

INTEGRATED PROJECT DELIVERY AGREEMENT

Rocky Mountain Institute



BUSINESS TERMS SHEET

The key business terms of this Agreement are set forth below and included in the Agreement:

Senior Management Team (SMT)	Owner:	
	Architect:	
	Contractor:	
Project Management Team (PMT)	Owner:	
	Architect:	
	Contractor:	
Base Target Cost	██████████	
Final Target Cost	\$ _____ (established by Amendment)	
Added Value Incentive Items	Exhibit B-3	
ICL amounts & ICL Percentages of Risk/Reward Team	Exhibit G	
Architect's Overhead Multiplier		
Contractor's Overhead Multiplier		
Change Order % (ICL Change Limitation Section 11.4.)	Work performed by or through Architect.	
	Work performed by or through Contractor.	
Date for Substantial Completion of the Project		
Date for Final Completion of the Project	(established by Amendment)	



EXHIBITS

Exhibit		Status at Contract Signing
Exhibit A	Definitions	Included
Exhibit B	Project Objective	
B-1	Base Program	Included
B-2	Base Target Cost Breakdown	Included
B-3	Added Value Incentive Items	Included
B-4	Milestones	Included
B-5	Implementation Document List	Included
B-6	Final Target Cost Breakdown	By Amendment
B-7	Basis of Design	Included
B-8	Construction Schedule	By Amendment
Exhibit C	Contract Task Matrix	Not Used
Exhibit D	General Conditions to the Agreement	Included
Exhibit E	Architect's Chargeable Costs	Included
E-1	Architect's Billable Rates	Included
Exhibit F	Contractor's Chargeable Costs	Included
F-1	Contractor's Billable Rates	Included
F-2	Equipment Rates	Included
Exhibit G	ICL Distribution Spreadsheet	Included
Exhibit H	Project Insurance Requirements	
H-1	Owner Provided Insurance	Included
H-2	Contractor Provided Insurance	Included
H-3	Architect Provided Insurance	Included
Exhibit I	Key Employees	Included
Exhibit J	Project Assessment Score Sheet	Not Used
Exhibit K	Payment Protocol	Included



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INTEGRATED PROJECT DELIVERY AGREEMENT

This Integrated Project Delivery Agreement (“**Agreement**”) is entered into on March 10, 2014 (“**Effective Date**”) among:

The Owner (“**Owner**”):

Rocky Mountain Institute
2371 Snowmass Creek Road
Snowmass, CO 81654-9118
Phone: (303) 567-8622

The Architect (“**Architect**”)

Zimmer Gunsul Frasca Architects LLP
1223 SW Washington Street
Suite 200
Portland, Oregon 97205
Phone: 503.224.3860

The Contractor (“**Contractor**”)

JE Dunn Construction
2000 S. Colorado Ave. Suite 12000
Denver, CO 80222
Phone: (303) 691-7630

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1. DEFINITIONS

1.1 Defined Terms. Defined terms and titles of Exhibits will be capitalized throughout the Agreement and the General Conditions to the Agreement (Exhibit D). The definitions for this Agreement are set forth in alphabetical order in Exhibit A. The Owner, Architect, and Contractor may be individually referred to as a Party and will be collectively referred to throughout this Agreement as the Parties. References to “subcontractor” or “consultant” in lower case refer to all subcontractors and consultants of any tier, including the Risk/Reward Subcontractors and Risk/Reward Consultants.

2. THE PROJECT

2.1 The Project. The Project is to design and construct an office building of approximately 15,800 square feet in size and will be a physical manifestation of Rocky Mountain Institute's work and values. The goal of the building design will be state-of-the-art facility designed to seek net zero energy. Third-party verification will be pursued through USGBC (LEED Platinum), and International Living Futures Institute (Living Building Challenge Petal Certification).

2.2 Project Objective. The Parties will jointly develop the Project Objective based upon the Owner's requirements, goals, and limitations. The Project Objective is comprised of the Base Program, Base Target Cost, Added Value Incentive Items, Implementation Documents, and Contract Time, and any other objectives agreed by the Parties. The Project Objective establishes the Project requirements and standards for measuring the Project's success. The various components of the Project Objective may be incorporated into the Agreement through Amendment upon recommendation of the Project Management Team (“PMT”) and approval of the Senior Management Team (“SMT”).

2.3 Project Phases and Stages. This Project has 3 Phases of Work: Validation Phase, Design/Preconstruction Phase, and Construction Phase. The Project may also be divided into one or more Project Stages based on geographic or other relationships. At any point in time, Work in different Project Stages may be in different Project Phases. For example, Work may be in the Construction Phase for one Project Stage while in the Design/Preconstruction Phase of a different Project Stage.

2.3.1 Prior Services Incorporated into this Agreement. When this Agreement is executed, portions of the Validation Phase services will have already been performed under separate Agreements for Professional Services between the Owner and the Architect and the Owner and the Contractor. Upon execution of this Agreement, the Agreements for Professional Services will automatically terminate and be replaced by this Agreement, and all services performed under those Agreements for Professional Services will be deemed to have been performed under this Agreement from their inception, with the exception of costs and payments thereof. All costs of, and payments for, Professional Services prior to March 10, 2014 will not be included in this Agreement or the Base Target Cost.

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

2.4.1 Jointly managing the Project through the PMT pursuant to Article 3;



2.4.2 Cooperating with and assisting the PMT and the Project Implementation Teams (“PITs”), subject to the limits of their respective professional expertise, licensing, and abilities;

2.4.3 Executing the Work according to Lean principles as described in the General Conditions (Exhibit D); and

2.4.4 Complying with all other obligations, terms, and conditions of the Contract Documents.

3. THE PARTIES

3.1 Relationship of the Parties. Although this Agreement establishes a relationship of mutual trust and good faith among the Parties, who recognize that their individual success is directly tied to the performance of other Project Participants, it does not create an agency relationship, fiduciary relationship, partnership, or joint venture among or between the Parties. The Architect and Contractor are each independent contractors solely responsible for directing and managing their own forces and services within their respective area of responsibility as described in Sections 3.4 through 3.5. The Parties acknowledge that this Agreement is not a design-build agreement and that each Party, and each individual entity that is a Party, is responsible for its own errors, omissions, or construction defects to the extent provided in this Agreement. Likewise, nothing contained in this Agreement makes any Party jointly and severally liable for the negligent acts or omissions of any other Party, except that: (a) the Contractor is responsible for the acts, errors, and omissions of its subcontractors, and the Architect is responsible for the acts, errors, and omissions of its consultants; and (b) the Incentive Compensation Layer (“ICL”) may be eroded if errors or omissions of Architect, Contractor, or those for whom they are responsible increase the incurred Chargeable Costs.

3.2 Key Employees. Architect and Contractor acknowledge that in entering into this Agreement, Owner has relied upon each assigning to this Project the Key Employees listed in Exhibit I, each of which must perform their respective work or services throughout the term of this Agreement. No Key Employee may be replaced, reassigned, or removed without Owner’s written approval, which will not be unreasonably withheld. Owner may require replacement of any Key Employee. Replacement Key Employees, whether replacement is required by Owner or agreed to by Owner, may not be replaced, reassigned, or removed except as allowed in this Section 3.2.

3.3 Owner. The Owner will actively participate in the Target Value Design process and serve as a member of the SMT and the PMT. The Owner is responsible for providing the Owner’s requirements, goals, and limitations that must be accommodated in the Project and actively participating in developing and documenting the Project Objective.

3.3.1 Owner Provided Information. Owner will provide a legal description of the property, access to all existing documentation, and all geotechnical or environmental impact reports, surveys, and other reports as may be required for proper performance of the Work and that are in Owner’s possession. Risk/Reward Team Members that participated in the Joint Site Investigation may rely upon the completeness and accuracy of the information provided by the Owner to the extent that it is not contradicted by the Joint Site Investigation or any additional documents and reports provided by Owner.



3.3.2 Permits and Fees. The Owner will pay for all entitlements, easements, assessments, and fees required for the development, use or occupancy of the Project. Permits and fees related to the Construction Work are a Chargeable Cost.

3.3.3 Testing and Inspections. Owner will be responsible for all third-party testing, inspections, or commissioning. Contractor will be responsible for any other inspections and reports required by law or by the Contract Documents. Test and inspection costs are Chargeable Costs.

3.3.4 Legal and Insurance Services. The Owner will provide legal counseling and insurance services for the Project but all Parties are responsible for their own respective legal and insurance services.

3.3.5 PMT Participation and Deliverables. The Owner will actively participate with the PMT and PITs in further development of a BIM execution plan, and other management protocols and tools.

3.3.6 Other Obligations. In addition to the above, the Owner will provide the PMT with timely decisions necessary to support the Project Objective, make timely payments, and perform all other Owner-designated tasks as required by this Agreement.

3.3.7 Financial Assurances. The Owner will, at the written request of the Contractor or Architect prior to commencement of the Construction or Design and thereafter, furnish to the Contractor or Architect satisfactory evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence will be a condition precedent to commencement or continuation of the Work. Satisfactory evidence will include a certified letter (or copy of the loan commitment letter) and supporting documents showing the Project is fully funded. Note that RMI's audited financial statements for the 2 years preceding the execution of this Agreement is public information that can be found on RMI's website (www.rmi.org).

3.4 Architect. The Architect is the Architect of Record and is responsible for designing the Work except for those portions of the Work that are being designed through Design-Build Subcontractors. All Design Services provided by Architect and its consultants must be consistent with the Base Program and meet or exceed the standard of care in Section 3.4.1.

3.4.1 Standard of Care. The Architect and its design consultants will perform the Design Services using that skill and care used by other competent licensed architects and engineers skilled in designing projects in Colorado that are similar in size, scope, quality, and complexity. Design Services performed in connection with this Agreement must also be in accord with all Applicable Laws. If any of the Applicable Laws conflict, the Architect will consult with the PMT on how the conflict should be resolved. Nothing in this Agreement requires the Architect or its design consultants to perform any services outside its license or contrary to laws, codes, or regulations. The Architect and its design consultants are not professionally responsible for the means, methods, sequences or procedures, or safety precautions, or programs in connection with the Construction Work.

3.4.2 Consultants. The Architect may retain design consultants to perform portions of the Design Services in accordance with Article 5. All design consultants will be



appropriately licensed, will sign and seal all architectural or engineering documents prepared by them to the extent required by Governmental Authorities, will perform all services in accordance with the standard of care in Section 3.4.1, and in the case of engineering consultants, will be the Engineer of Record for their respective scopes of work. All consultants will be identified in the Project roster. The Architect is responsible for managing its consultants and coordinating their respective services with services provided by Architect, other consultants, and any Design-Build Subcontractors.

3.4.3 Review and Integration of Design-Build Information. The PMT may elect to have Design Services performed under design-build subcontracts through the Contractor. The Architect and its consultants will provide all applicable performance specifications and design criteria for design-build Work and will review the design documents prepared by the Design-Build Subcontractors for integration into the Architect's design and for conformance with the Architect's design intent and Base Program. All Design-Build Subcontractors will be identified in the Project roster.

3.4.4 PMT Participation and Deliverables. The Architect will actively participate with the PMT in further development of a BIM execution plan and other management protocols and tools.

3.4.5 General Duties and Obligations. The Architect will perform all of its obligations under the Agreement including, but not limited, to the following:

- (a) Manage and coordinate all design submissions, questions, and responses to all applicable Governmental Authorities and all other reviewing and permitting agencies;
- (b) Sign and affix its professional seal on all documents prepared by Architect and arrange for its professional consultants to do the same for all documents prepared by consultant(s), to the extent required by Governmental Authorities;
- (c) Perform all Design Services required by the Project Objective and in accordance with Applicable Law and furnish all reports, affidavits, certificates, and other documents required by Governmental Authorities relating to those portions of the Project designed by the Architect and its consultants;
- (d) Utilize Target Value Design (Section 6.2.4);
- (e) Actively collaborate with Contractor, cross-functional teams, and other Project Participants throughout the design process to develop a complete set of coordinated Implementation Documents that meet or exceed the Base Program;
- (f) Engage in "pull-based" planning for design production using Lean project delivery methods to avoid advancing the design beyond what is called for in the work plan or identified as workable back-log;
- (g) Timely review and approve all Submittals in accordance with the requirements set forth in the General Conditions (Exhibit D) for conformance with the Implementation Documents;



(h) Provide the PMT with timely decisions necessary to support the Project Objective, make timely payments, and perform all other Architect-designated tasks as required by this Agreement;

(i) Provide construction administration, problem solving, and resolution of design issues during the Construction Phase; and

(j) Work with Contractor to deliver Record Drawings to Owner after Final Completion.

3.5 Contractor. The Contractor is responsible for providing preconstruction services and performing the Construction Work in accordance with the Implementation Documents and for supervising, directing, and managing the Construction Work in a manner that meets the Project Objective. All Work provided by Contractor must be consistent with the Project Objective and meet or exceed the standard of care in Section 3.5.1. Contractor is responsible for all means, methods, sequences, and safety procedures related to the Construction Work.

3.5.1 Standard of Care. Contractor will perform all Construction Work using its best skill and attention and in a timely, workman-like manner consistent with the degree of care and skill customarily exercised by prudent licensed general contractors performing Construction Work on projects of similar size, scope, quality, and complexity in Colorado. To the extent that the Contractor engages Design-Build Subcontractors, those subcontractors must comply with the standard of care in Section 3.4.1 for their respective Design Services except that Design-Build Subcontractors are also responsible for the means and methods of their respective portion of the Construction Work. Nothing in this Agreement requires the Contractor to perform any work or services outside its license or contrary to the laws, codes, or regulations of the Governmental Authorities.

3.5.2 Subcontractors. Contractor will retain all subcontractors required for performance of its Work in accordance with Article 5, which includes Risk/Reward Subcontractors and Standard Subcontractors. Contractor is responsible for, and will review, supervise, coordinate, and manage, the subcontracted Work. All subcontracted Work must be performed in accordance with the standard of care in Section 3.5.1 and the Implementation Documents.

(a) Design-Assist Subcontractors will actively engage in Target Value Design services (including Set Based Design, alternatives, cost and constructability analyses) and will construct their respective portions of the Project.

(b) Design-Build Subcontractors will provide Design Services for their respective scopes of the Work through appropriately licensed design professionals who are responsible for the design documents prepared by the Design-Build Subcontractor. Design-Build Subcontractors will coordinate their Design Services with those of the Architect, its design consultants, and other Design-Build Subcontractors. All design-build documents will be stamped and signed by a registered professional engineer or architect who is licensed in Colorado in the appropriate discipline. The Design-Build Subcontractors will furnish all reports, affidavits, certificates, and other documents required by any Governmental Authority that are required by the applicable building codes, laws, and regulations governing those portions of the Project.



3.5.3 PMT Participation and Deliverables. The Contractor will actively participate with the PMT and PITs in further development of a BIM execution plan, and other management protocols and tools.

3.5.4 General Duties and Obligations. The Contractor will perform all of its obligations under the Agreement including, but not limited, to the following:

(a) Assist the Architect during all Phases of design by providing Target Value Design services (including Set Based Design, alternatives, constructability and cost analyses) and by coordinating design information between Design-Build Subcontractors and the PITs;

(b) Actively collaborate with Architect, cross-functional teams, and other Project Participants throughout the design process to develop a complete set of coordinated Implementation Documents that meet or exceed the Base Program;

(c) Support and collaborate in Target Value Design (Section 6.2.4);

(d) Manage Project information by using a Building Information Model or Models related to Project cost and schedule databases and provide Model checking and validation, including clash detection and integration of subcontractor models;

(e) Collaborate with Architect to produce visualization aids such as renderings or computer generated video;

(f) Work with Architect to deliver Record Drawings to Owner after Final Completion;

(g) Manage, perform, oversee, and direct all Construction Work in accordance with the Implementation Documents and Project Objective through Final Completion of the Project;

(h) Coordinate work with Owner's Separate Contractors, including integration of the Separate Contractors into Project planning, scheduling, and coordination activities;

(i) Install, commission, and test as required, including ancillary construction necessary for installation, all Owner furnished materials and equipment;

(j) Engage in "pull-based" scheduling for Construction Work using Lean project delivery methods to avoid advancing the construction beyond what is called for in the work plan or identified as workable back-log;

(k) Timely prepare and submit Submittals that are in conformance with the Implementation Documents in accordance with the requirements set forth in the General Conditions (Exhibit D);

(l) Provide the PMT with timely decisions necessary to support the Project Objective, make timely payments, and perform all other Contractor-designated tasks as required by this Agreement;



(m) Propose a Quality Assurance/Quality Control (“QA/QC”) plan for approval by the PMT, and implement the approved QA/QC plan;

(n) Construct the Project in accordance with the Implementation Documents, including installation of Owner-provided materials and equipment; and

(o) Commission the Project with the assistance of the Architect, other Project Participants, and the independent commissioning agent, if any.

4. PROJECT MANAGEMENT

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

4.1.1 Authority and Responsibility. The PMT will manage and coordinate implementation of the Project Objective and provide direction to the Parties and to the PITs. Subject to the requirement that its decisions be unanimous, it is authorized to manage and direct the Project. The PMT is not, however, authorized to direct the actions of Owner’s, Architect’s, or Contractor’s employees and is not responsible for any failure of Contractor or Architect to perform their respective obligations. PMT decisions are final and not subject to review or modification except by subsequent PMT action or Owner’s Directive.

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

4.1.3 Interpretation of Base Program and Implementation Documents. The PMT has the sole authority to interpret the Base Program and Implementation Documents. All Requests for Information (“RFI”) or clarification must be processed through the Project Management Information System (“PMIS”). Work related to a RFI or clarification that impacts the Base Target Cost, Final Target Cost, or Contract Time may not proceed until it is discussed with the PMT and documented in a PMT Bulletin pursuant to Sections 4.1.6 and 4.3 issued through the PMIS. The PMT will resolve questions, discrepancies, ambiguities, and other clarifications regarding the requirements of the Base Program and Implementation Documents according to this Agreement, the Project Objective, and in the best interests of the Project.

4.1.4 Project Meetings. The PMT will hold Regular Meetings and Special Meetings as set forth below. The PMT will designate a person to schedule Regular Meetings, facilitate communications between the Project Participants, lead Regular and Special Meetings, prepare minutes of all PMT meetings, and prepare PMT Bulletins for execution by the PMT members.

(a) Regular Meetings. The PMT will establish a regular meeting schedule, which in general should occur weekly. “Regular Meetings” will be held to review, discuss, and evaluate the current status of the Project with respect to design issues, cost, and



schedule, and implement programs to improve overall Project performance. The Regular Meetings will be held separately from other meetings to assure proper management of the Project and encourage candor among the Parties. The Regular Meetings may include SMT members from each of the Parties, as well as any other necessary Project Participants that may be required to attend based on the meeting agenda.

(b) Special Meetings. "Special Meetings" may be requested by any PMT member to allow the PMT to address a matter of urgency. The Party requesting the Special Meeting will provide at least 1 Business Day's written notice, unless all PMT members agree to a shorter time frame. Notice of a Special Meeting will identify the issues to be addressed. If a PMT member is not able to attend either a Regular Meeting or Special Meeting because of a scheduling conflict, an alternate member of the Party may be designated pursuant to Section 4.1.7.

4.1.5 Direct Communications. The PMT members and the Parties' employees are encouraged to communicate directly as necessary to efficiently manage the Project and to execute each individual PMT member's responsibilities. All decisions affecting design, cost, or Contract Time must be made by the PMT jointly according to Section 4.1.6 and confirmed in writing in a PMT Bulletin.

4.1.6 Decision Making. PMT decisions must be by unanimous agreement. All PMT decisions that change the Base Target Cost, Final Target Cost, Contract Time, or ICL will be documented through a Change Order per Section 11.5. If the PMT is unable to reach agreement, the PMT will refer the issue to the SMT under Section 4.2.

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

4.2 Senior Management Team; Owner's Directive. Each Party will be represented by SMT members who will act on its behalf with respect to the dispute resolution procedures set forth in Article 15 and, upon request, to meet with the PMT at any Regular or Special Meetings. In addition, the SMT will periodically attend Regular Meetings to gain deeper familiarity with the Project and provide executive coaching and support to the PMT.

4.2.1 SMT Decisions. Any matters requiring SMT decisions or action will be decided by majority vote of the SMT, with Owner, Architect, and Contractor each having only 1 vote. Despite the above, the Owner will have the right to override the majority decision of the SMT by issuing a written "Owner's Directive." If an Owner's Directive causes the cost or duration of the Project to be increased, the Base Target Cost or Final Target Cost, Contract Time, and ICL, as applicable, will be adjusted pursuant to Article 11. Any dispute resulting from an Owner's Directive will be resolved under the dispute resolution provisions set forth in Article 15. Each of the Parties' SMT representatives is set forth in the Business Terms Sheet. A Party may appoint a replacement SMT member by providing written notice to the other Parties. SMT meetings will coordinate and facilitate PMT meetings, but will not vote in any SMT decisions.



4.3 Written Confirmation of Decisions. All decisions affecting design, cost, schedule, or reallocation of the Work will be recorded in writing by a PMT Bulletin per Section 4.1.5 and will be issued directly to the Contractor or Architect for distribution to the appropriate subcontractors and consultants. PMT Bulletins must be signed by all PMT representatives to signify their concurrence with the decision. A Change Order that adjusts the Base Target Cost, Final Target Cost, ICL, or Contract Time must be counter-signed by all PMT representatives and will be deemed a PMT Bulletin as well. All other decisions will be recorded through written meeting minutes that will be prepared by either the Contractor, the Architect, or the Owner, agreed to advance. PMT decisions and meeting minutes will be circulated to the Project Participants and maintained in the PMIS.

4.4 Personnel Management. The PMT will not supervise or control any person the Owner, Architect, or Contractor employs or contracts with in connection with the Project. The PMT may, however, require any Party to remove from the Project any person employed in connection with the Project, or personnel of companies that any Party contracted with, if it determines that the presence of that person is detrimental to achievement of the Project Objective. The Owner, Architect, and Contractor will provide personnel according to staffing plans approved by the PMT. The Parties will not remove or reduce involvement of any personnel set forth in an approved staffing plan without the PMT's written consent, which will not be unreasonably withheld. Staffing plans may be prepared and approved in phases, as directed by the PMT.

5. SUBCONTRACTS AND CONSULTING AGREEMENTS

5.1 Written Agreements. The Work performed under this Agreement will be executed by various Project team members, which will include subcontractors, suppliers, Vendors, and consultants. Consultants, subcontractors, and Vendors may be Risk/Reward Team Members or may be Standard Subcontractors or Standard Consultants. All subcontractors and consultants will be retained through subcontracts to the Contractor or consulting agreements to the Architect. Risk/Reward Team Members will be engaged through subcontracts, purchase orders (for Vendors), or consulting agreements that incorporate the risk/reward and liability allocation provisions of this Agreement. All Risk/Reward Team Members retained by Contractor or Architect will be engaged through agreements approved by the Parties, the terms of which may not be modified without the PMT's written approval.

5.1.1 Selection. Each Party will provide the PMT, in writing, with the names of persons or entities proposed to perform any portion of the Work. Within 5 Business Days of receipt, the PMT will provide a written response if it objects to the proposed person or entity because of the proposed person's or entity's qualifications, educational history, work history, or other reasonable basis. Failure of the PMT to timely object or recommend other potential subcontractors, suppliers, Vendors, or consultants will constitute the PMT's acceptance. Key consultants, subcontractors, Vendors, and suppliers will be procured early during the Validation Phase. Those consultants, subcontractors, Vendors, and suppliers that were not procured during the Validation Phase will be procured sometime during the Design/Preconstruction Phase or, in some cases, early during the Construction Phase.

5.1.2 Transparency in Negotiating or Bidding. Standard Subcontractors and suppliers will be selected on an open bid or negotiated basis as determined by the PMT. The process will be open and transparent with subcontractors and consultants submitting detailed breakdowns of their bids or proposals. Subcontractors, Vendors, and consultants that are



Risk/Reward Team Members will provide detailed information concerning their respective Chargeable Costs, profit included in the ICL, and the profit percentage cap for Change Orders. The ICL Distribution Spreadsheet (Exhibit G) will be amended to incorporate the Risk/Reward Team Members' ICL and ICL Percentages. Standard Subcontractors and suppliers will provide detailed information about their respective bids or proposals including costs associated with the Work and overhead and profit for Change Orders.

5.1.3 **Contract Award.** Upon completion of the selection process for each subcontractor or consultant, the Contractor or Architect will make a written recommendation to the PMT for contract award. If the PMT members objects to a person or entity on one of the bases set forth in Section 5.1.1, the objecting PMT member will propose another person or entity to which the PMT has no reasonable objection. A Party will not contract with a proposed person or entity reasonably and timely objected to by the PMT. Substitutions of a subcontractor or consultant previously selected and approved by the PMT will not be made without PMT approval.

5.2 Licensing Requirements. All subcontractors and consultants will be properly licensed for their respective portion of the Work.

5.3 Required Pass Through Provisions. The Parties must pass the following provisions through to subcontractors, suppliers, Vendors, and consultants in their respective agreements as set forth below:

5.3.1 **Risk/Reward Team Members**

(a) **Waiver of Liability and Claims.** The Contractor and Architect will incorporate clauses substantially similar to Sections 12.1 and 12.2 regarding waiver of liability and claims against the Parties and other Risk/Reward Team Members;

(b) **Indemnification.** Substantially similar indemnity provisions to those set forth in Section 12.3 will be incorporated into Risk/Reward Team Member subcontracts, Vendor agreements, and consulting agreements. The Owner, Contractor, and Architect must be indemnified Parties under all such provisions;

(c) **Compensation and ICL.** Those subcontractors, Vendors, and consultants that are Risk/Reward Team Members will be subject to substantially similar compensation and ICL provisions set forth in Articles 7 and 8;

(d) **Change Orders and Permitted Delays.** Those subcontractors, Vendors, and consultants that are Risk/Reward Team Members will be tied to similar provisions governing Contract Time under Article 10 and changes under Article 11; and

(e) Those provisions required by Section 5.3.2.

5.3.2 **All Subcontracts, Purchase Orders, and Consulting Agreements.**

(a) **Contract Flow-through.** By appropriate written agreement, the Contractor and Architect will require each subcontractor, supplier, and consultant, to the extent of the Work to be performed by the subcontractor, supplier, or consultant, to be bound to the Contractor or Architect by terms of the Contract Documents, and to assume toward the



Contractor or Architect all the obligations and responsibilities that the Contractor or Architect assumes toward the Owner through those documents. Each subcontract, purchase order, and consulting agreement will preserve and protect the rights of the Parties under this Agreement with respect to the Work to be performed by others so that subcontracting will not prejudice the Parties' rights. Where appropriate, the Contractor and Architect will require each subcontractor, supplier, and consultant to enter into similar agreements with lower-tier subcontractors, suppliers, and consultants. In addition to this general flow-through requirement, Contractor and Architect are specifically required to flow through the requirements in Section 5.3.2(b) through 5.3.2(f) as specified;

(b) **Assignment.** All subcontracts, purchase orders, and consulting agreements will include assignment provisions allowing assignment by the Party to Owner after termination of this Agreement by Owner for cause pursuant to Section 16.3 and provided that Owner chooses to accept the assignment of the subcontract, purchase order, or consulting agreement. If the subcontract, purchase order, or consulting agreement is assigned to Owner as a result of a termination for cause, and the Work has been suspended for more than 30 days, the subcontractors', suppliers', or consultants' compensation will be equitably adjusted for increases in cost resulting from the suspension;

(c) **Insurance.** Insurance provisions equivalent to those applicable in Exhibit H-1, through Exhibit H-3 will be included in the subcontracts and consulting agreements;

(d) **Indemnification.** The Contractor and Architect will each include indemnification provisions into the subcontracts and consulting agreements of each Standard Subcontractor and Standard Consultant that require the Standard Subcontractor and Standard Consultant to defend and indemnify the Owner, Architect, Contractor, and all Risk/Reward Team Members from all claims, damages, and liability arising out of or related to their respective work or services, including breach of contract, bodily injury, personal injury, and property damage, but only to the extent caused by the breach of contract or negligent acts or omissions of the Standard Subcontractor or Standard Consultant, or anyone directly or indirectly employed by any of them and for whose acts they may be liable;

(e) **Dispute Resolution Proceedings.** Contractor will require all subcontractors, Vendors, and suppliers, and Architect will require all consultants, to be subject to the dispute resolution proceedings in Article 15;

(f) **Records and Auditing.** Contractor will require all subcontractors, Vendors, and suppliers, and Architect will require all consultants, to be bound by the records retention and auditing provisions in Section 9.13; and

(g) **Confidentiality and Non-Disclosure.** Contractor will require all subcontractors, Vendors, and suppliers, and Architect will require all consultants, to be bound by the provisions of Section 17.2 prior to receiving any information regarding this Project.

5.4 Separate Contractors

5.4.1 **Non-Risk/Reward Separate Contractors.** The Owner may retain Separate Contractors to perform work or services related to the Work under this Agreement. The Owner is responsible for the timeliness and quality of the work and services of its Separate Contractors. The Contractor and Architect will coordinate their Work with the work and services



of the Separate Contractors to allow for smooth and efficient workflow and integrated work product.

5.4.2 Owner's Risk/Reward Subcontractors, Vendors, and Consultants. The Owner may retain vendors, contractors, or consultants that are Risk/Reward Team Members although paid directly by Owner. These vendors, subcontractors, and consultants will be retained under agreements that are substantially similar to the IPD Subcontract Agreement or the IPD Consultant Agreement used by Architect or Contractor, as appropriate. Owner's Risk/Reward vendors, contractors, and consultants will be compensated on the same basis as a Risk/Reward Subcontractor or Risk/Reward Consultant using Exhibit E or Exhibit F as appropriate, will be subject to direction from the PMT and SMT, and will benefit by and be obligated by the waivers, limitations, and other terms applicable to other Risk/Reward Team Members. The work scope of Owner's Risk/Rewards Subcontractors, Vendors, and Consultants will be within the Project Objective and their Chargeable Costs will be included in all calculations of Final Actual Cost and Estimated Final Cost, their ICL will be subjected to the adjustments in Article 8.

6. RESPONSIBILITIES BY PHASE

6.1 Validation Phase. As determined by the PMT, the Architect and Contractor will procure certain key subcontractors and consultants to assist in the required design and construction services of the Validation Phase.

6.1.1 Joint Site Investigation. The Owner and Risk/Reward Team Members will conduct investigations at or concerning the Project site ("Joint Site Investigation") to review all existing site information; perform investigations and surveys; document all site-related information needed to design and construct the Project; verify existing conditions within the Project site, including all points of connection, and the accuracy of existing surveys and other documentation provided by the Owner.

6.1.2 Base Program. The Owner and Risk/Reward Team Members will jointly develop the Base Program, which will be part of the Project Objective and is included in the Agreement as Exhibit B-1. The Base Program will be based on the Owner's Project requirements and will further define the final quality, quantity, functionality, aesthetics, sustainability, and other Project requirements approved by the PMT. The Project scope will include all elements explicitly included in the Base Program and those that are reasonably inferable from the Base Program. The Added Value Incentive Items will not be included in the Base Program.

6.1.3 Base Target Cost. The Owner and Risk/Reward Team Members will jointly and collaboratively develop a Base Target Cost that incorporates all Chargeable Costs, to design and construct the Project based on the Base Program. The Base Target Cost will be used as the threshold for which the Added Value Incentive Items and Base Program are compared in order to determine whether additional ICL is earned during the Design/Preconstruction Phase. The Base Target Cost is part of the Project Objective and included in the Agreement as Exhibit B-2.

(a) Project Contingency. In developing the Base Target Cost, the PMT will include an appropriate amount for Project contingency to cover costs for issues such as minor revisions to design layout due to errors or omissions, coverage for Contractor's scope



gaps during procurement of subcontractors, unanticipated field conditions that do not constitute an Unforeseen and Differing Site Condition, or re-sequencing of the Work and/or acceleration of the Project schedule for improvement in the Project outcome. The Project contingency is not a separate fund, but will be tracked as a separate line item and used as a cost management tool. The Project contingency will be carried over into the Final Target Cost, as necessary, for use during the Construction Phase. The PMT will determine when and how the Project contingency will be used or allocated among cost model line items. The Project contingency will be taken into consideration as part of the shared cost savings after Final Completion of the Project. However, the Owner may not require the Project contingency to be used for any of the conditions set forth in Section 11.1.

(b) Allowances. In developing the Base Target Cost, the PMT may include appropriate Allowances. Included Allowance items will be specifically listed in the Base Target Cost Breakdown (Exhibit B-2). The Final Target Cost will include any Allowance items included in the Base Target Cost that were not reconciled to actual cost prior to setting of the Final Target Cost. Prior to each ICL distribution Milestone, the Allowance items that have become fixed will be reconciled by Change Order, increasing the Base Target Cost or Final Target Cost if the fixed amount exceeds the Allowance amount or decreasing the Base Target Cost or Final Target Cost if the fixed amount is less than the Allowance amount. Unspent Allowances accrue to the Owner through Change Order upon reconciliation.

(c) Termination for Failure to Agree on a Base Target Cost and Milestones. If the Parties are unable to agree on a Base Target Cost and Milestones to complete the program described in Exhibits B-1 and B-4, the Owner may terminate this Agreement and must pay the Architect, and Contractor for all Chargeable Costs incurred prior to termination but has no obligation to pay for any ICL that might be due had the termination not occurred. The Parties will provide Owner with all designs, specifications, models or other materials developed by the Parties for the Project, which are the property of Owner, and Owner agrees to defend, indemnify and hold harmless Architect, and Contractor from any and all liability or damages proximately caused by Owner's use of these documents for the Project or any other Project.

6.1.4 Milestones. The Owner and Risk/Reward Team Members will jointly develop and document Milestones based on the Contract Time set forth in the Business Terms Sheet. The Milestones are part of the Project Objective and is included in the Agreement as Exhibit B-4. The Milestones will be used as a management tool.

6.1.5 ICL Distribution Spreadsheet. The PMT will develop the ICL Distribution Spreadsheet and update it to include those Risk/Reward Team Members procured during the Validation Phase per Article 5 and indicate the respective ICL and ICL Percentages of the Risk/Reward Team. The ICL Distribution Spreadsheet (and its updates) will be amended into the Agreement as Exhibit G.

6.2 Design/Preconstruction Phase. During the Design/Preconstruction Phase, the PMT will oversee development of the Implementation Documents for the Project in accordance with the Base Program and will complete the following design and preconstruction activities.

6.2.1 Procurement of Other Project Team Members. During the Design/Preconstruction Phase, the remaining key subcontractors, Vendors, suppliers, consultants, and Separate Contractors will be contracted by the Owner, Contractor, and



Architect pursuant to Article 5. The Project roster will be updated by the PMT to include all Project Participants.

(a) Early Release and Prefabrication. The PMT may authorize early release of certain systems, Phases, or prefabrication of materials or equipment.

6.2.2 Project Implementation Teams. The PMT will develop, guide, and direct PITs that are responsible for designing and implementing the Project consistent with the Base Program, Base Target Cost, and Added Value Incentive Items. The PITs will be organized into interdisciplinary, cross-functional teams that will vary depending upon the stage of the Project. These cross-functional teams may be temporary for certain issues or may be formed for the duration of the Project. The cross-functional teams will collaborate regarding Project elements, including site use and improvements, selection of materials, building systems, and equipment. The PITs will meet regularly with the PMT throughout the Target Value Design process to evaluate functionality, constructability, sustainability, life cycle cost analysis, and Added Value Incentive Items. The PITs will not have decision making authority, but the PMT will actively seek and consider input and counsel of the PITs.

(a) Cost Model. With the assistance of the PITs, the PMT will develop a detailed cost model based on the Base Target Cost breakdown and the profit of each Risk/Reward Team Member. The cost model will track paid Chargeable Costs, incurred but unpaid Chargeable Costs, current estimate of future Chargeable Costs, the percentage of the Work completed, Value Added Incentive items, any ICL distributions, the predicted variance of each line item, and the projected variance from the Base Target Cost. The cost model will be updated by the Contractor based on a schedule developed by the PMT and will be reviewed and approved by the PMT.

(b) Project Scheduling. The PMT and PITs will jointly develop an initial pull-based schedule per Section 10.4 based on the design requirements and the Substantial Completion date. The pull-based schedule will define the flow of developing the Implementation Documents, avoiding bottlenecks, or advancing aspects of the design beyond what has been anticipated and approved for any given time period. The PMT and PITs will jointly develop Phase Plans per Section 10.4.1 based on the initial pull-based schedule for submission and approval by the PMT. Under PMT direction, the applicable Project Participants will collaboratively create and update work plans for Design/Preconstruction Phase activities per Section 10.4.2. The Parties and applicable Project Participants will only perform Work that is approved on the applicable work plan or has been identified as workable backlog.

6.2.3 Building Information Modeling Execution Plan. Early in the Design/Preconstruction Phase, the PMT and other relevant consultants, Vendors, suppliers, and subcontractors will participate in a BIM workshop to establish a BIM execution plan that addresses the uses specified in the General Conditions (Exhibit D) or identified in the Base Program. The BIM execution plan will be approved by the PMT.

6.2.4 Target Value Design Process. The PMT and PITs will utilize the Target Value Design process to optimize and coordinate the design in accordance with the Base Program and endeavor to create additional value by identifying alternative systems, means, and methods to reduce capital expenditures and life-cycle costs, analyze and improve work-flow, improve constructability and functionality, provide more operational flexibility, and endeavor to



reduce the actual Chargeable Costs while maintaining or increasing the quality and overall function of the Project.

(a) The agreed Base Target Cost is a design criteria.

(b) To the greatest extent practicable, the Contractor and its subcontractors will provide continuous cost projections and rapid cost evaluation of proposed design alternatives to the PITs and PMT throughout the Target Value Design process to assist the Risk/Reward Team Members, and the PMT, in making informed decisions about proposed design solutions.

6.2.5 Innovation and Added Value Incentive Program. Owner wants to encourage innovation and to increase Project value without exceeding the Base Target Cost. If savings are generated during the Design/Preconstruction Phase by reducing the estimated cost of the Base Program below the Base Target Cost, the PMT will recommend including Added Value Incentive Items to the Base Program and the ICL will be adjusted in accordance with Section 8.8. The initial list of Added Value Incentive Items will be included as Exhibit B-3. Owner may update the list of potential Added Value Incentive Items that it would favorably consider, and the PMT may recommend other items or innovations that Owner, in its sole discretion, may choose to have added to the Base Program as Added Value Incentive Items.

6.2.6 Government Regulations. Architect, Architect's consultants, or the Design-Build Subcontractors, as applicable, will identify and determine the meaning and effect of all applicable building code provisions and other building restrictions and requirements of Governmental Authorities. The Architect, in conjunction with the Contractor and any Design-Build Subcontractors, will assist the Owner with filing all required applications, drawings, specifications, calculations, or other documents required for permits.

6.2.7 Implementation Documents. The PMT will finalize design in accordance with Base Program and within Base Target Cost and obtain a permit for the Construction Work. The Implementation Documents list will be incorporated into the Project Objective as Exhibit B-5.

6.2.8 Final Target Cost and Milestones for ICL Distribution. The PMT will establish the Final Target Cost based on Implementation Documents and incorporate the Final Target Cost breakdown into the Project Objective as Exhibit B-6 through Amendment to the Agreement. The Final Target Cost cannot exceed the Base Target Cost and must include any Added Value Incentive Items elected by Owner and incorporated by the PMT during the Design/Preconstruction Phase. The Final Target Cost supersedes the Base Target Cost. Once the Final Target Cost is amended into the Agreement, all further ICL Milestone distributions will be measured against the Final Target Cost.

(a) Update ICL Distribution Spreadsheet. The PMT will update the ICL Distribution Spreadsheet to include all Risk/Reward Team Members' ICL and ICL Percentages, and will establish Milestone ICL distributions for the Construction Phase. The updated ICL Distribution Spreadsheet will be incorporated into the Agreement through Amendment as Exhibit G and will supersede all prior versions of Exhibit G.

(b) Update Cost Model. The PMT will update the cost model to incorporate the Final Target Cost.



(c) Update Milestones. The PMT will update the Milestones, if necessary, to incorporate all Construction Work reflected in the Implementation Documents.

6.3 Construction Phase. During the Construction Phase, the remainder of the consultants, subcontractors, suppliers, and Separate Contractors will be procured and the Construction Work will be performed in accordance with the permitted Implementation Documents.

6.3.1 Building Information Model. The BIM will be continually updated throughout the Construction Phase in accordance with the BIM agreement so that the Model strives to capture the “as-built” condition, and when completed will be part of the Record Drawings.

6.3.2 Commissioning. The Contractor, in conjunction with Architect and other necessary Project Participants, and Owner’s maintenance personnel, will schedule and oversee the final testing and start-up of utilities, operational systems, and equipment, and assist the Owner with the building commissioning. All inspections and testing will be conducted by the Owner, any third-party commissioning agent, and required Governmental Authorities. During commissioning and before Final Completion, the Contractor and other necessary participants will oversee the subcontractor operation, adjustment, and balancing of all equipment, and training of Owner’s employees in the correct operation and maintenance of equipment.

6.3.3 Close-Out. Before Final Completion of the Project, the Architect will provide Owner with the Record Drawings. The Contractor will provide the Shop Drawings, operation and maintenance manuals, references, warranties, attic stock, and keying schedules as required by the Contract Documents. If a document exists digitally, Contractor will provide Owner with an electronic copy in the document’s native format. If the document exists in hard copy, Contractor will provide Owner with a hard copy in addition to a native format electronic copy.

6.3.4 Final Payment and Determination of ICL and Shared Savings. After Final Completion of the Project, the PMT will determine final ICL distribution and any shared savings for the Risk/Reward Team Members per Section 8.9.2.

7. COMPENSATION

7.1 General. The Architect’s and Contractor’s compensation for the Work is the sum of their respective Chargeable Costs incurred for the Project to the extent allowed in Exhibit E and Exhibit F (including overhead on the basis set forth in Section 7.1.1), and subject to Project success, their respective percentage of the adjusted and available ICL. Overhead is based on rates agreed with Owner and covers all costs incurred by the Architect or the Contractor, of any nature, other than payable as Chargeable Costs, and may not include any amount of profit. Affiliates of a Party, if employed as a subcontractor or consultant, will be paid on the same basis as the parent company. An affiliate is any organization that is owned directly or indirectly, in whole or in part, by the parent of a Party, or which is owned in whole or in part by a Party, or a Party’s owners.

7.1.1 Overhead. Overhead for the Architect and Risk/Reward Consultants is paid as an agreed multiplier on their hourly rates in Exhibit E (Architect and Risk/Reward Consultants). Overhead for the Contractor and Risk/Reward Subcontractors is paid as an



agreed multiplier on its Chargeable Costs as agreed in Exhibit F (Contractor and Risk/Reward Subcontractors), at the fixed rate shown in the Business Terms Sheet.

7.1.2 Owner's Costs. The Owner's costs will be tracked separately by the Owner and are not included in the Base Target Cost or Final Target Cost. However, the following costs incurred by the Owner may be counted towards the Final Target Cost:

(a) The Owner's costs resulting from damage to the Work itself prior to Substantial Completion caused by Architect's professional negligence, Contractor, or anyone for whom either is responsible, but only to the extent such costs are not paid by an insurer. This provision captures those Owner's costs resulting from damage to the Work other than the Chargeable Costs of Architect or Contractor; and

(b) The Owner's costs to third parties necessary for the completion of the Work, such as permitting agencies, inspectors, testing labs, or geotechnical consultants, to the extent those costs result from a negligent error, omission, or delay caused by Architect, Contractor, or anyone for whom either is responsible.

7.2 Contractor Self-Performed Work.

7.2.1 Negotiated Trade Work. Owner, at its sole discretion, may choose to directly negotiate the performance of trade work with Contractor for a fixed profit plus overhead allowed under Section 7.1.1. The fixed profit amount will be added to the Contractor's ICL and the respective ICL Percentages of the Risk/Reward Team Members will be proportionately adjusted. This amount of overhead and profit awarded to Contractor for the self-performed trade work is Contractor's sole compensation for this work, which will not be marked up for any additional overhead or profit.

7.3 Incentive Compensation Layer. The ICL and the ICL Percentages of the Risk/Reward Team Members will be set forth in Exhibit G, as amended. The ICL can be modified by Change Order and may be disbursed, if earned, during the Design/Preconstruction Phase and Construction Phase based on the Milestone distributions also set forth in Exhibit G and subject to the provisions set forth in Article 8. Architect and Contractor will each be responsible for paying their own respective Risk/Reward Team Members their respective portion of any distributed ICL.

7.3.1 Scope Swaps. The PMT may choose to reduce the work scope of a Project Participant and correspondingly increase the scope of work of another Project Participant to capture the benefits, without limitation, of innovative designs, processes, or technologies. If the PMT determines that the increased scope for a Risk/Reward Team Member creates a significant financial inequity, it may use a portion of any savings from the innovative design, process, or technology to equitably increase the ICL of that Risk/Reward Team Member, and then recalculate the ICL and the ICL Percentages of each Risk/Reward Team Member. All changes under this Section will be documented in a Change Order.

8. RISK/REWARD PROGRAM

8.1 General. The Risk/Reward Team Members have agreed that 100% of their potential ICL will be increased or decreased based on overall Project performance, as described in this Article. Although a portion of ICL may be paid at a Project Milestone, ICL is not earned



until Final Completion of the Project and all adjustments to ICL have been made. No ICL increase for shared savings will be paid prior to Final Completion of the Project.

8.2 Contractor's ICL Pass-through. Contractor's ICL is the sum of the ICL attributable to its Work and the ICL attributable to the Work of its Risk/Reward Subcontractors. Contractor will distribute to its Risk/Reward Subcontractors their respective proportions of the Contractor's ICL. The ICL of subcontractors that join the Risk/Reward Team after execution of this Agreement will be added to Contractor's ICL and all ICL Percentages adjusted proportionately.

8.3 Architect's ICL Pass-through. Architect's ICL is the sum of the ICL attributable to its Work and the ICL attributable to the Work of its Risk/Reward Consultants. Architect will distribute to its Risk/Reward Consultants their respective proportions of the Architect's ICL. The ICL of consultants that join the Risk/Reward Team after execution of this Agreement will be added to Architect's ICL and all ICL Percentages will be adjusted proportionately.

8.4 ICL Distribution Schedule. For each Project Stage, Exhibit G lists the Milestones and the percentage of a Risk/Reward Team Member's ICL that is payable, subject to payment pre-conditions, at each Milestone.

8.5 Milestone ICL Payments.

8.5.1 Milestone Achievement. When a Milestone is achieved, the PMT will assess whether: (1) the Project is estimated to achieve Project Final Completion within the Contract Time; and (2) whether the Estimated Final Cost is less than or equal to the Base Target Cost (or if the Final Target Cost has been set, the Final Target Cost).

(a) If both pre-conditions are true, the ICL Milestone payment scheduled in Exhibit G will be paid along with the Chargeable Costs for that period.

(b) If either or both of the payment pre-conditions are not met, then the scheduled Milestone payment will be deferred, and not paid. If at a later Milestone, both pre-conditions are met, the Milestone payment will include the scheduled Milestone payment plus the deferred Milestone payment or payments.

(c) Increases to the ICL due to Project performance are not included in Milestone ICL payments, but are only paid at Final Completion of the Project.

8.6 Milestone Estimate. When a Milestone is achieved, the Contractor and Architect will prepare a proposed estimate that: (i) is current as of date of Milestone achievement; (ii) contains all elements and costs that are included within either the Base Target Cost or Final Target Cost; and (iii) is based on the actual incurred Chargeable Costs plus the estimated cost to complete the Work. Within 5 Business Days after receipt of the proposed Milestone estimate, the PMT will either accept the proposed Milestone estimate or request verification from an independent cost consultant. If independent verification is requested, the PMT will meet with an independent cost consultant chosen by the Owner who will review the proposed Milestone estimate within 5 Business Days and either accept it, accept it with modification, or prepare an independent cost estimate. The independent cost estimate must follow the same structure as the proposed Milestone estimate and may not include any items



not contained within either the Base Target Cost or Final Target Cost, increase any contingencies, or withhold any funds not previously agreed to by the PMT.

8.7 Milestone Overpayment. If, at any time during the Design/Preconstruction Phase or Construction Phase, the amount of the distributed Milestone ICL payments exceed the ICL, as adjusted, then Architect and Contractor will reimburse the Owner for any overpayment of ICL, including amounts of overpaid ICL that are paid to their subcontractors, Vendors, and consultants. Reimbursement will be made within 10 Business Days of receiving written demand from Owner. Also, if at any time after 50% completion of the Construction Phase the Owner reasonably determines that the aggregate Chargeable Costs are likely to exceed the Final Target Cost, the Owner may offset the applicable amounts of prior Milestone ICL payments against succeeding payments of Chargeable Costs to Contractor and Architect, respectively. Any offset under the prior sentence will be reversed after Project Final Completion if the actual Chargeable Costs do not exceed the adjusted Final Target Cost.

8.8 Design/Preconstruction Phase ICL Adjustments.

8.8.1 General. Owner and the Risk/Reward Team intend to use Target Value Design processes to improve Project design, eliminate waste, and optimize Project value. The Design/Preconstruction Phase ICL adjustments are designed to promote innovation at the time when change is least disruptive to the Project and when savings can be most efficiently used by the Owner.

8.8.2 Added Value Incentive Items. Owner has developed a list of Added Value Incentive Items that it would like to include in the Project without increasing the Base Target Cost.

8.8.3 ICL Increase by Adding Value. The Parties have agreed to use a Value Cost Model. After Validation, Base Target Cost and Incentive Compensation Layer (ICL) are set. If, during the Design/Preconstruction Phase, the projected cost is reduced through innovation and efficiency, then 75% of the savings will be used to purchase additional scope through Added Value Incentive Items and 25% is used to increase the potential ICL. The Base Target Cost is decreased by the amount the ICL is increased. This can occur multiple times. When the Design/Preconstruction Phase is complete, with the design finalized and all key design decisions made, the adjusted Base Target Cost becomes the Final Target Cost.

8.8.4 Limit on Final Target Cost. The Final Target Cost cannot exceed the Base Target Cost, unless adjusted by Change Order.

8.9 Construction Phase ICL Adjustment.

8.9.1 General. Owner and the Risk/Reward Team want to reduce rework, improve subcontractor productivity, and generally execute the Construction Phase as efficiently as possible. Thus, design innovation is not incentivized during this Phase to avoid change that could disrupt construction efficiency.

8.9.2 Final Completion of the Project. If, at Final Completion of the Project, the Final Actual Cost (including reconciliation of Allowances) is less than the Final Target Cost, then the ICL is increased by 50% of the difference. If after reconciliation of Allowances the Final Actual Cost exceeds the Final Target Cost, then the ICL will be reduced, dollar for dollar, by the



amount of the difference. If, after this reduction, the amount of ICL that had previously been distributed at Milestones exceeds the reduced ICL, then the Architect and Contractor will, within 15 days of Project Final Completion, repay Owner the amount of the overpayment, in proportion to their ICL Percentages.

9. PAYMENT

9.1 Chargeable Costs. The Architect's and Contractor's Chargeable Costs are chargeable to the Base Target Cost and Final Target Cost. The Architect's Chargeable Costs are set forth in Exhibit E. The Contractor's Chargeable Costs are set forth in Exhibit F. Consultants and subcontractors who are Risk/Reward Team Members will use the same Chargeable Cost standards applied to Architect and Contractor, respectively. No costs will be charged to the Project that are not actually incurred by the Project Participants.

9.2 Periodic Payments. Payment applications will be prepared by the Architect and Contractor as required by Exhibit K and Owner will make payments accordingly.

9.3 Final Payment. The Owner will make Final Payment 30 Calendar Days after Final Completion of the Project and determination of the ICL adjustments per Section 8.9.2. Final Payment will include all unpaid Chargeable Costs, plus the Risk/Reward Team Members' respective ICL amount, if any. The PMT must approve the payment application for Final Payment. Final Payment does not waive Owner's right to later object to defective design, materials, or workmanship; waive any warranty rights the Owner may have; or release any Party from its indemnification obligations in Section 12.3.

9.4 Materials and Equipment. Periodic payment applications may include materials and equipment delivered and suitably stored on-site for subsequent incorporation into the Construction Work or, with PMT's prior approval, suitably stored off-site at an insured warehouse that is approved by the PMT. Payment for stored materials and equipment will be conditioned upon compliance with Owner's procedures for protecting the Owner's interest and establishing Owner's title to the materials and equipment. Contractor will not make advance payments to subcontractors or suppliers for stored materials or equipment without PMT approval.

9.5 Supporting Documents. Each payment application will be accompanied by the following:

9.5.1 Sufficient documentation supporting the Chargeable Costs as described in the Payment Protocol (Exhibit K), and other documentation reasonably required by the PMT or the Owner;

9.5.2 Duly executed conditional waiver and release forms complying with Applicable Law covering all Work performed during the billing period by the Architect, Contractor, subcontractors, consultants, suppliers, or any other party entitled to record or serve a stop payment notice or mechanics lien; and

9.5.3 Certification that Architect and Contractor have no knowledge of any recorded stop payment notices or mechanics liens with respect to the Work performed by others and that all subcontractors, consultants, and suppliers have been paid to date or will be paid with the proceeds for Work covered under the payment application. If Architect or Contractor has



knowledge of any recorded stop payment notices or mechanics liens, it will certify as to what it knows of the stop payment notices or liens and covenant to bond or otherwise discharge or expunge the stop payment notices or liens per Section 12.3.5.

9.5.4 In addition to the above, within 5 Business Days after receipt of Final Payment, the Architect and Contractor will provide Owner a duly executed unconditional waiver and release form complying with Applicable Law covering all services and work performed by them and by their subcontractors, consultants, suppliers, or any other party entitled to record or serve a stop payment notice or mechanics lien with respect to any labor, services, equipment, or material rendered or provided for the Project.

9.6 Right to Withhold. Owner may refuse to approve a payment application or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or any part of a prior payment application to the extent the PMT determines, or the SMT determines by majority vote, is necessary to protect Owner from loss arising out of or resulting from:

9.6.1 The Willful Default of the Party submitting the invoice;

9.6.2 Failure of Contractor, or its subcontractors, to make timely payments to their respective subcontractors and suppliers for labor, materials, or equipment, provided Owner has made payment as required by this Agreement;

9.6.3 Failure of Architect, or its consultants, to make timely payments to their respective consultants for Design Services rendered in connection with the Project, provided Owner has made payment as required by this Agreement; and

9.6.4 Insufficient documentation, erroneous estimates of value of the Work performed, or other incorrect statements in a payment application.

If the reason for withholding payment is cured, Owner will pay the withheld amount within 7 days of receiving reasonable documentation evidencing that the reason for the withholding has been cured. The right to withhold does not apply to undisputed portions of any payment application.

9.7 No Right to Stop Work. If a Party disputes any determination with respect to any payment application, the Party will nevertheless expeditiously continue to prosecute the Work, if undisputed amounts are timely paid. Owner will not be deemed to be in default or breach of this Agreement for withholding of any payment under Section 9.6. However, the Party claiming that payment has been withheld, in whole or in part, may submit the payment dispute for determination under Article 15.

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

9.9 Warranty of Title. Contractor warrants that title to all Construction Work, materials, and equipment covered by a payment application, whether incorporated in the Project



or not, will pass to Owner at the time of payment by Owner, free and clear of all liens, claims, security interests, or encumbrances in favor of Contractor, subcontractors, suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials, or equipment relating to the Construction Work. Contractor will defend, indemnify, and hold Owner harmless from any and all liens, claims, security interests, or encumbrances filed by Contractor, or its subcontractors, suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials, and equipment relating to the Construction Work, provided Contractor has received payment for the Construction Work at issue pursuant to this Agreement. (See also Section 12.3.5).

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

9.11 Payments to Subcontractors and Suppliers. The Owner and Architect do not have any obligation to pay, or to see that payment is made to a subcontractor or supplier except as may otherwise be required by law.

9.12 Payment to Consultants. The Owner and Contractor do not have any obligation to pay, or to see that payment is made to an Architect's consultant except as may otherwise be required by law.

9.13 Records and Audits.

9.13.1 Architect and Contractor must keep full and detailed accounts and records related to the performance of Work under this Agreement for a period of at least 4 years after Final Completion of the Project. The detailed accounts and records will be created and maintained in accordance with good accounting practices and control systems satisfactory to Owner. The records maintained must include, without limitation, job cost reports, general ledgers, time records, receipts, subcontracts, purchase orders, evidence of payment, written and electronic communications, estimates, bids, Change Order logs and files, Change Order Request logs and files, and records related to any Chargeable Costs charged to the Project.

9.13.2 At any time during the performance of the Work and through 4 years after Project Final Completion, Owner, at its expense, may, but is not under any obligation to, audit the records of Architect or Contractor, and their consultants and subcontractors of any tier, related to: (i) direct costs provided in establishing the Base Target Cost and Final Target Cost; (ii) any payment application or calculation of amounts the Owner owes or is alleged to owe; and (iii) subcontractor or consultant costs submitted as Chargeable Costs. The person or organization being audited will reasonably cooperate and make its records available for inspection, copying, and audit. If an audit discovers undisputed overcharges that the Architect or Contractor knew or reasonably should have known and that exceeds 5% net of the contract value, the Party responsible for the overcharge will reimburse Owner for the cost of that audit and if both the Architect and Contractor are responsible for the overcharge, each will reimburse the Owner in proportion of the amount of the overcharge.

9.13.3 These audit provisions survive the termination of this Agreement. By appropriate written agreement, Architect and Contractor will require their respective subcontractors, Vendors, suppliers, and consultants to be bound by and fully comply with the provisions of this Section 9.13.



10. CONTRACT TIME

10.1 Contract Time. The Contract Time is the time allotted in the Milestones to achieve Final Completion of the Work, as may be adjusted under this Agreement. The Substantial Completion and Final Completion dates may only be extended by mutual agreement of the PMT for a Permitted Delay per Section 10.5 and in accordance with the Change Order process under Article 11.

10.2 Commencement of the Construction Work. The date of commencement of the Construction Phase will be documented by the Notice to Proceed issued by the PMT.

10.3 Project Staging. Portions of the Project may be segregated into separate Project Stages with individual Milestones, Substantial Completion, and Final Completion dates. If the Project is staged, all Project Stages must be completed prior to the date for Final Completion of the Project. The PMT will prepare a Staging Schedule for approval by the SMT that, at a minimum, specifies the dates of construction commencement, Substantial Completion and Final Completion for each Project Stage.

10.4 Project Scheduling. Planning and scheduling performed on the Project will use “pull scheduling” techniques pursuant to the Last Planner System™, or an equivalent system as appropriate. In order to be pull-based, the planning system must be based upon requests from a Project Participant to other Project Participants upon whom the requester’s work is dependent, and receipt of reliable promises made by the upstream performer about when it will finish the work agreed upon per the hand-off criteria, in order to enable the downstream performers to begin their respective portion of the Work. At a minimum, the system must include the Milestones, collaboratively created Phase Plans per Section 10.4.1, make-ready work plans per Section 10.4.2, and a method for measuring, recording, and improving planning reliability.

10.4.1 Phase Planning. Phase Plans must be based on collaborative planning through direct communications by all Project Participants performing Work in a particular Phase, who, working backwards from the most current approved Milestones, create collaborative Phase schedules indicating when their portion of the Work will be completed. Direct communications among Project Participants allows the various parties to make reliable promises to each other, and specifically discuss and negotiate the hand-off criteria or other conditions of satisfaction that are mutually understood and agreed upon.

10.4.2 Work Plans. As part of the Phase Planning, the PMT in collaboration with the PITs will establish a work plan to review upcoming design and construction performance requirements and establish the frequency of look-ahead meetings and work plan schedules. The work plan schedules will document all Work performed during the prior week’s period and Project Work to be performed during the upcoming week(s). The work plans are to be used as a working tool to reflect commitments made in look-ahead meetings, evaluate any upcoming constraints or schedule slippages, identify workable backlog and collaborate on methods for labor efficiency. Work flow will be scheduled to optimize the flow of Work through the Project and reduce bottlenecks and activities that will not advance the Contract Time or other Milestone dates.

10.5 Permitted Delays. If the Architect or Contractor is delayed in the commencement, prosecution, or completion of the Work by: (i) material acts or omissions of the Owner, its affiliates, or the Owner’s Separate Contractors; (ii) Owner-Elected Changes;



(iii) Owner's Directive; (iv) a Post Permit Change; (v) a Force Majeure event; (vi) Adverse Weather; (vii) Unforeseen and Differing Site Conditions; (viii) Owner's Suspension of the Work per Section 16.2; and/or (ix) changes to Applicable Law that occur after the Effective Date that were not reasonably anticipated by the Architect or Contractor exercising reasonable care, and if the delay lengthens the Project's critical path, then the Contract Time will be extended for the duration of the delay less the extent that the delay was also caused by any fault, neglect, act or omission of the Architect, Contractor, or their respective employees, consultants, subcontractors or suppliers.

10.6 Notice. The Architect and Contractor will not be entitled to a Permitted Delay unless the PMT is notified no later than 5 Business Days after the event causing the delay was first observed and provided Architect and/or Contractor demonstrates that it could not have anticipated or avoided the delay, obstruction, hindrance, or interference and has used available means to minimize the consequences of the delay.

10.7 Schedule Slippage. The Contractor or Architect will notify the PMT promptly of any delay in the most current approved Project schedule as a result of its Work and must submit a detailed recovery plan for the PMT to evaluate and approve.

10.8 Acceleration. The PMT may determine that it is in the best interest of the Project to direct certain Project Participants to work overtime in an attempt to recapture any delays to the Project schedule. Overtime directed by a PMT Bulletin is a Chargeable Cost.

11. CHANGES

11.1 Permitted Changes. There will be no changes to the Project Objective, including the Base Target Cost, Final Target Cost, Contract Time, or the ICL unless one of the following conditions occur:

11.1.1 Owner-Elected Changes;

11.1.2 Owner's Directive;

11.1.3 Unforeseen and Differing Site Conditions;

11.1.4 Post Permit Changes;

11.1.5 Owner's suspension of the Work per Section 16.2;

11.1.6 Reconciliation of Allowance items to actual cost;

11.1.7 Permitted Delays per Section 10.5, except Force Majeure to the extent allowed by Section 11.3;

11.1.8 Material acts or omissions of the Owner, its affiliates, or the Owner's Separate Contractors;

11.1.9 Changes to Applicable Law that occur after the Effective Date that were not reasonably anticipatable by Architect or Contractor exercising reasonable care; or

11.1.10 Changes mandated by the Governmental Authorities.



11.2 Changes to Cost. Subject to PMT approval, the Base Target Cost or Final Target Cost may be adjusted by the estimated increase in Chargeable Costs caused by one of the conditions set forth in Sections 11.1.1 through 11.1.10 above. Additional costs resulting from a Permitted Delay under Section 10.5 will not adjust the Base Target Cost, Final Target Cost or ICL unless and only to the extent that the delay was caused by one of the conditions set forth in Sections 11.1.1 through 11.1.10 above.

11.3 Changes to the Contract Time. The Contract Time may only be extended for a Permitted Delay under Section 10.5.

11.4 Limitation on Changes to ICL. A permitted change under Section 11.1 does not necessarily result in an adjustment to the ICL, which will be made only with the PMT's agreement and as set forth in a Change Order. However, if the ICL is adjusted, the ICL adjustment cannot exceed the product of: (a) the ICL Change Order percentage applicable to a Risk/Reward Team Member whose portion of the Work has increased; and (b) the anticipated increase in Chargeable Costs of the Risk/Reward Team Member.

11.5 Change Order Procedure. Change Orders will be used to document changes to the Project Objective and will include approved adjustment to the Base Target Cost, Final Target Cost, Contract Time, or ICL. Adjustments to the ICL must be tracked in accordance with the distribution chart set forth in Exhibit G for each approved Change Order. Any Party may request a Change Order to this Agreement for a permitted change by providing the PMT with a written Change Order Request ("COR") setting forth the nature of the change, the reason for the change, and the effect, if any, on either the Base Target Cost or Final Target Cost, the Contract Time, if any, or ICL. A notification of all potential CORs must be submitted to the PMT within 10 Business Days of discovering the condition or circumstance necessitating the change. Failure to timely submit the COR waives and releases any claim for a Change Order related to the facts or circumstances allegedly supporting the COR. The PMT will promptly review the COR and: (i) accept the request; (ii) accept the request in part or with modification; (iii) request additional information or perform its own investigation; or (iv) deny the COR. If a COR is accepted by the PMT, then the PMT will recommend the Change Order to the Parties for execution. If the PMT does not act on a COR within 10 Business Days of its submission, it will be referred directly to the SMT. The SMT must act on the COR within 10 Business Days of referral from the PMT, and if it does not act, the Change Order is deemed denied by Owner's Directive. Any disagreements with regard to a COR will be determined according to the decision procedures in Sections 4.1.6 and 4.3, and if unresolved, are subject to dispute resolution under Article 15.

11.6 Owner's Directive. When Owner issues an Owner's Directive, Architect and Contractor must separately track their Chargeable Costs incurred in complying with the Owner's Directive and indicate on the applicable payment application(s) which Chargeable Costs are for a particular Owner's Directive.

12. LIABILITY ALLOCATION

12.1 Waiver of Liability. The Owner and Risk/Reward Team Members waive and release all claims and liability between and among each other related to the performance of this Agreement except for the Allowed Claims listed in Section 12.2. However, this liability waiver is void as to the Willful Default of Owner or any Risk/Reward Team Member, but only as to the entity in Willful Default.



12.2 Allowed Claims. “Allowed Claims” are limited to the following circumstances:

12.2.1 Willful Default. Claims for damages caused by the Willful Default of Architect, Contractor, Vendor, subcontractors, or consultants;

12.2.2 Warranty Claims. Claims against the Contractor, subcontractors, or suppliers for any breach of warranty obligations under Article 14;

12.2.3 Project Performance. Claims for loss or damage first occurring after Project Final Completion for: (i) bodily injury or property damage caused by the failure of the Construction Work to be executed in conformance with the Implementation Documents; (ii) bodily injury or property damages caused by negligent acts, errors, or omissions in the design of the Project or its component systems; and (iii) the repair, modification, or replacement of components or systems that do not meet the functional and performance requirements of the Implementation Documents;

12.2.4 Third-Party Claims. Claims for contribution or indemnification from claims of third parties pursuant to Section 12.3;

12.2.5 Unresolved Change Order Requests. Claims for Change Orders that have not been resolved by the PMT or SMT pursuant to Article 11;

12.2.6 Non-Payment. Claims from the Owner’s failure to pay undisputed amounts due under this Agreement or amounts withheld by Owner pursuant to Section 9.6;

12.2.7 Over-Payment. Claims for amounts overpaid by Owner, as determined by audit under Section 9.13;

12.2.8 Termination or Suspension. Claims for amounts due following termination or suspension to the extent permitted by Article 16;

12.2.9 Indemnity. Claims to enforce indemnification obligations in Section 12.3, 12.4 or elsewhere in this Agreement;

12.2.10 Insurance. Claims that arise from the failure of the liable party to obtain insurance required by the Agreement;

12.2.11 Intellectual Property. Claims to enforce intellectual property rights under this Agreement;

12.2.12 Dispute Resolution. Claims to enforce the dispute resolution provisions set forth in Article 15 and civil actions necessary to enforce mechanics liens or stop payment notice rights; and

12.2.13 Specific Performance. Actions for specific performance of this Agreement.

12.3 Indemnification.

12.3.1 Contractor’s Indemnification. The Contractor will (and Contractor will require its subcontractors and suppliers to) defend, indemnify, and hold the Owner and



Risk/Reward Team Members harmless from and against any and all claims, losses, damages, liabilities, and expenses (including legal, expert witness, and consulting fees and costs) alleged by any third parties (including any of their respective employees), arising out of, or resulting from, bodily injury (including death) or damage to tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, its subcontractors, and suppliers or anyone directly or indirectly employed by any of them for whose acts the Contractor may be liable.

12.3.2 Owner's Indemnification. The Owner will defend, indemnify, and hold the Risk/Reward Team Members harmless from and against any and all claims, losses, damages, liabilities, and expenses (including legal, expert witness, and consulting fees and costs) alleged by Owner's employees arising out of, or resulting from, bodily injury (including death) or damage to tangible property damage (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Owner, its Separate Contractors, or anyone directly or indirectly employed by any of them for whose acts the Owner may be liable.

12.3.3 Architect's Indemnification. The Architect will (and Architect will cause its consultants to) defend, indemnify, and hold the Owner and Risk/Reward Team Members harmless from and against any and all claims, losses, damages, liabilities, and expenses (including legal, expert witness, and consulting fees and costs) alleged by any third parties (including their respective employees) arising out of, or resulting from, bodily injury (including death) or damage to tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Architect or its consultants, or anyone directly or indirectly employed by any of them for whose acts Architect may be liable.

12.3.4 Patent and Copyright. Contractor and Architect each represent and warrant that designs, processes, methods, or materials used by each for the Project do not and will not violate any patents, copyrights, or trademarks. Contractor and Architect, but only for its own breach of the prior sentence, will defend and indemnify Owner from and against claims, damages, losses, royalties and expenses, including, without limitation, attorneys' fees attributable to patent, copyright, or trademark violations.

12.3.5 Lien-Free Obligation. If any subcontractor, supplier, or consultant records or files, or maintains any action regarding a claim of mechanics lien, stop payment notice, or *lis pendens* relating to the Work or the property where the Project is situated, the Contractor or Architect, as applicable, will immediately procure, furnish, and record appropriate statutory release bonds that will extinguish or expunge the mechanics lien, stop payment notice, or *lis pendens*, provided the Owner has paid the Contractor or Architect for the Work and the Contractor or Architect failed to pay their respective consultants, subcontractors, or suppliers. If Architect or Contractor fails to make timely payments to their respective consultants, subcontractors, and suppliers as required, the Owner may settle or bond over those claims, or take other actions necessary to prevent a default under any other agreement affecting the Owner's property or the Project, and Contractor or Architect, as applicable, will upon written demand reimburse Owner for any substantiated amounts that were necessary to satisfy Architect's or Contractor's obligation to satisfy, discharge, or defend against any claim of lien or stop payment notice. The Architect and Contractor will each indemnify and hold the Owner harmless from any claims filed by their respective consultants, subcontractors, or suppliers for enforcement of mechanics liens or stop payment notices, provided the Owner has made payment to the Architect and Contractor for the Work that is subject to the claim. Nothing contained in this Section will be construed to require the Contractor or Architect to provide



release bonds for any valid mechanics lien, stop notice, *lis pendens*, or other claim due to the Owner's non-payment or a valid dispute between the Parties.

12.3.6 Choice of Counsel. In all instances where there is an obligation to defend another Party or to pay the cost of another Party's defense, the defending Party whose defense is being provided, may reasonably reject counsel appointed for its defense and select counsel of its own choosing, which will be paid by the Party obligated to defend as if selected by that Party.

12.4 Site Safety. The Contractor is solely responsible for training, initiating, maintaining, and supervising safety precautions and programs in connection with performance of the Construction Work and according to all Applicable Laws governing safety on construction sites and the provisions of Article 8 of Exhibit D. The Contractor will defend, indemnify, and hold the Owner and Architect harmless from and against all demands, causes of action, and other claims for damage, loss, and expense, including but not limited to attorneys' fees, resulting from bodily injury, sickness, disease, death, injury, or tangible property damage (other than to the Work itself) to the extent caused by its failure to properly train, initiate, maintain, or supervise safety precautions and programs in connection with performance of the Construction Work.

12.5 Joint Defense of Third-Party Claims. Because the Parties have a similar interest in the outcome of the Project, the Parties will endeavor to resolve any third-party claims (including subcontractor, supplier, and consultant claims) under a joint defense agreement establishing the procedures and rights of the Parties. To the greatest extent possible, the Parties will jointly address, investigate, manage, defend, settle, or otherwise resolve all third-party claims arising from or related to the Project or this Agreement, subject to applicable legal and ethical considerations, including the need for independent legal counsel. Subject to PMT approval, a Party defending a claim on behalf of the Project may submit its reasonable expenses of defense as a Chargeable Cost.

13. PROJECT INSURANCE

13.1 General. The Parties will carry the insurance required of them in Exhibit H-1 through Exhibit H-3 and require their respective subcontractors, consultants, and suppliers to carry the insurance coverages indicated in Exhibit H-1 through Exhibit H-3. The availability of insurance does not limit the indemnification responsibility of any Party or Risk/Reward Team Member, nor limit any other remedy available to a Party or Risk/Reward Team Member.

13.2 Bonding or Subcontractor Default Insurance. To the extent required by the PMT, the Contractor will cause certain subcontractors to be covered under subcontractor default insurance, or to furnish payment and performance bonds in full compliance with Applicable Law for the full subcontract amount, with the additional costs adjusting the Base Target Cost and Final Target Cost through executed Change Order. To the extent required, the actual cost of the required bonds or subcontractor default insurance will be paid by Owner as a Chargeable Cost.

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14. WARRANTY

14.1 Warranty and Correction of Work.

14.1.1 Contractor's Warranty and Correction of Work. Contractor warrants that all Construction Work will be of good quality, free from defects, and conforming to the Implementation Documents and all laws, codes, regulations and other requirements specifically applicable to Contractor's work. For a period of 1 year commencing from Owner's acceptance of Substantial Completion of the Project or the date of repair of the defective component, whichever is later, and for longer periods specified in the Implementation Documents for certain equipment manufacturers or suppliers, Contractor will repair or replace any and all deficient or defective Construction Work together with any other work that is damaged during repair or replacement as further detailed in Section 14.1.1(a). If a portion of the Construction Work is completed and accepted by Owner, then the warranty will commence from the date of acceptance or the date of repair of the defective component, whichever is later. Contractor's warranty excludes improper or insufficient maintenance, improper operation, and normal wear and tear under normal usage. Contractor will procure all subcontractor and manufacturer express warranties required under the Implementation Documents on the Owner's behalf and will transmit the warranties to Owner before Final Completion and Project close-out. Establishment of the 1 year express warranty period for correction of Construction Work relates only to the Contractor's specific obligation to correct defective or non-conforming Construction Work, and has no relationship to statute of limitations periods for legal claims arising from this Agreement.

(a) The Owner will establish an \$x Warranty Reserve to pay for certain warranty work performed by Contractor. The Warranty Reserve amount must be agreed to by the Parties and will be funded by Owner. During the warranty period, but only until the Warranty Reserve is exhausted, Contractor will be paid its Chargeable Costs from the Warranty Reserve to repair or replace all deficient or defective Construction Work together with any other work that is damaged during repair or replacement. If the Warranty Reserve is exhausted during the warranty period, the Contractor must repair or replace at its expense any and all deficient or defective Construction Work together with any other work that is damaged during repair or replacement. The Owner will retain any balance in the Warranty Reserve at the end of the warranty period.

14.1.2 Other Contractors' Warranties and Corrections of Work. With the exception of Contractors, whose warranty is described in Section 14.1.1 above, all other contractors must warrant that all Construction Work will be of good quality, free from defects, and conforming to the Implementation Documents and Applicable law. For a period of 1 year commencing from Owner's acceptance of Substantial Completion of the Project, and for longer periods specified in the Implementation Documents for certain equipment manufacturers or suppliers, the contractor will repair or replace at its expense any and all deficient or defective Construction Work together with any other work that is damaged during repair or replacement. If a portion of the Construction Work is completed and accepted by Owner, then the warranty will commence from the date of acceptance or the date of repair of the defective component, whichever is later. The contractor's warranty excludes improper or insufficient maintenance, improper operation, and normal wear and tear under normal usage or damage caused by anyone for whom Contractor or contractor is not responsible. The contractor will procure all subcontractor and manufacturer express warranties required under the Implementation Documents on the Owner's behalf and will transmit the warranties to Owner before Final Completion and Project close-out. Establishment of the 1 year express warranty period for



correction of Construction Work relates only to the contractor's specific obligation to correct defective or non-conforming Construction Work, and has no relationship to statute of limitations periods for legal claims arising from this Agreement.

15. DISPUTE RESOLUTION

15.1 Scope. All disputes between the Parties and their respective Separate Contractors, subcontractors, suppliers, and consultants arising from or in connection with this Agreement will be resolved as provided in this Article.

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

15.3 Permitted Disputes. No Party may bring any action, suit, or other proceeding against any other Party to this Agreement relating to or arising from this Agreement, except for: (i) Allowed Claims; (ii) proceedings to seek an interpretation of the terms of this Agreement; (iii) proceedings to determine the Contract Time; or (iv) proceedings to determine Change Order disputes, ICL, or shared savings distributions.

15.4 Notice. A Party may initiate the dispute resolution procedures stated in this Section by providing all PMT members with written notice of a potential dispute which specifies, in reasonable detail, the basis of the dispute and the remedy sought. Notice of a dispute must be given within 10 Business Days following knowledge of the occurrence of the event or condition or circumstance giving rise to the dispute or the claim is waived. Under no circumstances will a claim be made if it is barred by applicable statutes of limitation or repose.

15.5 Senior Management Team Meeting. If the PMT is unable to resolve the dispute, any party to the dispute may request the SMT members to meet with the PMT and attempt in good faith to resolve the dispute. The SMT will then review the claim in detail and meet face-to-face to discuss and resolve the matter in a "SMT Meeting." The SMT Meeting will occur no later than 10 Business Days after the PMT has declared an impasse in its efforts to resolve the dispute, unless the parties to the dispute agree upon a longer period of time. The SMT Meeting will be for the express purposes of: (i) exchanging and reviewing all pertinent non-privileged documents and information relating to the matters and issues in dispute; (ii) freely and candidly discussing each party's position; and (iii) reaching agreement upon a reasonable, compromise resolution of the dispute. If a negotiated settlement is reached, the terms of the settlement will be recorded in a written Amendment or Change Order signed by the parties to the dispute.

15.6 Mediation. If the dispute is not resolved by the conclusion of the SMT Meeting, any party to the dispute may request mediation of the dispute in writing. If the Parties agree to mediate, they will jointly select a mediator acceptable to all SMT members and who is a construction attorney with at least 10 years of experience in resolving disputes for complex construction projects. Each Party to the dispute will give the mediator a written statement regarding the asserted claims, and the mediator may inspect the Project site, Project Objective, Implementation Documents, and other information reasonably required to understand the factual and legal basis of the dispute. The mediator will schedule a mediation session within 20 Business Days of the PMT's agreement to mediate. Representatives from each party who have



authority to resolve the dispute, together with any other party who has an interest in the dispute, will attend the mediation. The parties involved in the dispute will bear the cost of mediation equally. The mediation proceeding will be confidential and not admissible in court. The mediation process must be completed within 40 Business Days of the PMT's agreement to mediate, unless all parties involved in the dispute extend the mediation period. If, as a result of the mediation, a negotiated settlement is reached, the parties will enter into a written settlement agreement that will be enforceable in a court of competent jurisdiction.

15.7 Arbitration. All disputes that are not either resolved through the informal process under Section 15.5 or by mediation under Section 15.6 will be subject to binding arbitration. Any party to the dispute may serve the other Parties a written demand for arbitration within 30 Calendar Days after conclusion of either the informal process under Section 15.5 or mediation required under Section 15.6 or within the applicable statute of limitations, whichever is sooner. Disputes involving claims of \$500,000 or less will be subject to arbitration before a single arbitrator. Those involving claims in excess of \$500,000 will be subject to arbitration before a panel of 3 arbitrators. Within 15 Calendar Days after service of a demand for arbitration, the Parties or their attorneys will meet and confer in an attempt to select an arbitrator or arbitrators. If the Parties fail to reach agreement, the Party who served the demand for arbitration will file the demand with the American Arbitration Association and the dispute will be resolved under the Construction Industry Arbitration Rules of the American Arbitration Association. The Parties further agree that this arbitration may include, by consolidation or joinder, any Party's consultants, subcontractors or suppliers. The arbitrator(s) must base its decisions strictly on the requirements of the Contract Documents. Subject to the previous sentence, the award rendered by the arbitrator or arbitrators will be final, and judgment may be entered upon it according to Applicable Law in any court having jurisdiction. Nothing contained within this paragraph prevents timely mechanics lien foreclosure actions.

16. DEFAULT, SUSPENSION AND TERMINATION

16.1 Termination for Convenience. The Owner may terminate this Agreement for convenience upon 10 Business Days' prior written notice at any time. Subject to receiving the payment required by Section 16.1.2, the Architect and Contractor each grant title to Owner for all Design Materials prepared prior to a termination under this Section 16.1 for Owner's use, at its discretion, for future continuation of the Project and for its future maintenance and remodeling. If the Project is terminated for convenience before commencement of the Construction Phase and the Owner uses the Design Materials for continuation of the Project following the termination, Owner will release, indemnify, defend, and hold harmless Contractor and Architect from any liability arising from Owner's further use of these materials.

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

16.1.2 Payment Upon Termination for Convenience. If the Owner terminates this Agreement for convenience, the Owner will pay the terminated Party: (i) all Chargeable Costs incurred by the terminated Party prior to the effective date of termination; (ii) reasonable expenses related to the termination, including demobilization and securing the Project site; and



(iii) the lesser of a portion of the unadjusted ICL per Section 7.3 based on the percentage of the Work completed prior to termination or the amount of ICL payable at the next nearest Milestone ICL distribution as determined by an independent assessor prior to termination. In no event will the total amount paid to the Architect and Contractor, exclusive of ICL, exceed the Base Target Cost or Final Target Cost, as applicable. Any payment under this Section is subject to Owner's receipt of all requested statutory lien waiver and release forms, as well as other documentation required for payment under Section 9.5, subject to withholding by Owner for reasons and in the manner provided in connection with Final Payment. Any dispute over the amount to be paid upon termination will be resolved under the dispute resolution procedures in Article 15. This Section 16.1.2 is not applicable to a termination due to failure to agree on a Base Target Cost and Milestones, which is governed by Section 6.1.3(c).

16.2 Suspension. The Owner may, without cause, order the PMT to suspend, delay, or interrupt the Project for as long as the Owner may determine. If the Project is suspended pursuant to this Section, the Contract Time will be extended per Section 11.3. If the Project is suspended after issuance of the Notice to Proceed with the Work and the suspension results in an increase in the Chargeable Costs for the Work, either the Base Target Cost or Final Target Cost (depending on the Phase) will be increased by the increase in Chargeable Costs reasonably caused by the suspension, and each Party's ICL, which will be increased by the product of its Change Order percentage multiplied by the increase in its Chargeable Costs due to the suspension. No adjustment will be made to the extent that performance was suspended, delayed, or interrupted by acts or omissions of the Architect, Contractor, or any entity or persons working directly for either for which they are responsible.

16.3 Owner Termination for Cause.

16.3.1 Notice. The Owner may terminate a Party to this Agreement, upon 10 Business Days' prior written notice, and an additional 10 Business Days to cure, if any of the following conditions occur. The effective date of termination will be 20 Business Days from the date of the notice.

- (a) Failure of one or more Parties to this Agreement to provide adequate labor and resources to achieve the Project Objective;
- (b) Refusal by Architect to rectify Work (as it related to the Architect's services) that is not in accordance with this Agreement, the Project Objective, Applicable Laws, applicable codes or regulations;
- (c) Refusal by Contractor to rectify Work that is not in accordance with this Agreement or the Implementations Documents;
- (d) Failure of a Party to collaborate with the PMT for the benefit of the Project;
- (e) Failure of the Architect or Contractor to properly pay its subcontractors, suppliers, and consultants;
- (f) Bankruptcy or insolvency of a Party to this Agreement; or
- (g) Acts of Willful Default by Architect or Contractor.



16.3.2 Ownership of Design Materials in Termination for Cause. The Architect and Contractor each grant title to Owner for all Design Materials prepared prior to a termination under this Section 16.3 for Owner's use, at its discretion, for future continuation of the Project and for its future maintenance and remodeling.

16.3.3 Owner Remedies. If Owner terminates a Party for cause, the terminated Party will not be entitled to any further payments until after Final Completion of the Project. In addition, Owner may, without prejudice to any other rights or remedies, and after giving the Party and its surety (if any) prior written notice:

- (a) Take possession of the site and of all materials and equipment procured for the Project;
- (b) Accept assignment of any purchase orders, subcontracts, and consulting agreements, as well as rental agreements for construction equipment and machinery at the site; and
- (c) Finish the Work by whatever reasonable method Owner may deem expedient.

16.3.4 Conversion to Termination for Convenience. If a court of competent jurisdiction deems that termination of the Party was wrongful or otherwise improper, the termination will be deemed a termination for convenience under Section 16.1. Owner will pay the terminated Party the amount due as if the termination had been for convenience, plus interest at 3% simple interest per annum, on the difference between the amount that was paid at termination and the amount that should have been paid for a termination for convenience, if any, from the date the payment would have been due to the date payment is actually made.

16.4 Architect/Contractor Termination for Cause. The Architect or Contractor may terminate this Agreement for cause upon 10 Business Days' prior written notice and an additional 10 Business Days to cure if any of the following occur: (i) Owner fails to pay undisputed amounts due pursuant to this Agreement; (ii) after commencement of construction, Owner suspends the Project under Section 16.2 for more than 90 consecutive Calendar Days; or (iii) Owner has repeatedly failed to fulfill its obligations under the Agreement constituting an abandonment of the Project.

16.4.1 Effective Date. Termination is effective upon further notice to Owner after expiration of the period to cure.

16.4.2 Payment. If the Agreement is terminated under Section 16.4, the Owner will pay the Architect and Contractor the: (i) Chargeable Costs incurred by the Architect and Contractor prior to the effective date of termination; (ii) reasonable expenses related to the termination, including demobilization and securing the Project site; and (iii) the lesser of a portion of the unadjusted ICL per Section 7.3 based on the percentage of the Work completed prior to termination or the amount of ICL payable at the next nearest Milestone ICL distribution as determined by an independent assessor prior to termination. The total amount paid to the Architect and Contractor may not exceed either the Base Target Cost or Final Target Cost (depending on the Phase). Any payment under this Section is subject to Owner's receipt of all requested statutory lien waiver and release forms, as well as other documentation required for payment under Section 9.5, subject to withholding by Owner for reasons and in the manner



provided in connection with Final Payment. Any dispute over the amount to be paid upon termination will be resolved under the dispute resolution procedures in Article 15.

17. MISCELLANEOUS PROVISIONS

17.1 License. The Architect and Contractor represent that they are properly licensed as required by the State of Colorado to perform the Work required under this Agreement, and that each Party’s business entity is in good standing, qualified to do business, and has any necessary licenses or permits.

17.2 Confidentiality.

17.2.1 Parties’ Financial Information. The Owner and Risk/Reward Team Members will be disclosing information concerning their methods of accounting, pricing of products and services, and other confidential information. Each Party agrees that it will keep such information confidential and will only provide it to other persons or entities as reasonably necessary for the design or construction of the Project. If a Party makes a written demand for return of confidential information, the other Parties will make reasonable attempts to destroy any copies of the confidential information in their possession. Each Party will place similar confidentiality restrictions in any agreements with its Risk/Reward Team Members of any tier.

17.2.2 Owner’s Proprietary Information. Information provided by Owner or made available to the Parties during performance of this Agreement will not be disclosed to persons or entities other than as necessary to perform the Work or Design Services required by this Agreement.

17.3 Compliance With Anti-Corruption Laws. Architect and Contractor (including their respective subsidiaries and affiliates and any directors, officers, and employees of each such entity) each represent and warrant that they have each complied, and will continue to comply, with all applicable anti-corruption laws in connection with their respective Work under this Agreement.

17.4 Notices. Any notice required to be given by this Agreement will be in writing and deemed effective upon: (a) the date of personal delivery or email delivery if received by the addressee before 5:00 p.m. local time on a Business Day (if received after 5:00 p.m. it will be deemed to have arrived on the next Business Day); (b) 3 Business Days after being sent via registered or certified mail with a return receipt requested; or (c) 1 Business Day after being sent by overnight commercial courier providing next-business-day delivery. Delivery by email is not deemed effective if the sender receives an automated reply indicating that the email was not delivered to the intended recipient or that the intended recipient was out of the office. Notices will be addressed to the following respective Parties:

<p>Owner:</p> <p>Rocky Mountain Institute 1820 Folsom Street Boulder, CO 80302</p>	<p>Architect:</p> <p>Zimmer Gunsul Frasca Architects LLP 1223 SW Washington Street Suite 200 Portland, Oregon 97205</p>
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<p>Contractor:</p> <p>JE Dunn Construction 2000 S. Colorado Ave. Suite 12000 Denver, CO 80222</p>	
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17.5 Governing Law. This Agreement will be governed and construed under the laws of the State of Colorado without giving effect to any choice of law or rule of conflict that would cause the application of the laws of any other jurisdiction. Venue for any action will be Basalt, Colorado.

17.6 Commencement of Statute of Limitations. Causes of action between the Parties to this Agreement pertaining to acts or failures to act will be deemed to have accrued and the applicable statutes of limitations will commence to run not later than either the date of Project Final Completion or, if applicable, the date of a recorded notice of completion, whichever is later.

17.7 Assignment. The Parties respectively bind themselves, and their respective successors, assigns, and legal representatives to the other Parties to this Agreement. The Contractor and Architect may not assign this Agreement without the express written consent of the Owner, and any unconsented assignment will be void. The Owner may assign this Agreement to any lending institution for the purpose of obtaining financing for the Project and the Architect and Contractor will cooperate with the Owner and execute all reasonable assignment and subordination agreements that do not materially change their rights and responsibilities under this Agreement.

17.8 Notice of Dissolution and Other Change of Business. If at any time during the performance of the Work and for a period of 2 years following the completion of the Work: (i) Dissolution of any Party occurs; (ii) any Party experiences or anticipates a material change in business, including a reorganization, refinancing, restructuring or leveraged buyout; and (iii) any Party has notice of any of the matters referred to in (i) or (ii), then that Party must furnish the other Parties with written notice of the same within 5 days and, in the case of Architect or Contractor, take all necessary and proper safeguards to allow Owner the opportunity to retrieve its property, the Work, and anything relating to the Work from their then-current location. For the purposes of this provision, "Dissolution" means, in respect of any Party, the making of an assignment for the benefit of creditors or admitting in writing its inability to pay its debts as they mature, bankruptcy, insolvency, liquidation, winding-up, administration and dissolution and the appointment in respect of it or any of its assets of a receiver, administrator, manager or similar officer and any proceeding or event which is equivalent or analogous to any of the same by whatever name known and in whatever jurisdiction and any step taken for or with a view to any of the foregoing.

17.9 Severability. The terms and conditions of this Agreement will be interpreted according to their plain meaning, and not strictly for or against any Party. Any rule of construction or interpretation to the contrary will be of no force or effect with respect to this Agreement. If a court of competent jurisdiction finds any term or provision of this Agreement to be void or unenforceable for any reason, the term or provision will be deemed severed, and the remainder of the Agreement will remain in full force and effect according to its terms and provisions, to the maximum extent permitted by law.



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

17.11 Rights and Remedies. The rights and remedies under this Agreement are the exclusive remedies available to the Parties.

17.12 Survival. The following provisions will survive the termination or expiration of this Agreement: (i) Article 7; (ii) Section 9.13; (iii) Article 12; (iv) Article 14; (v) Article 15; (vi) Article 16; (vii) Article 17; and (viii) Section 4.4 and Article 11 of the General Conditions.

17.13 Waiver. No Party's action or failure to act will constitute a waiver of a right or duty afforded them under this Agreement, and such action or failure to act will not constitute approval of or acquiescence in a breach of this Agreement, unless specifically agreed to in writing by the Parties.

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

17.15 Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original. When proving this Agreement, it will only be necessary to produce or account for the counterpart signed by the Party against whom enforcement is sought. Electronic copies or photocopies of this Agreement showing the true signatures of the Parties may be used for all purposes as originals.

17.16 Exhibits. The Exhibits referred to in this Agreement, whether attached at the time of execution or added by Amendment signed by the Parties, are incorporated into this Agreement by reference as though set forth in full.

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

[Signature Page Follows this Page]



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

Owner:

By:
Name
Title:

Architect:

By
Name
Title: Partner

Contractor:

By:
Name