.1. Urban Design Approach
    - 4.2.2. Wall Systems Narratives
    - 4.2.3. Building Massing Studies
  - 4.3. Interior Architecture
    - 4.3.1. Finishes Matrix Validation
    - 4.3.2. Room Type Descriptors
  - 4.4. Structural Systems
    - 4.4.1. Structural Design Criteria Update
    - 4.4.2. Structural Approach Options (A3 summaries)
  - 4.5. Mechanical and Plumbing Systems
    - 4.5.1. Performance Design Criteria
    - 4.5.2. System Narratives
    - 4.5.3. Materials and Methods (includes specs and details)
  - 4.6. Electrical Systems
    - 4.6.1. Design Criteria
    - 4.6.2. Utility Services Summary
    - 4.6.3. Normal and Critical Load Summary
    - 4.6.4. Lighting

- 4.7. Technology Systems
- 4.8. Fire Alarm System
- 4.9. Acoustical Design
- 4.10. Food Service Analysis
- 4.11. Materials Handling and Management Analysis
  - 4.11.1. Materials Management
  - 4.11.2. Material Handling
  - 4.11.3. Sterile Processing
  - 4.11.4. Waste Management
  - 4.11.5. Pneumatic Tube
- 4.12. Security Systems
- 5. **UPDATE TO CODE SUMMARY AND FIRE PROTECTION REPORT**
- 6. **PROJECT SCHEDULES**
  - 6.1. Document and Submittal Strategies
  - 6.2. Proposed Design and Approval Schedule
- 7. **BUDGET AND COST ANALYSIS**
  - 7.1. Sutter Health Budget Information
  - 7.2. Preliminary Cost Estimates
  - 7.3. Budget/Cost Analysis
- 8. **GREEN GUIDE FOR HEALTHCARE**
- 9. **LEAN-ENABLED BIM WORKPLAN**
- 10. **COMMUNICATION PLAN**

**EXHIBIT 2**

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**PROJECT BUSINESS CASE AND CONCEPTUAL PROJECT  
SCHEDULE**

## EXHIBIT 3

# ARCHITECT'S SCOPE OF SERVICES

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In addition to the description of the Services to be provided by Architect and Architect's Consultants in the Agreement, the following description, together with the Design Deliverable, is intended to further describe the scope of services. References to the Architect shall include the Architect's Consultants as appropriate.

### 1. VALIDATION AND PRELIMINARY PROGRAMMING

As part of Basic Services, Architect shall carefully review the programming materials provided by Owner (the "Program") for compliance with all codes and regulations applicable to the Project and shall confirm that the Program proposed in the Validation Study:

- (a) Meets all such codes and regulations except for items which Architect brings to the attention of Owner;
- (b) In Architect's professional opinion, the ratio of net to gross square footage meets acceptable industry standards and is sufficient to accommodate Owner's function requirements; and
- (c) In Architect's professional opinion, the Program objectives can be accomplished within the Construction Budget.

In the event that Architect reports that the Program does not comply with applicable codes and/or regulations or that the Program cannot be accomplished within the Expected Cost, Owner may adjust the Program and submit it to Architect for review and comment

### 2. CONCEPTUAL DESIGN (TASK )

2.1. Description. Based on the approved Validation Study, the IPD Team shall develop a Target Value Design Plan. Architect shall coordinate the values workshops to be convened with representatives of IPD Team Members and the customers of the design process, including clinicians, medical personnel, plant operations and maintenance, and patient and family members. Through these workshops, the IPD Team shall establish the basic values, in addition to cost and schedule, that will guide the process of design and construction.

### 3. DESIGN (TASK )

### 4. DETAILED DESIGN (TASK )

### 5. IMPLEMENTATION DOCUMENTS TASK (TASK )

### 6. PERMITTING/PRICING (TASK )

### 7. CONSTRUCTION-ADMINISTRATION OF CONSTRUCTION CONTRACT (TASK )

7.1. Duration. The Construction Task shall commence with issuance of the Notice to Proceed and shall end upon Final Completion. Architect's obligation to provide Construction Administration as Basic Services under the Agreement, shall continue until Final Completion. In the event Final Completion is delayed, Architect shall be entitled to additional compensation only as provided in the Agreement.

7.2. Architect's Role. Architect shall provide general administration as provided in the Agreement and as further described in the Contract Documents. Architect shall have authority to act on Owner's behalf only to the extent provided in the Agreement and limitations on Architect's authority shall not be modified or extended without written agreement of the Core Group.

7.3. Site Visits. Architect shall visit the site at intervals appropriate to the stage of construction, but not less than twice monthly to become familiar with the progress and quality of the Work and to determine if the Work is proceeding in substantial accordance with the Contract Documents and the Project Schedule. Architect shall attend all Core Group meetings and all progress meetings scheduled by CM/GC during the Construction Task. It is anticipated that progress meetings will be held at least weekly. On the basis of such on-site observations as an Architect, Architect shall keep the Core Group informed of the progress and quality of the Work, including all changes and their impact on the quality of the Work, and shall endeavor to guard Owner against defects and deficiencies in the Work. Architect shall

advise Owner in writing of any defects or deficiencies in the Work at the time Architect observes such defects or at such time as Architect has reason to believe that such defects exist.

7.4. Means and Methods. Architect shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures; safety precautions and programs in connection with the Work; or the acts or omissions of CM/GC or any other person performing any of the Work, all of which shall be CM/GC's responsibility.

7.5. Access. Architect shall at all times have access to the Work whenever it is in preparation or progress.

7.6. Assess/Reject Work. Architect shall promptly notify Owner of Work observed by Architect which does not conform to the Contract Documents and upon instruction from Owner shall reject such Work on Owner's behalf. Without creating a duty as to construction means, methods or safety, Architect may reject nonconforming Work without consultation with Owner if Architect reasonably believes that continuance of the Work would result in an emergency condition affecting the safety of persons or property on the Project. Whenever, in Architect's reasonable opinion, special testing or inspection of any Work is necessary or advisable to determine whether the Work conforms to the Contract Documents, Architect shall recommend to Owner such inspection or testing, whether such Work be fabricated, installed or completed.

7.7. Submittals. Architect shall review or take other appropriate action upon Submittals as provided for in the Agreement. Architect's action shall be taken with reasonable promptness so as to cause no delay. Architect's approval of specific items shall not indicate approval of an assembly of which the item is a component.

7.8. Change Orders & Construction Change Directives. Architect shall, as a Basic Service except as specified in Section 23, prepare Change Orders or Construction Change Directives (as defined in the Agreement), and shall have authority to order minor changes in the Work as provided in the Agreement. Architect shall prepare drawings for, and otherwise assist in effecting, such changes in the work. Any disagreement between Owner and Architect regarding the cause of or compensation for a Change Order or Construction Change Directive, even if Architect has been paid for services associated therewith, shall be subject to the dispute resolution procedures set forth in Article 41.

7.9. Substantial Completion. Architect shall participate in determining the Substantial Completion Date and the date of Final Completion, both in accordance with the Agreement. Architect shall receive and forward to Owner, for Owner's review, written warranties and related documents required by the Contract Documents and assembled by CM/GC and shall issue a final Certificate for Payment.

7.10. Recordkeeping. Architect shall maintain records as determined by the Core Group and in accordance with applicable law. If the Core Group intends to use an electronic system to monitor Project documentation, Architect shall maintain its record keeping in that system.

## 8. PROJECT CLOSE-OUT (TASK )

8.1. Monies Owed to CM/GC. Architect shall furnish all necessary services required in assisting Owner in determining any monies owed to CM/GC and in obtaining beneficial occupancy for Owner.

8.2. Final Completion List Clearance. Architect shall revisit the site as directed by the Core Group and review for Architect's final acceptance all items of Work.

8.3. Record Documents. Upon completion of the Project, and based upon information provided by CM/GC and assembled by Architect, Architect shall participate in preparation of a final set of record drawings in electronic format, compiled on compact disks, or as otherwise directed by Owner.

8.4. Final Certification. Architect shall provide all required documentation and coordinate with governing state and local agencies until a final Certificate of Occupancy is issued by all such agencies having jurisdiction over the Project, and file all final verified reports.

**EXHIBIT 3A**

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**ARCHITECT'S AND ARCHITECT'S CONSULTANTS' BILLING RATES  
(ALL PHASES)**

**EXHIBIT 3B**

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**CM/GC'S AND SUBCONTRACTORS' BILLING RATES VALIDATION  
PHASE AND PRECONSTRUCTION PHASE PRIOR TO ADOPTION  
OF IPD TEAM RISK POOL PLAN)**

## EXHIBIT 4

### APPLICABLE BUILDING CODES AND REGULATIONS

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The Project shall Comply with applicable codes and should consider the following regulations and guidelines:

|  |   |
|--|---|
| Acoustical Society of America  | Specific Site Response Design Spectra For Irregular Buildings |
| American Concrete Institute  |   |
| American Gas Association   | Underwriters Laboratory, Inc.                                 |
| American Institute of Steel Construction                                     | Uniform Building Code with California Amendments              |
| American Society of Heating, Refrigeration and Air Conditioning Engineers    | Uniform Fire Code   |
| American Society of Mechanical Engineers                                     | Uniform Mechanical Code with California Amendments            |
| American Society for Testing and Materials                                   | Uniform Plumbing Code with California Amendments              |
| American Water Works Association   | ANSI Codes - Vertical Transportation                          |
| Americans with Disabilities Act  |   |
| Associated Air Balance Council   |   |
| California Code of Regulations—Title 8                                       |   |
| California Code of Regulations—Title 17                                      |   |
| California Code of Regulations—Title 19                                      |   |
| California Code of Regulations—Title 22                                      |   |
| California Code of Regulations—Title 24                                      |   |
| California State Accessibility Standards Interpretive Manual                 |   |
| Guidelines for Construction of Hospital and Healthcare Facilities (AIA 2006) |   |
| Guidelines for Restraints of Mechanical Systems and Plumbing Piping Systems  |   |
| Health and Safety Code   |   |
| Illuminating Engineering Society   |   |
| Institute of Electrical and Electronic Engineers                             |   |
| Life Safety Code   |   |
| National Institute of Standards and Technology                               |   |
| National Electrical Code with California Amendments                          |   |
| National Electrical Code Standards   |   |
| National Electrical Manufacturers Association                                |   |
| National Fire Protection Association   |   |
| National Fire Codes  |   |
| Sheet Metal and Air Conditioning Contractors National Association            |   |
| Single Ply Roofing Institute   |   |

## **EXHIBIT 5 CM/GC**

# **CM/GC's INSURANCE REQUIREMENTS/OWNER'S PROPERTY INSURANCE**

### **1. CONTRACTOR'S LIABILITY INSURANCE**

1.1. CM/GC and its Subcontractors shall procure and maintain insurance on all their operations during the progress of the Work, with reliable insurance companies authorized to do business in California, on forms acceptable to Owner, the minimum insurance coverages as more specifically set forth below.

1.2. Such coverage shall be maintained by insurance companies that have a rating of at least A-VII in the most recent edition of Best's Key Rating Guide, have equivalent or better ratings from Standard and Poor and Moody's and are otherwise satisfactory to Owner. CM/GC shall provide Owner with certificates of insurance evidencing issuance of all insurance required by this Exhibit. Such policies will contain a severability of interest endorsement.

1.3. The insurance limits set forth in this Exhibit for liability and excess/umbrella insurance shall apply separately to CM/GC's work on the Project, and the certificate shall be endorsed to reflect these yearly, per-project aggregate limits. The General Aggregate limit specified below shall apply on an annual, per-project basis. At Owner's discretion, higher limits of liability may be an alternative to per-project aggregate.

1.4. If requested by Owner after the date of the Agreement, CM/GC shall promptly procure, at Owner's expense, insurance in such amounts as Owner may request insuring against perils not listed above.

1.5. CM/GC's policy or policies, other than workers' compensation and CM/GC's Environmental Coverage, and property insurance for CM/GC's tools and equipment, shall be endorsed to name Owner and others identified in the Project Summary, and each of its/their officers, employees, affiliates, partners and members as additional insureds, including any required listing in the introduction of the policy, and shall stipulate that the insurance shall be primary, and that any insurance carried by Owner and others identified in the Project Summary shall be excess and not contributory insurance. The listed parties shall be additional insureds for the duration of all required insurance.

1.6. CM/GC shall be liable for any and all deductibles under all policies provided pursuant to the Contract Documents.

1.7. CM/GC shall provide Certificates of Insurance, or other evidence of insurance as requested by Owner, to Owner before any work is commenced by CM/GC. The certificates shall provide that there will be no cancellation, or modification of coverage without thirty (30) days' prior written notice to Owner, shall state that Owner, and its officers, employees, affiliates, partners and members, are additional insureds with additional insured endorsement on form CG 2010 (11/85) or form(s) comparable to this ISO form Edition Date which shall be attached to the certificate, and shall specifically reference the Project. CM/GC shall promptly furnish copies of all policies of insurance, including any renewal or replacement policies upon Owner's request within ten (10) days of written notice.

1.8. All such insurance coverages shall remain in effect until expiration of CM/GC's warranty to Owner, or as provided in this Exhibit. CM/GC's coverage for products liability, completed operations and warranty shall remain in effect until three (3) years after Owner has accepted the Project. Prior to final payment, CM/GC shall provide evidence that a policy is in effect, as required by this section.

1.9. If CM/GC does not comply with the requirements of this section, Owner may, at its option, provide insurance coverage to protect Owner, and charge CM/GC for the cost of that insurance. The required insurance shall be subject to the approval of Owner, but any acceptance of insurance certificates by Owner shall not limit or relieve CM/GC of the duties and responsibilities assumed by it under the Agreement.

1.10. Owner and CM/GC waive all rights against each other and against all other Subcontractors for loss or damage to the extent covered by Builder's Risk or any other property or equipment insurance applicable to the Project, except such rights as they may have to the proceeds of such insurance less their pro-rata share of the deductible.

1.11. If the policies of insurance referred to in this Article require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

1.12. CM/GC waives, and shall require all its Subcontractors to waive, all rights of recovery against Owner (and such other persons or entities as required by the Contract Documents) for losses within the scope of Subcontractor's or lower tier subcontractor's insurance.

1.13. The coverage of any insurance policy required hereunder or actually carried by Owner shall not limit the extent of CM/GC's liability under the Agreement. In the event Owner employs any separate contractor to work on the site prior to CM/GC's final completion, Owner shall require the separate contractor to cause CM/GC to be named an additional insured under its commercial general liability policy.

1.14. Nothing contained in these insurance provisions shall limit the indemnity obligations of CM/GC under the Agreement or applicable law.

## 2. **OWNER'S PROPERTY INSURANCE**

2.1. Unless otherwise provided, Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in California, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the [Estimated Cost / Target Cost?], plus value of subsequent Contract Modifications, on a replacement-cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than Owner has an insurable interest in the property required by this Section to be covered, whichever is later. This insurance shall include interests of Owner, CM/GC, Subcontractors and Sub-subcontractors in the Project.

2.1.1. Property insurance shall cover all risks of direct physical damage from any external causes unless excluded or shall include insurance against the perils of flood, earthquake, terrorism, and debris removal including demolition occasioned by enforcement of any applicable requirements, and shall cover reasonable compensation for Architect's services and expenses required as a result of such insured loss.

2.1.2. If Owner does not intend to purchase such property insurance required by the Agreement and with all of the coverages in the amount described above, Owner shall so inform CM/GC in writing prior to commencement of physical construction. CM/GC may then effect insurance which will protect the interests of CM/GC, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to Owner. If CM/GC is damaged by the failure or neglect of Owner to purchase or maintain insurance as described above, without so notifying CM/GC, then Owner shall bear all reasonable costs properly attributable thereto.

2.1.3. If the property insurance requires deductibles, CM/GC shall pay costs not covered because of such deductibles. If deductibles are not identified in the Contract Documents, Owner shall pay costs not covered because of deductibles.

2.1.4. This property insurance shall cover portions of the Work stored off the site and also portions of the Work in transit.

2.2. **Boiler and Machinery Insurance.** CM/GC is responsible for carrying or causing its Subcontractors to carry insurance on all boilers, machinery, and equipment, including coverage for testing and installation, until the equipment and the work have been accepted as completed by Owner. After completion and final acceptance, Owner will obtain boiler and machinery insurance. CM/GC shall specifically notify Subcontractors of this requirement.

2.3. **Loss of Use Insurance.** Owner, at Owner's option, may purchase and maintain such insurance as will insure Owner against loss of use of Owner's property due to fire or other hazards, however caused. The existence of such insurance benefiting Owner shall not affect CM/GC's obligation to complete its work within the Contract Time, or any other obligation of CM/GC, and such insurance shall not reduce the amount of damages to which Owner may be entitled in the event CM/GC breaches any obligations under this Agreement.

2.4. If CM/GC requests in writing that insurance for risks other than those described herein or for other special causes of loss be included in the property insurance policy, Owner shall, if possible, include such insurance, and the cost thereof shall be charged to CM/GC by appropriate Change Order.

2.5. If during the Project construction period Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, Owner shall waive all rights in accordance with the terms of Section 2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

2.6. Before an exposure to loss may occur, Owner shall file with CM/GC evidence of insurance stating that the policy complies with Section 2.

2.7. Waivers of Subrogation. Owner and CM/GC waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) separate contractors described in the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 2 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by Owner. Owner or CM/GC, as appropriate, shall require of the separate contractors described in the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. In no event shall this waiver apply to faulty workmanship in the design or construction of the Project.

2.8. A loss insured under Owner's property insurance shall be adjusted by Owner and made payable to Owner, subject to requirements of any applicable mortgagee clause and of Section 2.9. CM/GC shall pay Subcontractors their just shares of insurance proceeds received by CM/GC, and by appropriate agreements, written where legally required for validity, shall require Subcontractors by make payments to their Sub-subcontractors in similar manner.

2.9. Owner shall have the right and power to adjust and settle a loss with insurers, subject to the dispute resolution procedures set forth in the Contract Documents.

2.10. Partial occupancy or use in accordance with the Agreement shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. Owner and CM/GC shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

**INSURANCE REQUIREMENTS -  
PROJECT COST OVER \$10,000,000**

Minimum amounts of insurance to be carried by CM/GC:

|  |   |
|--|---|
| <b>Workers' Compensation</b> <sup>1</sup><br><b>Employers' Liability</b> <sup>2</sup>  | Statutory Limits<br>\$1,000,000 Each Accident   |
| <b>Commercial General Liability</b> <sup>3</sup><br>(Occurrence Form Only)<br>(Modified Occurrence Form <u>not</u> acceptable) | \$25,000,000 Each Occurrence<br>\$25,000,000 General Aggregate/Per Project<br>\$25,000,000 Products–Completed Operations<br>Aggregate |
| <b>Automobile Liability</b> <sup>4</sup><br><b>Combined Single Limit</b><br><b>Any Auto</b>                                    | \$5,000,000 Each Accident   |
| <b>Property Insurance for CM/GC's Tools &amp; Equipment</b>  | Actual Cash Value   |
| <b>Pollution Liability</b>   | \$10,000,000 (Each Occurrence/Aggregate)  |
| <b>CM/GC's Errors &amp; Omissions</b>  | \$5,000,000   |

**The above insurance coverages may not be waived under any circumstances.**

CM/GC shall require all Subcontractors of any tier to procure and to maintain during the term of their subcontract, Subcontractor's Commercial General Liability, Automobile Liability; Pollution Liability; Property Insurance for Subcontractor's Tools & Equipment; and Workers' Compensation Insurance of the type and amounts acceptable to Owner.

A list of subcontractors with coverage limits appropriate to the exposure should be submitted to Owner for approval, and the minimum limits and coverages are:

|  |  |
|--|--|
| <b>Workers' Compensation</b> <sup>5</sup><br><b>Employers' Liability</b> <sup>6</sup>  | Statutory Limits<br>\$1,000,000 Each Accident  |
| <b>Commercial General Liability</b> <sup>7</sup><br>(Occurrence Form Only)<br>(Modified Occurrence Form <u>not</u> acceptable) | \$1,000,000 Each Occurrence<br>\$2,000,000 General Aggregate/Per Project<br>\$2,000,000 Products–Completed Operations<br>Aggregate |
| <b>Automobile Liability</b> <sup>8</sup><br><b>Combined Single Limit</b><br><b>Any Auto</b>                                    | \$1,000,000 Each Accident  |

<sup>1</sup> Including occupational disease insurance as required by law.

<sup>2</sup> Covering all work places involved in the Agreement.

<sup>3</sup> Commercial General Liability insurance, including Owner's contingent coverage. This insurance will also include provision for the deletion of "X,C,U" exclusion and contain completed operations coverage for three (3) years after the Project is accepted by Owner. Modified Occurrence form is not acceptable. Limits may be met by a combination of basic limits and umbrella/excess coverage.

The insurance shall cover all operations of Contractor and its Subcontractors, including but not limited to (1) premises, operations and mobile equipment liability; (2) completed operations and products liability; (3) contractual liability insuring the obligations assumed by Contractor and its Subcontractors under this Agreement; (4) Owner's, Contractor's Protective Liability coverage; (5) explosion, collapse, and underground property damage; (6) broad form property damage liability; and (7) personal injury liability endorsement.

<sup>4</sup> Automobile bodily injury and property damage insurance, including all owned, hired and non-owned motor vehicles.

<sup>5</sup> Including occupational disease insurance as required by law.

<sup>6</sup> Covering all work places involved in the Agreement.

<sup>7</sup> Commercial General Liability insurance, including Owner's contingent coverage. This insurance will also include provision for the deletion of "X,C,U" exclusion and contain completed operations coverage for three (3) years after the Project is accepted by Owner. Modified Occurrence form is not acceptable.

The insurance shall cover all operations of Subcontractor and its subcontractors, including but not limited to (1) premises, operations and mobile equipment liability; (2) completed operations and products liability; (3) contractual liability insuring the obligations assumed by Contractor and its subcontractors under the Agreement; (4) Owner's, Contractor's Protective Liability coverage; (5) explosion, collapse, and underground property damage; (6) broad form property damage liability; and (7) personal injury liability endorsement.

|   |  |
|---|--|
| <b>Property Insurance for Subcontractor's Tools &amp; Equipment</b> | Actual Cash Value                        |
| <b>Pollution Liability</b>  | \$1,000,000 (Each Occurrence/ Aggregate) |
| <b>Design-Build Subcontractor's Errors &amp; Omissions</b>          | \$5,000,000                              |

**INSURANCE REQUIREMENTS  
PROJECT COST UNDER \$10,000,000**

Minimum amounts of insurance to be carried by CM/GC:

|   |   |
|---|---|
| <b>Workers' Compensation</b> <sup>9</sup><br><b>Employers' Liability</b> <sup>10</sup>  | Statutory Limits<br>\$1,000,000 Each Accident   |
| <b>Commercial General Liability</b> <sup>11</sup><br>(Occurrence Form Only)<br>(Modified Occurrence Form <u>not</u> acceptable) | \$10,000,000 Each Occurrence<br>\$10,000,000 General Aggregate/Per Project<br>\$10,000,000 Products–Completed Operations<br>Aggregate |
| <b>Automobile Liability</b> <sup>12</sup><br><b>Combined Single Limit</b><br><b>Any Auto</b>                                    | \$5,000,000 Each Accident   |
| <b>Property Insurance for CM/GC's Tools &amp; Equipment</b>   | Actual Cash Value   |
| <b>Pollution Liability</b>  | \$1,000,000 (Each Occurrence/Aggregate)   |
| <b>CM/GC's Errors &amp; Omissions</b>   | \$2,000,000   |

**The above insurance coverages may not be waived under any circumstances.**

CM/GC shall require all Subcontractors of any tier to procure and to maintain during the term of their subcontract, Subcontractor's Commercial General Liability; Automobile Liability; Property Insurance for Subcontractor's Tools & Equipment; and Workers' Compensation Insurance of the type and amounts acceptable to Owner.

A list of subcontractors with coverage limits appropriate to the exposure should be submitted to Owner for approval and the minimum limits and coverages are:

|   |   |
|---|---|
| <b>Workers' Compensation</b> <sup>13</sup><br><b>Employers' Liability</b> <sup>14</sup>   | Statutory Limits<br>\$1,000,000 Each Accident   |
| <b>Commercial General Liability</b> <sup>15</sup><br>(Occurrence Form Only)<br>(Modified Occurrence Form <u>not</u> acceptable) | \$1,000,000 Each Occurrence<br>\$2,000,000 General Aggregate/Per Project<br>\$2,000,000 Products–Completed Operations |

<sup>8</sup> Automobile bodily injury and property damage insurance, including all owned, hired and non-owned motor vehicles.

<sup>9</sup> Including occupational disease insurance as required by law.

<sup>10</sup> Covering all work places involved in the Agreement.

<sup>11</sup> Commercial General Liability insurance, including Owner's contingent coverage. This insurance will also include provision for the deletion of "X,C,U" exclusion and contain completed operations coverage for three (3) years after the Project is accepted by Owner. Modified Occurrence form is not acceptable. Limits may be met by a combination of basic limits and umbrella/excess coverage.

The insurance shall cover all operations of Contractor and its Subcontractors, including but not limited to (1) premises, operations and mobile equipment liability; (2) completed operations and products liability; (3) contractual liability insuring the obligations assumed by CM/GC and its Subcontractors under the Agreement (4) Owner's, Contractor's Protective Liability coverage; (5) explosion, collapse, and underground property damage; (6) broad form property damage liability; and (7) personal injury liability endorsement.

<sup>12</sup> Automobile bodily injury and property damage insurance, including all owned, hired and non-owned motor vehicles.

<sup>13</sup> Including occupational disease insurance as required by law.

<sup>14</sup> Covering all work places involved in the Agreement.

<sup>15</sup> Commercial General Liability insurance, including Owner's contingent coverage. This insurance will also include provision for the deletion of "X,C,U" exclusion and contain completed operations coverage for three (3) years after the Project is accepted by Owner. Modified Occurrence form is not acceptable.

The insurance shall cover all operations of Subcontractor and its subcontractors, including but not limited to (1) premises, operations and mobile equipment liability; (2) completed operations and products liability; (3) contractual

|  |   |
|--|---|
|  | Aggregate                               |
| <b>Automobile Liability <sup>16</sup><br/>Combined Single Limit<br/>Any Auto</b> | \$1,000,000 Each Accident               |
| <b>Property Insurance for Subcontractor's Tools &amp; Equipment</b>              | Actual Cash Value                       |
| <b>Pollution Liability</b>   | \$1,000,000 (Each Occurrence/Aggregate) |
| <b>Design-Build Subcontractor's Errors &amp; Omissions</b>                       | \$2,000,000                             |

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liability insuring the obligations assumed by Contractor and its subcontractors under the Agreement; (4) Owner's, Contractor's Protective Liability coverage; (5) explosion, collapse, and underground property damage; (6) broad form property damage liability; and (7) personal injury liability endorsement.

<sup>16</sup> Automobile bodily injury and property damage insurance, including all owned, hired and non-owned motor vehicles.

# EXHIBIT 5A

## ARCHITECT'S INSURANCE REQUIREMENTS

### ARCHITECT'S INSURANCE

#### 1. MAINTAIN INSURANCE

Prior to commencing the Services, and continuing for a period of at least three (3) years following completion of the Construction Phase, Architect and Architect's Consultants shall, at their respective sole cost and expense, carry and maintain insurance with coverage as set forth in this Exhibit. Architect shall deliver evidence of such insurance to Owner by delivering copies of the policies, or certificates of insurance setting forth the required coverage. The certificates shall show a "Retroactive Date" for professional liability coverage. If the "Retroactive Date" is later than the earlier of the date Architect or Architect's Consultant commenced performing services in connection with the Project and such person was previously insured under a "Claims Made" errors and omissions policy, that person shall furnish a certificate of insurance showing that it has purchased the supplemental Extended Reporting Period Endorsement under the previous policy extending for an unlimited time the period during which a claim may first be made.

#### 2. GENERAL REQUIREMENTS

All insurance required by this Article shall be provided by companies satisfactory to Owner and each policy of insurance, with the exception of Workers' Compensation and Professional Liability Insurance, shall name Owner, Sutter Health, such additional parties as may be designated in the Project Summary, and each of their agents and employees as additional insureds. Each policy and certificate shall provide that it will not be canceled or materially modified unless and until at least thirty (30) days' written notice by mail has been given to Owner. The scope of the insurance coverage required shall not be modified or reduced by the scope of the indemnity obligations set forth in the Agreement.

#### 3. SPECIFIC REQUIREMENTS

Architect and Architect's Consultants shall provide the following insurance coverage and limits:

3.1. Workers' Compensation. Workers' Compensation covering all employees of Architect performing services under this Agreement and complying with all laws of the State where the Project is to be performed.

3.2. Commercial General Liability. Commercial General Liability (excluding professional liability coverage) providing for a limit of not less than One Million Dollars (\$1,000,000) for all damages arising out of the bodily and/or personal injuries to or death of one or more persons, destruction of tangible property including loss of use resulting therefrom, in any one occurrence, and subject to that limit, where applicable, an annual aggregate limit of not less than Two Million Dollars (\$2,000,000).

|  |  |
|--|--|
| The Commercial General Liability Policy shall include the following coverages: |  |
|  | Premises-Operations  |
|  | Contractual Liability                                      |
|  | Broad Form Property Damage                                 |
|  | Independent Contractor's Liability (If any work is sublet) |
|  | "X,C,U" Property Damage Liability                          |

3.3. Automobile. Business Automobile Liability covering all owned, hired, or non-owned vehicles including the loading or unloading thereof with limits no less than:

|                                |
|--------------------------------|
| Bodily Injury/Property Damage: |
|--------------------------------|

|  |                             |
|--|-----------------------------|
|  | \$1,000,000 combined limit. |
|--|-----------------------------|

3.4. Professional Liability. Professional Liability, including contractual liability insurance, covering all services performed by Architect or Architect's Consultant for or on behalf of Owner. The limits of liability shall be no less than Five Million Dollars (\$5,000,000) per claim and in the aggregate. Architect's Consultants may carry lower limits for professional liability only if approved in writing by Owner.

4. **SUBROGATION**

Architect waives all rights of action and subrogation against Owner to the extent of any insurance recoveries that may be obtained by Architect for damages caused by fire or other peril covered by insurance, except such rights as Architect may have to insurance proceeds held by any other person as trustee or otherwise on behalf of Architect, and where prohibited by such policies.

5. **INSURANCE VERIFICATION**

Architect shall furnish Owner with certificates showing that all insurance is being maintained as required by Owner. Upon renewal of any such insurance that expires before the completion of all Architect's Basic Services under this Agreement, Owner shall be provided with renewal certificates or binders not less than fifteen (15) days prior to the expiration.

6. **ALTERATION OF LIMITS OR COVERAGE**

The coverage and limits of insurance required by this Exhibit shall not be altered, modified, or changed except as expressly agreed in writing. No course of dealing or acceptance of certificates or policies shall constitute a waiver of any of these insurance requirements.

## EXHIBIT 6

### CATEGORIES FOR CHANGE ORDERS

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Owner, Architect, and CM/GC shall review Change Proposal Requests and Change Orders once per month at regularly scheduled construction meetings. This activity shall be an agenda item. Change Proposal Requests and Change Orders shall be assigned to one or more of the following categories:

1. OWNER GENERATED-REQUESTED BY OWNER, OWNER'S SUPPLIERS OR CONSULTANTS.
2. UNKNOWN CONDITIONS-ITEMS WHICH WERE NOT ANTICIPATED DURING DESIGN OR WHICH CM/GC DID NOT ANTICIPATE DURING DESIGN OR BIDDING.
3. DESIGN REFINEMENT-ADDED VALUE OR BETTERMENT TO OWNER. OWNER WOULD HAVE PAID FOR WORK IF INCLUDED IN BID DOCUMENTS.
4. CONSTRUCTION REVISION-NO ADDED VALUE OR BETTERMENT TO OWNER. SOMETHING HAD TO BE ADDED, REMOVED OR REWORKED ONCE IT WAS INSTALLED, AND THE REVISION WAS NOT THE RESULT OF FRAUD OR WILLFUL MISCONDUCT BY THE ARCHITECT OR CM/GC.
5. GOVERNING AGENCY GENERATED-THE RESULT OF AGENCY CODE INTERPRETATIONS, NEWLY ENACTED CODES OR POLICIES BEING ENFORCED WHICH WERE NOT ANTICIPATED DURING DESIGN OR BIDDING.
6. CM/GC GENERATED-THE RESULT OF CORRECTIVE WORK REQUIRING DOCUMENTATION TO RECORD THE CHANGE, OWNER ACCEPTED NON-CONFORMING WORK OR CM/GC-REQUESTED CHANGES.
7. ANY FORCE MAJEURE EVENT.
8. FAILURE OR DELAY OF OWNER TO PROVIDE OR CAUSE TO BE PROVIDED ANY INFORMATION OR OTHER ITEMS REQUIRED IN ACCORDANCE WITH THE AGREEMENT.
9. SUSPENSION OF THE WORK.

# EXHIBIT 7

## COST OF THE WORK

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### 1. COSTS TO BE REIMBURSED

1.1. The term "**Cost of the Work**" shall mean all costs and expenses actually incurred by Architect or CM/GC in the performance of the Project, excepting only those which are the result of Fraud or Willful Misconduct. Costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of Owner. The Cost of the Work shall include only the items set forth in Section 1 of this Exhibit, and "Cost(s)" shall be defined as the actual expenses incurred or prices paid by Architect or CM/GC, but no more than customarily paid at the place where the Project is located. All of the following terms shall apply to each Risk Pool Subcontractor and each Risk Pool Consultant.

### 1.2. LABOR COSTS.

1.2.1. Wages of workers directly employed by Architect or CM/GC to perform the Project. CM/GC shall obtain Owner's agreement for construction workers performing Work at off-site workshops.

1.2.2. Wages or salaries of Architect's supervisory and administrative personnel. Wages and salaries of CM/GC's supervisory and administrative personnel when stationed at the site in the home or branch office, or on the road when engaged in the administration of the project with Owner's prior written agreement. Rates and categories shall be as set forth in **Exhibit 3A** for Architect and **Exhibit 7A** for CM/GC.

1.2.3. Wages and salaries of CM/GC's supervisory or administrative personnel, whether stationed at the site, in the home or branch office, or on the road engaged in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. This includes necessary shop drawing review, subcontract preparation, and scheduling performed at CM/GC's off-site offices, as approved by Owner. Rates and categories shall be as set forth in **Exhibit 7A**.

1.2.4. Costs paid or incurred by Architect or CM/GC for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays and vacations, provided that such costs are based on wages and salaries included in the Cost of the Work under this Exhibit. For Architect's employees, these amounts shall be included in the rates set forth in **Exhibit 3A**. For CM/GC's employees, these amounts shall be included in the rates set forth in **Exhibit 7A**.

1.2.5. With Owner's approval, cost of annual cash bonuses actually paid to Architect's or CM/GC's salaried personnel assigned to the Project, in an amount not to exceed a percentage of each such person's annual base salary established by the Core Group, pro-rated according to the amount of time the employee worked on the Project during the preceding twelve months.

1.2.6. When pre-agreed rates do not exist, Architect and CM/GC shall compute actual costs for payroll taxes giving proper consideration to the annual limitations of wages that are subject to certain payroll taxes. Architect and CM/GC may accomplish this through the use of an accounting system which computes actual costs for payroll taxes when incurred up to the wage limit cut-off and allocates them to all jobs by individual based on the time worked on each job by the individual. Alternatively Architect and CM/GC may use an estimated net effective payroll tax percentage to allocate payroll tax costs during the year and make appropriate adjustments at the end of the year or at the end of the project (whichever is more appropriate) to adjust the costs to actual net payroll tax cost. Using the latter approach, for example, if 50% of the wages paid to an employee during the year were chargeable to the Cost of the Work, then only 50% of the actual annual costs of payroll taxes would be allocable to the Cost of the Work.

1.2.7. Cost of the Work shall include the actual net cost to Architect or CM/GC for worker's compensation insurance attributable to the wages chargeable to the Cost of the Work per this Agreement.

1.2.8. Any payroll burden or related costs which are not required by law shall be subject to advance written approval by Owner to be considered reimbursable. Fringe benefit costs typically falling into this category include, but are not limited to, pension, employee stock option plans, bonuses, medical and dental benefits, and life and accident insurance. Architect and CM/GC shall submit detailed breakdowns of all such payroll burden costs along with a representation as to how the proposed actual billable cost will be computed. Such information must be reviewed and approved no later than execution of Amendment No. 1. Except for rates established in **Exhibits 3A** and **7A**, adjustments will be made to account for actual costs which may be less than the provisional maximum costs previously billed.

1.3. SUBCONSULTANT AND SUBCONTRACT COSTS.

1.3.1. Payments made by Architect to Subconsultants, and by CM/GC to Subcontractors, in accordance with the requirements of the subconsulting agreements or subcontracts. If CM/GC has proposed requiring payment and performance bonds from a Subcontractor and Owner refuses to permit CM/GC to include the bond premiums as a Cost of the Work, then in the event the Subcontractor defaults, the additional expenses paid to a replacement subcontractor, and all costs incurred by CM/GC, including attorney's and consultants' fees, and all liabilities to any person occasioned by such default, shall be considered a Cost of the Work and shall increase the Estimated Maximum Price by a like amount.

1.3.2. The Core Group shall determine whether a Subconsultant or Subcontractor shall be compensated based upon a lump-sum or cost-plus, EMP or GMP basis. Subconsultants and Subcontractors to be compensated on a cost-plus EMP or GMP basis shall have the Cost of their work calculated in accordance with these costs requirements, subject to specific variations that may be negotiated with the Subconsultant or Subcontractor and approved by the Core Group.

1.4. COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION.

1.4.1. Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.

1.4.2. Costs of materials in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, tools, or equipment paid for by Owner, if any, shall be delivered to Owner at the completion of the Work or, at Owner's option, shall be sold by CM/GC; amounts realized, if any, from such sales shall be credited to Owner as a deduction from the Cost of the Work.

1.5. COSTS OF MATERIALS AND EQUIPMENT, FACILITIES AND OTHER ITEMS

1.5.1. Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by CM/GC at the site and fully consumed in the performance of the Work; and cost less salvage value of such items if not fully consumed, whether sold to others or retained by CM/GC. Cost for items previously used by CM/GC shall mean fair market value.

1.5.2. Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by CM/GC at the site, whether rented from CM/GC or others, and costs of transportation, installation, repairs and replacements, dismantling and removal thereof. Rental charges for all necessary temporary facilities, machinery, and equipment, exclusive of hand tools customarily owned by construction workers, which are provided by CM/GC at the site, including costs of transportation, installation, repairs and replacements, dismantling and removal thereof, whether rented from CM/GC or others, shall be consistent with those prevailing in the locality. Rates and quantities of equipment rented shall be subject to Owner's prior approval. Unless otherwise agreed by Owner and CM/GC, CM/GC shall provide at least two (2) bona fide price quotations from reputable equipment suppliers to validate the reasonableness of the rental rates charged or at the rates specified in **Exhibit 7B**, or rates to be agreed upon in Amendment No. 1.

1.5.3. Proposed rental rates and related fair market values for equipment owned by CM/GC or a Subcontractor (or any affiliate, subsidiary, or related party) shall be submitted to and approved by Owner prior to being used in connection with the Work. The projected usage for each piece of equipment proposed to be rented, and estimated total rentals shall be submitted for approval in advance in a form satisfactory to Owner so that an appropriate lease versus buy decision can be made.

1.5.4. Rental charges for bona-fide third-party equipment shall be considered reimbursable and will be reimbursed at actual costs, as long as rental rates are consistent with those prevailing in the locality. For any lease/purchase arrangement where any of the lease/purchase rental charges were charged to Owner as reimbursable job costs, appropriate credit adjustments to job cost will be made for an appropriate pro rata share of the fair market value of the equipment at the time it was last used on the job.

1.5.5. CM/GC shall be required to maintain a detailed equipment inventory of all job-owned equipment (either purchased and charged to job cost or job-owned through aggregate rentals) and such inventory shall be available to Owner each month.

1.5.6. All costs incurred for maintenance and repairs of equipment shall be reimbursed at actual cost. Repairs and/or replacement of a capital nature are considered to be covered by the rental rates. Major repairs and overhauls are not considered routine and ordinary; consequently, such costs are not reimbursable and are intended to be covered by the rental rates.

1.5.7. Costs of removal of debris from the site.

1.5.8.      Reproduction costs, costs of telegrams, long-distance telephone calls, all other communication and technology expenses directly related to the Project, copying costs, postage and express delivery charges, telephone service at the site, radio/communications systems and equipment, and reasonable petty cash expenses.

1.5.9.      That portion of the reasonable travel and subsistence expenses of Architect's or CM/GC's personnel incurred with Owner's prior written consent while traveling in discharge of duties connected with the Work.

1.6.      MISCELLANEOUS COSTS.

1.6.1.      7.6.1.      That portion directly attributable to this Agreement of premiums for insurance for Architect or CM/GC, together with other insurance-related expenses identified and approved in the Estimated Maximum Price proposal. Charges for self-insurance will be considered as a reimbursable cost only if the arrangements for self-insurance are first disclosed in writing to Owner along with a proposed methodology for allocating a fair and equitable portion of the actual cost of the self-insurance out-of-pocket costs incurred to settle claims related to work performed to this Project, and in no event in excess of the comparable cost of procuring conventional insurance.

1.6.2.      Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which Architect or CM/GC is liable.

1.6.3.      Fees and assessments for the building permit and for other permits, licenses and inspections for which Architect or CM/GC is required by the Contract Documents to pay, other than those permits for which Owner pays directly.

1.6.4.      Fees of testing laboratories for tests required by the Contract Documents or necessarily incurred in the performance of the work on the Project.

1.6.5.      Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents, provided that Architect or CM/GC notified Owner, in writing, that a royalty payment would be necessary to use the design, process, or product specified in the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against Architect or CM/GC resulting from such suits or claims and payments of settlements made with Owner's consent.

1.6.6.      Data processing costs directly attributable to work on the Project. Data processing costs are limited to the cost of personal computer hardware and software used in the performance of and normal day-to-day administration, management and control of the Project, internet access, and labor costs directly supporting the information technology at the Project.

1.6.7.      Lost deposits.

1.7.      OTHER COSTS.

1.7.1.      Other costs incurred in the performance of the Project if and to the extent approved in advance in writing by Owner.

1.7.2.      In-house and outside legal and consultant costs reasonably resulting from performance of the Project, other than those arising from disputes between Owner and Architect or Owner and CM/GC, incurred with Owner's permission, which shall not be unreasonably withheld. All costs, expenses including attorney's and consultant's fees, damages and liability incurred in connection with Subcontractor or Supplier liens, bonds or other security, as provided in Articles 30 and 32 of this Agreement.

1.7.3.      Costs of CM/GC's Safety Program directly related to the Work.

1.7.4.      The cost of Architect's correcting or revising Plans and Specifications.

1.7.5.      The cost of corrective, remedial or warranty work actually incurred by CM/GC to the extent not compensated by insurance or by a Subcontractor or Supplier. The amount to be paid during the warranty period shall not exceed the warranty reserve established in Amendment No. 1. No payments under this provision shall be made to subcontractors engaged on a lump sum basis.

1.7.6.      CM/GC agree that CM/GC may, with Owner's written agreement which shall not be unreasonably withheld, self-perform certain items of work, including work which might otherwise be let to subcontractors. In the case of such self-performed work, CM/GC's total costs thereof, including but not limited to labor, materials, equipment, services and supervision, will be included in Cost of the Work.

1.8.      EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK.

The Cost of the Work shall also include costs previously described that are incurred by CM/GC in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in the Agreement.

## **2. COSTS NOT TO BE REIMBURSED**

2.1. The Cost of the Work shall not include:

2.1.1. Except as otherwise provided in Section 1, salaries and other compensation of CM/GC's personnel stationed at CM/GC's principal office or offices other than the site office.

2.1.2. Except as otherwise provided in Section 1, expenses of Architects and CM/GC's principal offices, and offices other than the site office, including Architect's and CM/GC's home office computer systems and all hardware, software, maintenance, and similar expenses.

2.1.3. Overhead and general and administrative expenses, except as may be expressly included in Section 1.

2.1.4. Except as otherwise provided in Section 1, CM/GC's capital expenses, including interest on CM/GC's capital employed for the Work.

2.1.5. Any cost not included in Section 1.

## **3. DISCOUNTS, REBATES AND REFUNDS**

3.1. CM/GC shall notify Owner of available discounts, rebates and refunds. Cash discounts obtained on payments made by CM/GC shall accrue to Owner if (1) before making the payment, CM/GC included them in a Payment Application and received payment therefor from Owner, or (2) Owner has deposited funds with CM/GC with which to make payments; otherwise, cash discounts shall accrue to CM/GC. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to Owner, and CM/GC shall make provisions so that they can be secured.

3.2. Amounts that accrue to Owner in accordance with Section 3.1 shall be credited to Owner as a deduction from the Cost of the Work.

## **4. ACCOUNTING RECORDS**

4.1. Architect and CM/GC shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems shall be satisfactory to Owner. Owner and Owner's accountants or consultants shall be afforded prompt access to Architect's and CM/GC's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Project and to Project record keeping and accounting personnel of Architect and CM/GC. Architect and CM/GC shall preserve these Project records for a period of three (3) years after final payment, or for such longer period as may be required by law.

4.2. Architect and CM/GC shall make available at any time during normal business hours, and upon reasonable advance notice to the Owner access to their job cost accounting system. The Owner shall accept the accounting systems journal cost report as satisfactory evidence of cost incurred for billing and payment purposes. Architect and CM/GC shall not have to submit paper backup for each journal entry as long as this information is maintained at its offices for audit by the Owner.

**EXHIBIT 7A**

**CM/GC LABOR RATES**

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**EXHIBIT 7B**

**EQUIPMENT RATES**

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## EXHIBIT 8

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### CONFLICT OF INTEREST AND BUSINESS ETHICS POLICY

During the course of pursuing contracts with Owner and while performing contract work in accordance with this agreement, each IPD Team Member agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the dealings with the Owner.

IPD Team Members shall not have a business interest as a partner, joint venturer, officer, director, more than five percent (5%) shareholder, advisor, employee, or otherwise ("Business Interest") in or undertake a business opportunity or form a business venture with any employee, officer or director of Owner or Sutter Health, without first disclosing such interest in writing to Owner and receiving its consent in writing.

IPD Team Members should not make or provide to be made any employment, gifts, extravagant entertainment, payments, loans, free work, substantially discounted work, or similar items of value to Owner's or Sutter Health's representatives, employees or their relatives. Similarly, IPD Team Members' employees, agents or subcontractors (or their relatives) should not receive any commissions, gifts, extravagant entertainment, payments, loans, free work, substantially discounted work or similar items of value from representatives of subcontractors, or material suppliers performing work on this project.

IPD Team Members agree to notify an appropriate uninvolved representative of Owner as soon as possible after becoming aware of any instance where there has been a failure to comply with the provisions of this policy.

Upon Owner's request, an IPD Team Member agrees to provide a Management Representation Letter in a form agreeable to Owner stating that they understand Owner has a Business Ethics Policy which provides that no Owner employees nor members of their family shall accept anything of value from contractors, suppliers, vendors or others transacting or seeking to transact business with Owner and that they are not aware of any situations violating that policy which has not been previously reported to the Owner as provided above.

CM/GC and Architect are expected to disclose in writing to Owner any business arrangements such as commission arrangements, referral fee arrangements, ownership interests, profit sharing arrangements, bonus arrangements, etc. that it's organization, any affiliated organization, or any representatives (or relatives of representatives) of their organization have with any other contractor, Owner's representative, or consultant involved in any way with the Owner's project.

**EXHIBIT 9**

**RESPONSIBILITY ALLOCATION MATRIX**

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## **EXHIBIT 10**

# **PRINCIPLES FOR RISK POOL STRUCTURE AND PROCEDURES**

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### **1. CREATION AND GENERAL ADMINISTRATION OF AT-RISK POOL ACCOUNT ESCROW, IF ANY**

- 1.1. Identity of Escrow Bank
- 1.2. Deposit Procedures
- 1.3. Permitted Investments by IPD Team of Funds in Account
- 1.4. Periodic Payments of Interest to IPD Team
- 1.5. Required Signatures for Release of Funds
- 1.6. Other Customary Escrow Matters

### **2. CALCULATION OF "PROFIT AMOUNTS" AND OTHER AMOUNTS UNDER IFOA**

- 2.1. CM/GC
- 2.2. Architect
- 2.3. Other Risk Pool IPD Team Members

### **3. RELEASES OF FUNDS FROM ACCOUNT**

#### **4. UPON FINAL COMPLETION**

- 4.1. Cost Overrun Sharing Over -Estimated Maximum Price
- 4.2. Other Details

#### **5. PRIOR TO FINAL COMPLETION**

- 5.1. Normal Course
- 5.2. Upon Default
- 5.3. Other Early Termination

### **6. CM/GC AND ARCHITECT AS "AGENT" FOR OTHER RISK POOL IPD TEAM MEMBERS**

### **7. APPLICABLE PAYMENT DETAILS AND PROTOCOLS**

### **8. DISPUTES**

### **9. OTHER NECESSARY OR APPROPRIATE DETAILS IDENTIFIED BY THE PARTIES**



**EXHIBIT 12**

**PROJECT SITE LEGAL DESCRIPTION**

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