



Contract A

CONTRACT A

MASTER DESIGN/BUILD CONSTRUCTION CONTRACT

GATTACA

as the "Owner"

and

DPR CONSTRUCTION
as the "Design/Builder"

Date

February 9, 2017

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DESIGN/BUILD AGREEMENT

This Master Design/Build Agreement is entered into effective as of the Effective Date by and between **GATTACA, LLC**, a Delaware limited liability company (the "**Owner**") and **DPR CONSTRUCTION**, a general partnership (the "**Design/Builder**").

RECITALS

WHEREAS, the Owner intends to construct a life science building (the "Building").

WHEREAS, the Owner has selected the Design/Builder to perform, either directly or pursuant to Subcontracts (defined below) the design, engineering and construction services set forth in this Agreement and the Design/Build Documents (defined below) for the design and construction of one or more Design/Build Projects (defined below) at the Site, each on a Guaranteed Maximum Price Basis (GMP).

WHEREAS, the Design/Builder is ready, willing and able to perform such design, engineering and construction services in accordance with the terms and conditions of this Agreement for each such Design/Build Project.

AGREEMENT

NOW, THEREFORE, in consideration of the Recitals, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

ARTICLE 1 BASIC PROVISIONS

The Work will consist of all of the Design Work and Construction Work (including all labor, equipment and materials necessary or appropriate to perform same) that is required to design and construct each individual project (each a "**Design/Build Project**") that is identified in a Project Authorization that is entered into by the Parties.

1.1 CORRELATION; INTENT AND EXECUTION.

1.1.1 The intent of the Design/Build Documents is to include all items necessary for the proper execution and completion of the Work by the Design/Builder. The Design/Build Documents are complementary and what is required by one shall be as binding as if required by all. Performance by the Design/Builder (and other members of the Design/Build Team) shall be as required by or inferable from the Design/Build Documents as being necessary to produce the intended results with respect to the Work, taking into account the familiarity of the Design/Builder (and other members of the Design/Build Team) with the existing conditions at the Site (subject to Section 2.2.1 below) and extensive experience and expertise with the design and construction of improvements similar to the Work.

1.1.2 Conflicts and Inconsistencies.

1.1.2.1 In the event of a conflict or inconsistency among the Design/Build Documents, the following order of precedence shall govern the interpretation of the documents: (a) Modifications (provided that (i) Modifications of a later date take precedence over Modifications of an earlier date and (ii) the terms and conditions of the Project Authorization (and/or any Project Authorization Modification) for any single Design/Build Project shall apply only to such Design/Build Project and shall not apply to or affect any other Design/Build Project), (b) this Agreement, (c) Design Materials (provided that Drawings govern Specifications for quantity and location and Specifications govern Drawings for quality and performance) and (d) Submittals.

1.1.2.2 In the event of an ambiguity, or multiple provisions relating to the same topic, the interpretation or provision that is the most stringent, or that requires the highest standard of performance by Design/Builder (or other member of the Design/Build Team) shall prevail. In the event of an ambiguity in quality or quantity, the better quality or greater quantity shall prevail (except, however, computed or figured dimensions shall take precedence over scale dimensions, and large scale drawings shall take precedence over small scale drawings).

1.1.2.3 In general, the Drawings show dimensions, positions, materials and kind of construction, and the Specifications describe quality of materials, performance, workmanship, and methods. Work called for on Drawings and not mentioned in Specifications, or Work mentioned in Specifications and not called for on Drawings, shall be performed as though fully set forth in both. Work which is not particularly detailed, marked or specified shall be the same as similar parts that are detailed, marked or specified.

1.1.2.4 Drawings and diagrams for mechanical and electrical work shall be followed only for work for which they were especially prepared and shall be considered as diagrammatic only; they shall not be used for any structural guidance or for architectural layout.

1.1.2.5 Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American national Standards Institute Specification, or other similar standard, the Design/Builder shall present an affidavit from the manufacturer, when requested by the Owner or required in the Specifications, certifying that the product complies with the particular ASTM Standard or Specification. When requested by the Owner or specified, supporting test data shall be submitted to substantiate compliance.

1.1.2.6 Whenever a product is specified or shown in the Design Documents by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted as a Change in the Work in accordance with Article 8. When two or more products are shown or specified, the Design/Builder has the option to use either of those shown or specified.

1.1.2.7 Design/Builder acknowledges its continuing duty to (and to cause the other members of the Design/Build Team to) review and evaluate the Design/Build Documents (and all other information referred to in Section 1.1.5 below) during performance of the Work, and if Design/Builder (or any other member of the Design/Build Team) knows or discovers that portions of the Design/Build Documents are: (a) in conflict with other Design/Build Documents, (b) contain any error or require clarification of any ambiguity, inadequacy, inconsistency or omission or (c) at variance with Applicable Laws, Design/Builder shall immediately notify Owner thereof and cause the applicable Design/Build Documents to be corrected. Except as provided otherwise in this Agreement (including, without limitation, in Section 8.1.4, below), Design/Builder shall not be entitled to any additional compensation for performing the Work pursuant to the Design/Build Documents, and subject to application of the Contingency in accordance with Section 5.3, below, Design/Builder shall be responsible for corrections or changes required as a result of compliance with Applicable Laws (other than New Legal Requirements).

1.1.2.8 If Design/Builder (or any other member of the Design/Build Team) becomes aware that a discrepancy exists between the Design/Build Documents and any New Legal Requirements, which discrepancy necessitates a correction or Change in the Work, said change or correction will be immediately brought to the attention of Owner in the form of a Change Claim delivered pursuant to Section 8.3, below. If Design/Builder claims it is entitled to an increase in the GMP or the Contract Time, or both, due to changes occasioned by New Legal Requirements, Design/Builder must, except in an emergency endangering life or property, submit the proposed change in the form of a Change Claim in accordance with the provisions of Section 8.3, below, (and must receive Owner's written approval therefor, not to be unreasonably withheld, delayed or conditioned) before proceeding to execute any Work involved.

1.1.2.9 As part of the Project Authorization for each Design/Build Project, Owner shall provide Design/Builder with a "Program" (or a "Basis of Design") for such Design/Build Project, which shall consist of a functional narrative which describes the intended uses of such Design/Build Project and the relationship of the uses to the proposed improvements. The Design/Builder shall be entitled to rely on the completeness and accuracy of the information contained in such Program, but not that such information complies with Applicable Laws, which shall be the obligation of the Design/Builder to determine.

1.1.3 Organization of Materials. Organization of the Design Materials into divisions, sections and articles, and arrangement of drawings shall not control the Design/Builder in dividing the Construction Work among Subcontractors or in establishing the extent of Construction Work performed by any trade.

1.1.4 Meaning of Words. Unless otherwise stated in this Agreement, words which have well-known technical or construction industry meanings are used in accordance with such recognized meanings. In the interest of brevity, the Design/Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. When the words "approve", "consent" "satisfactory," "proper," or "as directed" (or any derivatives of any of the foregoing words) are used, approval by the Owner shall be understood, and unless specifically provided otherwise, any such approval by Owner may be granted or withheld in Owner's sole but good faith discretion. When the word "provide," including its derivatives, is used, it means to fabricate properly, complete, transport, deliver, install, erect, construct, test, and furnish all labor, materials, equipment, apparatus, appurtenances, and all other items necessary to properly complete in place, ready for operations or use under the terms of the Specifications. Words in initial capitals used herein without definition shall have the meanings given to such terms in the other Design/Build Documents, and if not defined in any other Design/Build Document, words which have well-known technical or construction industry meanings shall have such recognized meanings.

1.1.5 Execution of Agreement and Project Authorizations. Execution of this Agreement (and of each Project Authorization) by the Design/Builder is a representation that, as of the date hereof and as of the date of Design/Builder's execution of each such Project Authorization:

1.1.5.1 The Design/Builder (and other members of the Design/Build Team) are knowledgeable of the Work and understand the availability of manpower, materials, tools, utilities and equipment required for the Work. In connection therewith, the Design/Builder and the other members of the Design/Build Team (and their management personnel assigned to the Work) have visited and evaluated the nature and location of the Site, are (subject to Section 2.2.1 below) familiar with the general and local conditions and limitations under which the Work is to be performed and the character, and quantity of the equipment, facilities, manpower, materials and services necessary to complete the Work in accordance with the scheduling requirements, the cost commitments and the quality requirements set forth in or imposed by the Design/Build Documents, and have correlated observations with the requirements of the Design/Build Documents and confirmed that the Contract Time for the applicable Design/Build Project is a reasonable period of time for achieving Substantial Completion of the Work for such Design/Build Project. This evaluation includes,

without limitation: (a) the layout and nature of any observable physical conditions at the Site and surrounding areas, (b) generally prevailing climatic conditions, (c) the character of equipment and facilities needed prior to and during the performance of the Work and anticipated equipment, labor and material supplies and costs, (d) the availability of labor, water, power and roads and other conditions bearing on transportation, disposal, handling and storage of materials and (e) other matters that a design professional and/or contractor skilled and experienced in construction of Comparable Projects in the same geographical area would consider. In addition, if the Work for any Design/Build Project includes demolition, modifications or remodeling of an existing structure(s) or other man-made feature(s) on or near the Site, Design/Builder shall also: (i) review all available as-built and record drawings, plans and specifications and (ii) thoroughly inspect (subject to Section 2.2.1 below) the structures and man-made features to be modified, demolished or remodeled, and the requirements (if any) for locating and relocating existing (to the knowledge of the Design/Build Team) utilities, all prior to signing the applicable Project Authorization (and by signing the applicable Project Authorization, Design/Builder shall be deemed to have represented that it has in fact done so).

1.1.5.2 Design/Builder and the other members of the Design/Build Team, and the management personnel assigned to the Project possess a high level of experience and expertise in the design, business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of the applicable Design/Build Project involving, among other things, the construction of Comparable Projects, and will perform the Work with the care, skill and diligence of such a design professional or contractor, as applicable.

1.1.5.3 The Design/Builder and the other members of the Design/Build Team have had extensive experience in designing, performing and constructing Comparable Projects, and are well acquainted with the components that are properly and customarily included within such projects, including, without limitation, the requirements of Applicable Laws, local building officials, ASTM standard practices, manufacturers' recommendations, building standards, trade practices and customs and usage in the design and construction industries as to the types and quantities of components, items, systems, materials, and methods of design and construction to be included in each Design/Build Project in order to produce a first-class project of the type described in the Design/Build Documents that will operate with utility and efficiency.

1.1.5.4 The Design/Builder (together with the other members of the Design/Build Team and the Subcontractors) are able to furnish the plant, tools, materials, supplies, equipment, management, supervision, and labor required to complete the Work and perform all of the Design/Builder's obligations hereunder (and under the applicable Project Authorization), and the key personnel of Design/Builder (and the other members of the Design/Build Team) assigned to the Work have experience and competence to do so.

1.1.5.5 The Design/Builder and the other members of the Design/Build Team are: (a) authorized to do business in the city (or county) and state in which the Building is located and (b) properly licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over Design/Builder and other members of the Design/Build Team, and over the Work and the Project. Without limitation of the foregoing, Design/Builder hereby represents and warrants that: (i) it is in good standing in the State in which the Building is located, (ii) the Architect is a duly licensed design firm in the State in which the Building is located and is in good standing, and (iii) the Design/Builder holds a duly valid and existing contractor's license in the State in which the Building is located, and is in good standing and its License Number is as specified herein.

1.1.5.6 With respect to the Design Work, Design/Builder is experienced in managing the effort by all participants to the Design Work (both design professionals and others) to provide a complete and coordinated design, construction and installation. With respect to the Construction Work, Design/Builder is experienced in managing the effort by all participants to the Construction Work (both construction professionals and others) to provide a complete and coordinated design, construction and installation.

1.1.5.7 With respect to each Design/Build Project, the GMP for such Design/Build Project includes and represents the Design/Builder's best and most diligent efforts to establish the lowest cost for responsible performance of the Work for such Design/Build Contract consistent with the Owner's standards of quality and workmanship as reflected in the Design/Build Documents existing as of the date of the applicable Project Authorization.

1.1.5.8 To the extent applicable, the Design/Builder and the other members of the Design/Build Team recognize the degree of care required under the site construction circumstances with respect to safety, protection of pedestrians, protection of existing Building tenants' operations, cleanliness of the site, health and other Applicable Laws, and protection of existing utilities, adjacent streets and property. In arriving at the GMP and the Contract Time for each Design/Build Project, the Design/Builder has, as an experienced and prudent design/build firm, exercised its best judgment and expertise to include the impact of such circumstances upon such GMP and Contract Time for providing these safety conditions.

1.2 PROFESSIONAL STANDARD; USE OF DESIGN MATERIALS

1.2.1 Standards of Performance. The Work shall be performed in accordance with the professional standards applicable to projects, buildings or work of complexity, quality and scope comparable to the Work and the Project (including, the Comparable Projects), and shall be performed by the Design/Builder and the Subcontractors. Subject to the terms and conditions of this Agreement, the Design/Builder may make such additions or substitutions to personnel and responsibilities as it deems necessary or appropriate in order to carry out its responsibilities hereunder, provided such personnel shall be suitably qualified and provided further, that any replacement of any member of the Design/Build Team shall be subject to the approval of Owner (in its sole and absolute discretion). Nothing in this Agreement shall be construed to create any contractual obligations of Owner to any of the Subcontractors.

1.2.2 Use of Design Materials.

1.2.2.1 The Owner shall have unlimited rights to copy and use all Design Materials, including the right to use the Design Materials in connection with the Project or otherwise at no additional cost to the Owner, regardless of degree of completion. The Design/Builder agrees to and does hereby grant to the Owner and its successors and assigns, a perpetual, unlimited, worldwide, non-revocable, royalty-free license to and with respect to all such Design Materials for which the Design/Builder may assert any rights under the patent, copyright, trademark or other laws (including laws relating to trade secrets), and the Design/Builder hereby assigns to the Owner and its successors and assigns, outright and exclusively, all copyrights, trademarks and/or other rights in the design appearance of each Design/Build Project and the Project. The Design/Builder (and each member of the Design/Build Team), as part of its agreements with each and every Subcontractor or consultant, will secure from such Person: (a) a grant of a perpetual, unlimited, worldwide, non-revocable, royalty-free license to Owner and its successors and assigns to and with respect to all Design Materials for which such Person may assert any rights under the patent, copyright, trademark or other laws (including laws relating to trade secrets) and (b) an outright and exclusive assignment to the Owner and its successors and assigns of all copyrights, trademarks and/or other rights in the design appearance of each Design/Build Project and the Project, and the Design/Builder shall defend, indemnify and hold the Owner Indemnified Parties harmless from and against any Losses arising out of or relating in any manner to any claims by such Persons, including, but not limited to, claims for copyright or patent infringement, trademark infringement or dilution, misappropriation of trade secrets.

1.2.2.2 The Owner shall defend, indemnify and hold harmless the Design/Builder Indemnified Parties from and against all Losses that arise as a result of: (a) any amendments or modifications of any such Design Materials made without the prior written consent of Design/Builder and/or (b) any use by the Owner of the Design Materials or any part of the Design Materials on a project other than the Project.

1.2.2.3 Design/Builder, the other members of the Design/Build Team and other Subcontractors possesses certain inventions, processes, know-how, trade secrets, computer technical expertise, software programs and other intellectual property (collectively, "**Design/Builder Property**"), all of which has been developed by Design/Builder, any other member of the Design/Build Team and/or any Subcontractor, either; (i) prior to the effective date of this Agreement or subsequent Project Authorization; or (ii) after the effective date of this Agreement or subsequent Project Authorization, but without the benefit of confidential or proprietary information or intellectual property of Owner or any other Owner Party under this Agreement or subsequent Project Authorization or other Modification. Subject to Section 1.2.2.1 above, any such Design/Builder Property is owned and controlled by Design/Builder, other members of the Design/Build Team and/or Subcontractors. Subject to Section 1.2.2.1 above, Design/Builder Property or any improvements thereto which are used, improved, modified or further developed solely by the Design/Builder or any other member of the Design/Build Team or any Subcontractors during the performance of this Agreement or subsequent Project Authorization, which are the product of the technical expertise of the Design/Builder or any other member of the Design/Build Team, or any Subcontractor, which are related to the business of the Design/Builder, any other member of the Design/Build Team, or any Subcontractor or the way the Design/Builder, any other member of the Design/Build Team, or any Subcontractor performs its Work and which do not use or include any confidential or proprietary information or intellectual property of Owner, shall be and remain the property of the Design/Builder, the applicable member of the Design/Build Team or the applicable Subcontractor.

1.3 DEFINITIONS.

"Additional Design Services Costs" means additional amounts payable to the Architect (or other members of the Design/Build Team) on account of Change Orders relating to design, which consists of: (i) the hourly rates of all of the personnel (which shall include principals, associate principals, associates and other personnel assigned to the Design Work, including specification and report typists, project secretaries and electronic computer technicians, but not including general office employees such as accountants or general secretaries performing nontechnical or nonprofessional functions) of the Architect (or other member of the Design/Build Team) at the Approved Labor Rates specified in the applicable Project Authorization performing services with respect to the Design Work required by such Change Orders, plus (ii) all out of pocket expenses in connection therewith times a multiplier of 1.10.

"Affiliate" means, with respect to any designated Person, any Person that is directly or indirectly Controlled by, under common Control with or that Controls such designated Person.

"Agreement" means this Master Design/Build Agreement.

"Applicable Laws" means all present and future federal, state and local laws, ordinances, rules, codes, regulations, interpretations and orders of public authorities having jurisdiction over the Site and/or the Work, or any portion thereof.

"Application for Payment" means the document prepared by the Design/Builder and submitted to the Owner showing the Design/Builder's entitlement to payments, the requirements of which are more fully described in Section 5.4.2 below (and, for any final payment, in Section 5.4.6).

"Architect" means, with respect to any Project, the individual(s) appointed by the Owner and/or the Design/Builder to provide architectural services as set forth in the applicable Project Authorization. Design/Builder understands and agrees that Owner may authorize the Architect to act as its agent with respect to the performance of any or all of its rights and obligations hereunder.

“Authorized Representatives” means, with respect to each Design/Build Project, those individuals appointed by the Owner and the Design/Builder in accordance with the provisions of Section 3.1.1 (and, with respect to each such Design/Build Project, shall initially mean the Persons identified as such in the applicable Project Authorization).

“Basis of Design” means, with respect to any Design/Build Project, a document that may include text, preliminary drawings, equipment lists, statements that may form the basis of inspection and test acceptance criteria for such Design/Build Project and that documents how the design will satisfy the performance and operational requirements for such Design/Build Project. The Basis of Design shall be prepared in connection with the preparation of the Schematic Design Documents, Design Development Documents and Construction Documents and shall be subject to development and refinement as the Design Materials are so developed and refined.

“Business Day” or “Business Days” means Days other than weekend, national, state or local holidays in which applicable government agencies are open for business.

“Certificate of Substantial Completion” means, with respect to each Design/Build Project, a certificate prepared by the Design/Builder and forwarded to the Owner stating that the Design/Builder believes in good faith that the applicable Design/Build Project is Substantially Complete.

“Change Claim” is defined in Section 8.3.1.

“Change Claim Event” is defined in Section 8.3.1.

“Change in the Work” means any addition to, deletion from, or other modification to the quality, function or intent of the Work, including without limitation, any such addition, deletion, suspension or other modification which requires a change in one or more of the GMP or Contract Time in accordance with the terms of Article 8; provided that a “Change in the Work” does not include any Work that: (a) is reasonably inferable from and consistent with the intent of the scope of or is a required component of a specific detail set forth in the Design Materials for any Design/Build Project that exist on the date on which the Parties execute a Project Authorization with respect to such Design/Build Project or (b) is reasonably necessary for the proper execution and completion of the Work with respect to any Design/Build Project.

“Change Notice” means a written notice delivered by Owner to Design/Builder setting forth in reasonable detail any prospective changes to any Design/Build Project that are desired by Owner.

“Change Order” is defined in Section 8.1.1 below.

“Commissioning Work” means the work described in Section 2.19 below, which shall be performed with respect to any Design/Build Project for which its performance is required under the applicable Project Authorization.

“Comparable Projects” means, with respect to each Design/Build Project, projects of the nature, size, complexity and type identified in the Design/Build Documents and that are located at or on sites that are comparable to the Site within the same region in which the Project is located.

“Construction Change Directive” is defined in Section 8.1.2 below.

“Construction Documents” means, with respect to each Design/Build Project, the plans and specifications prepared by the Architect (and other members of the Design/Build Team), or other design consultants that are approved by the Owner, and are to be used to construct such Design/Build Project. The Construction Documents for each Design/Build Project shall, as applicable: (a) cover all aspects of the applicable Design/Build Project (including, but not limited to, architectural, structural, plumbing, mechanical, electrical, civil, telecommunications, security, building automation, cable & telecommunications infrastructure, and landscaping), (b) include complete structural, civil, electrical, mechanical and all other required calculations for all elements of the applicable Design/Build Project, (c) set forth all items necessary to complete the construction of the applicable Design/Build Project in accordance with all of the other the Design/Build Documents, (d) be full, complete, and accurate, giving such directions as will enable Design/Builder and its Subcontractors to carry them out, and (e) be in a form sufficient to obtain required building permits.

“Construction Manager” means any Person(s) designated in writing by Owner as set forth in the applicable Project Authorization. The Construction Manager’s responsibilities include: (a) peer review of the design documents provided by the Design/Builder for the Project, (b) review of elements of architectural or engineering administration of the Work (including change orders) under the Design/Build Documents, and (c) performance of design and construction administration services for the Project, and Design/Builder understands and agrees that Owner may authorize the Construction Manager to act as its agent with respect to the performance of any or all of its rights and obligations hereunder.

“Construction Notice to Proceed” means, with respect to each Design/Build Project, the notice given by the Owner to the Design/Builder stating that the Site is available to the Design/Builder and directing the Design/Builder to commence construction of such Design/Build Project.

“Construction Phase” means, with respect to each Design/Build Project, the period set forth in the Schedule for such Design/Build Project beginning with the issuance of the Construction Notice to Proceed and ending on the date of Final Completion of such Design/Build Project.

“Construction Work” means that portion of the Work consisting of the provision of labor, materials, equipment and services provided in connection with the construction of a Design/Build Project as set forth in the Design/Build Documents.

“Contingency Percentage” means, with respect to any particular Design/Build Project, the percentage specified in the Project Authorization with respect to such Design/Build Project.

“Contingency Amount” means, for each Design/Build Project, an amount equal to the Contingency Percentage specified in the applicable Project Authorization multiplied by the Cost of the Work (excluding Insurance Costs) for such Design/Build Project. For each Design/Build Project, the Contingency Amount is a fixed amount that is not subject to modification in accordance with Article 8 below, notwithstanding the fact that the GMP may be based on estimates for various portions of the Work which differ from actual costs.

“Control” or **“Controlling”** means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, or ownership of any sort.

“Contract Price” means, for each Design/Build Project, the amount that is payable by Owner to Design/Builder hereunder with respect to such Design/Build Project, which shall not exceed the GMP for such Design/Build Project.

“Contract Time” means, for each Design/Build Project, the time allotted in the Schedule for such Design/Build Project for the Substantial Completion of the Work with respect to such Design/Build Project, which is the period of time, beginning on the first Business Day after the Owner delivers the Design Notice to Proceed for such Design/Build Project and ending on the Scheduled Date of Substantial Completion for such Design/Build Project (as such date may be extended in accordance with the express provisions of this Agreement).

“Cost of the Work” consists of those items of Work which are paid for by the Owner to the Design/Builder, and consists only of those categories of costs set forth as allowable on Exhibit “D”.

“CPM” means a critical path method schedule in the form of precedents, networks and time sequences.

“Day” means a calendar day (and **“Days”** means calendar days).

“Design/Build Documents” means this Agreement, any and all Modifications (including, but not limited to, all Project Authorizations executed by Design/Builder and Owner), any and all documents referenced in or attached to any Project Authorization (or other Modifications) executed by Owner and Design/Builder, the Design Materials for each Design/Build Project, which collectively, form the entire integrated contract (the **“Contract”**) between the Owner and the Design/Builder with respect to the Work.

“Design/Build Team” means, with respect to any Design/Build Project, the Design/Builder, the Architect and: (a) all other Subcontractors that are retained by the Design/Builder or the Architect to perform any portion of the Design Work for such Design/Build Project (including, without limitation, Subcontractors retained by the Design/Builder to perform any portion of the Work for such Design/Build Project on a design/build basis) and (b) any Subcontractor retained by the Design/Builder to perform general contracting services for such Design/Build Project.

“Design/Builder” is defined in the preamble to this Agreement. The Design/Builder shall act as the general contractor for each Design/Build Project.

“Design/Builder Affiliate” means any Affiliate of the Design/Builder.

“Design/Builder Governmental Approvals” means those governmental (including agency) approvals required to be obtained by the Design/Builder in the course of the design and construction of the Work, such as temporary and/or final certificates of occupancy, building permits, and construction permits (Street Use, Encroachment, OSHA, etc.); provided that the Design/Builder Governmental Approvals shall not include any governmental approvals or permits that designated as Owner Governmental Approvals in any Project Authorization.

“Design/Builder Indemnified Parties” means the Design/Builder and the other members of the Design/Build Team, and their respective members, partners, officers, directors, employees, agents, successors and assigns.

“Design/Builder Parties” means, collectively, the Design/Builder and all Subcontractors and their respective agents and employees, any other firms or persons performing portions of the Work under a contract with the Design/Builder and/or any other Subcontractor and their respective agents and employees and anyone else for whose acts or omissions the Design/Builder or any Subcontractor may be liable.

“Design Development Documents” means, with respect to any Design/Build Project, documents which illustrate and describe the refinement of the design of the Work for such Design/Build Project, establishing the scope, relationships, forms, size and appearance of the Work for such Design/Build Project by means of plans, sections and elevations, typical construction details, and equipment layouts. The Design Development Documents for each Design/Build Project shall include Specifications that identify major materials and systems and establish in general their quality levels.

“Design Materials” means any and all documents, electronic information, data, plans, drawings, sketches, illustrations, specifications, descriptions, models and other information developed, prepared, furnished, delivered or required to be delivered by the Design/Builder: (a) to the Owner under the Design/Build Documents or (b) developed or prepared by the Design/Builder specifically to discharge its duties under the Design/Build Documents, including, but not limited to, the Basis of Design, Schematic Design Documents, the Design Development Documents and the Construction Documents (and all Specifications and Drawings contained therein).

“Design Notice to Proceed” means, with respect to each Design/Build Project, the notice given by the Owner to the Design/Builder, after Owner accepts the Basis for Design, directing the Design/Builder to commence creation of Schematic Design Documents under this Agreement and the applicable Project Authorization.

“Design Phase” means, with respect to each Design/Build Project, the period set forth in the Schedule for such Design/Build Project, beginning with the issuance of the Design Notice to Proceed for such Design/Build Project.

“Design Work” means that portion of the Work for such Design/Build Project consisting of the design services required to be provided in connection with the design of, as the context requires, a Design/Build Project or the Project, as set forth in the Design/Build Documents, which shall be performed consistent with the standards of professional care exercised by national design firms performing design work for Comparable Projects.

“Drawings” means the graphic and pictorial portions of any of the Design Materials showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

“Environmental Assessment” means any Environmental Assessment referenced in the applicable Project Authorization.

“Environmental Laws” means any and all federal, state or local laws, statutes, regulations, rules or ordinances or amendments thereto, and all applicable judicial, administrative or regulatory decrees, judgments or orders relating to the protection of human health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601 et seq. (“**CERCLA**”), as amended, the Resource, Conservation and Recovery Act, as amended, 42 U.S.C. Sections 6901 et seq. (“**RCRA**”), the Toxic Substances Control Act, 15 U.S.C. Sections 2601-2671, the Clean Air Act, 42 U.S.C. Sections 7401 et seq., and the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251 to 1387, as the foregoing may be amended from time to time.

“Environmental Reports” means any Environmental Report referenced in the applicable Project Authorization.

“Excusable Delay” means only Owner Delays and Force Majeure Delays.

“Fee” means, with respect to each Design/Build Project, the fee payable to the Design/Builder, which is a part of the GMP for such Design/Build Project, as set forth in the applicable Project Authorization, which: (a) shall be equal to the Cost of the Work (excluding: (i) Insurance Costs and (ii) the cost of any Trade Work that is performed by any Design/Builder Affiliate) for such Design/Build Project multiplied by the Fee Percentage, and (b) will be payable in accordance with the provisions of this Agreement (and the applicable Project Authorization).

“Fee Percentage” means with respect to any particular Design/Build Project, the percentage specified in the Project Authorization with respect to such Design/Build Project.

“Final Basis of Design” means, with respect to any Design/Build Project, the Basis of Design to be developed by Design/Builder and approved by Owner in connection with the preparation and approval of the Construction Documents, which Final Basis of Design shall represent a further development and refinement of the Interim Basis of Design.

“Final Completion” means, with respect to each Design/Build Project, the point at which the Work for such Design/Build Project has been completed (including Punch List items) in accordance with the terms and conditions of the Design/Build Documents for such Design/Build Project.

“Force Majeure” means the acts, omissions or delays of government officials, labor dispute, fire, unusual delay in transportation or delivery, unavoidable casualty, flood, earthquake, epidemic, civil disturbance, war, terrorism, unusual and severe weather, freight embargo, riot, sabotage (by persons other than the Design/Builder or Subcontractors), industry-wide material shortages or any other events or circumstances not within the reasonable control of the party affected, whether similar or dissimilar to any of the foregoing.

“Force Majeure Delays” means any actual delays in Substantial Completion to the extent caused by Force Majeure. It is understood that Force Majeure Delays that are caused by severe weather may continue beyond the end of the severe weather event that caused the delay (for example, a two (2) Day rain storm may cause delays in excess of two (2) Days).

“GCC Amount” means, with respect to any particular Design/Build Project, the costs (calculated at the GCC Rates specified in the Project Authorization for such Design/Build Project) that are incurred by Design/Builder for General Conditions Costs, which shall not exceed the GCC Max Amount for such Design/Build Project (as specified in the Project Authorization for such Design/Build Project).

“GCC Max Amount” means, with respect to any particular Design/Build Project, the amount specified in the applicable Project Authorization (which shall be subject to adjustment only in accordance with Article 8 below).

"GCC Rates" means, with respect to any Design/Build Project, (a) for General Conditions Costs that are attributable to labor provided by Design/Builder and its employees, the Approved Labor Rates at which General Conditions Costs are allocated to such Design/Build Project, and (b) for non-labor costs, the actual costs incurred by Design/Builder for the applicable items or activities.

"General Conditions Costs" means, with respect to each Design/Build Project, the Design/Builder's on-site job overhead, general conditions items and other indirect costs that are required to complete the Work required by this Agreement and the applicable Project Authorization (which include, without limitation, the following types of costs: job supervision, field administration, field engineering, field accounting, pre-construction services, computer hardware and software costs for project management, accounting and scheduling, blueprinting, telephone, messenger service, communication system, security and watchman service, trash removal, clean-up (except for final cleaning), permits (except building permits), general equipment rentals or purchases, and all labor insurances, taxes, and fringes associated with job supervision, field administration, field engineering, field accounting and pre-construction labor), which General Conditions Costs: (a) shall not include any labor, tax, rental subcontractor or material costs, including rented or purchased equipment, required for items of direct cost performed by the forces of the Design/Builder or Subcontractors), and (b) for any Design/Build Project shall not exceed the GCC Max Amount specified in the applicable Project Authorization. It is understood that Owner shall permit Design/Builder to use all its utility services in connection with a Design/Build Project and that the cost of such utilities shall not be included in the GCC Rate or the GMP. Subcontractor general condition costs are included in the Cost of the Work and are not included in the General Conditions Costs.

"GMP Breakdown" means, with respect to each Design/Build Project, the Design/Builder's binding proposal for the GMP for such Design/Build Project, which: (a) shall specify (with respect to such Project): (i) the Cost of the Work (and the Insurance Costs that are included in such Cost of the Work), (ii) the Fee, (iii) the GCC Max Amount and the projected GCC Amount and (iv) the Contingency Amount and (b) shall specifically state and include: (i) a list of all applicable allowances, if any, that are included in the GMP, (ii) a schedule of all applicable alternate prices that are included in the GMP; (iii) a schedule of all applicable unit prices that are included in the GMP; (iv) schedule of all applicable allowance items that are included in the GMP, (v) a list of any and all reasonable assumptions on which the GMP is based and any and all qualifications and clarifications to the GMP, and (vi) a schedule of all of the Excluded Costs (excluded from the Cost of the Work).

"Guaranteed Maximum Price" or "GMP" means, with respect to each Design/Build Project, the Design/Builder's the Design/Builder's binding commitment for, and guaranty of, the maximum cost for the performance of the Work for such Design/Build Project, as set forth in the GMP Breakdown that is attached to (or is developed in accordance with) the Project Authorization for such Design/Build Project, which may be increased or decreased only in accordance with the express provisions of the provisions of Article 8 of this Agreement.

"Hazardous Materials" means any substance: (a) the presence of which requires investigation or remediation under any federal, state or local law, statute, regulation, ordinance, order, action, policy or common law; (b) which is or becomes defined as a "hazardous waste", "hazardous substance", "hazardous material", "toxic substance", "hazardous pollutant", "toxic pollutant", or contaminant under any Environmental Laws; (c) which is petroleum, including crude oil or any fraction thereof not otherwise designated as a "hazardous substance" under CERCLA, including without limitation gasoline, diesel fuel or other petroleum hydrocarbons; (d) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority or instrumentality of the United States or jurisdiction in which the Project is located; (e) the presence of which on the site causes or threatens to cause a nuisance upon the site or to the adjacent properties or poses or threatens to pose a hazard to the health or safety of persons on or about the site; (f) Underground Storage Tanks as defined in Section 9001 of RCRA, 42 U.S.C. Section 6991; or (g) the presence of which on adjacent properties could constitute a trespass by the Design/Builder or the Owner.

"Inexcusable Delays" means any delays that are not Excusable Delays.

"Initial Basis of Design" means, with respect to any Design/Build Project, the Basis of Design to be developed by Design/Builder and approved by Owner in connection with the preparation and approval of the Schematic Design Documents.

"Insurance Costs" means, with respect to each Design/Build Project, the insurance charges that are included in the Cost of the Work for such Design/Build Project (as provided in Section 1.5 of Exhibit "D").

"Insurance Percentage" means, with respect to any particular Design/Build Project, the fixed percentage rate specified in the Project Authorization with respect to such Design/Build Project.

"Interest Rate" means an annual rate of interest equal to the prime rate of interest announced from time to time by the Wall Street Journal plus two percent (2%).

"Interim Basis of Design" means, with respect to any Design/Build Project, the Basis of Design to be developed by Design/Builder and approved by Owner in connection with the preparation and approval of the Design Development Documents, which Interim Basis of Design shall represent a further development and refinement of the Initial Basis of Design.

"Key Personnel" means, with respect to each Design/Build Project, the persons designated as "Key Personnel" in the applicable Project Authorization.

"Known Hazardous Materials" means any Hazardous Materials that the Design/Builder knew to be present in, on, under or about the Site as of the date of this Agreement (including, but not limited to, any Hazardous Materials the presence of which in, on, under or about the Site was disclosed in any Environmental Assessment as set forth in the applicable Project Authorization).

"Liquidated Damages" means the liquidated damages, if any, payable by the Design/Builder to the Owner under the applicable Project Authorization if the Design/Builder does not achieve Substantial Completion of the Work (or the applicable portion thereof) for the applicable Design/Build Project by the date required on the Schedule for such Design/Build Project, as adjusted.

"Losses" means claims, demands, losses, damages, lawsuits, proceedings, judgments, causes of action, liabilities, liens, penalties, charges, costs and expenses (including, without limitation, reasonable attorneys' fees and court costs).

"Modification" means a Change Order, a Construction Change Directive and/or a written amendment to this Agreement executed by the Parties after the date hereof; including, without limitation, Project Authorizations and Project Authorization Modifications.

"New Legal Requirements" means, with respect to any Design/Build Project, the requirements of any Applicable Laws that are first enacted after the date that Design/Builder signed the applicable Project Authorization.

"Nonconforming Construction Work" means any Construction Work that is not in accordance with or that deviates from the requirements of the Design/Build Documents or that is otherwise defective.

"Notice of Nonconforming Work" means a writing signed by Owner (or an agent or representative of Owner) that informs the Design/Builder of the existence of Nonconforming Construction Work that is rejected by Owner. Each Notice of Nonconforming Work shall: (a) include a description of Construction Work which: (i) has been omitted, (ii) as of the date of the Notice of Nonconforming Work has not been executed on or before the time for its incorporation into the Work for the applicable Design/Build Project under the Schedule for the applicable Design/Build Project, or (iii) has not been executed in accordance with the methods and materials designated in the Design/Build Documents for the applicable Design/Build Project; (b) include a reference to the provision or provisions of the Design/Build Documents which has or have been violated; and (c) if applicable (i.e., if the applicable failure is amenable to cure), specify a reasonable period of time within which the Design/Builder must correct the deficiency (which period of time shall not be deemed to be an extension of Contract Time for the applicable Design/Build Project, nor shall it be deemed to be authorization for amendment to the Schedule for the applicable Design/Build Project).

"Owner" is defined in the preamble to this Agreement.

"Owner Delays" means any delays to the extent caused by any of the following: (a) failure of Owner to issue the Design Notice to Proceed for any Design/Build Project on or before the date therefor set forth in the Schedule for such Design/Build Project, (b) failure of Owner to issue the Construction Notice to Proceed for any Design/Build Project on or before the date therefor set forth in the Schedule for such Design/Build Project (except to the extent such failure is related to any failure of the Design/Builder to meet any deadlines or dates for completion of any portion of the Design Work for such Design/Build Project), (c) failure of the Owner to make available the Site for any Design/Build Project in accordance with the requirements of the Schedule for such Design/Build Project, (d) failure of the Owner to obtain Owner Governmental Approvals for any Design/Build Project in accordance with the requirements of the Schedule for such Design/Build Project, (e) failure of Owner to furnish to Design/Builder in a timely manner any items required to be furnished by Owner to Design/Builder pursuant to the Design/Build Documents, (f) any unreasonable interference with the progress of the Work for any Design/Build Project caused by the conduct or lack of conduct by the Owner or its employees, agents or Separate Contractors, (g) the existence or discovery of Hazardous Materials in, on, under or about the Site other than Known Hazardous Materials and/or Hazardous Materials that became present in, on, under or about the site as a result of any act or omission of the Design/Builder or any of the other Design/Builder Parties, (h) differing, unusual and concealed conditions at the Site that could not reasonably have been anticipated by the Design/Builder (such as archaeological finds, subsurface conditions; underground foundations, and abandoned utility lines) or (i) any New Legal Requirements.

"Owner Governmental Approvals" means, with respect to any Design/Build Project, only those governmental (including agency) consents, permits and approvals required to be obtained by the Owner and necessary for the completion of such Design/Build Project, including, but not limited to, modification of existing zoning, special permits, vacation of certain streets and/or alleys, and modifications to or variances from applicable building codes, all as more fully described in the Project Authorization for each Design/Build Project.

"Owner Indemnified Parties" means the Owner and its subsidiaries, parents or Affiliates and their respective partners, members, mortgagees, ground lessors, directors, officers, managers, trustees, investors, employees, agents, successors, assigns, and other person or entities reasonably designated by Owner (including any lender of Owner designated by Owner).

"Party" or **"Parties"** means the Owner and/or the Design/Builder, their respective permitted successors and/or assigns, and any other future signatories to this Agreement.

"Person" means an individual, general or limited partnership, limited liability partnership or company, corporation, trust, estate, real estate investment trust association or any other entity.

"Pre-Design/Build Services" means the services to be provided by Design/Builder to Owner pursuant to the Pre-Design/Build Services Agreement.

"Pre-Design/Build Services Agreement" will be identified in each Project Authorization..

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

"Program" means, with respect to any Design/Build Project, the Owner's requirements for the Work for such Design/Build Project, as set forth and described in the applicable Project Authorization.

"Project" means, collectively, all of the Design/Build Projects for which the Parties mutually execute and deliver Project Authorizations (i.e., all of the Design/Build Projects to be performed by Design/Builder hereunder).

"Project Authorization" means a Modification to this Agreement substantially in the form of **Exhibit "A"**, under which Owner and Design/Builder shall agree upon the terms and conditions upon which Design/Builder shall perform the Work with respect to the Design/Build Project described therein.

"Project Authorization Modification" means a written amendment to any Project Authorization (and it is understood that a Project Authorization Modification shall amend only the particular Project Authorization that is specifically referenced in such Project Authorization Modification).

"Punch List" means, with respect to any Design/Build Project, the list of Punch List Items to be prepared in accordance with Section 2.20 below.

"Punch List Items" means, with respect to any Design/Build Project, those minor items of Construction Work for such Design/Build Project that are to be completed after Substantial Completion and prior to Final Completion of such Design/Build Project, which do not prevent the Construction Work for such Design/Build Project from being used for the purpose for which it is intended and which will not prevent the issuance of a temporary or final certificate of occupancy.

"Retained Percentage" means, with respect to any particular Design/Build Project, the percentage specified in the Project Authorization with respect to such Design/Build Project.

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

"Savings" is defined in Section 5.1.2 below.

"Schedule" means, with respect to any Design/Build Project, the schedule pursuant to which the Design/Builder has agreed to Substantially Complete the Work for such Design/Build Project, which Schedule: (a) shall initially be the schedule attached to the applicable Project Authorization, (b) as design proceeds, shall be periodically updated to indicate: (i) proposed activity sequences and durations, (ii) milestone dates for receipt and approval of pertinent information, (iii) preparation and processing of Shop Drawings and Samples, (iv) delivery of materials or equipment requiring long-lead-time procurement, and (v) Owner's occupancy requirements showing portions of the applicable Design/Build Project having occupancy priority; and (c) at the time that the Construction Documents for a Design/Build Project are ready for bidding, shall include all of the detail described in Section 2.4.5 below. The Schedule for a Design/Build Project shall be adjusted only pursuant to the express provisions of this Agreement.

"Schedule of Values" means, with respect to any Design/Build Project, a schedule of values for such Design/Build Project that is: (a) approved by Owner, (b) allocates the GMP for such Design/Build Project among the various portions of the Work for such Design/Build Project (except that the Fee, the General Conditions Costs, the Contingency, and the Insurance Costs that are included in the Cost of the Work for such Design/Build Project shall each be shown as a single separate item), and (c) is prepared in such form and supported by such data to substantiate its accuracy as the Owner may reasonably require.

"Scheduled Date of Substantial Completion" means, with respect to any Design/Build Project, the date the Design/Builder has agreed to achieve Substantial Completion of the applicable Design/Build Project in accordance with the Schedule for such Design/Build Project, as adjusted pursuant to the express provisions of this Agreement.

"Schematic Design Documents" means documents that further develop the conceptual design of the Work for any Design/Build Project, illustrating the scale and relationship of the components of the Work for such Design/Build Project. The Schematic Design Documents shall include refined site plan, building plans, sections and elevations, including preliminary floor plans showing life sciences, electrical, mechanical and special areas. At the Design/Builder's option, the Schematic Design Documents for any Design/Build Project may include study models, perspective

sketches, electronic modeling or combinations of these media. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

"Separate Contractors" means those individuals or entities (including, but not limited to, concessionaires) who have entered into arrangements with the Owner for the provision of labor, materials or other services in connection with any Design/Build Project, or any other project located on the same Site on which any Design/Build Project is located.

"Shop Drawings" are drawings, diagrams, schedules and other data specially prepared for the Work by the Design/Builder, a Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Construction Work.

"Site" means, with respect to any Design/Build Project, the real property on which such Design/Build Project will be located, which is more fully described in the applicable Project Authorization.

"Specifications" means that portion of any Design Materials consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

"Subcontract" means an agreement between the Design/Builder (or any higher tier Subcontractor) and another person or entity engaged to perform a portion of the Work, including, without limitation, any agreement between the Design/Builder or the Architect and any other Person that is a member of the Design/Build Team.

"Subcontractor" means a Person who has entered into an arrangement with the Design/Builder (or with a higher tier Subcontractor) for the provision of labor, materials, supplies, equipment, temporary facilities, or other services required to be performed by the Design/Builder under the Design/Build Documents, at any and all tiers. For the avoidance of doubt, the Architect and each of the other members of the Design/Build Team are Subcontractors.

"Submittals" means Shop Drawings, Product Data, Samples and similar submittals (as such term is understood in the construction industry).

"Substantial Completion" means, with respect to any Design/Build Project, the completion of the Work for such Design/Build Project in accordance with the Design/Build Documents for such Design/Build Project (including, but not limited to, the Construction Documents for such Design/Build Project) as evidenced by: (a) a "signoff" on the building permit card by an inspector of the applicable jurisdiction (such that the applicable Design/Build Project (or the building in which it is located) may be lawfully used by the Owner for its intended purpose), (b) a certificate (or other writing) from the Architect (acting consistently with AIA custom and practice) confirming completion of the Work for such Design/Build Project in accordance with the Design/Build Documents (including, but not limited to, the Construction Documents), excepting only: (i) any Punch List Items and (ii) any fixtures, work-stations, built-in furniture, or equipment to be installed by Owner or any of its agents (other than Design/Builder), and (c) if specified in the applicable Project Authorization, the completion of the Commission Work.

"Substantial Completion Date" means, with respect to any Design/Build Project, the date on which Substantial Completion of the Work for such Design/Build Project actually occurs.

"TIA" is defined in Section 8.3.2.

"Work" means the Design Work and the Construction Work collectively, and includes: (a) the design services and construction work required by or reasonably inferable from the Design/Build Documents and all design services necessary to produce such design; (b) all labor necessary to produce such construction; (c) all materials, fabrications, assemblies, and equipment incorporated or to be incorporated in such construction; and (d) all materials, equipment, tools, construction means, utilities, facilities, transportation, appliances, supervision and services necessary to fulfill Design/Builder's obligations under the Design/Build Documents and to produce the intended results, including, without limitation, such materials and equipment which may be consumed or used but not actually incorporated in such construction.

1.4 ADDITIONAL DEFINED TERMS. Initial-capitalized terms not defined in Section 1.3 shall have the meanings otherwise ascribed to them in this Agreement.

ARTICLE 2 SERVICES BY THE DESIGN/BUILDER

2.1 PERFORMANCE OF WORK. The Design/Builder covenants and agrees that, with respect to each Design/Build Project, it shall be responsible for (a) performing and completing, and for causing the Subcontractors to perform and complete all of the Work set forth in the Design/Build Documents and all other obligations of the Design/Builder under the Design/Build Documents, including, without limitation under this Article 2 of this Agreement, (b) for performing general contracting services with respect to each such Design/Build Project and (c) for achieving Substantial Completion of the Work for such Design/Build Project by the Scheduled Date of Substantial Completion set forth in the Schedule for such Design/Build Project, as the same may be extended from time to time pursuant to the express provisions of this Agreement (and for achieving Final Completion within a reasonable time thereafter). Substitutions (and/or changes in the GMP and/or Contract Time for any Design/Build Project) shall

be permitted only with the consent of the Owner, and only in accordance with a Change Order. The Work shall include all work specifically called for in the Design/Build Documents and in all Applicable Laws, and all items necessary, incidental, required by, or implied by the Design/Build Documents, except for those items, if any, that are specifically and expressly excluded. Design/Builder's specific duties as set forth in this Article 2 are not intended to be exhaustive, and do not limit other duties imposed by the Design/Build Documents and/or otherwise necessary for the successful completion of the Work with respect to any Design/Build Project as an integrated whole.

2.2 LOCAL CONDITIONS; ENVIRONMENTAL SITE CONDITIONS.

2.2.1 Concealed Conditions. To the extent that, with respect to any Design/Build Project, the Design/Builder encounters subsurface or concealed conditions which differ materially from that actually known by the Design/Builder and the other members of the Design/Build Team on the date of the applicable Project Authorization or that are different from those disclosed by Owner or its consultants to Design/Builder, and which differ materially from those ordinarily found to exist and are generally recognized as inherent in construction activities of the character provided in the Design/Build Documents, then Design/Builder shall provide the Owner with prompt written notice of such conditions (and in any case, must provide such notice before such conditions are disturbed). Subject to all of the terms and conditions of this Agreement, such materially different conditions shall entitle the Design/Builder to an equitable adjustment in the GMP and/or Contract Time for the applicable Design/Build Project pursuant to the Change Order provisions of this Agreement.

2.2.2 Hazardous Materials.

2.2.2.1 In performing the Work, the Design/Builder and all Subcontractors shall: (a) comply with all Applicable Laws, including, but not limited to Environmental Laws and (b) shall not discharge, release, emit, spill, store, treat or dispose of any Hazardous Materials in, on, under or about the Building or the Site. Should the Design/Builder or any Subcontractors discharge, release, emit, spill, treat, store or dispose of any Hazardous Material in, on, under or about the Building or Site in violation of this Section 2.2.2.1 or otherwise in violation of Applicable Laws, Design/Builder shall immediately: (i) inform Owner in writing of such event, (ii) advise Owner with respect to any release reporting or notification requirement that may apply as a result of such event; (iii) assist Owner in complying with any such reporting or notification requirement as determined by Owner, and (iv) at its sole cost and expense (and not as part of the Cost of the Work), perform any investigation, remediation, removal or other response that is necessary or desirable in order to abate or clean up the condition resulting from such event to the satisfaction of Owner and any applicable governmental agency. Materials containing PCB's, asbestos or urea formaldehyde shall not be specified, used or installed in connection with any of the Work.

2.2.2.2 If Hazardous Materials (other than any Hazardous Materials that are to be abated, remediated or removed as part of the Work as specified in any Project Authorization) that have not been rendered harmless are encountered on the Site by the Design/Builder or any Subcontractor (and that are not brought to the Site by any Design/Builder Party), the Design/Builder shall immediately stop Work in the affected area upon recognizing the condition and shall report the condition to Owner and shall continue work in unaffected areas reasonably believed safe. Owner or its consultant shall promptly undertake to sample, test and profile such suspected Hazardous Materials in accordance with applicable protocols and standards in order to confirm the nature, quantity or concentration thereof. If it is determined that the applicable materials are not Hazardous Materials or are Hazardous Materials but are not of sufficient nature, quantity or concentration to trigger handling and manifesting of the same as a hazardous waste upon disturbance and removal from the Building and Site, then Design/Builder and the Subcontractors shall immediately resume the portion of the Work that was suspended, and shall proceed to handle and dispose of such materials pursuant to the Design/Build Documents, taking all work practice and safety precautions that are applicable under the circumstances. If, however, the applicable materials are determined to be Hazardous Materials of sufficient nature, quantity or concentration to trigger handling and manifesting of the same as hazardous waste upon disturbance and removal from the Building and the Site, the Parties shall determine what, if any, action to take with respect to such Hazardous Materials, whether to resume Work in the affected area taking all applicable work practice and safety precautions, and what, if any, Change Order or adjustment to the GMP and Contract Time for the applicable Design/Build Project is appropriate and mutually agreed in order to account for any increased costs caused thereby of and effect that the same will have on the Schedule for the applicable Design/Build Project.

2.2.2.3 To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Design/Builder Indemnified Parties from and against all Losses to the extent the same arise out of the performance of the Work in any area in which any Hazardous Materials (other than any Known Hazardous Materials and any Hazardous Materials that become or became present in any such area as a result of any act or omission of any of the Design/Builder Parties) that: (a) are described in Section 2.2.2.2 and (b) have not been rendered harmless, are present; provided, however, that the Owner's obligation to so indemnify the Design/Builder Indemnified Parties shall not apply to the extent that (i) any such Losses arise out of the breach, negligence or willful misconduct of any of the Design/Builder Parties or (ii) such Losses are of a type for which coverage is provided under the insurance that Design/Builder or any Subcontractor is required to carry under the Design/Build Documents or any other insurance that Design/Builder or any Subcontractor is actually carrying.

2.2.2.4 Design/Builder shall bear full responsibility, as between the Parties, for the compliance of all Subcontractors (and other Design/Builder Parties) with the provisions of this Section 2.2.2.

2.3 LEGAL REQUIREMENTS. The Design/Builder shall comply with all Applicable Laws relating in any manner to the Work or any Design/Build Project, and shall give all applicable notices pertaining thereto. Although it is the responsibility of the Design/Builder to conform the Work and each Design/Build Project to Applicable Laws at all times, to the extent that the cost or time of performance of the Work for any

Design/Build Project shall be affected (increased or decreased) as a result any New Legal Requirements, such change shall be the subject of a Change Order under the provisions of Article 8 hereof.

2.4 DEVELOPMENT OF SCHEMATIC DESIGN DOCUMENTS, DESIGN DEVELOPMENT DOCUMENTS, CONSTRUCTION DOCUMENTS, AND SCHEDULE.

2.4.1 [Intentionally Omitted]

2.4.2 Schematic Design Documents. With respect to each Design/Build Project, unless the Basis of Design and/or Schematic Design Documents are attached to the applicable Project Authorization, once the Owner gives the Design/Builder the Design Notice to Proceed for such Design/Build Project, the Design/Builder shall cause the Architect and other members of the Design/Build Team to commence preparation of the Schematic Design Documents and the Initial Basis of Design for such Design/Build Project in accordance with the Schedule for such Design/Build Project and the procedures for review set forth in **Exhibit "F"**. The Program for a Design/Build Project, as approved by Owner, or as attached to any Project Authorization, shall provide the basis for the preparation of the Schematic Design Documents for such Design/Build Project, and for purposes of developing such Schematic Design Documents and Initial Basis of Design (including, but not limited to, for purposes of specifying quantities and qualities of items, equipment, performance standards, materials and finishes in such Schematic Design Documents and Initial Basis of Design), Design/Builder (and the other members of the Design/Build Team) shall be entitled to rely on the Program for such Design/Build Project that is included in the Project Authorization for such Design/Build Project. Such Schematic Design Documents and the Initial Basis of Design together with a proposed updated and more detailed Schedule for the applicable Design/Build Project shall be submitted by the Design/Builder to Owner for review and approval on or before the date therefor set forth in the then existing Schedule for the applicable Design/Build Project. Such Schematic Design Documents and Initial Basis of Design shall be consistent with the Program for the applicable Design/Build Project and such proposed updated Schedule shall be consistent with the then existing Schedule for the applicable Design/Build Project. To the extent the Owner disapproves any Schematic Design Documents or the Initial Basis of Design and/or any proposed updated Schedule, Owner shall give prompt written notice to the Design/Builder of its specific reasons for disapproval.

2.4.2.1 To the extent in such written notice of disapproval, the Owner specifies items: (a) in the Schematic Design Documents and/or Initial Basis of Design that are not consistent with the Program for the applicable Design/Build Project and/or (b) in the proposed updated Schedule that are not consistent with the then existing Schedule for the applicable Design/Build Project, then the Design/Builder shall, at its sole cost and expense, cause the Schematic Design Documents and/or the Initial Basis of Design, and/or the proposed updated Schedule for the applicable Design/Build Project to be revised accordingly, the costs of remedial design work shall not be included in the Cost of the Work for the applicable Design/Build Project, and the Contract Time (and/or the portion thereof allotted to the Design Phase) for the applicable Design/Build Project shall not be extended.

2.4.2.2 To the extent in such written notice of disapproval, the Owner specifies items that Owner wishes to change: (a) in the Schematic Design Documents and/or Initial Basis of Design that are consistent with the Program for the applicable Design/Build Project and/or (b) in the proposed updated Schedule that are consistent with the then existing Schedule for the applicable Design/Build Project, then the Design/Builder shall cause the Schematic Design Documents and/or Initial Basis of Design and/or the proposed updated Schedule for the applicable Design/Build Project to be revised accordingly, the cost associated with revising such Schematic Design Documents and/or Initial Basis of Design and/or such proposed updated Schedule, and any construction costs associated therewith, shall be included in the Cost of the Work for the applicable Design/Build Project, and the Contract Time (and the Schedule) for the applicable Design/Build Project shall be equitably adjusted to reflect the redesign and additional construction activities required on account of such changes (and the Parties shall execute a Change Order making any necessary adjustments to the GMP and/or the Contract Time for the applicable Design/Build Project).

2.4.2.3 Upon approval of the Schematic Design Documents and Initial Basis of Design and proposed updated Schedule for any Design/Build Project, the Parties shall execute a Modification (and/or a Change Order) under which: (a) the approved Schematic Design Documents and Initial Basis of Design for such Design/Build Project shall be incorporated into the applicable Project Authorization as Design/Build Documents and (b) the Schedule for the applicable Design/Build Project shall be updated as proposed. The Basis of Design shall continue to be one of the Design/Build Documents provided that, in the event of any conflict between the Basis of Design and the Schematic Design Documents (or the Design Development Documents or Construction Drawings or Basis of Design) that are approved by Owner, the latter shall prevail.

2.4.3 Design Development Documents. After approval by the Owner of the Schematic Design Documents and Initial Basis of Design for a Design/Build Project (unless such documents were attached to the applicable Project Authorization), the Design/Builder shall cause the Architect and other members of the Design/Build Team to commence preparation of the Design Development Documents and Interim Basis of Design for such Design/Build Project in accordance with the then existing Schedule for such Design/Build Project and the procedures for review set forth in **Exhibit "F"**. The Schematic Design Documents and Initial Basis of Design as approved by Owner shall provide the basis for development of the Design Development Documents and Interim Basis of Design, and for purposes of developing such Design Development Documents and Interim Basis of Design (including, but not limited to, for purposes of specifying quantities and qualities of items, equipment, performance standards, materials and finishes in such Design Development Documents and Interim Basis of Design), Design/Builder (and the other members of the Design/Build Team) shall be entitled to rely on the Schematic Design Documents and Initial Basis of Design that are approved by Owner. Such Design Development Documents and Interim Basis of Design, together with a proposed updated and more detailed Schedule for the applicable Design/Build Project shall be submitted by the Design/Builder to Owner for review and approval on or before the date therefor set forth in the then

existing Schedule for such Design/Build Project. Such Design Development Documents and Interim Basis of Design shall be consistent with the Schematic Design Documents and Initial Basis of Design for the applicable Design/Build Project approved by the Owner and such proposed updated Schedule shall be consistent with the then existing Schedule for such Design/Build Project. To the extent the Owner disapproves the Design Development Documents and/or the Interim Basis of Design and/or the proposed updated Schedule for any Design/Build Project, Owner shall give prompt written notice to the Design/Builder of its specific reasons for disapproval

2.4.3.1 To the extent in such written notice of disapproval, the Owner specifies items: (a) in the Design Development Documents and/or Interim Basis of Design that are not consistent with the Schematic Design Documents or Initial Basis of Design for the applicable Design/Build Project approved by Owner and/or (b) in the proposed updated Schedule for the applicable Design/Build Project that are not consistent with the then existing Schedule for such Design/Build Project, then the Design/Builder shall, at its sole cost and expense, cause such Design Development Documents and/or Interim Basis of Design and/or such proposed updated Schedule to be revised accordingly, the costs of remedial design work shall not be included in the Cost of the Work for the applicable Design/Build Project, and the Contract Time (and/or the portion thereof allotted to the Design Phase) for the applicable Design/Build Project shall not be extended.

2.4.3.2 To the extent in such written notice of disapproval, the Owner specifies items that Owner wishes to change: (a) in the Design Development Documents and/or Interim Basis of Design that are consistent with the Schematic Design Documents and/or the Initial Basis of Design for the applicable Design/Build Project approved by Owner and/or (b) in the proposed updated Schedule that are consistent with the then existing Schedule for the applicable Design/Build Project, then the Design/Builder shall cause such Design Development Documents and/or Interim Basis of Design and/or such proposed updated Schedule to be revised accordingly, the cost associated with revising such Design Development Documents and/or Interim Basis of Design and/or such proposed updated Schedule, and any construction costs associated therewith, shall be included in the Cost of the Work for the applicable Design/Build Project, and the Contract Time (and the Schedule) for the applicable Design/Build Project shall be equitably adjusted to reflect the redesign and additional construction activities required on account of such changes (and the Parties shall execute a Change Order making any necessary adjustments to the GMP and/or the Contract Time for the applicable Design/Build Project).

2.4.3.3 Upon approval of the Design Development Documents and Interim Basis of Design and proposed updated Schedule for any Design/Build Project, the Parties shall execute a Modification (and/or a Change Order) under which: (a) the approved Design Development Documents and Interim Basis of Design shall be incorporated into the applicable Project Authorization as Design/Build Documents and the Schematic Design Documents and Initial Basis for Design for such Design/Build Project shall be deleted from the applicable Project Authorization as Design/Build Documents and (b) the Schedule for the applicable Design/Build Project shall be updated as proposed.

2.4.4 Construction Documents. After approval by the Owner of the Design Development Documents and Interim Basis of Design for a Design/Build Project (unless such documents were attached to the applicable Project Authorization), the Design/Builder shall cause the Architect (and other members of the Design/Build Team) to commence preparation of the Construction Documents and the Final Basis of Design for such Design/Build Project in accordance with the then existing Schedule for such Design/Build Project and the procedures for review set forth in **Exhibit "F"**. The Design Development Documents and Interim Basis of Design as approved by Owner shall provide the basis for development of the Construction Documents and Final Basis of Design, and for purposes of developing such Construction Documents and Final Basis for Design (including, but not limited to, for purposes of specifying quantities and qualities of items, equipment, performance standards, materials and finishes in such Construction Documents and Final Basis of Design), Design/Builder (and the other members of the Design/Build Team) shall be entitled to rely on the Design Development Documents and Interim Basis of Design that are approved by Owner. Such Construction Documents and Final Basis of Design together with a proposed updated and more detailed Schedule for the applicable Design/Build Project shall be submitted by the Design/Builder to Owner for review and approval on or before the date therefor set forth in the then existing Schedule for such Design/Build Project. Such Construction Documents and Final Basis of Design shall be consistent with the Design Development Documents and Interim Basis of Design for such Design/Build Project approved by the Owner and such proposed updated Schedule shall be consistent with the then existing Schedule for such Design/Build Project. To the extent the Owner disapproves any Construction Documents and/or Final Basis of Design and/or any proposed updated Schedule, Owner shall give prompt written notice to the Design/Builder of its specific reasons for disapproval.

2.4.4.1 To the extent in such written notice of disapproval, the Owner specifies items: (a) in the Construction Documents and/or Final Basis of Design that are not consistent with the Design Development Documents and/or the Interim Basis of Design for the applicable Design/Build Project approved by Owner and/or (b) in the proposed updated Schedule that are not consistent with the then existing Schedule for the applicable Design/Build Project, then the Design/Builder shall, at its sole cost and expense, cause such Construction Documents and/or the Final Basis of Design and/or such proposed updated Schedule to be revised accordingly, the costs of remedial design work shall not be included in the Cost of the Work for the applicable Design/Build Project, and the Contract Time (and/or the portion thereof allotted to the Design Phase) for the applicable Design/Build Project shall not be extended.

2.4.4.2 To the extent in such written notice of disapproval, the Owner specifies items that Owner wishes to change: (a) in the Construction Documents and/or Final Basis of Design that are consistent with the Design Development Documents and the Interim Basis of Design for the applicable Design/Build Project approved by Owner and/or (b) in the proposed updated Schedule that are consistent with the then existing Schedule for the applicable Design/Build Project, then the Design/Builder shall cause such Construction Documents and/or Final Basis of Design and/or such proposed updated Schedule to be revised accordingly, the cost associated with revising such Construction Documents and/or Final Basis of Design and/or such proposed updated Schedule, and any construction costs associated therewith, shall be included in the Cost of the Work for the applicable Design/Build Project, and the Contract Time (and the Schedule) for the applicable Design/Build Project shall be equitably adjusted

on account of redesign and additional construction activities required to reflect the such changes (and the Parties shall execute a Change Order making any necessary adjustments to the GMP and/or the Contract Time for the applicable Design/Build Project).

2.4.4.3 Upon approval of the Construction Documents and Final Basis of Design and proposed updated Schedule for any Design/Build Project, the Parties shall execute a Modification (and/or a Change Order) under which (a) the approved Construction Documents and Final Basis for Design shall be incorporated into the applicable Project Authorization as Design/Build Documents and the Design Development Documents shall be deemed deleted from the applicable Project Authorization as Design/Build Documents and (b) the Schedule for the applicable Design/Build Project shall be updated as proposed.

2.4.5 Detailed Schedule. On or before the date therefor set forth in the then existing Schedule for a Design/Build Project (and prior to the time that the Construction Documents for such Design/Build Project are ready to be bid), a proposed updated and more detailed Schedule for such Design/Build Project (which shall include all of the detail described in this Section 2.4.5) shall be submitted by the Design/Builder to Owner for review and approval. Such proposed updated Schedule shall be consistent with the then existing Schedule for the applicable Design/Build Project and shall be in a detailed computer generated, logic-driven, precedence style CPM schedule in a mutually agreeable format reasonably satisfactory to the Owner that: (a) provides a graphic representation of all activities and events that will occur during performance of the Work for the applicable Design/Build Project; (b) identifies each phase of construction and occupancy for the applicable Design/Build Project; (c) sets forth milestone dates for the applicable Design/Build Project that are critical in ensuring the timely and orderly completion of the Work for the applicable Design/Build Project in accordance with the requirements of the Design/Build Documents, (d) contains space for notations and revisions, (e) shows, without limitation: (i) complete sequence of construction by activity, with dates for beginning and completion of each element of the Work for the applicable Design/Build Project as well as the totality of the Work for the applicable Design/Build Project, (ii) each element by major specification section, (iii) sub-schedules to define critical portions of the entire Schedule, and (iv) realistic durations of activities, sequence of events, processing of Submittals, proper delivery of lead time items, the activities of Separate Contractors performing improvements or other work and Owner's occupancy requirements during construction, if any, and (f) specifies the dates on which Owner shall: (i) cause to be delivered to the applicable Site any items that are to be acquired by Owner for the applicable Design/Build Project and (ii) select the items (if any) for which (A) alternates have been provided or (B) an allowance has been provided and that are to be selected by the Owner for the applicable Design/Build Project. To the extent the Owner disapproves any such proposed updated Schedule, Owner shall give written notice to the Design/Builder of its specific reasons for disapproval.

2.4.5.1 To the extent in such written notice the Owner specifies items in the proposed updated Schedule that are not consistent with the then existing Schedule for the applicable Design/Build Project and/or with the requirements of Section 2.4.5 above, then the Design/Builder shall, at its sole cost and expense, cause such proposed updated Schedule to be revised accordingly, the costs associated with revising such proposed updated Schedule shall not be included in the Cost of the Work for the applicable Design/Build Project, and the Contract Time (and/or the portion thereof allotted to the Design Phase) for the applicable Design/Build Project shall not be extended.

2.4.5.2 To the extent in such written notice the Owner specifies items that the Owner wishes to change in the proposed updated Schedule that are consistent with the then existing Schedule for the applicable Design/Build Project and are also consistent with the requirements of Section 2.4.5 above, then the Design/Builder shall cause such proposed updated Schedule to be revised accordingly, the cost associated with revising such proposed updated Schedule shall be included in the Cost of the Work for the applicable Design/Build Project, and the Contract Time (and the Schedule) for the applicable Design/Build Project shall be equitably adjusted (and the Parties shall execute a Change Order making any necessary adjustments to the GMP and/or the Contract Time for the applicable Design/Build Project).

2.4.5.3 Upon approval of any proposed updated Schedule, the Parties shall execute a Modification (and/or a Change Order) under which the Schedule for the applicable Design/Build Project shall be updated as proposed.

2.4.6 Prior Development as Part of Pre-Design/Build Services Agreement. To the extent that, with respect to any Design/Build Project, any of the work described in Sections 2.4.2 through 2.4.5 above has been completed prior to the date of the applicable Project Authorization (as part of the Pre-Design/Build Services or otherwise), such prior completion shall be acknowledged in the applicable Project Authorization.

2.4.7 Review of Design Materials. Review and approval of Design Materials shall not relieve the Design/Builder from any of its responsibilities under this Agreement, or be deemed to be an approval or waiver by the Owner of any deviation from, or of the Design/Builder's failure to comply with, any provision or requirement of the Design/Build Documents, unless such deviation or failure has been identified as such in writing in the document submitted for approval by the Design/Builder and expressly approved in writing by the Owner. Design/Builder understands and agrees that it is responsible for the sufficiency, adequacy and completeness of the Design Materials (including, but not limited to, the Drawings and Specifications therein). Design/Builder acknowledges that Owner may limit its review of the Design Materials to a cursory review, or a review for the limited purpose of determining whether to make a progress payment to Design/Builder, it being Design/Builder's sole responsibility to prepare the Design Materials properly and completely. Because of Design/Builder's design-build responsibilities under this Agreement and the other Design/Build Documents, Owner may not be expected to carry out a detailed review, check or coordination of these documents, and Design/Builder shall not rely on such in any case and Owner may elect to make such a review as superficial, brief and limited as it may, in its sole discretion, choose to do. If Owner notifies Design/Builder that any Design Materials are incomplete, unacceptable or inconsistent with the Design/Build Documents in any respect, then, Design/Builder shall promptly complete, correct and/or modify the Design Materials in question and shall resubmit such Design Materials to Owner.

2.4.8 Reliance on Approvals. For purposes of developing the GMP and the Schedule, the Design/Builder shall be entitled to rely on the approvals of the Owner with respect to the Design Materials and the Schedule. If, with respect to any Design/Build Project, the Owner revokes, modifies or otherwise changes in a material way its approval of a given system after such system has been designed and approved, or modifies the original Program in a manner requiring modification to one or more systems which have been designed and approved by Owner, the Design/Builder shall be entitled to a Change Order in accordance with the provisions of Article 8 hereof. No Change Order shall be issued to the extent such modification is due to the fault or neglect of the Design/Builder, the Architect or other member of the Design/Build Team.

2.4.9 Review of Design Materials and Field Conditions. Except as expressly provided otherwise in this Agreement (including, without limitation, with respect to any matters specifically designated by the Owner to be included in the Design Materials), the Design/Builder shall be responsible for all errors, inconsistencies or omissions in the Design Materials. Subject to Section 2.2.1, the Design/Builder shall take field measurements and verify field conditions and shall carefully compare such field conditions and conditions and other information known to the Design/Builder with the Design/Build Documents before commencing activities. The Design/Builder shall perform the Work in accordance with the Design/Build Documents and Submittals approved in accordance with the procedures set forth in Exhibit "F".

2.5 LAYING OUT THE WORK. With respect to each Design/Build Project, Design/Builder shall, to the extent reasonably required in connection with the performance of the applicable Design/Build Project, perform the following work:

2.5.1 To the extent necessary, the Design/Builder shall obtain and pay for the service of an independent, licensed surveyor to lay out the Work. The surveyor shall be approved by the Owner and shall not be a regular employee of the Design/Builder or other member of the Design/Build Team, or have any interest in the Contract. As soon as practicable, the surveyor shall verify the layout and the Design/Builder shall furnish certified original drawings of the survey showing exact locations of the Project. All Construction Work that is not correctly located shall be relocated or altered to conform to the Design Materials. Additional copies of the survey shall be furnished to the Owner or its designees at the Owner's request.

2.5.2 The Design/Builder shall establish control points and bench marks adequate for the use of all trades for reference to obtain all portions of the Work within the specified and indicated tolerances. The Design/Builder shall remove, reestablish and relocate control points and bench marks as necessitated by the construction progress. The Design/Builder shall maintain such control points and bench marks in an undisturbed condition until Final Completion and final acceptance by the Owner of the Work. As the job proceeds, the Design/Builder shall verify all grades, lines, levels, and dimensions indicated on the Drawings, and shall report all errors or inconsistencies to the Owner. The Design/Builder shall not proceed until all errors and inconsistencies are corrected.

2.6 VALUE ENGINEERING.

2.6.1 The Design/Builder shall (and shall cause the other members of the Design/Build Team to) assist the Owner by furnishing recommendations to the Owner and by providing value engineering services; all of which shall be performed so as to assist the Owner in achieving its objectives, including, without limitation, those related to schedule, cost, functional performance and aesthetics. Factors to be considered by the Design/Builder (and other members of the Design/Build Team) in providing such services shall include, without limitation, Site use, selection of building materials, equipment and systems, availability of labor, lead times, methods of construction and any other similar items creating economies and/or cost savings for the Project (and the applicable Design/Build Project). Particular attention shall be given to alternative design proposals, possible economies, and identification of options which would maximize the benefits the Owner would derive upon completion of the Work.

2.6.2 The Design/Builder shall cause the other members of the Design/Build Team to furnish the Design/Builder with design documents, information and materials as reasonably necessary for the Design/Builder to perform the value engineering services described in this Section 2.6. The Design/Builder shall compile value engineering analyses, advice and recommendations in a written summary, and shall submit the same to the Owner for review and consideration.

2.6.3 Each value engineering proposal submitted by the Design/Builder shall include, without limitation, the following: (a) a reasonably detailed description of the difference between the requirements of the then existing Design/Build Documents and the proposed changes and comparative advantages and disadvantages of each; (b) itemization of aspects of the then existing Design/Build Documents affected by enactment of the proposal; (c) impact of the proposal upon both cost and schedule; (d) list of the projects, to the extent known, where the proposal or a similar proposal was used and the results experienced; (e) other information reasonably necessary to fully evaluate the proposal; and (f) the date by which the Owner must accept the proposal in order for the Design/Builder's cost and time estimates to remain valid.

2.6.4 The Design/Builder shall proceed with the performance of the Work as required by the Design/Build Documents and shall not implement any value engineering or other recommendations unless such recommendations are accepted by the Owner in a Change Order or Construction Change Directive.

2.6.5 To the extent that the performance of any value engineering services that are performed in accordance with this Section 2.6 with respect to any Design/Build Project were not anticipated (or extend beyond the scope of anticipated value engineering services) at the time the Cost of the Work and GMP and/or Schedule for the applicable Design/Build Project was developed and agreed upon, the Parties shall execute a Change Order appropriately adjusting the Cost of the Work and the GMP or the Contract Time, or both.

2.7 SERVICES AND FACILITIES.

2.7.1 General. Subject to the terms of this Agreement, the Design/Builder shall provide everything required for the orderly progress and proper execution and completion of the Work in accordance with the requirements of the Design/Build Documents, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including, but not limited to, design services, labor, materials, equipment, furnishings, tools, construction equipment and machinery, utilities, transportation and other facilities and services.

2.7.2 Supervision. The Design/Builder shall supervise and direct the Work in accordance with its best skill and attention. The Design/Builder shall be solely responsible for and shall have control over design and construction means, methods, techniques, sequences and procedures and for coordination of all portions of the Work under the applicable Design/Build Documents. The Design/Builder shall be responsible to the Owner for the acts and omissions of (and whenever this Agreement refers to the negligence, fault or omission of the Design/Builder, such term shall include the negligence, fault or omission of) all of the Design/Builder Parties.

2.7.2.1 Superintendent. The Design/Builder shall employ a competent superintendent and necessary assistants who shall be in attendance at the Site during performance of the Construction Work.

2.7.2.2 Key Personnel. The Design/Builder shall furnish (and shall cause the Architect and other members of the Design/Build Team to furnish) only skilled and properly trained staff for the performance of the Work. With respect to each Design/Build Project, the Key Personnel shall be persons agreed upon with the Owner and identified in the Schedule of Key Personnel attached to the applicable Project Authorization. Such Key Personnel shall not be changed without the written consent of the Owner, unless such person becomes unable to perform any required duties due to death, disability, transfer, or termination of employment with the Design/Builder, the Architect or other member of the Design/Build Team. If any Key Personnel are no longer capable of performing in the capacity described in the Schedule of Key Personnel, the Design/Builder shall (or shall cause the Architect to or other member of the Design/Build Team to) promptly recommend a mutually acceptable substitute(s) at no additional cost to the Work.

2.7.2.3 The Design/Builder shall immediately remove, or cause to be immediately removed, from the Site any Subcontractor or any employee of Design/Builder or of any Subcontractor reasonably considered to be unsatisfactory to the Owner. If the reason for removal is the Owner's good faith belief that the Subcontractor's employee's conduct or omission will lead to or has resulted in a breach of any material term or provision of the Contract, the Design/Builder shall replace (or cause the Subcontractor to replace) such removed party and be solely responsible for all costs associated therewith, including without limitation, any increase to the Cost of the Work or GMP for the applicable Design/Build Project(s).

2.7.3 Coordination. The Design/Builder shall coordinate design and construction requirements with governmental agencies, utilities, and all other parties either involved in infrastructure improvements or otherwise affected by the design and construction requirements.

2.7.4 Cooperation. The Design/Builder shall assist the Owner's staff and reasonably cooperate with the Owner's legal, financial, design and construction consultants and all other designated representatives during the design and construction of the Project.

2.7.5 Management. The Design/Builder shall implement suitable management systems and work plans for the Project relative to Project safety, quality assurance and managing and controlling the Work.

2.7.6 Reports. The Design/Builder shall prepare and submit to the Owner, during both the Design Phase and the Construction Phase for each Design/Build Project, monthly progress reports on the Work for the applicable Design/Build Project accomplished during the prior monthly period, which reports shall be prepared in a manner and in a format reasonably acceptable to the Owner. Such reports shall be furnished at or prior to the time of submission of each monthly Application for Payment. As part of such report, the Design/Builder shall provide an updated Schedule for the applicable Design/Build Project in accordance with (and including all of the information described in) Section 2.18.2 below. During the Construction Phase (at project mobilization, and monthly thereafter) for each Design/Build Project, 8"x10" progress photos depicting work status from all four sides, shall be included with monthly reports.

2.7.7 Progress Meetings. The Design/Builder shall conduct and manage progress meetings with Owner and other Persons designated by Owner to be held on a regular basis at a place at the Site (and/or at any other location(s) mutually acceptable to Owner and Design/Builder) to be mutually established by Owner and Design/Builder. Design/Builder shall arrange for the Architect and other members of the Design/Build Team and its Engineers to attend these weekly progress meetings upon the request of Owner. Design/Builder shall prepare timely minutes of the meetings and circulate the minutes to all interested Persons.

2.7.8 Non-Interference with Operations. Design/Builder understands and acknowledges that it may be performing the Work in an existing building, or in an area which affects other existing buildings on or near the Site. Design/Builder understands and acknowledges that such buildings shall remain operational and in use by tenants and the public during construction. Design/Builder warrants that in connection with its determination of the GMP and the Scheduled Completion Date for each Project, as set forth in the applicable Project Authorization, it has included sufficient monies and time to permit the Work to be performed in a manner that shall not cause interruption, interference or discomfort to tenants by operations, noise, dust, electrical outages, cooling or heating effects, or any other deleterious effects of construction activities and that shall not interfere with the ongoing operations of Owner or any tenants, contractors or vendors utilizing the building or any other building on the same campus. Design/Builder shall include the provisions of this Section, 2.7.8 in all subcontracts entered into with Subcontractors for the performance of any

portion of the Work. Design/Builder understands and acknowledges that a breach of this provision may result in actual and consequential damages to Owner and that Owner is entitled to seek indemnification for such damages from Design/Builder as set forth in Section 7.4 of this Agreement and/or the applicable Project Authorization.

2.8 WARRANTY.

2.8.1 General Warranty. The Design/Builder warrants to the Owner that: (a) any and all materials, equipment and furnishings incorporated in the Construction Work or otherwise provided under the Design/Build Documents will be of good quality and new (except to the extent otherwise expressly required or permitted by the Design/Build Documents), (b) the Construction Work will be free from defects, and (c) the Work will otherwise conform with the requirements of the Design/Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The foregoing warranty excludes damage or defect caused by abuse, modifications executed by the Owner, any Separate Contractor or any Person other than any Design/Builder Party, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by Owner, the Design/Builder shall furnish satisfactory evidence as to the kind and quality of materials, equipment and furnishings. Other than the above, Design/Builder makes no other warranty, representation or guarantee whether express or implied, and such are expressly disclaimed. The provisions of this Section 2.8.1 shall be applicable only to a claim for breach of this warranty which is delivered by Owner to Design/Builder in writing within the applicable warranty period.

2.8.2 The Design/Builder, the other members of the Design/Build Team and all other Subcontractors shall guarantee or warrant in writing to the Owner, consistent with Section 2.8.1 above, that each such party will repair or replace any or all Construction Work, together with any other Construction Work which may be displaced, damaged or marred in so doing, that may prove defective in materials or workmanship or fail to conform to the provisions and requirements of the Design/Build Documents, all without any additional expense to the Owner, ordinary wear and tear, abuse or neglect or modifications excepted. All guarantees or warranties shall be satisfactory in form and substance to the Owner and, unless otherwise stipulated in the Design/Build Documents, shall be for a period of one year, dated from the date of Substantial Completion (provided Owner shall give notice to Design/Builder of such defective Construction Work promptly following the date that Owner first becomes aware of the same). The guarantees or warranties shall not be construed to modify or limit, in any way, any rights or actions which the Owner may otherwise have against the Design/Builder or any Subcontractor by law or statute, or in equity.

2.8.3 Manufacturer's Warranties. All manufacturer warranties shall be assigned to the Owner at Substantial Completion of the Work, with a minimum period of one year coverage following Substantial Completion for each such warranty (unless otherwise required or approved by Owner).

2.8.4 Assignment of Warranties. All warranties and guaranties of Design/Builder and all Subcontractors shall be assignable by Owner to any third party, including, without limitation, any subsequent owner of the site or any lenders.

2.9 TAXES. The Design/Builder shall pay, as part of the Cost of the Work: (a) all applicable labor taxes imposed by Applicable Laws and (b) all existing and future applicable Federal, State and local gross receipts, sales, consumer, use and similar taxes, whether direct or indirect, relating to, or incurred in connection with, the performance of the Work (excluding taxes based on income). If the Design/Builder is obligated to pay any new or increased taxes or duties as a result of any New Legal Requirements, the amount of such new or increased taxes shall increase the GMP for the applicable Design/Build Project(s) pursuant to the Change Order provisions of this Agreement. If the Design/Builder receives the benefit of a tax exemption or tax reduction (with respect to any tax expenses that may be included in the Cost of the Work) taking effect after the date of any Project Authorization (and after the GMP for any Design/Build Project has been determined), the amount of such exemption or reduction shall decrease the GMP for the applicable Design/Build Project(s) pursuant to the Change Order provisions of this Agreement.

2.10 USE OF SITE.

2.10.1 For each Design/Build Project, the Design/Builder shall, prior to on-site testing and inspection activities, and prior to on-site mobilization for demolition and construction, prepare a mobilization plan for the Owner's review and approval based upon information provided to the Design/Builder by the Owner from time to time concerning the anticipated availability of the Site or portions thereof for tests and inspections to be performed in connection with the preparation of the Design Materials for the applicable Design/Build Project, for demolition, excavation and construction activities and to the extent (and only to the extent mutually agreed by the Parties in any Project Authorization), for testing relating to Hazardous Materials. The foregoing mobilization plan shall be revised from time to time as necessary to incorporate additional information on availability of the Site provided by the Owner. The Design/Builder shall confine operations at the Site to areas permitted by Applicable Laws, permits and the Design/Build Documents, and shall not unreasonably encumber the Site with materials or equipment. The Design/Builder shall at all times confine its access and use of the Site to the areas reasonably designated by the Owner from time to time as being delivered and available to the Design/Builder.

2.10.2 Owner is not obligated to allow Design/Builder (or any Subcontractor) to use any equipment or facilities located at the Site other than utilities, and (subject to Section 7.2, below) may not maintain insurance coverage that would protect Owner or Design/Builder in the event of injury or damage to persons or property. Without limiting the generality of the foregoing, it is understood and agreed that parking of all vehicles at (or around) the Site shall be limited to areas specifically designated by Owner. Usage of any such equipment or facilities shall be permitted only with prior written approval from Owner, and shall be subject to strict compliance with all terms and conditions imposed by the Owner. If Design/Builder or any Subcontractor uses any such equipment or facilities located at the Site, Design/Builder shall indemnify, defend and hold the Owner Indemnified

Parties harmless from and against all Losses resulting from Design/Builder's or Subcontractors' use of any equipment or facilities located at the Site. In addition, Design/Builder hereby releases Owner and the other Owner Indemnified Parties of and from any and all Losses, whether relating to bodily injury or property damage, resulting from use of any facilities or equipment at the Site (except to the extent such claims arise out of Owner's gross negligence or willful misconduct). Nothing in this Agreement shall prohibit Owner from furnishing its own equipment or materials at Owner's sole discretion.

2.11 PATENTS, TRADEMARKS, COPYRIGHTS. The Design/Builder shall pay, as a Cost of the Work, all applicable royalties and license fees on any and all matters arising in connection with the Work. The Design/Builder shall, at its sole cost and expense, defend all suits or claims for infringement of patent, trademark, and copyrights against the Owner Indemnified Parties, and shall indemnify, defend and hold the Owner Indemnified Parties harmless from Losses on account thereof for any and all matters arising in connection with the Work; provided, however, that the foregoing indemnity shall not extend to any particular design process or the product of a particular manufacturer or manufacturers that is specified and required by the Owner (other than pursuant to or as result of the recommendation or suggestion of the Design/Builder, the Architect or other member of the Design/Build Team), except to the extent that the Design/Builder, the Architect or other member of the Design/Build Team knew that the design, process or product so specified by Owner is an infringement of a patent, trademark and/or copyright and failed to provide the Owner with prompt written notice of such knowledge.

2.12 RUBBISH; DEBRIS; CLEANUP.

2.12.1 During the performance of all Work, the Design/Builder shall at all times, as a Cost of the Work, keep the Site, the Building, and adjacent streets, properties and sidewalks reasonably free from waste materials, debris and/or rubbish, and if applicable, shall employ adequate dust control measures. If accumulation of such materials, debris, or rubbish and/or any dust produced in connection with the Work constitutes a nuisance or safety hazard or is otherwise objectionable in the reasonable opinion of the Owner, the Design/Builder shall promptly remove them (or in the case of dust, employ dust control measures capable of eliminating such condition).

2.12.2 Upon Substantial Completion of the Work, or any portion or component thereof, the Design/Builder shall remove from the applicable Site and the Building, all tools, construction equipment, machinery, surplus materials, waste materials and rubbish and shall leave the applicable Site and the Building in a "broom clean" condition (subject to any other Work that is then in progress).

2.12.3 If the Design/Builder fails to comply with any of its obligations under this Section 2.12, and such failure continues for the notice and cure period described in Section 3.4 below, Owner shall have the rights described in Section 3.4 below.

2.13 PERMITS, FEES AND NOTICES. For each Design/Build Project, the Design/Builder shall obtain (and pay for, as a part of the Cost of the Work for the applicable Design/Build Project) all Design/Builder Governmental Approvals for such Design/Build Project; provided that to the extent that as a result of any New Legal Requirement there is a change in the type or cost of any Design/Builder Governmental Approvals for any Design/Build Project, there shall be an equitable adjustment in the GMP and the Contract Time for the applicable Design/Build Project on account of such change in accordance with the Change Order provisions of this Agreement.

2.14 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES.

2.14.1 Documents and Samples at the Site. From and after commencement of the Construction Work for any Design/Build Project (i.e., from and after the date on which the Owner issues the Construction Notice to Proceed for such Design/Build Project), the Design/Builder shall maintain at the Site one record copy of the Construction Documents for such Design/Build Project (including any and all amendments thereto that are approved by Owner), in good order and condition, and marked to record changes and selections made during the Construction Phase for such Design/Build Project and shall be referred to as the "As-Built" documents for the applicable Design/Build Project. In addition, the Design/Builder shall maintain at the Site approved Shop Drawings, Product Data, Samples and similar required Submittals. These shall be provided to the Owner upon completion of the Work for each Design/Build Project.

2.14.2 Shop Drawings, Product Data and Samples.

2.14.2.1 Shop Drawings, Product Data, Samples and similar Submittals are not Design/Build Documents. The purpose of their submittal is to demonstrate for those portions of the Construction Work for which Submittals are required the way the Design/Builder proposes to conform the construction to the Construction Documents for the applicable Design/Build Project.

2.14.2.2 The Design/Builder shall review and take appropriate action upon Shop Drawings, Product Data, Samples and similar Submittals. If the Owner wishes to review any Shop Drawings, Product Data, Samples and similar Submittals, it shall give reasonable prior written notice to the Design/Builder, and shall conduct such review so as not to delay the Work for the applicable Design/Build Project.

2.14.2.3 Responsibility. The Design/Builder shall not be relieved of responsibility for the deviations from requirements of the approved Construction Documents for any Design/Build Project by the Owner's approval of Shop Drawings, Product Data, Samples or similar Submittals unless the Design/Builder has specifically informed the Owner of such deviation at the time of the Submittal and the Owner has given written approval to the specific deviation. The Design/Builder shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar Submittals by the Owner's approval thereof.

2.15 TESTS AND INSPECTIONS.

2.15.1 Initial Tests and Inspections. Tests, inspections and approvals of portions of the Construction Work required by the Design/Build Documents, Applicable Laws or normal construction practices shall be made at an appropriate time. Unless otherwise provided, the Design/Builder shall make arrangements for such tests, inspections and approvals with the identified testing laboratory. The Design/Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may observe such procedures.

2.15.2 Additional Tests and Inspections. If the Design/Builder installs portions of the Construction Work that require additional testing, inspection or approval beyond the required testing that is referenced in Section 2.15.1, the Owner will make arrangements for such additional testing, inspection or approval.

2.15.2.1 If such additional tests and/or inspections reveal failure of the portions of the applicable Construction Work to comply with the requirements of the Design/Build Documents, the reasonable costs of such tests and of required corrections shall be deducted from the GMP for the applicable Design/Build Project, and if such additional tests and/or inspections increase the Design/Builder's time of performance of the Construction Work for the applicable Design/Build Project, the Contract Time for the applicable Design/Build Project shall not be extended.

2.15.2.2 If the additional tests and/or inspections show that the portions of the Work for the applicable Design/Build Project comply with the requirements of the Design/Build Documents, the costs thereof shall be an increase to the GMP for the applicable Design/Build Project, and if such additional tests and/or inspections increase the Design/Builder's time of performance of the Construction Work for the applicable Design/Build Project, an appropriate extension of the Contract Time for the applicable Design/Build Project (and the Parties shall execute a Change Order making such adjustments).

2.15.3 Required Certificates. Required certificates of testing, inspection or approval shall, unless otherwise required by the Design/Build Documents, be secured by the Design/Builder and promptly delivered to the Owner.

2.15.4 Timing of Testing. Tests or inspections conducted pursuant to the Design/Build Documents shall be made promptly to avoid unreasonable delay in the Work.

2.16 LABOR AND MATERIALS; LIENS.

2.16.1 Unless otherwise provided in the Design/Build Documents, the Design/Builder shall provide and pay as a Cost of the Work for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work for each and every Design/Build Project, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Design/Builder shall enforce strict discipline and good order among the Subcontractors and their respective employees and other persons carrying out the Work. The Design/Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

2.16.2 If any member of the Design/Build Team or any other Subcontractors or laborers record any liens, stop notices or violation notices in connection with or relating to the Work or a Design/Build Project (except for any liens, stop notices or violation notices that arise directly from Owner's default in its payment obligations hereunder), the Design/Builder will, at its expense, satisfy, discharge or bond such liens, stop notices or violation notices within ten (10) Business Days after written notice from the Owner of the existence of such liens by: (a) filing the applicable bond required by the Applicable Laws of the state where the Site is located, (b) providing Owner with a court order discharging the lien, stop notice or violation notice, or (c) providing Owner with another form of protection against such lien, stop notice or violation notice which is acceptable to Owner, in its sole and absolute discretion. If the Design/Builder fails to satisfy, discharge or bond such liens within such ten (10) Business Day period, the Owner may, but shall not be required to: (i) discharge or bond over such lien, stop notice or violation notice and the cost thereof: (A) may be deducted from any unpaid amounts due to the Design/Builder under this Agreement (including, without limitation, any unpaid retention or progress payment) and (B) any amount not so deducted shall become a debt due to Owner from Design/Builder (and payable immediately upon demand) and shall bear interest at the Interest Rate, or (ii) withhold from the Design/Builder the amount of such lien, stop notice or violation notice under the provisions of Section 5.4.9.

2.17 CUTTING AND PATCHING.

2.17.1 Cutting and Patching of the Work. The Design/Builder shall be responsible for cutting, fitting, or patching required to complete the Construction Work or to make its parts fit together properly.

2.17.2 Damage to Work of Owner or Separate Contractors. The Design/Builder shall not damage or endanger a portion of the Construction Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Design/Builder shall not cut or otherwise alter such construction by the Owner or a Separate Contractor except with written consent of the Owner and of such Separate Contractor, such consent not to be unreasonably withheld, delayed or conditioned. The Design/Builder shall not unreasonably withhold consent from the Owner or a Separate Contractor with respect to cutting or otherwise altering the Construction Work.

2.18 SCHEDULE; PROGRESS OF WORK.

2.18.1 The Design/Builder shall revise the Schedule for each Design/Build Project as required herein and otherwise at appropriate intervals as required by the conditions of the Work and Design/Build Project. The Design/Builder shall monitor the progress of the Work for conformance with the Schedule for the applicable Design/Build Project, and shall promptly advise Owner of any material deviations from the Schedule for the applicable Design/Build Project and/or any delays or potential delays.

2.18.2 In connection therewith, the Design/Builder shall consult with the Owner in preparing and submitting to the Owner an updated Schedule not less often than monthly and as may be required more frequently by changes in the Work for any for Design/Build Project. Each updated Schedule shall contain a comparison of actual progress with the estimated progress for such point in time stated in the Schedule for the applicable Design/Build Project approved by Owner in accordance with Section 2.4.5 above. Update information shall include, without limitation, actual start dates, actual completion dates, activity percent completion, projected progress for the forthcoming month, and remaining duration of activities in progress. If any Schedule submitted sets forth a date for completion of the Work for the applicable Design/Build Project or any phase of the Work for the applicable Design/Build Project beyond the date(s) for completion established in the Schedule for the applicable Design/Build Project approved by Owner in accordance with Section 2.4.5 above (as such dates may be extended as provided in this Agreement), then the Design/Builder shall submit to the Owner for its review and approval a narrative description of the means and methods which the Design/Builder intends to employ to expedite the progress of the Work for the applicable Design/Build Project to insure timely completion of the various phases of the Work for the applicable Design/Build Project as well as the totality of Work for the applicable Design/Build Project. Approval by the Owner of any updated Schedule for any Design/Build Project submitted under this Section 2.18.2 shall not relieve the Design/Builder of its obligation to complete the Work with respect to any Design/Build Project within the Contract Time established for such Design/Build Project. The Design/Builder shall take all necessary action (including, without limitation, if and to the extent necessary, causing its employees and the Subcontractors to work overtime) to insure such timely completion, and except to the extent expressly provided herein, shall not be entitled to any adjustment in the GMP or Contract Time for the applicable Design/Build Project for taking such action.

2.18.3 For each Design/Build Project, the Design/Builder shall prepare and keep current, for the approval of Owner, a schedule of Submittals which is coordinated with the Schedule for the applicable Design/Build Project and allows the reasonable time to review Submittals.

2.18.4 The Design/Builder shall cooperate with the Owner in scheduling and performing the Work for each Design/Build Project to avoid delay in or conflict or interference with the work of Owner's Separate Contractors or Owner's own forces, provided Owner shall cause Owner's Separate Contractors and own forces to perform such that their work conforms to and does not interfere with the Schedule.

2.19 COMMISSIONING. If any Project Authorization indicates that the Design/Builder is to perform Commissioning Work with respect to the applicable Design/Build Project, then no later than the date specified in the applicable Project Authorization, the Design/Builder shall provide the Owner with a detailed commissioning plan satisfying commissioning requirements set forth in the applicable Project Authorization for the Owner's review and comment. The Owner shall provide any comments on such commissioning plan to the Design/Builder within fifteen (15) Business Days after the Owner receives such commission plan, and the Design/Builder shall, within five (5) Business Days thereafter, modify such commissioning plan to reflect the Owner's comments and resubmit it to the Owner for the Owner's further review and approval. After modifying such commissioning plan to reflect the Owner's comments, the Design/Builder shall perform the commissioning described in such plan as part of the Work with respect to the applicable Design/Build Project (and Substantial Completion of the applicable Design/Build Project shall not occur until such commissioning is completed in accordance with the approved commissioning plan to the satisfaction of Owner). Upon successful completion of such commissioning, the Owner and the Design/Builder shall jointly issue a certificate stating that the commissioning has been completed.

2.20 PUNCH LIST; CERTIFICATE OF SUBSTANTIAL COMPLETION. When the Design/Builder considers that the Work for any Design/Build Project, or a portion thereof which the Owner agrees to accept separately, is Substantially Complete, the Design/Builder shall prepare, in conjunction with Owner, a comprehensive list of Punch List Items. The Design/Builder shall proceed promptly to complete and correct all of the Punch List Items. Failure to include an item on the Punch List does not alter the responsibility of the Design/Builder to complete all Work in accordance with the Design/Build Documents. The Certificate of Substantial Completion shall state the date of Substantial Completion and shall be executed by the Owner and the Design/Builder. If the Owner and the Design/Builder cannot agree as to the appropriate Substantial Completion Date for any Design/Build Project, such issue shall be submitted for dispute resolution in accordance with the procedures set forth in this Agreement. Notwithstanding such disagreement, the Design/Builder shall diligently proceed with completion of the Punch List Items.

ARTICLE 3 OWNER'S DUTIES AND RESPONSIBILITIES

3.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER.

3.1.1 Designation of Authorized Representatives.

3.1.1.1 The Owner shall designate, from time to time, one or more representatives authorized to act on the Owner's behalf with respect to each Design/Build Project, together with any limitations on the scope of his/her respective authority. Such designations with respect to each Design/Build Project shall initially be designated in the applicable Project Authorization. The Owner's Representative (and if more than one person is designated as the Owner's Representative, each person so designated) is authorized to act on behalf of and in the name of the

Design/Builder in connection with the Work. Directions and decisions made by Authorized Representatives of the Owner shall be binding on the Owner.

3.1.1.2 The Design/Builder shall designate, from time to time, one or more representatives authorized to act on the Design/Builder's behalf with respect to each Design/Build Project, together with any limitations on the scope of his/her respective authority. Such designations with respect to each Design/Build Project shall initially be designated in the applicable Project Authorization. The Design/Builder's Representative (and if more than one person is designated as the Design/Builder's Representative, each person so designated) is authorized to act on behalf of and in the name of the Design/Builder in connection with the Work. Directions and decisions made by Authorized Representatives of the Design/Builder shall be binding on the Design/Builder.

3.1.2 Communication. During the term of this Agreement, the Owner shall, absent extenuating circumstances, communicate with the Subcontractors, suppliers and others performing any part of the Work through the Design/Builder's Authorized Representatives.

3.1.3 Cooperation; Approvals. Whenever the Owner's cooperation is required by the Design/Builder in order to carry out the Design/Builder's obligations hereunder, the Owner shall act in good faith in so cooperating with the Design/Builder. Whenever the Design/Builder's cooperation is required by the Owner in order to carry out the Owner's obligations hereunder, the Design/Builder shall act in good faith in so cooperating with the Owner. The Owner shall furnish decisions, information, and approvals required by this Agreement in a timely manner so as not to delay the Work, provided that the Owner shall have no less time for review and approval of Design Materials and other Submittals than as set forth in Exhibit "F" or in the applicable Project Authorization. Except as provided otherwise in the Contract Documents, the Owner shall, in all instances that require the Owner's approval or consent, not unreasonably withhold, delay or condition such approval or consent.

3.1.4 Governmental Approvals. The Owner shall be responsible for obtaining the Owner Governmental Approvals. Except to the extent that any such delay is due to the fault or neglect of the Design/Builder or any Subcontractor, any delay in obtaining the Owner Governmental Approvals shall constitute an Owner Delay.

3.1.5 The Owner shall furnish to the Design/Builder, within ten (10) Business Days after receipt of a written request therefor, information necessary and relevant for the Design/Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the Site, and the Owner's interest therein.

3.1.6 The Owner shall promptly provide, to the extent available to the Owner and if not required by the Design/Build Documents to be provided by the Design/Builder, the results and reports of prior tests, inspections or investigations conducted for the Project, involving civil, structural or mechanical systems, chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of Hazardous Materials at the Site. Owner shall make all such items that are currently in the possession of Owner available for review and inspection by Design/Builder at a location at the Site (and Owner agrees to make any such additional items that Owner shall at any time possess available to Design/Builder at a location at the Site).

3.1.7 Owner represents to Design/Builder that, as of the Effective Date, funds available to Owner are sufficient to fulfill the Owner's payment obligations under this Agreement.

3.2 ACTIVITIES ON THE SITE BY OWNER OR SEPARATE CONTRACTORS.

3.2.1 Access. The Owner, its Separate Contractors and other Persons designated by Owner shall have access to the Site and to the Work at all times subject to compliance with reasonable safety precautions.

3.2.2 Owner's Right to Award Separate Contracts. The Owner reserves the right to perform work or operations at the Site (including, but not limited to, work that is related to any Design/Build Project) with the Owner's own forces, and to award separate contracts to Separate Contractors in connection with any such work.

3.2.3 Integration of the Work with Separate Contractors. Following the request of the Owner, the Design/Builder shall prepare a plan in order to integrate the work performed by any Separate Contractors (or Owner's own forces) with the performance of the Work (or the applicable portion thereof), and shall submit such plan to the Owner for approval. The plan shall be fair and reasonable for the Design/Builder and the Separate Contractors (or Owner's own forces), and the Design/Builder shall work with the Separate Contractors (or Owner) to reach agreement on such plan. The Design/Builder shall arrange the performance of the Work so that the Work and the work of the Separate Contractors (or Owner's own forces) are, to the extent applicable, properly integrated, jointed in an acceptable manner, and performed in the proper sequence so that any disruption or damage to the Work or to any work of Separate Contractors (or Owner's own forces) is avoided.

3.2.4 Coordination. The Design/Builder shall provide for the coordination of the activities of the Design/Builder and the Subcontractors with the activities of the Separate Contractors (or Owner's own forces). The Design/Builder shall participate with all Separate Contractors and the Owner in reviewing and coordinating the schedules of the Separate Contractors (or Owner's own forces) with the Schedule or Schedules for the Work. The Design/Builder shall make any revisions to any Schedule for any Design/Build Project deemed necessary to properly incorporate the work of the Separate Contractors (or Owner's own forces) with the Work for the applicable Design/Build Project(s). To the extent:

(a) the date of Substantial Completion for the applicable Design/Build Project(s) is extended by any such Schedule revision; (b) the Design/Builder is required to perform any Work with respect to any Design/Build Project(s) out of sequence, and in a manner which is not as efficient or cost effective as originally planned; or (c) the Program for any Design/Build Project is increased, the GMP and/or the Contract Time (and the Schedule) for the applicable Design/Build Project(s) shall be equitably adjusted (and the Parties shall execute a Change Order making such adjustments).

3.2.5 Use of Site. The Design/Builder shall afford the Owner and all Separate Contractors reasonable opportunity for storage of materials and equipment and performance of their work. The Design/Builder shall also connect and coordinate its Work and operations with the Owner and all Separate Contractors' operations as required by the Design/Build Documents. The Owner shall direct the Separate Contractors (or Owner's own forces) to cooperate with the Design/Builder and to avoid actions or omissions which could interfere with or delay the activities of the Design/Builder.

3.2.6 Deficiency in Work of Separate Contractors. If part of the Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Design/Builder shall, prior to proceeding with that portion of the Work, promptly report to the Separate Contractor and the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for proper execution and results by the Design/Builder. The Design/Builder, the Owner and the Separate Contractor shall thereafter use good faith efforts to resolve any such discrepancies or defects or any disagreements relating thereto. Failure of the Design/Builder to so report any such discrepancies or defects shall not constitute acceptance by the Design/Builder of the work of Owner or Separate Contractors as fit and proper to receive the Work (except as to those defects or discrepancies that are apparent).

3.2.7 Interference. If the Design/Builder unnecessarily and unreasonably interferes with the work of Owner or any Separate Contractors by not cooperating with them as required under this Section 3.2, or by not affording them reasonable opportunity to perform their work as stated in this Section 3.2, then the GMP for the applicable Design/Build Project(s) shall be reduced by an amount equal to all reasonable direct incremental costs and expenses incurred by such Separate Contractors due to any such delays (and such amounts shall not be included in the Cost of the Work for the applicable Design/Build Project(s)). If Owner's own forces or any Separate Contractor performing work at the Site unnecessarily and unreasonably interferes with the Work for any Design/Build Project(s) by not cooperating with the Design/Builder, or by not affording the Design/Builder reasonable opportunity to perform the Work as stated in this Section 3.2, then: (a) the GMP for the applicable Design/Build Project(s) shall be equitably increased (to the extent of any reasonable direct incremental increases in the Cost of the Work for the applicable Design/Build Project(s) caused thereby) and (b) the Contract Time for the applicable Design/Build Project(s) shall be equitably adjusted (to the extent of any reasonable delays directly caused thereby) and the Parties shall execute a Change Order making such adjustments.

3.2.8 Assignment of Separate Contracts. If the Owner determines that it wishes to assign to the Design/Builder one or more contracts between the Owner and the Separate Contractors, it shall give the Design/Builder written notice of such desire, including in such notice a copy of such contract for the Design/Builder's review and approval. On the condition that the applicable Separate Contractor: (a) is, in the Design/Builder's reasonable opinion, fully qualified to perform the work under the to-be-assigned contract, (b) possesses the financial capability to perform its obligations under such to-be-assigned contract, (c) meets or exceeds other reasonable prequalification requirements of the Design/Builder (d) does not violate any Design/Builder's labor agreements, (e) provides any payment and performance bonds or Subguard insurance covering its work that are required to be provided by the Design/Build Documents (as if such Separate Contractor was a Subcontractor), and (f) includes (or is amended to include) material provisions that are identical in all material respects to those contained in the Design/Builder's standard subcontract agreement, with its Subcontractors (such as, but not limited to, with respect to liability, indemnification, retainage, payment, and other material items) then Design/Builder shall assume all of Owner's rights and obligations under the applicable contract, as limited if at all by the terms of the assignment. In such case, (i) the applicable Separate Contractor(s) shall thereafter be deemed to be a Subcontractor and (ii) the GMP or Contract Time, or both, for the applicable Design/Build Project(s) shall be appropriately adjusted by Change Order.

3.3 OWNER'S RIGHT TO STOP THE WORK. If the Design/Builder fails to correct Work which is not in accordance with the requirements of the Design/Build Documents and this Agreement or fails to carry out any of the Work in accordance with the Design/Build Documents, and such failure is not cured within seven (7) Days following Owner's delivery of notice thereof, the Owner may, by written notice to the Design/Builder, order the Design/Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; provided, however, that Owner shall have no such right to order the Design/Builder to stop the Work if (and so long as) the Design/Builder commences the cure of any such failure within the above described seven (7) Day period and diligently and continuously prosecutes such cure to completion, provided, further, however, that the right of the Owner to stop any of the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design/Builder or any other person or entity and shall not give rise to any liability of the Owner to the Design/Builder resulting from any delay (except to the extent that such order is found to be improper). The Design/Builder shall not be entitled to any extension of the Contract Time for the applicable Design/Build Project(s) or any increase in the GMP for the applicable Design/Build Project(s) for any stoppage in the Work by Owner under this Section 3.3.

3.4 OWNER'S RIGHT TO CARRY OUT THE WORK. If the Design/Builder defaults or fails to carry out any of the Work in accordance with the Design/Build Documents, and such default or failure is not cured within seven (7) Days after (or in the event of an emergency (e.g., a condition creating an immediate and material threat to life, safety or the operation of Owner's business), within one (1) Day after) Owner's delivery of notice thereof, then without prejudice to other remedies the Owner may have, Owner may correct such default or failure at the expense of Design/Builder (provided that, if the nature of any such default or failure is such that more than seven (7) Days (or one (1) Day, as applicable) are required for its cure, Owner shall have no right to so correct such default or failure on the condition that the Design/Builder commences to cure such default or

failure within the above referenced seven (7) Day (or one (1) Day, as applicable) period, and thereafter diligently pursues such cure to completion). In such case Owner shall promptly notify Design/Builder of its election to correct any default or failure of Design/Builder under this Section 3.4, and an appropriate Change Order shall be issued deducting from payments then or thereafter due to the Design/Builder (and the Cost of the Work) for the applicable Design/Build Project(s) the Owner's cost of correcting such deficiencies, including reasonable compensation for its agents and consultants and additional services and expenses made necessary by such default or failure. Owner shall employ due diligence to minimize such costs.

If payments then or thereafter due to the Design/Builder for the applicable Design/Build Project(s) are insufficient to cover such amounts, the Design/Builder shall pay the difference to the Owner upon demand. If the payments then or thereafter due the Design/Builder are not sufficient to cover the amount of the deduction, the amount of the deficiency: (a) may be deducted from any unpaid amounts due to the Design/Builder under this Agreement, including, without limitation, any unpaid retention or progress payment and (b) any amount not so deducted shall become a debt due to Owner from Design/Builder (and payable immediately upon demand) and shall bear interest at the Interest Rate.

3.5 PARTIAL OCCUPANCY OR USE. The Owner may occupy or use any completed or partially completed portion of the Construction Work at any stage when such portion is designated by separate agreement with the Design/Builder, provided such occupancy or use is consented to by applicable insurance companies providing insurance on account of the Construction Work and authorized by public authorities having jurisdiction over the Construction Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Owner and the Design/Builder have accepted in writing the responsibilities assigned to each of them for payment, security, indemnity, maintenance, heat, utilities, damage to the Construction Work and insurance, and have agreed in writing concerning the period for correction of the Construction Work and commencement of warranties required by the Design/Build Documents. Immediately prior to such prior occupancy, the Owner and the Design/Builder shall jointly inspect the area to be occupied in order to determine and record the condition of the Construction Work. Unless otherwise agreed, partial occupancy or use of a portion of any the Construction Work shall not constitute acceptance of Work not complying with the requirements of the Design/Build Documents.

ARTICLE 4 TIME

4.1. TIME IS OF THE ESSENCE. Time limits stated in the Design/Build Documents are of the essence of this Agreement. The Design/Builder shall provide services as expeditiously as is consistent with reasonable skill and care and the orderly progress of construction. Time limits established by the Design/Build Documents or the Schedule for any Design/Build Project shall not, except for reasonable cause, be exceeded by the Design/Builder or Owner. The services covered by the Contract are subject to the time limitations contained herein below and elsewhere in the Design/Build Documents.

4.2 COMMENCEMENT DATE AND CONTRACT TIME.

4.2.1 For each Design/Build Project, Design/Builder shall: (a) commence the Design Work upon the first Business Day following Owner's delivery of the Design Notice to Proceed for such Design/Build Project, (b) shall commence the Construction Work upon the upon the first Business Day following Owner's delivery of the Construction Notice to Proceed for such Design/Build Project, (c) prosecute the Work for such Design/Build Project so that Milestone Dates set forth in the applicable Schedule (as adjusted in accordance with the express terms of the Design/Build Documents) shall be achieved (with it being understood that such Milestone Dates are to be used to measure progress toward achieving Substantial Completion on or before the Scheduled Date of Substantial Completion), and (d) achieve Substantial Completion of such Design/Build Project on or before midnight on the Scheduled Date of Substantial Completion for such Design/Build Project; provided, however, that: (i) as and to the extent provided in Section 4.3 below, the Scheduled Date of Substantial Completion for each Design/Build Project shall be extended on a Day for Day basis for each Day of Excusable Delay that shall occur prior to the Substantial Completion Date for such Design/Build Project, and (ii) the Scheduled Date of Substantial Completion for each Design/Build Project is subject to extension pursuant to Article 8, below. Design/Builder agrees that, to the extent Design/Builder employs and/or utilizes more than the Contract Time for any Design/Build Project to achieve Substantial Completion of such Design/Build Project, Design/Builder shall, except as otherwise expressly provided in this Agreement, be responsible for all increased and additional costs and expenses incurred in connection with the completion of the Work for such Design/Build Project after the Contract Time for such Design/Build Project. For each Design/Build Project, Design/Builder agrees to perform the Work for such Design/Build Project during the Contract Time specified for such Design/Build Project (as it may be adjusted in accordance with the express terms of the Design/Build Documents, including this Agreement) for no additional compensation. Design/Builder further agrees that the terms and conditions set forth in this Section 4.2.1 shall be incorporated into all Subcontracts in connection with the Work.

4.2.2 To the extent the Design/Builder completes activities on the critical path for any Design/Build Project earlier than scheduled, the savings in time on account thereof shall belong solely to the Design/Builder. If the rate of progress of the Work for any Design/Build Project is such that the total amount of Work for such Design/Build Project and/or the degree of completion of the Work for such Design/Build Project accomplished by the Design/Builder as of any particular time is less than the amount or degree specified (for the same time) in the Schedule for such Design/Build Project (i.e., if the Work (or any portion thereof) for any Design/Build Project is behind schedule: (a) the Design/Builder shall notify the Owner thereof, and (b) shall prepare a recovery schedule for such Design/Build Project for the Owner's review and approval, showing how the Design/Builder will compensate for the delays and achieve Substantial Completion of the applicable Design/Build Project by the Scheduled Date of Substantial Completion for such Design/Build Project. The Owner may order the Design/Builder to employ such extraordinary measures as are

necessary to bring the Work for any Design/Build Project into conformity with the Schedule for such Design/Build Project (such that the Substantial Completion Date for such Design/Build Project shall occur on or before the Scheduled Date of Substantial Completion for such Design/Build Project), and: (i) to the extent that any such measures are taken to remedy the effects of any Excusable Delays, then the Contract Time (and Schedule) and the GMP for the applicable Design/Build Project shall be equitably adjusted as and to the extent provided in Section 4.3 below and (ii) to the extent that any such measures are taken to remedy the effects of any Inexcusable Delays, the Design/Builder shall bear any and all costs incurred in connection with such measures (and such costs shall not be included in the Cost of the Work for such Design/Build Project) and neither the GMP nor the Contract Time (nor the Schedule) for such Design/Build Project shall be adjusted.

4.2.3 If the Substantial Completion Date for any Design/Build Project does not occur on or before the Scheduled Date of Substantial Completion for such Design/Build Project (as such date may be extended pursuant to the express terms of this Agreement), the Owner may declare Design/Builder in default and may terminate this Agreement for cause pursuant to Section 11.1.1, below. If the Substantial Completion Date for any Design/Build Project does not occur on or before the Scheduled Date of Substantial Completion for such Design/Build Project, Owner may also seek liquidated damages from Design/Builder as set forth in the applicable Project Authorization.

4.3 DELAYS; EXTENSIONS OF CONTRACT TIME.

4.3.1 Design/Builder shall use commercially reasonable efforts to promptly notify Owner of the occurrence of any Excusable Delays that to the knowledge of Design/Builder, have occurred (or are reasonably likely to occur). Subject to the terms and conditions of this Section 4.3, if any Excusable Delays shall occur, the Scheduled Date of Substantial Completion for the applicable Design/Build Project shall be extended on a Day for Day basis for each Day of Excusable Delay that shall occur prior to the actual Substantial Completion Date for such Design/Build Project; provided that Design/Builder shall only be entitled to such extension of the Scheduled Date of Substantial Completion for any Excusable Delays if the Design/Builder notifies the Owner in writing of the cause of such delay promptly after Design/Builder becomes aware of such delay (which notice shall describe the Excusable Delay and shall state the approximate number of Days the Design/Builder expects to be delayed as a result thereof). After the cessation of any Excusable Delay, the Design/Builder shall notify the Owner of the number of Days the Design/Builder believes that its activities were in fact delayed by such Excusable Delay. In addition, if any Owner Delays shall occur, then in addition to the extension of the Scheduled Date of Substantial Completion for the applicable Design/Build Project that is described above, Design/Builder shall also be entitled to an equitable increase in the General Conditions Costs for such Design/Build Project (based on the number of Days of actual delay in achieving Substantial Completion of such Design/Build Project that are actually caused by Owner Delays). For the avoidance of doubt, with respect to Force Majeure Delays, Design/Builder shall be entitled only to an extension of the Scheduled Date of Substantial Completion Date for the applicable Design/Build Project as described above that is impacted by the Force Majeure Delay.

4.3.2 Extensions of the Scheduled Date of Substantial Completion for any Design/Build Project (as provided in Section 4.3.1 above) shall be limited to the amount of time Design/Builder is actually delayed in achieving Substantial Completion of such Design/Build Project by Excusable Delays.

4.3.3 Owner's exercise of any of its remedies of suspension of the Work with respect to any Design/Build Project, or requirement of correction or re-execution of any Nonconforming Work with respect to any Design/Build Project, or Owner's exercise of any of its rights under this Agreement (or any of the other Design/Build Documents), shall not under any circumstances be construed as interference with, or a delay to, Design/Builder's performance of the Work for any Design/Build Project and shall not be deemed an Excusable Delay.

4.3.4 No party will be liable for nonperformance or delay of its obligations under this Agreement if the nonperformance or delay was due to a Force Majeure Event as defined in Section 1.3 herein on the condition that such party complies with the following conditions and the conditions set forth in 4.3.5 and/or any additional conditions required by an applicable Project Authorization. Upon occurrence of a Force Majeure Event, the non-performing party shall promptly notify the other party that a Force Majeure Event has occurred, its anticipated effect on performance, including its expected duration. The non-performing party shall use reasonable diligence to minimize damages and to resume performance.

4.3.5 Within thirty (30) Days after cessation of an event giving rise to either an Excusable Delay or Inexcusable Delay, the parties will use good faith efforts to agree on the extent to which the Work has been delayed and whether the delay is an Excusable Delay or an Inexcusable Delay. In the absence of agreement between the parties as to the then current status of Excusable Delays and Inexcusable Delays, the Owner will provide the Design/Builder with written notice of the Owner's determination of the respective number of Days of Excusable Delay and/or Inexcusable Delay within ten (10) Days after receipt by the Owner of the Design/Builder's written request for such determination. The issuance by the Owner of such a determination shall not, however, be deemed a concurrence by the Design/Builder of the matters set forth therein, and the Design/Builder may invoke the dispute resolution procedures set forth in this Agreement with respect to such determination. Pending completion of such dispute resolution procedures (and pending ultimate resolution of any such dispute), the Design/Builder may take such acceleration or other measures on account of the Owner's determination of Inexcusable Delay, and if completion of the dispute resolution procedures (and/or resolution of the dispute) results in the Owner's determination being changed to Excusable Delay, the costs associated with such measures shall be paid by the Owner as an increase to the GMP for the applicable Design/Build Project, and the Parties shall execute a Change Order making such adjustment to the GMP (and to the extent applicable, an adjustment to the Schedule).

4.3.6 Design/Builder agrees that the terms set forth in this Section 4.3 shall be incorporated into all Subcontracts entered into in connection with the Work.

4.4 ACCELERATION. Should Owner require that completion of all or any portion of the Work be accelerated to an earlier time, Owner and Design/Builder shall negotiate in good faith the terms of a Change Order to effect such acceleration.

ARTICLE 5 PAYMENT AND COMPLETION

The Owner shall compensate the Design/Builder in accordance with this Article 5. For the Work and for any other services included in this Agreement or elsewhere in the Design/Build Documents as part of the Work, Design/Builder's compensation for each Design/Build Project shall not exceed the GMP for such Design/Build Project specified in the applicable Project Authorization (as the same may be adjusted pursuant to Article 8, below).

5.1 GMP; SAVINGS; ALLOWANCE ITEMS; ASSUMPTIONS.

5.1.1 GMP. Subject to the provisions of Article 8, for each Design/Build Project, the sum of the Cost of the Work, the Fee, the General Conditions Costs, and the portion of the Contingency Amount applied toward the Cost of the Work for such Design/Build Project is guaranteed by the Design/Builder not to exceed the GMP specified in the GMP Breakdown for such Design/Build Project. Costs which would cause the GMP for any such Design/Build Project to be exceeded shall be paid by the Design/Builder without reimbursement by the Owner unless there are approved Change Orders for such costs, in which event the GMP for such Design/Build Project shall be adjusted in accordance with Article 8, and the Design/Builder shall be reimbursed accordingly.

5.1.2 Savings. If, for any Design/Build Project, as of the date of Final Completion of such Design/Build Project, the total aggregate sum of the Cost of the Work, the Fee, the General Conditions Costs, and the portion of the Contingency Amount applied toward the Cost of the Work for such Design/Build Project is less than the GMP for such Design/Build Project, then the difference (hereinafter referred to as "**Savings**") shall accrue entirely to the Owner, unless otherwise agreed to by the Parties in the applicable Project Authorization.

5.1.3 Allowance Items. The GMP for each Design/Build Project includes the alternates, unit prices and allowances set forth in the GMP Breakdown for such Design/Build Project. Except as expressly provided in the GMP Breakdown for any Design/Build Project, no allowances are called for under this Agreement, under the applicable Project Authorization or under any other Design/Build Documents. To the extent that the actual cost of an allowance item for any Design/Build Project shall exceed the allowance amount for such item set forth in the applicable GMP Breakdown, the GMP for the applicable Design/Build Project shall be increased, dollar for dollar, to the extent the actual cost of such item exceeds the allowance amount for such item set forth in the applicable GMP Breakdown, plus an appropriate percentage thereof for the Fee on such cost in excess of the allowance amount (and Design/Builder and Owner shall execute a Change Order with respect thereto). To the extent that the actual cost for any allowance item is less than the allowance amount for such item set forth in the applicable GMP Breakdown, the GMP for the applicable Design/Build Project shall be decreased, dollar for dollar, to the extent that actual cost of any such allowance item is less than the allowance amount for such item set forth in the applicable GMP Breakdown, and further decreased by an appropriate percentage thereof for Design/Builder's Fee on the portion of the cost which is less than the allowance amount for such item set forth in the applicable GMP Breakdown (and Design/Builder and Owner shall execute a Change Order with respect thereto).

5.1.4 Assumptions. All assumptions, exclusions and clarifications upon which the GMP for each Design/Build Project is based must be set forth in the GMP Breakdown for such Design/Build Project.

5.1.5 Subcontractors. Fees payable to all Subcontractors (including, without limitation, construction contractors, laborers and suppliers) for the Work with respect to any Design/Build Project are (and must be) included within the GMP for such Design/Build Project that is specified in the applicable GMP Breakdown.

5.2 GMP SUMMARY.

5.2.1 After the Construction Documents for each Design/Build Project are approved by Owner, the Design/Builder shall obtain bids from Subcontractors (including, without limitation, material and equipment suppliers) for all portions of the Work that are to be performed by Subcontractors with respect to such Design/Build Project (the "**Trade Work**"). Design/Builder shall inform Owner of all bids from Subcontractors and provide Owner with the bids at Owner's request.

5.2.2 Within ten (10) Business Days after the Owner's and Design/Builder's mutual determination of all of the bids to be accepted from Subcontractors (including, without limitation, material and equipment suppliers) for the Trade Work for any Design/Build Project, the Design/Builder shall deliver to the Owner a summary of the GMP for such Design/Build Project that includes: (a) the GMP for such Design/Build Project, (b) a list of the Construction Documents (and other Design/Build Documents) upon which the GMP for such Design/Build Project is based, (c) a list of all applicable allowances, if any, that are included in the GMP for such Design/Build Project, (d) a schedule of all applicable alternate prices for such Design/Build Project, (e) a schedule of all applicable unit prices for such Design/Build Project, (f) the amount of the Cost of the Work for such Design/Build Project, (g) the amount of the Insurance Costs that are included in the Cost of the Work for such Design/Build Project, (h) the estimated amount of the General Conditions Costs for such Design/Build Project, (i) the Contingency Amount for such Design/Build Project, (j) the Fee, and (k) an updated Schedule that is consistent with the then existing Schedule for such Design/Build Project and that includes the information set forth in

Section 2.18.2 above and (l) list of assumptions, exclusions, etc. pursuant to Section 5.1.4. Such summary shall form the basis for the Schedule of Values for such Project.

5.3 CONTINGENCY.

5.3.1 Design/Builder shall notify Owner in writing at least three (3) Business Days prior to any proposed use of the Contingency Amount with respect to any Design/Build Project, or any portion thereof, and shall supply Owner with detailed information relative to such proposed use provided, however, that Design/Builder may use up to \$25,000 (in the aggregate) in any single calendar month for any Design/Build project without first obtaining Owner's prior written approval. To the extent Design/Builder seeks to use more than \$25,000 (in the aggregate) in any single calendar month for any Design/Build project, Design/Builder will obtain Owner's prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned. Any approval by Owner of any use of the Contingency Amount for any Design/Build Project shall be documented in writing (which may include an exchange of email correspondence), and Contractor shall report any use of the Contingency (whether or not the approval of Owner is required) on a monthly basis. Subject to obtaining the Owner's approval (to the extent required hereunder), the Design/Builder is authorized to spend the Contingency Amount for any Design/Build Project to defray any Cost of the Work for the same Design/Build Project that is reimbursable or authorized under **Exhibit "D"**, but that are not otherwise payable to the Design/Builder pursuant to a Change Order, and which results only from any of the following causes:

5.3.1.1 Conditions and events, which were not foreseen or known to the Design/Builder (or other member of the Design/Build Team) and which could not have been reasonably foreseen or known to the Design/Builder (or other member of the Design/Build Team) as of the date of the applicable Project Authorization, but only on the condition that the Design/Builder shall have given notice thereof to the Owner promptly after learning of such condition or the occurrence of such event;

5.3.1.2 Gaps in Subcontractors' scopes of work which could not have been foreseen or known to Design/Builder (or other member of the Design/Build Team) at the time such bids were accepted; but only on the condition that the Design/Builder shall have given notice thereof to the Owner promptly after learning of such gaps;

5.3.1.3 Delays in receipt of materials or equipment not the fault of Design/Builder (or other member of the Design/Build Team) and which could not have been reasonably foreseen or known to Design/Builder (or other member of the Design/Build Team) at the time such materials or equipment were specified; but only on the condition that the Design/Builder shall have given notice thereof to the Owner promptly after learning of such delays;

5.3.1.4 Increases in pre-established Subcontractor bids, negotiated contracts or purchase orders or failure by a Subcontractor or supplier which is not reasonably recoverable by Design/Builder;

5.3.1.5 Unanticipated changes in the Schedule for the applicable Design/Build Project;

5.3.1.6 Replacement costs for non-performing or defaulting Subcontractors; or

5.3.1.7 Upon the agreement of Owner and Design/Builder, costs incurred to accelerate the Date of Substantial Completion for any Design/Build Project.

5.3.2 The Design/Builder shall keep the Owner advised of all anticipated charges against the Contingency Amount (in excess of \$25,000 (in the aggregate) in any single calendar month) for each Design/Build Project. The Contingency Amount shall not be construed as an amount available for upgrading or enlarging the scope or quantity of the Work for any Design/Build Project. Except as expressly provided in Section 5.3.1 above, the Contingency Amount for any Design/Build Project shall also not be construed as an amount available for: (a) covering expenses in excess of \$25,000 with respect to any Design/Build Project that are incurred as a result of any errors or omissions of any member of the Design/Build Team (including, but not limited to, deficiencies in the Construction Drawings for any Design/Build Project), (b) covering expenses incurred as a result of damage or destruction not caused by any event covered by the insurance required to be carried by Design/Builder or any Subcontractor, (c) remedying or repairing any Nonconforming Work, (d) acceleration or premium time costs to recover time lost due to error by Design/Builder or any Subcontractor, (e) any other charges which cause an overrun in the General Conditions Costs for any Design/Build Project due to negligent performance or non-performance by Design/Builder (or other member of the Design/Build Team) in the management and prosecution of the Work, (f) any costs or expenses for work required to be performed by the Design/Builder (or other member of the Design/Build Team) under any warranty, express or implied, made by the Design/Builder or any Subcontractors to the Owner in connection with the Work for any Design/Build Project or (g) any costs or expenses resulting from any defaults by the any Subcontractors which are reasonably recoverable from such Subcontractors or from any insurance or any bond coverage (with it being agreed that, in the event of a default by any Subcontractor, Design/Builder shall enforce its rights and pursue its remedies in accordance with the terms of the Subcontract with such Subcontractor). Any portion of the Contingency Amount which remains undisbursed after the Work for any Design/Build Project is fully completed shall accrue to the benefit of the Owner and the Contingency Amount for one Design/Build Project shall not be used on or with respect to any other Design/Build Contract.

5.4 PAYMENTS BY OWNER. For each Design/Build Project, Owner shall pay the Design/Builder an amount equal to the total Cost of the Work plus the General Conditions Costs (up to the GCC Max Amount), plus the Fee, plus any portion of the Contingency Amount Design/Builder is authorized to utilize in accordance with Section 5.3, above; provided that in no event shall Owner be obligated to pay to Design/Builder any amount

in excess of the GMP for such Design/Build Project specified in the applicable Project Authorization (as the same may be adjusted pursuant to Article 8). Such amounts shall be payable monthly in proportion to the percentage of Work for the applicable Design/Build Project completed by Design/Builder as provided in this Section 5.4. Owner shall have the right to withhold an amount equal to the Retained Percentage of the amount requested to be disbursed pursuant to any Application for Payment, and retain such amount until the final payment is due to Design/Builder in accordance with Section 5.4.6, below.

5.4.1 Schedule of Values.

5.4.1.1 Before applying for any payment hereunder with respect to any Design/Build Project, Design/Builder shall remit a Schedule of Values for such Design/Build Project to Owner. The Design/Builder shall revise the Schedule of Values for each Design/Build Project from time to time as circumstances may require, and the Schedule of Values for each Design/Build Project, as approved by Owner, (together with any supplements or amendments thereto approved by Owner) shall be used only as a basis for the requests for payment by Design/Builder hereunder with respect to the applicable Design/Build Project.

5.4.1.2 In addition, for each Design/Build Project, Design/Builder shall prepare, or cause to be prepared, a supplemental schedule of values for each subcontracted trade which shall be approved by both Design/Builder and Owner prior to submission of any request for payment for services rendered by the particular Subcontractor involved (for the applicable Design/Build Project).

5.4.2 Request for Payment; Progress Payments.

5.4.2.1 Provided that a properly completed and correct Application for Payment, together with all of the other items described in clauses (a), (b), (c), and (d) below, is received by the Owner, the Owner shall make payment (as computed below) to the Design/Builder on or before the date specified in Section 5.4.3.2, below, provided such Application for Payment is approved by Owner. Each Application for Payment shall be based upon the Schedule of Values for the applicable Design/Build Project submitted by the Design/Builder and approved by Owner in accordance with the Design/Build Documents. With each Application for Payment, and with respect to the Design/Builder and the Subcontractors, the Design/Builder shall also submit: (a) properly completed and executed conditional waiver and release upon progress payment forms of the type required under the laws of the state in which the Project is located (including, without limitation, if the Project is located in the State of California, of the type specified in California Civil Code Section 3262 if the application is submitted prior to July 1, 2012, or in the form set forth in California Civil Code Section 8132, if the payment application is submitted on or after July 1, 2012) for all labor, services, equipment and material provided during the month for which the Application for Payment is being submitted, (b) properly completed and executed unconditional waiver and release upon progress payment forms of the type required under the laws of the state in which the Project is located (including, without limitation, if the Project is located in the State of California, in the form set forth in California Civil Code Section 8132 for all labor, services, equipment and material furnished to the applicable Design/Build Project for work covered by all amounts previously paid for by Owner, (c) the statement and all other items described in Section 5.4.4, and (d) such data substantiating the Design/Builder's right to payment as the Owner may reasonably require.

5.4.2.2 Applications for Payment shall indicate the percentage of completion of each portion of the Work (including, at minimum, the percentage of completion as to each line item on the current Schedule of Values for the applicable Design/Build Project) for the applicable Design/Build Project as of the end of the period covered by the Application for Payment, and shall reflect retainage provided for elsewhere in the Design/Build Documents. The format of the Application for Payment and backup documentation shall strictly adhere to the requirements reasonably established by Owner from time to time. Each Application for Payment shall bear the signature of Design/Builder, which signature shall constitute Design/Builder's representation to Owner that: (a) the Work indicated in the Application for Payment has reached the level stated and has been properly and timely performed in accordance with the Design/Build Documents, (b) the expenses included in the Application for Payment have been reasonably incurred in accordance with the Design/Build Documents, (c) all obligations of Design/Builder covered by prior Applications for Payment which have previously been paid by Owner have been paid in full, and (d) the amount requested is currently due and owing, there being no reason known to Design/Builder that payment of any portion thereof should be withheld. Submission of Design/Builder's final Application for Payment for any Design/Build Project shall further constitute Design/Builder's representation to Owner that, upon receipt by Design/Builder of the amount invoiced, all obligations of Design/Builder to others, including its Subcontractors, incurred in connection with the applicable Design/Build Project, will be paid in full.

5.4.2.3 Design/Builder shall receive, review and approve all requests for payments from all Subcontractors performing work and providing materials in the construction of the applicable Design/Build Project before submitting such requests for payment to Owner, and Design/Builder shall pay all such Subcontractors within ten (10) Business Days after receipt of payment from Owner, excepting only any amounts that Design/Builder is entitled to retain for retention or for incomplete or unsatisfactory work under and in accordance with a Subcontract or purchase order (subject to Design/Builder's obligation to maintain the Project, each Design/Build Project and the Site free of mechanic's liens or material suppliers' liens).

5.4.2.4 Owner intends to pay only for materials and equipment incorporated into the Work. However, at Owner's sole discretion, and with thirty (30) Days advance written approval by Owner, Owner may make payments to Design/Builder for materials and equipment not yet incorporated into the Work, but delivered and suitably stored and secured on-Site or at any other bonded off-Site location approved by Owner. For the purpose of this Section 5.4.2.4, "materials and equipment" eligible for payment are defined as finished goods normally shipped to the Site in a condition ready for incorporation into the Work. Raw materials or work-in-process at a manufacturer's plant location are not eligible for

payment. Where payment is authorized by Owner for materials and equipment not yet incorporated in the Work, the following will be provided by Design/Builder: (a) all items of such material and equipment shall be listed separately on the applicable Application for Payment; (b) an appropriate transfer of title with respect to such items of material and equipment shall be executed; (c) the method used to store any such items of material and equipment that are stored off-Site shall be described (and Owner shall have given prior approval (in its sole and absolute discretion) of the location of any such off-Site storage); (d) items of material and equipment in storage shall be identified as property of Owner, and a description of the identification method used shall be submitted; (e) a written inventory of items or material and equipment and method used to verify such inventory, including Design/Builder's certification that all quantities have been received in good condition shall be submitted; and (f) proof of insurance (in Owner's name) with respect to such materials and equipment shall be secured at no additional cost to Owner. Owner shall have the right to verify storage by a physical inspection prior to invoice approval and at any time thereafter. Such payment shall not relieve Design/Builder of the responsibility for protecting, safeguarding, and proper installation of the equipment or materials. Any warranty and guaranty period with respect to any such materials and equipment shall not commence until Substantial Completion of the applicable Design/Build Project.

5.4.3 Approval of Request for Payment; Payment.

5.4.3.1 Owner shall, within ten (10) Business Days after receipt of any Application for Payment from Design/Builder, either approve such Application for Payment or notify Design/Builder in writing of any items in such Application for Payment that are not approved by Owner, including the reasons for disapproval.

5.4.3.2 Thereafter, subject to Sections 5.1.1, 5.4.8 and 5.4.9, on or before the date that is thirty (30) Days after receipt of an approved Application for Payment from Design/Builder, Owner shall pay to Design/Builder an amount equal to one hundred percent (100%) minus the Retained Percentage of all amounts approved and due under such Application for Payment. Subject to Section 5.4.8 below, progress payments shall be made in the form of a check payable to Design/Builder. Neither any progress payment nor any partial or entire use or occupancy of any Design/Build Project by Owner shall constitute an acceptance of any Work that is not in accordance with the Design/Build Documents.

5.4.4 Monthly Statements. Prior to the day that is ten (10) Business Days after the last Day of each month, with respect to each Design/Build Project, Design/Builder will deliver to Owner a statement showing in detail all monies paid out on account of the Cost of the Work for such Design/Build Project (and, if applicable, from the Contingency Amount for such Design/Build Project) during the preceding month, together with complete conditional lien releases, in the form described in Section 5.4.2.1, above, from all Subcontractors covered by Design/Builder's Application for Payment and unconditional lien releases, in the form described in Section 5.4.2.1, above, for work covered by all amounts previously paid for by Owner. Accompanying such statement, Design/Builder shall submit all bills which have been paid by Design/Builder with respect to the applicable Design/Build Project. Such statement will also include Fee and the General Conditions Costs for the applicable Design/Build Project. All discounts, rebates and other credits due Owner with respect to the applicable Design/Build Project shall appear in each said statement as credits due to Owner. Such statement will thereby display the use of the funds paid or payable by Owner pursuant to Section 5.4.3 (or, if applicable, Section 5.4.6, below) with respect to the applicable Design/Build Project.

5.4.5 Application For Final Payment. After Substantial Completion of the Work for any Design/Build Project, Design/Builder shall submit to Owner a final Application for Payment showing, in such form and detail as Owner shall reasonably require, the aggregate of all reimbursable costs (for the Cost of the Work with respect to such Design/Build Project) paid by Design/Builder and accounted for in accordance with Exhibit "D", but less the aggregate of payments previously made by Owner with respect to such Design/Build Project pursuant to this Agreement. The final payment due Design/Builder with respect to each such Design/Build Project shall be made in accordance with the provisions of Section 5.4.6 and shall be equal to the lesser of: (a) the amount shown on Design/Builder's final Application for Payment for such Design/Build Project, or (b) the GMP for such Design/Build Project (as adjusted by changes in the Work approved in accordance with Article 8, and for approved actual costs of allowance items) minus (i) any portion of the Contingency Amount for such Design/Build Project accruing to the Owner, (ii) any amount by which the GCC Max Amount exceeds the GCC Amount, and (iii) the aggregate of payments previously made by Owner with respect to such Design/Build Project.

5.4.6 Final Payment. Upon completion of the Work for any with Design/Build Project, subject to approval by Owner of Design/Builder's final Application for Payment for such Design/Build Project, the final payment with respect to such Design/Build Project shall be paid by Owner to Design/Builder within thirty (30) Days after receipt of such final Application for such Design/Build Project; provided that all of the following shall be conditions precedent to the Owner's obligation to make final payment to Design/Builder with respect to any Design/Build Project:

5.4.6.1 The Work with respect to such Design/Build Project shall be Substantially Complete and the Contract shall have been fully performed by the Design/Builder with respect to such Design/Build Project; all Punch List Items with respect to such Design/Build Project shall have been completed and Owner shall have accepted the Work with respect to such Design/Build Project; and a final Application for Payment with respect to such Design/Build Project and a final accounting for the cost of the Work for such Design/Build Project have been submitted by the Design/Builder and reviewed and approved by the Owner's accountants.

5.4.6.2 Submission by the Design/Builder to the Owner of: (a) if Design/Builder or any Subcontractor is subject to a collective bargaining agreement, a Union Trust Fund Report indicating: (i) the payments that have been made by Design/Builder and/or by each such Subcontractor over the preceding twelve (12) months and (ii) whether the Union Trust Fund believes that Design/Builder or such Subcontractor owes

any additional payments to the Union Trust Fund with respect to such Design/Build Project and (b) satisfactory evidence that full payment has been made for any and all taxes and insurance for the applicable Design/Build Project.

5.4.6.3 Either (a) seven (7) Days shall have passed following the last date that any mechanic's lien can be properly recorded against the applicable Design/Build Project or the Site or (b) (i) the Design/Builder shall have delivered to Owner properly completed unconditional (or with respect to amounts to be paid out of the final payment, conditional) Waiver and Release upon Final Payment forms in the forms described in Section 5.4.2.1 above, executed by the Design/Builder and all Subcontractors, with any additional supporting documentation reasonably requested by the Owner (provided, however, that if any Subcontractor refuses to furnish a lien release in full, in lieu of said lien releases, Design/Builder may furnish a bond satisfactory to Owner to indemnify Owner against any lien), and (ii) there shall have been no: (A) liens recorded against the applicable Design/Build Project or Site which have not been discharged (by bonding or otherwise) (other than as a direct result of any failure by Owner to perform any of its payment obligations hereunder), or (B) threats of any claims or lawsuits against the Owner for alleged failure to make payment by the Design/Builder with respect to the applicable Design/Build Project (other than as a direct result of any failure by Owner to perform any of its payment obligations hereunder); provided that, notwithstanding the foregoing (and not withstanding any payment by Owner of any amount requested to be paid pursuant to the final Application for Payment), with respect to each Design/Build Project, Design/Builder shall remain obligated to deliver to Owner properly completed Unconditional Waiver and Release upon Final Payment forms within ten (10) Business Days after Owner's release of the final payment to Design/Builder.

5.4.6.4 [Intentionally Omitted].

5.4.6.5 If any mechanic's liens have been recorded against the applicable Design/Build Project or Site (or the Building or any Design/Build Project) for any reason related to the Work (other than as a direct result of any failure by Owner to perform any of its payment obligations hereunder), the Design/Builder, at the Design/Builder's expense, shall procure and record a mechanic's lien release bond discharging the lien. Subsequent to the recordation of such release bond, and the discharge of the Owner from any lawsuit to foreclose the mechanic's lien in question, the Owner shall release to the Design/Builder the funds which are the subject of any such lien.

5.4.6.6 Submission by the Design/Builder to the Owner of required written guarantees and warranties with respect to the applicable Design/Build Project, properly indexed and placed in a loose leaf binder. Unless provided to the contrary elsewhere in the Design/Build Documents, the warranties and guarantees shall commence upon Substantial Completion of the applicable Design/Build Project.

5.4.6.7 Submission by the Design/Builder to the Owner of: (a) two copies of as-built drawings permit set together with electronic as-built drawings with respect to the applicable Design/Build Project and (b) two copies of updated Construction Drawings with respect to the applicable Design/Build Project as necessary to reflect all changes made thereto during the course of construction and all field conditions (including AutoCad files on CD ROM of such updated construction drawings).

5.4.6.8 Submission by the Design/Builder to the Owner of a complete list of Subcontractors on the applicable Design/Build Project, including addresses and telephone numbers.

5.4.6.9 Submission by the Design/Builder to the Owner of: (a) in an indexed loose leaf binder, of complete installation, operation and maintenance manuals and equipment specifications information, including all manufacturer's literature, of equipment and materials used in connection with the Work with respect to the applicable Design/Build Project, (b) an HVAC and water air balance report with respect to the applicable Design/Build Project, and (c) a copy of the labeled electrical panel schedule with respect to the applicable Design/Build Project.

5.4.6.10 Submission by the Design/Builder to the Owner, in an indexed loose leaf binder, of all inspection reports, permits and temporary and final certificates of occupancy and licenses necessary for the occupancy of the applicable Design/Build Project.

5.4.6.11 An affidavit that those payrolls, bills for materials and equipment, and other indebtedness connected with the Work with respect to the applicable Design/Build Project for which the Owner or the Owner's property might be responsible or encumbered have been paid or otherwise satisfied, or will be paid from amounts in the Final Application for Payment.

5.4.6.12 A certificate evidencing that insurance that is required by the Design/Build Documents to remain in force after final payment with respect to the applicable Design/Build Project is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Owner.

5.4.6.13 Any and all other items required pursuant to the Design/Build Documents or pursuant to any Project Authorization.

Acceptance of final payment by the Design/Builder and Subcontractors with respect to any Design/Build Project shall constitute a waiver of claims by such payee with respect to such Design/Build Project except as previously made in writing and identified at the time of final Application for Payment with respect to such Design/Build Project. Such waiver shall be in addition to any of the waivers described elsewhere in the Design/Build Documents.

5.4.7 Payment For Labor And Materials. Design/Builder shall timely and faithfully pay (in accordance with the terms of the applicable Subcontract) for all labor performed, all materials purchased and all subcontracts let (as evidenced by Design/Builder's monthly statements) with respect to each Design/Build Project.

5.4.8 Owner's Right To Make Payments Directly. If (a) Design/Builder neglects or refuses to take care of any bills for Work or materials promptly when they become due, or as provided herein, (b) Design/Builder's credit becomes impaired, or (c) a lien is threatened or pending against any Design/Build Project, the Building or the Site as a result of any act or omission of Design/Builder (or other member of the Design/Build Team) and Design/Builder shall not provide assurances reasonably acceptable to Owner that Design/Builder will bond over any such lien that may be filed (and does actually bond over any such lien that has been filed), Owner may, at Owner's option make payment in the form of check(s) made payable directly to the applicable Subcontractors.

5.4.9 Owner's Right to Withhold Payments. Notwithstanding anything to the contrary in this Agreement, in addition to the right of Owner to withhold payment of retainage amounts and to disapprove Applications for Payment in whole or in part, Owner may withhold all or any portion of payments otherwise due hereunder to Design/Builder (with Design/Builder agreeing that in such circumstances, it shall be reasonable for Owner to withhold payment) for any of the following reasons: (a) omission of any Work required by the Design/Build Documents or Design/Builder's failure to cure Nonconforming Work; (b) failure to submit to Owner all information (including complete and qualifying evidence of insurance in accordance with this Agreement, and all waivers and releases required under the Design/Build Documents; (c) mechanics' liens, materialmen's liens, stop notices or bonded claims which are filed or recorded or reasonable evidence indicating the probable filing or recording of such liens, notices or claims by any Subcontractors, which claims are not bonded over pursuant to Section 5.4.11 and do not arise out of any failure of the Owner to make any payments required to be made by Owner under the Contract; (d) Design/Builder's failure to make payment properly to the Subcontractors or insurance carriers for the insurance requirements of Design/Builder required under the Design/Build Documents as well as to union fringe benefit trust funds (to the extent required) or to its creditors but only if and to the extent any such failure does not arise from Owner's default in its payment obligations hereunder; (e) Design/Builder's failure to timely complete the Work, or any reasonable indication that the Work will not be completed or performed within the Contract Time; (f) Design/Builder's failure to construct, install or perform the items of the Work for any Design/Build Project as required in the Design/Build Documents, or any reasonable indication that Design/Builder will be unable to perform the items of the Work required under the Design/Build Documents; (g) Design/Builder's failure to perform any term or provision of the Design/Build Documents when, in Owner's judgment, such failure will or may jeopardize the timely and proper completion of the Work for any Design/Build Project; (h) Design/Builder or any other member of the Design/Build Team, or any Design/Builder Affiliate is in default or breach of any term or condition of this Agreement or any other Design/Build Document, notice thereof is or has been given to Design/Builder and such default has not been cured; (i) damage to Owner or another contractor, agent or representative of Owner if Design/Builder or any Subcontractor is responsible for the damage or (j) any other grounds for withholding payment permitted by Applicable Laws, or as otherwise permitted by the Design/Build Documents; provided, however, that in no event shall Owner unreasonably withhold any payment from Design/Builder. The amount so withheld shall be reasonably determined by Owner; provided that in any of the circumstances described in clauses (a) and (c) above, it is agreed that it shall be reasonable to withhold an amount equal to 150% of the cost associated with such omissions or failure or of the amount sought.

Whenever the grounds giving rise to the above withholding have been removed, Owner shall pay Design/Builder the amount withheld within ten (10) Business Days thereafter, less any expenses reasonably incurred by Owner or damages actually sustained by Owner as a result of the withholding, the cause of the withholding or the removal of the cause. The right to withhold payments as provided in this Section 5.4.9 shall be in addition to all other rights and remedies of Owner under the Design/Build Documents and at law or in equity.

5.4.10 [Intentionally Omitted].

5.4.11 Title to the Work. The title to all of the Work completed and in course of construction and of all materials delivered to the Site and/or paid for by Owner pursuant to the terms of the Contract shall be in Owner. Design/Builder warrants (a) that title to all Work, materials and equipment covered by an Application for Payment will pass to Owner either by incorporation in the Work or upon receipt of payment by Design/Builder, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances (and upon receipt of payment by Design/Builder, Design/Builder shall deliver unconditional lien releases to Owner evidencing that title to the Work was transferred free and clear of all liens, claims, security interest or encumbrances), and (b) that no Work, materials or equipment covered by any Application for Payment shall have been acquired by Contractor, or by any other Person performing Work at any Site or furnishing materials or equipment for the Project.

5.5 ACCOUNTING RECORDS. The Design/Builder shall check all materials, equipment and labor entering the Site (and Building) or stored elsewhere, shall keep or make available at the Site or at its local regional office in Redwood City, California, full and detailed accounts and shall exercise such controls as may be necessary for proper financial management under the Contract (and all such the accounting and control systems must be reasonably satisfactory to the Owner). Design/Builder shall maintain complete, accurate and well-organized files containing all Subcontracts, purchase orders, invoices, labor transaction reports, etc. pertaining to the Work with respect to all Design/Build Projects, so as to afford Owner precise verification of all monies spent and corroboration that all contractual insurance obligations have been met. The Owner and the Owner's accountants and Persons reasonably designated by Owner shall be afforded access to, and shall be permitted to audit and copy (within three years of the Substantial Completion Date of any Design/Build Project), the Design/Builder's (and other members of the Design/Build Team's) books, correspondence, instructions, drawings, receipts, Subcontracts, purchase orders, vouchers, memoranda and other data relating to the Contract (as it relates to any particular Design/Build Project(s)), and the Design/Builder shall preserve these for a period of three (3) years after final payment for each Design/Build Project, or for such longer period as may be required by Applicable Laws. If, with respect to any Design/Build Project(s): (a)

Owner should have an audit made for any period of three (3) months or more and the Cost of the Work (other than related to the estimated amount of completion) for such Design/Build Project(s) for such period as reflected in the Design/Builder's Applications for Payment submitted to Owner pursuant to this Article 5 with respect to such Design/Build Project(s) are found to be overstated by more than five percent (5%) or (b) Owner should have a final audit made covering the entire Work for any Design/Build Projects(s) and the entire Cost of the Work for such Design/Build Project(s) as reflected in all of the Design/Builder's Applications for Payment submitted to Owner pursuant to this Article 5 with respect to such Design/Build Project(s) are found to be overstated by more than five percent (5%), then in addition to paying to Owner the amount of any overpayment made by Owner on account of the Cost of the Work (and the Fee), Design/Builder shall also immediately pay to the Owner the cost of such audit together with interest at the Interest Rate on such overpayment and costs from the date or dates of payment until so repaid.

ARTICLE 6 PROTECTION OF PERSONS AND PROPERTY

6.1 DESIGN/BUILDER'S RESPONSIBILITY. The Design/Builder shall be responsible for initiating, maintaining and providing supervision of safety precautions and programs in connection with all of the Work (and with respect to each and every Design/Build Project).

6.2 SAFETY. The Design/Builder shall (and shall cause all Subcontractors to) take all reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (a) employees performing any portion of the Work and all other Persons who may be affected thereby, (b) the Work and materials and equipment to be incorporated therein (whether in storage on or off the Site, under care, custody or control of the Design/Builder or Subcontractors), (c) other property at the Site or adjacent thereto (such as, without limitation, trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction), and (d) construction or operation by the Owner and its Separate Contractors. The Design/Builder shall also give notices and comply with any and all Applicable Laws (including, but not limited to, the occupational Safety and Health Act of 1970 as amended, supplemented or modified from time to time and all regulations implementing the same) bearing on the safety of Persons and property and their protection from damage, injury or loss. Without limiting the generality of the foregoing:

6.2.1 Within ten (10) Days after the date the Parties execute any Project Authorization, the Design/Builder shall provide a notice to the Owner describing the safety and security assurance program to be used by the Design/Builder in the performance of the Work for such Design/Build Project (which shall identify haul routes, detours, barricading, lane closures, on-site safety and any other safety precautions which may be required during construction of such Design/Build Project). The Owner shall have the right to review and comment on such program as described in such notice from the Design/Builder; provided, however, that the Design/Builder shall remain solely responsible for implementing and performing such safety and security assurance program to be used by the Design/Builder in the performance of the Work for the applicable Design/Build Project. The Design/Builder shall perform the Work with respect to each Design/Build Project in accordance with the safety and security assurance program approved by Owner under this Section 6.2.1.

6.2.2 The Design/Builder shall promptly provide the Owner (and/or other Persons designated by Owner) with: (a) written accident reports for O.S.H.A., lost time and recordable accidents that occur at the Site prepared in accordance with the safety and security assurance program approved by Owner pursuant to Section 6.2.1 and (b) copies of all written communications with all governmental authorities and, except to the extent privileged or confidential, insurance companies (including any notices) with respect to accidents that occur at the Site, and thereafter provide such written reports relating thereto as the Owner may request.

6.2.3 The Design/Builder shall implement and utilize effective quality assurance programs, acceptable to the Owner in performing the Work. Within ten (10) Days after the date the Parties execute any Project Authorization, the Design/Builder shall provide a notice to the Owner describing such quality assurance programs to be used by the Design/Builder in the performance of the Work with respect to the applicable Design/Build Project.

6.2.4 The Design/Builder shall maintain at the Site, copies or suitable extracts of: Construction Safety Orders, Tunnel Safety Orders, and General Industrial Safety Orders issued by the all applicable governmental authorities.

6.2.5 The Design/Builder shall erect and maintain, as required by existing conditions and performance of the Design/Build Documents, reasonable safeguards for safety and protection, including posting of danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

6.2.6 When use or storage of explosives or other Hazardous Materials or hazardous equipment or unusual methods are necessary for execution of any of the Work, the Design/Builder shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

6.2.7 The Design/Builder shall designate a responsible member of the Design/Builder's organization at the Site whose duty shall be to endeavor to prevent accidents. This person shall be the Design/Builder's superintendent unless otherwise designated by the Design/Builder in writing to the Owner.

6.2.8 The Design/Builder shall not load or permit any part of the construction or the Site to be loaded so as to endanger its safety or the safety of persons or other property

6.3 CORRECTIVE ACTION. The Design/Builder shall promptly remedy damage and loss caused in whole or in part by the Design/Builder any Subcontractor, or any other Design/Build Party.

ARTICLE 7 INSURANCE AND BONDS; INDEMNIFICATION

7.1 CONTRACTOR'S INSURANCE.

7.1.1 The Design/Builder shall (and shall cause the other members of the Design/Build Team to) purchase and maintain in a company or companies authorized to do business in the State of California, such insurance as will protect the Design/Builder (and the other members of the Design/Build Team) from claims set forth below which may arise out of or result from operations under this Agreement (and other Design/Build Documents) by the Design/Builder (and the other members of the Design/Build Team) or by any Subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable: (a) claims under workers' or workmen's compensation, disability benefit and other similar employee benefit laws which are applicable to the Work; (b) claims for damages because of bodily injury, occupational sickness or disease, or death of the Design/Builder's (or the other members of the Design/Build Team's) employees under any applicable employer's liability law; (c) claims for damages because of bodily injury, sickness or disease, or death of persons other than the employees of Design/Builder (and the other members of the Design/Build Team); (d) claims for damages covered by usual personal injury liability coverage which are sustained: (i) by a person as a result of an offense directly or indirectly related to employment of such person by the Design/Builder (or the other members of the Design/Build Team) or (ii) by another Person; (e) claims for damages because of injury to or destruction of tangible property, including loss of use; and (f) claims for damages for bodily injury or death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle (of any type).

7.1.2 Design/Builder shall also comply with the following provisions in connection with insurance coverage to be obtained and maintained by Design/Builder pursuant to this Agreement:

7.1.2.1 The Design/Builder shall obtain and maintain (as provided herein), at its own expense, the minimum types and amounts of insurance described in Part 1 of Exhibit "E", attached hereto, insuring the Design/Builder, its employees, agents and designees and the Owner Indemnified Parties as required herein.

7.1.2.2 The Design/Builder shall insure specifically the Owner Indemnified Parties, and shall include the Owner Indemnified Parties as additional insureds (via an ISO form CG 20 10 11 85 (Form B) endorsement or another form of endorsement providing equivalent coverage (note that ISO endorsement CG 20 33 10 01 together with either CG 20 37 10 01 or CG 20 37 07 04 are acceptable equivalents)) by causing mandatory riders or endorsements to be attached to the insurance policies described in Paragraph 1.1 of Exhibit "E" ("employers liability" (but not the Workers' Compensation Insurance)), Paragraph 1.2 of Exhibit "E", Paragraph 1.3 of Exhibit "E", and Paragraph 1.4 of Exhibit "E". The insurance coverage afforded under the policies described in this Section 7.1.2 (and in Part 1 of Exhibit "E"), shall be primary and non-contributory to any insurance carried independently by the Owner Indemnified Parties and shall apply separately to each Design/Build Project and the Work. Said amendatory riders or endorsements shall indicate that there shall be severability of interests under said insurance policies for all coverage provided under said insurance policies in connection with the Owner Indemnified Parties.

7.1.2.3 All of the insurance required to be carried by Design/Builder (or the Subcontractors) under or pursuant to this Agreement shall: (a) be provided by insurance companies having policy holder ratings not lower than "A" and financial ratings not lower than "IX" in the Best's Insurance Guide and (b) except for the insurance, if any, carried by Design/Builder (or the Subcontractor) pursuant to Paragraph 1.9 of Exhibit "E", shall be written on an occurrence basis. Deductibles on liability policies (i) carried by Design/Builder shall not exceed \$250,000.00 without the reasonable approval of Owner and (ii) carried by any other member of the Design/Build Team in excess of \$250,000.00 shall be subject to the reasonable approval of Owner. Deductibles on other policies of Design/Builder shall be subject to the reasonable approval of the Owner.

7.1.2.4 The Design/Builder shall maintain all of the insurance coverages described in Part 1 of Exhibit "E" in force, without interruption, from the date of the Design Notice to Proceed for the first Design/Build Project until final completion of the entire Work for the last Design/Build Project, except for the liability coverages required under Paragraphs 1.3 and 1.4 of Exhibit "E", which shall be maintained for at least three (3) years after completion of the Work by continuing to name the Owner and the other Owner Indemnified Parties as additional insureds under the Design/Builder's policy for such coverages during that period.

7.1.3 Concurrently with its delivery of an executed counterpart of each Project Authorization and before the Design/Builder (or any other member of the Design/Build Team) commences the rendition of any services hereunder (or thereunder), the Design/Builder shall submit to Owner valid certificates of insurance (with the description of the work area of each certificate containing a description of the Work and applicable Design/Build Project) in form and substance reasonably satisfactory to the Owner evidencing the foregoing insurance policies (and the insurance policies required to be carried by the other members of the Design/Build Team) along with copies of all required endorsements to any such policies to the Owner for Owner's approval (and Design/Builder and the other members of the Design/Build Team shall not commence the Work on any Design/Build Project until Owner has approved all such items). These Certificates as well as insurance policies required by Section 7.1.2 (and Part 1 of Exhibit "E") (and with respect to the other members of the Design/Build Team, required pursuant to Section 7.1.6 below) shall: (a) contain a provision stating that the insurer will endeavor to provide written notice given to the Owner (and any other person designated in writing by Owner) (i) at least thirty (30) Days prior to (or in the case of cancellation for nonpayment of premium amount, at least ten (10) Days prior to) any cancellation or material modification of the coverage, and (ii) at least ten (10) Days prior written notice of any nonrenewal of such coverage, (b) be endorsed to

provide that each insurer shall waive all of its rights of recovery, under subrogation or otherwise as permitted by law, against the Owner and the other Owner Indemnified Parties, and (c) identify if ISO Endorsement Nos. 22 94 or 22 95 (or the equivalent of either) have been added to the Design/Builder's (or the other members of the Design/Build Team's) CGL policy. If any of the foregoing insurance coverage is required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted along with the final Application for Payment. If the Design/Builder fails to furnish or maintain the insurance required by Section 7.1.2, (or if any other member of the Design/Build Team fails to furnish or maintain the insurance required by Section 7.1.6 below) the Owner may, after expiration of the notice and cure period described in Section 3.4, purchase such insurance on behalf of the Design/Builder (or other member of the Design/Build Team), in which case: (i) the cost thereof may be deducted from any unpaid amounts due to the Design/Builder under the Contract with respect to the applicable Design/Build Project, including, without limitation, any unpaid retention or progress payment and (ii) any amount not so deducted shall become a debt due to Owner from Design/Builder (payable immediately upon demand) and shall bear interest at the Interest Rate through the date paid.

7.1.3.1 In addition to certificates of insurance, Design/Builder and the Subcontractors shall provide Owner with endorsements to liability insurance policies described in Paragraph 1.1 of Exhibit "E" ("employers liability" (but not the Workers' Compensation Insurance)), Paragraph 1.2 of Exhibit "E", Paragraph 1.3 of Exhibit "E", and Paragraph 1.4 of Exhibit "E" issued by the respective insurers naming additional insureds in substantially the following form:

It is agreed that Gattaca, LLC, and such other persons or entities as Gattaca, LLC, may designate in a written notice to the insured, including, without limitation, Gattaca Management Company, LLC and Gattaca Holdings, LLC, and all of their respective subsidiaries, parents and affiliates and each of their respective partners, members, mortgagees, ground lessors, directors, officers, managers, trustees, investors, employees, agents, successors, and assigns are additional insureds. The insurance afforded the additional insureds shall apply as primary insurance as respects any claim, loss or liability arising directly or indirectly from work performed by or at the direction of the insured, and any other insurance carried by each of the additional insureds will be excess only and will not contribute with the insurance afforded the additional insureds hereunder.

7.1.3.2 In addition to certificates of insurance, Design/Builder and the Subcontractors shall provide Owner with waiver of subrogation endorsements to the insurance policies described in Section 7.1.2 issued by the respective insurers naming additional insureds in substantially the following form:

We have the right to recover our payments from anyone liable for an injury covered in this policy. We will not enforce our rights against Gattaca, LLC, Gattaca Management Company, LLC or Gattaca Holdings, LLC, and/or any of their respective subsidiaries, parents and affiliates and each of their respective partners, members, mortgagees, ground lessors, directors, officers, managers, trustees, investors, employees, agents, successors, or assigns.

7.1.4 The Design/Builder waives all rights against the Owner Indemnified Parties for damages to persons and the Design/Builder's property to the extent that such damages are covered by insurance purchased and maintained by the Design/Builder (or if the Design/Builder fails to carry all of the insurance that Design/Builder is required to carry hereunder, is of a type that would have been covered by the type of insurance Design/Builder is required to obtain and maintain hereunder, had Design/Builder carried such insurance), and the Design/Builder's insurance policies shall contain a provision or endorsement in which the insurer waives its right of subrogation against the Owner Indemnified Parties. This waiver provision shall also extend to all Subcontractors in connection with the Work, and it shall be the duty of the Design/Builder to insure that all Subcontracts and purchase orders entered into in connection with the Work contain such waiver provisions for the benefit of Owner Indemnified Parties.

7.1.5 Design/Builder shall cause all Subcontractors to carry the types and amounts of insurance specified in Part 2 of Exhibit "E" for the coverage periods specified therein. Design/Builder shall not permit any Subcontractors to commence any portion of the Work until such insurance has been obtained. The Subcontractors' insurance shall be primary and not considered contributory with any other insurance available to the Owner Indemnified Parties, shall name the Owner Indemnified Parties as additional insureds (via the form of endorsement described in Section 7.1.3.2, above) and shall contain a provision or endorsement in which the insurer waives its right of subrogation against the Owner Indemnified Parties as required herein by the Design/Builder. The Design/Builder shall require that all Subcontractors produce certificates of insurance evidencing that they have liability insurance of the type above and for the periods of time identified in this Article 7, and shall deliver copies of such certificates to Owner.

7.2 BUILDER'S RISK INSURANCE.

7.2.1 Unless otherwise provided in the applicable Project Authorization, with respect to each Design/Build Project, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Building is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Price for the applicable Design/Build Project, plus value of subsequent Project Authorization Modifications and cost of materials supplied or installed by others, comprising total value for the entire Design/Build Project at the Site on a replacement cost basis (provided that Owner may elect to carry a single policy of such type that

covers the entire Project rather than any particular Design/Build Project(s)). Such property insurance shall be maintained, unless otherwise provided in the Design/Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 5.4.6 or until no person or entity other than the Owner has an insurable interest in the property covered under the insurance described in this Section 7.2, whichever is later. This insurance shall include interests of the Owner, the Design/Builder and the Subcontractors to the extent that an insurable interest applies, and shall name as loss payees, the Design/Builder and the Subcontractors to the extent that an insurable interest applies. The Owner shall be named as the insured under such policy and shall also be named as loss payee under this policy.

7.2.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for services and expenses of the Design/Builder and other members of the Design/Build Team required as a result of such insured loss with a sublimit in an amount reasonably determined by Owner, but at the election of Owner, may exclude coverage for earthquake and flood.

7.2.1.2 If with respect to any Design/Build Project, the Owner does not intend to purchase the property insurance described in this Section 7.2, the Owner shall so inform the Design/Builder in writing prior to commencement of the Construction Work on such Design/Build Project. The Design/Builder may then effect insurance which will protect the interests of the Design/Builder and the Subcontractors in the Work with respect to the applicable Design/Build Project, and by appropriate Change Order the actual cost thereof shall be included in the Cost of the Work for such Design/Build Project. If the property insurance described in this Section 7.2 is later obtained by the Owner, then the Design/Builder shall terminate any property insurance coverage so obtained (and the Cost of the Work for the applicable Design/Build Project (as so increased in accordance with this Section 7.2.1.2) and Contract Price shall be reduced to the extent of any premium savings).

7.2.1.3 If the property insurance described in this Section 7.2 requires deductibles, the party responsible for the loss shall pay costs not covered because of such deductibles (provided that Design/Builder shall only be required to pay any such amounts to the extent such losses are covered by the liability insurance that Design/Builder is required to carry under the Design/Build Documents).

7.2.1.4 This property insurance shall cover portions of the Work stored off the Site, and also portions of the Work in transit with a sublimit in an amount reasonably determined by Owner.

7.2.1.5 Partial occupancy or use of any Design/Build Project shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design/Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

7.2.1.6 The insurance required by this Section 7.2 is not intended to cover machinery, tools or equipment owned or rented by the Design/Builder (or any Subcontractor) which are utilized in the performance of the Work but not incorporated into the permanent improvements. The Design/Builder (and/or Subcontractors) shall, at their own expense, provide insurance coverage for such owned or rented machinery, tools or equipment, and such coverage shall be subject to (and contain a waiver of subrogation consistent with) the requirements of Section 7.2.5, below.

7.2.2 The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused

7.2.3 If the Design/Builder requests in writing that insurance for risks other than those described in this Section 7.2 or other special causes of loss be included in the property insurance policy described in this Section 7.2, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Design/Builder by appropriate Change Order (in the form of a deduction from the GMP and Contract Price for the applicable Design/Build Project(s)).

7.2.4 Before an exposure to loss may occur, the Owner shall file with the Design/Builder a copy of a certificate of insurance for each policy that includes insurance property insurance coverages required to be carried by Owner under this Section 7.2. Each such certificate shall contain a provision that the insurer thereunder will endeavor to provide at least ten (10) Days notice to Owner before the policy will be allowed to expire.

7.2.5 The Owner and Design/Builder waive (and the Design/Builder shall cause all Subcontractors to waive) all rights against each other and any of their subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by the property insurance that is required to be obtained and maintained by Owner pursuant to this Section 7.2 (and Design/Builder and/or the Subcontractors under Section 7.2.1.6), except such rights as they have to proceeds of such insurance held by the other party. All such property insurance policies (that are required to be obtained and maintained by Owner or Design/Builder and/or the Subcontractors under this Section 7.2) shall provide such waivers of subrogation by endorsement or otherwise. This waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, even though the person or entity did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. This Section 7.2.5 shall not apply to any damages covered by any insurance carried by Owner or Design/Builder and/or Subcontractors other than the property

insurance policies that are required to be obtained and maintained by Owner or Design/Builder and/or the Subcontractors pursuant to this Section 7.2.

7.2.6 A loss insured under Owner's property insurance (required under this Section 7.2) shall be adjusted by the Owner in its sole and absolute discretion and made payable to the Owner, subject to requirements of any applicable mortgagee clause and of Section 7.2.7. The Owner shall pay Design/Builder its just share of insurance proceeds received by the Owner, and the Design/Builder shall pay its Subcontractors their just shares of any such insurance proceeds received by the Design/Builder, and by appropriate written agreements, shall require its Subcontractors to make payments to their Subcontractors in similar manner.

7.2.7 The Owner shall have power to adjust and settle a loss with insurers unless one of the parties in interest (under the property insurance carried by Owner in accordance with Section 7.2) shall object in writing within five (5) Days after occurrence of loss to the Owner's exercise of this power. The Owner, in the case of arbitration, shall make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

7.3 [Intentionally Omitted]

7.4 INDEMNIFICATION.

7.4.1 To the fullest extent permitted by law, but subject to Section 7.4.2 below and to the waiver of subrogation in Section 7.2.5 above, the Design/Builder agrees to indemnify, defend and hold harmless the Owner Indemnified Parties from and against any and **all** Losses suffered, sustained or incurred by or asserted against any Owner Indemnified Party with respect to any actual or alleged damage or injury of any kind or nature whatsoever (including, without limitation, claims for damage or injury to any employees of the Design/Builder any Subcontractors or otherwise, emotional or bodily injuries to or death of any person, property damage, or claims for payment) to the extent such Losses result from, arise out of or are caused by: (a) **negligent** performance and/or scope of the Work, (b) Design/Builder's **breach** of any provisions of this Agreement and/or the applicable Project Authorization, (c) the negligent acts or omissions or willful misconduct of the Design/Builder or any Subcontractor or any other Design/Builder Party, (d) any mechanics liens, stop notices and violation notices relating to any Design/Build Project, except to the extent caused by the Owner's default in its payment obligations under this Agreement or (e) any injury to any employee of Design/Builder or any Subcontractor or any other person performing any portion of the Work, and the Design/Builder agrees to and does hereby assume on behalf of Owner Indemnified Parties the defense of any action at law or in equity which may be brought against Owner Indemnified Parties by reason of such Losses; provided, that Design/Builder may not agree to any settlements of Losses against any of the Owner Indemnified Parties without Owner's prior written consent, in its sole but good faith discretion. Notwithstanding the foregoing, should Design/Builder be required to defend any claim or action and upon final resolution of such claim or action by judgment or settlement that is reasonably acceptable to Owner, it is determined that such claim or action resulted from any matter described in Section 7.4.2 below, then Owner shall reimburse Design/Builder its un-recovered out-of-pocket costs incurred by Design/Builder in defending such claim, including any applicable insurance deductibles and attorney's fees, to the proportionate extent that such claim or action is determined to result from any matter described in Section 7.4.2 below.

7.4.2 The indemnity and defense obligations set forth in Section 7.4.1 above shall not extend to any Losses (i) to the extent that such Losses result from the active negligence or willful misconduct of any Owner Indemnified Party or (ii) that arise from the sole negligence of any Owner Indemnified Party.

7.4.3 The indemnities set forth in this Agreement (including without limitation, in Section 7.4.1, above) shall not be limited by the insurance requirements set forth in Section 7.1, above (or Part 1 of Exhibit "E", attached hereto). In Losses against any Owner Indemnified Party by an employee of the Design/Builder, any Subcontractor, or any other Design/Builder Party, the indemnification obligation under this Section 7.4 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design/Builder or Subcontractor, under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

7.4.4 If, with respect to any of the Work, the Design/Builder, any Subcontractor or any other Design/Builder Party, takes any action against any Design/Build Project or the Site or any portion thereof, or any fund or bond held by or for the benefit of the Owner, including, without limitation, by: (a) recording or filing a design professional's, mechanic's, materialmen's or equitable lien or a stop notice, (b) making a claim or demand or maintaining an action on, or an action in foreclosure of any lien or stop notice or against a payment or performance bond, or (c) filing or recording a notice of pendency of any such actions, then except to the extent such action arises directly out of Owner's failure to perform its payment obligations hereunder with respect to the applicable Design/Build Project, the Design/Builder shall immediately and at its own expense, take whatever action necessary to defend and protect the Design/Build Project or the Site or the applicable portion thereof or such fund or bond, including, without limitation, obtaining and recording or filing a statutory release or other bond, dismissing or settling any action, claim or demand, and expunging any notices of pendency of such actions. The foregoing obligation is part of the Work and, accordingly, may be performed by the Owner at the Design/Builder's expense pursuant to Section 3.4, above.

7.4.5 This Section 7.4 shall specifically survive the expiration or sooner termination of this Agreement and the indemnity obligations set forth herein shall not be limited by any insurance obligations or limitations.

ARTICLE 8 CHANGES IN THE WORK

Except as expressly permitted in this Agreement, a change in the GMP or the Contract Time for any Design/Build Project shall be accomplished only by Change Order. No claim that Owner has been unjustly enriched by any alteration of or addition to the Work with respect to any Design/Build Project, whether or not there is in fact any unjust enrichment to the Work with respect to any Design/Build Project, shall be the basis of any claim to an increase in any amount due under the Design/Build Documents or a change in the Contract Time

8.1 CHANGE ORDERS; CONSTRUCTION CHANGE DIRECTIVES.

8.1.1 A "Change Order" is a written order signed by the Owner and Design/Builder, and issued after execution of this Agreement, authorizing a Change in the Work with respect to any Design/Build Project or adjustment in the GMP or Contract Time (or both) with respect to such Design/Build Project. Any such Change in the Work by Change Order shall be performed under applicable provisions of the Design/Build Documents and the Design/Builder shall proceed promptly upon receipt of Owner's approval of a Change Order Estimate.

8.1.2 A "Construction Change Directive" is a written order prepared by the Owner and signed by the Owner (which may be provided in lieu of its approval of a Change Order Estimate), directing a Change in the Work with respect to any Design/Build Project and stating a proposed, good faith basis for adjustment, if any, in the GMP or Contract Time (or both) with respect to such Design/Build Project. The Owner may, by Construction Change Directive, without invalidating or breaching the Contract, order changes in the Work with respect to any Design/Build Project within the general scope of the Design/Build Documents for such Design/Build Project consisting of additions, deletions or other revisions, in which case the GMP or Contract Time (or both) with respect to such Design/Build Project, shall be adjusted accordingly. A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

8.1.2.1 Upon receipt of a Construction Change Directive, the Design/Builder shall promptly proceed with the Change in the Work involved and advise the Owner of the Design/Builder's agreement or disagreement with the proposed adjustment in the GMP or Contract Time (or both) for the applicable Design/Build Project that is described in the Construction Change Directive.

8.1.2.2 If the Design/Builder does not agree with the method for adjustment in the GMP or Contract Time (or both) for any Design/Build Project that is stated in any Construction Change Directive, the method and adjustment shall be determined as provided in this Agreement, and the Design/Builder shall keep and present, in such form as the Owner may request, an itemized accounting, together with appropriate supporting data. Pending final determination of cost to the Owner, amounts incurred by the Design/Builder on account of Construction Change Directives that are not in dispute may be included in Applications for Payment. If the Owner and the Design/Builder do not agree with the adjustment in the GMP or Contract Time (or both) for any Design/Build Project that is stated in any Construction Change Directive, such disagreement shall be submitted for dispute resolution in accordance with the provisions of this Agreement.

8.1.2.3 When the Owner and Design/Builder agree with the adjustments in the GMP and/or Contract Time in connection with any Construction Change Directive, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order. Any such Change in the Work for any Design/Build Project by Construction Change Directive shall be performed under applicable provisions of the Design/Build Documents.

8.1.3 Change Order Proposal; Change Order Estimate.

8.1.3.1 Within ten (10) Business Days following its receipt of a Change Notice, Design/Builder shall deliver to Owner an estimate (a "Change Order Proposal") of the Additional Design Services Costs of preparing and the time required to prepare a Change Order Estimate. The Owner shall then direct the Design/Builder either to proceed with the Change Order Proposal or cancel the Change Order Proposal.

8.1.3.2 If the Owner directs the Design/Builder to proceed with the Change Order Proposal, the Design/Builder shall deliver to Owner a Change Order Estimate (defined below) within the time specified in the above described Change Order Proposal. A "Change Order Estimate" is a written offer for performance of any proposed Change in the Work that includes: (a) revised plans, Drawings and Specifications describing the proposed Changes in the Work, (b) an estimate of the amount of the increase, if any, or decrease, if any, in Cost of the Work and GMP as a result of the prospective Changes in the Work described in the applicable Change Order Proposal (collectively, "Change Order Costs"), (c) an estimate of the number of calendar days, if any, by which the Contractor reasonably believes Substantial Completion of the applicable Project will be delayed as a result of the prospective changes in the Project described in the applicable Change Order Proposal, and (d) the date by which the Owner must accept the Change Order Proposal in order for the Design/Builder's cost and time estimates to remain valid. The Owner shall then direct the Design/Builder to either proceed or not proceed with the Changes in the Work that are described in the Change Order Estimate,

8.1.3.3 If following receipt of a Change Order Proposal, the Owner directs the Design/Builder to proceed with the Change Order Estimate and then elects not to proceed with the Change Order contemplated therein, a Change Order shall be issued to reimburse the Design/Builder for any Additional Design Services Costs that are actually incurred by the Design/Builder in connection with preparation of such Change Order Estimate (up to the amount specified in the applicable Change Order Proposal). To the extent the preparation of any such Change Order Proposal or Change Order Estimate materially impacts the Schedule for any Design/Build Project (e.g., other Work on such Design/Build Project is suspended pending a decision on such Change Order Proposal or Change Order Estimate or the Design Work for such Design/Build Project is delayed due to the preparation of the Change Order Proposal and/or Change Order Estimate), an equitable adjustment in the Schedule (and to the extent applicable, Contract Time) for the applicable Design/Build Project shall be made.

8.1.4 Effect on GMP. Cost or credit to the Owner resulting from a Change in the Work for any Design/Build Project shall (unless specifically requested otherwise by Owner) be determined, by mutual acceptance of a lump sum, properly itemized and sufficiently supported by data to permit evaluation. If for any Design/Build Project, unit prices are stated in the Design/Build Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed for such Design/Build Project will cause substantial inequity to the Owner or the Design/Builder, the applicable unit prices shall be equitably adjusted. When both additions and credits covering related Work or substitutions are involved in a Change in the Work for any Design/Build Project, the change in Fee for such Design/Build Project shall be figured on the basis of net increase or decrease, as applicable, if any, with respect to that Change in the Work for such Design/Build Project.

8.1.4.1 Any Change Orders or Construction Change Directives which result in a net increase in the Cost of the Work for any Design/Build Project shall increase the GMP for such Design/Build Project in an amount equal to: (a) the amount of the approved increase in the Cost of the Work for such Design/Build Project (including any Additional Design Services Costs) (or in the case of a Change Order Directive, the lump sum increase in the Cost of the Work for such Design/Build Project (including any Additional Design Services Costs) ultimately agreed upon) plus (b) with respect to any change in the Work that results in an increase in the Contact Time, the net negotiated change in General Conditions Costs (and shall result in an adjustment of the GCC Max Amount by such negotiated amount), plus (c) the Fee Percentage of such amount for the Fee.

8.1.4.2 Any Change Orders or Construction Change Directives which result in a net reduction to the Cost of the Work for any Design/Build Project shall decrease the GMP for such Design/Build Project by an amount equal to: (a) the amount of the decrease in the Cost of the Work for such Design/Build Project (net of any Additional Design Services Costs or other costs) (or in the case of a Change Order Directive, the lump sum decrease in the Cost of the Work for such Design/Build Project (net of any Additional Design Services Costs or other costs) ultimately agreed upon), plus (b) with respect to any change in the Work that results in a decrease in the Contact Time, the net negotiated change in General Conditions Costs (and shall result in an adjustment of the GCC Max Amount by such negotiated amount), plus (c) the Fee Percentage of such approved amount for the Fee.

8.1.4.3 [Intentionally Omitted]

8.1.5 With respect to any Change in the Work for any Design/Build Project, the Design/Builder shall keep and present an itemized accounting together with appropriate supporting data for inclusion in a Change Order. Unless otherwise provided in the Design/Build Documents, the cost or credit of a Change Order or Construction Change Directive shall be limited to the following: (a) cost of materials, including sales tax and cost of delivery; (b) Approved Labor Rates (as defined in **Exhibit "D"**); (c) insurance premiums; (d) rental value of equipment and machinery (to the extent permitted to be included in the Cost of the Work); (e) increases or decreases in General Conditions Costs and the Fee as described in Section 8.1.4.1 and 8.1.4.2 above, and (f) additional costs of supervision and field office personnel directly attributable to the change. Pending final determination of cost to the Owner, payments on account shall be made on the Owner's approval of an Application for Payment. The amount of credit to be allowed by the Design/Builder to the Owner for deletion or change, which results in a net decrease in the GMP for any Design/Build Project, will be the actual net decrease in cost (together with the decreases in General Conditions Costs and the Fee as described in Section 8.1.4.2 above).

8.1.6 The Parties hereby agree that, in the event that any of the circumstances described: (a) in Section 9.2 (with respect to Nonconforming Work), (b) Section 5.1.3 (with respect to allowance items (if any)), (c) Section 5.4.8 (with respect to Owner's right to make payments directly to the Subcontractors), (e) Section 2.2.2 (with respect to the presence of Hazardous Materials at the Project Site (other than any Hazardous Materials (i) that are to be abated, remediated or removed as part of the Work as specified in any Project Authorization or (ii) for which the Design/Builder is responsible under Section 2.2.2.1 above), (f) Section 9.1.2 (with respect to uncovering Construction Work), and (g) Section 9.2.3 (with respect to Owner's right to correct Nonconforming Work), and (h) in Section 3.4 (with respect to Owner's right to perform the Work), the GMP for the applicable Design/Build Project shall be appropriately adjusted (and the parties shall execute a Change Order with respect to the work).

8.1.7 Compliance with Change Orders; Payment. Upon receipt of a duly authorized Change Order, Design/Builder shall not thereafter perform any Work or order materials that would be inconsistent with the modification required by the Change Order. Design/Builder shall observe and perform the duties of Design/Builder under the Design/Build Documents until Owner has issued a Change Order (or a Change Directive) in writing to Design/Builder.

8.1.8 Full Settlement. Agreement on any Change Order by Owner and Design/Builder shall constitute a final settlement of all matters relating to the Change in the Work that is the subject of such Change Order, including, but not limited to, all direct and indirect costs (including all claims for loss of productivity/efficiency, extended durations and other claims relating to delays) associated with such Change Order, and any and all adjustments to the GMP and the Contract Time for the applicable Design/Build Project arising out of or relating to the Change in the Work that is the subject of such Change Order. Each Change Order shall also, without need for reaffirmation, affirm this Agreement, the applicable Project Authorization and Design/Builder's obligations under the Design/Build Documents, as revised.

8.1.9 Except to the extent expressly provided in this Agreement, Owner shall not, under any circumstances, have any obligation to approve any increase in the GMP or extension in the Contract Time for any Design/Build Project with respect to a request by Design/Builder for a

change in the Construction Drawings (or other Design/Build Documents) arising from the inability of Design/Builder to complete any portion of the Work in accordance with the construction procedures, techniques and schedules anticipated by Design/Builder.

8.2 MINOR REVISIONS. Notwithstanding anything to the contrary in this Agreement, Owner shall have the right to make minor revisions in the Construction Drawings (and other Design/Build Documents) for any Design/Build Project in order to achieve maximum economy of construction cost. Such minor changes shall be mutually agreed to by Owner and Design/Builder. In effecting these changes, Design/Builder agrees that in no event shall the GMP or the Contract Time for the applicable Design/Build Project be changed in a material respect unless such changes change the scope of the Work for such Design/Build Project, in which case, both the GMP and the Contract Time for such Design/Build Project shall be adjusted pursuant to a Change Order.

8.3 CHANGE CLAIMS BY DESIGN/BUILDER.

8.3.1 Design/Builder shall not be entitled to the payment of any additional compensation or to any extension to the Contract Time with respect to any Design/Build Project for any act, or failure to act, by Owner or for the happening of any event, thing, occurrence or other cause unless Design/Builder delivers to Owner: (a) a Notice of Change Claim Event (defined below) within fifteen (15) Business Days after the Design/Builder first knows of the happening of the applicable Change Claim Event and (b) a Change Claim (defined below) within thirty (30) Days after the Design/Builder first knows of the happening of the applicable Change Claim Event, (with it being understood and agreed that Design/Builder shall be deemed to have waived its right to make any claim for or with respect to increase in the GMP or extension of the Contract Time for any Design/Build Project, or both, as a result of any Change Claim Event unless Design/Builder shall deliver to Owner a Notice of Change Claim Event within fifteen (15) Business Days following and a Change Claim within thirty (30) Days after the first Day on which Design/Builder becomes aware of the occurrence of the applicable Change Claim Event). A "**Notice of Change Claim Event**" is a written statement by the Design/Builder that describes in reasonable detail (to the extent then known by Design/Builder) the event, thing, occurrence, or other cause, that Design/Builder purports will give rise to a Change Claim (a "**Change Claim Event**"). A "**Change Claim**" is a written statement by the Design/Builder requesting additional time, money, or both, in connection with the performance of the Work for any Design/Build Project and that (a) references that applicable Notice of Change Claim Event to which such Change Claim relates and (b) includes: (i) appropriate revised plans, Drawings and Specifications indicating in reasonable detail the proposed changes in the Work for the applicable Design/Build Project, (ii) a statement of the amount of the increase, if any, or decrease, if any, in Cost of the Work for the applicable Design/Build Project (including or net of any Additional Design Services Costs) as a result of the prospective changes in the applicable Design/Build Project described in the applicable Change Claim, (iii) a statement of the number of Days, if any, by which the Design/Builder reasonably believes Substantial Completion of the applicable Design/Build Project will be delayed as a result of the prospective changes in the applicable Design/Build Project described in the applicable Change Claim, and (iv) the date by which the Owner must accept the proposal in order for the Design/Builder's cost and time estimates to remain valid.

8.3.2 The Change Claim must describe in reasonable detail (to the extent then known by Design/Builder) the reason for which Design/Builder believes the additional compensation or time (or both) will or may be due and, in so far as possible, the amount and impact of the Change Claim. For all Change Claims for which Design/Builder requests an extension of the Contract Time for any Design/Build Project, Design/Builder must also furnish, together with its Change Claim, a written Time Impact Analysis ("**TIA**"), which TIA shall: (a) include a fragnet (defined below) demonstrating how Design/Builder proposes to incorporate the change or delay into the Schedule for such Design/Build Project, (b) demonstrate the estimated time impact based upon the date the Change Claim Event occurred, the events of the delay, the status of the Work for the applicable Design/Build Project at that point in time, and the event time computation of all activities affected by the change or delay, and (c) illustrate the influence of each change or delay on the Contract Time for the applicable Design/Build Project utilizing the current updated Schedule for the applicable Design/Build Project and establishing that the Change Claim will extend the Substantial Completion Date for such Design/Build Project (and actual delays that are caused by acts or omissions of the Design/Builder or any Subcontractor shall not be a cause for an extension to the Contract Time for any Design/Build Project). The term "**fragnet**" is defined as a sequence of new activities or activity revisions that is or are proposed to be added to the existing Schedule for any Design/Build Project to demonstrate the influence of delays and the method for incorporating delays and impacts into the Schedule for such Design/Build Project as they are encountered. The event times used in the TIA shall be those included in the latest update of the Schedule for the applicable Design/Build Project in effect at the time the change or delay was first encountered. No extension of the Contract Time for any Design/Build Project will be provided unless the Schedule for such Design/Build Project shall clearly display that Design/Builder has used, in full, all the float time available for the Work involved with any request for an extension of the Contract Time for the applicable Design/Build Project. The determination as to the number of allowable Days by which the Contract Time for any Design/Build Project shall be extended (if at all) shall be based upon the Schedule for such Design/Build Project in effect for the time period in question and other factual supporting data. Submission of data based on revised activity logic, duration and costs is considered reasonable data for the Owner to make its determination.

8.3.3 The parties intend by this Section 8.3 that differences between the Parties arising under or by virtue of the Design/Build Documents be brought to the attention of Owner at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. Design/Builder shall have no further right to additional compensation or time with respect to any Design/Build Project for any matter that may be based on any such act, event, thing or occurrence for which no Change Claim as herein required was filed in a timely manner.

8.3.3 Within ten (10) Business Days of receipt of a Change Claim from Design/Builder, Owner shall determine whether to approve such Change Claim, in which case the Parties shall execute a Change Order, or not approve such Change Claim. Owner may also respond to a

Change Claim within the above-stated ten (10) Business Days by issuing a Construction Change Directive pursuant to Section 8.1.2. Methods used in determining adjustment to the GMP and/or Contract Time for a Change Claim shall be those methods set forth in Section 8.1 (with respect to GMP) and this Section 8.3 (with respect to Contract Time). Owner shall consider and evaluate a Change Claim in good faith. To the extent Owner and Design/Builder cannot agree upon the adjustment of GMP and/or Contract Time with respect to a Change Claim, the Change Claim shall be addressed pursuant to the dispute resolution provisions in Article 12 of this Agreement.

ARTICLE 9

UNCOVERING CONSTRUCTION WORK; CORRECTION OF NONCONFORMING WORK

9.1 UNCOVERING CONSTRUCTION WORK.

9.1.1 If a portion of the Construction Work for any Design/Build Project is covered contrary to the Owner's written request (in which case, Owner shall provide such notice sufficiently in advance so as not to delay the Construction Work for such Design/Build Project) or contrary to requirements of the Design/Build Documents, it must, if required in writing by the Owner be uncovered for the Owner's observation and be replaced without change in the GMP or the Contract Time for the applicable Design/Build Project (with it being understood that the costs of and any delays incurred in connection with such uncovering and replacement shall be borne solely by the Design/Builder and shall not be a Cost of the Work and shall not constitute Excusable Delays).

9.1.2 If a portion of the Construction Work for any Design/Build Project has been covered but the Owner has not specifically requested to observe such Construction Work prior to its being covered and the Design/Build Documents do not require such Construction Work to be observed prior to its being covered, the Owner may request to see such Construction Work and it shall be uncovered by the Design/Builder and Sections 9.1.2.1 and 9.1.2.2 below shall apply.

9.1.2.1 If such Construction Work is in accordance with the Design/Build Documents, then the Parties shall execute a Change Order increasing the GMP for the applicable Design/Build Project by the costs of uncovering and replacement of such Construction Work and extending the Contract Time for the applicable Design/Build Project by any delay incurred in connection with uncovering and replacement of such Construction Work.

9.1.2.2 If such Construction Work is not in accordance with the Design/Build Documents, then there shall be no change in the Contract Time or GMP for the applicable Design/Build Project (with it being understood that the costs of and any delays incurred in connection with such uncovering and replacement shall be borne solely by the Design/Builder and not be a Cost of the Work and shall not constitute Excusable Delays); provided that, notwithstanding the foregoing, if such condition was caused by the Owner or a Separate Contractor, then the GMP and Contract Time for the applicable Design/Build Project shall be adjusted as provided in Section 9.1.2.1 above.

9.2 NONCONFORMING CONSTRUCTION WORK.

9.2.1 Owner's Rejection or Acceptance of Nonconforming Construction Work. Unless Owner intends to accept any Nonconforming Construction Work, Owner shall deliver a Notice of Nonconforming Work to Design/Builder within a reasonable time after Owner first discovers the existence of any Nonconforming Construction Work. If Owner prefers to accept any Nonconforming Construction Work, the Owner may do so instead of requiring its removal and correction, in which case the GMP for the applicable Design/Build Project will be reduced by an amount that is appropriate and equitable (and such adjustment shall be made whether or not final payment has been made to Design/Builder hereunder).

9.2.2 Correction/Removal of Nonconforming Construction Work Rejected by Owner.

9.2.2.1 If Owner delivers a Notice of Nonconforming Work (or if Design/Builder (or Contractor) otherwise becomes aware of the existence of Nonconforming Construction Work with respect to any Design/Build Project) at any time prior to the date of Final Completion of any Design/Build Project, Design/Builder shall promptly and at its sole cost and expense correct (or cause to be corrected) all Nonconforming Construction Work with respect to such Design/Build Project unless the Owner has previously given the Design/Builder a specific written acceptance of such condition after the Owner has been specifically informed in writing by the Design/Builder that the condition is not in accordance with the Design/Build Documents, whether or not such Nonconforming Construction Work was fabricated, installed or completed.

9.2.2.2 In addition, if Owner delivers a Notice of Nonconforming Work (or Design/Builder otherwise becomes aware of the existence of Nonconforming Construction Work with respect to any Design/Build Project) at any time after the date of Final Completion and within the applicable warranty period under Section 2.8 above of such Design/Build Project, the Design/Builder shall promptly and at its sole cost and expense, correct (or cause to be corrected) such Nonconforming Construction Work unless the Owner has previously given the Design/Builder a specific written acceptance of such condition after the Owner has been specifically informed in writing by the Design/Builder that the condition is not in accordance with the Design/Build Documents.

9.2.2.3 In connection therewith, the Design/Builder shall, at its sole cost and expense: (a) remove from the Site (and the Property) any Nonconforming Construction Work that is neither corrected by the Design/Builder nor specifically accepted by the Owner and (b)

correct and repair any destroyed or damaged construction, whether completed or partially completed, of the Owner or Separate Contractors that is caused by the Design/Builder's correction or removal of any Nonconforming Construction Work. The costs of correcting and/or removing such Nonconforming Construction Work and correcting or repairing any damage to any other construction (including any additional testing and inspection and compensation for services and expenses of the Owner and its agents and representatives made necessary thereby) shall be borne solely by Design/Builder and shall not be included in the Cost of the Work for any Design/Build Project. The obligations of the Parties under this Section 9.2.2 (and under Section 2.8 above) shall survive acceptance of the Work under the Design/Build Documents and termination of this Agreement.

9.2.3 Failure to Correct Nonconforming Construction Work. If the Design/Builder fails to perform any of its obligations under this Section 9.2 within seven (7) Days after Owner's delivery of a Notice of Nonconforming Work (or to commence to perform any such obligations and thereafter diligently and continuously prosecute such action to completion), the Owner shall have the right to:

9.2.3.1 Perform such obligations of Design/Builder (at Design/Builder's cost) in accordance with the terms of Section 3.4 of this Agreement. If, after Substantial Completion of the Work for any Design/Build Project, Design/Builder fails to promptly correct any part of the Work with respect to such Design/Build Project that is Nonconforming Construction Work, the Owner may, without prejudice to other remedies the Owner may have, correct such Nonconforming Construction Work at Design/Builder's sole cost and expense, and the cost thereof shall become a debt due to Owner from Design/Builder (and payable immediately upon demand) and shall bear interest at the Interest Rate through the date paid. In connection with any action under this Section 9.2.3.1, the Owner may remove any such Nonconforming Construction Work, correct and repair any destroyed or damaged construction caused by such removal, and store the salvable materials or equipment at the Design/Builder's expense. If the Design/Builder does not pay costs of such removal, correction, repair and storage within ten (10) Days after written notice, the Owner may, upon ten (10) additional Days written notice, sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Design/Builder, including compensation for services and expenses made necessary thereby. If such proceeds of sale do not cover costs that the Design/Builder should have borne, the Design/Builder shall pay such excess to the Owner. If such proceeds are in excess of the costs which the Design/Builder should have borne, such excess shall be paid by the Owner to the Design/Builder. If such costs arise during the performance of the Work for the applicable Design/Build Project, such costs shall be charged against the Cost of the Work for such Design/Build Project (and shall be deducted from the GMP for such Design/Build Project). If such costs arise after Substantial Completion of the applicable Design/Build Project, such costs shall be payable as provided in Section 3.4.

9.2.3.2 Order the Design/Builder to stop the Work in accordance with the terms of Section 3.3 of this Agreement.

9.2.4 Nothing contained in this Section 9.2 shall be construed to establish a period of limitation with respect to other obligations that the Design/Builder might have under the Design/Build Documents. Establishment of the one year time period for correction of Nonconforming Construction Work as described in Section 9.2 relates only to the specific obligation of the Design/Builder to correct the Construction Work for any Design/Build Project, and has no relationship to the time within which the obligation to comply with the Design/Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design/Builder's liability with respect to the Design/Builder's obligations other than specifically to correct the Construction Work with respect to the applicable Design/Build Project.

ARTICLE 10 SUBCONTRACTS AND SUBCONTRACTORS; USE OF SITE

10.1 SUBCONTRACTS AND SUBCONTRACTORS.

10.1.1 The Design/Builder shall enter into Subcontracts with the Architect and other members of the Design/Build Team under which the Design/Builder shall delegate responsibilities for the Design Work contained in this Agreement to the Architect and other members of the Design/Build Team. The Design/Builder shall act as the general contractor with respect to each Design/Build Project and shall be responsible for the performance of all of the construction responsibilities contained in this Agreement.

10.1.2. Subcontracts and Subcontractors.

10.1.2.1. Due care shall be exercised by the Design/Builder (and other Subcontractors) in the selection of Subcontractors. Design/Builder is and shall be fully responsible for the acts and omissions of all Subcontractors and persons employed or engaged by them. Design/Builder acknowledges and agrees that there are no Owner "nominated" Subcontractors, notwithstanding any existing or prior relationship of any Subcontractor with the Owner. Notwithstanding anything in this Agreement to the contrary, in no event shall Design/Builder be required to contract with any party reasonably objectionable to Design/Builder.

10.1.2.2 As soon as practicable after the execution of each Project Authorization, and in any case prior to the execution of any Subcontract with any Subcontractor to perform any portion of the Work or services required to be performed by Design/Builder hereunder, the Design/Builder shall furnish to the Owner (and any other person designated by Owner) in writing, the names and qualifications of the persons or entities to be engaged (by Design/Builder or otherwise) as Subcontractors for the Work with respect to the applicable Design/Build Project. Design/Builder shall also specifically advise Owner in writing of any financial interest it has in any of the prospective Subcontractors, if any, and which of the Subcontractors, if any, has a financial interest in it, and the extent of such interests. Neither the Design/Builder nor any other Subcontractor shall subcontract with any Subcontractor to whom the Owner has made reasonable and timely objection. If Owner has reasonable objection to a person or entity proposed as a Subcontractor, the Design/Builder shall propose another to whom the Owner has no reasonable

objection, and if such Subcontractor was otherwise qualified to perform the applicable portion of the Work, the GMP or Contract Time, or both, may be increased as a result of any such change. No Subcontractor previously selected and approved by Owner shall be changed unless the substitute Subcontractor is approved by the Owner.

10.1.2.3 If, at any time after determination of the GMP and Contract Time for any Design/Build Project, with respect to any particular trade, a specific bidder among those whose bids for such Design/Build Project are delivered by the Design/Builder to the Owner (and any other person designated by Owner): (a) is recommended to the Owner by the Design/Builder, (b) is qualified to perform the applicable portion of the Work, and (c) has submitted a bid that conforms to the requirements of the Design/Build Documents without inapplicable reservations or exceptions, but the Owner requires that another bid be accepted, then the Design/Builder may require that a Change Order be issued (and Owner shall so issue such Change Order) to adjust the GMP or Contract Time, or both, for the applicable Design/Build Project by the difference between the bid and schedule of the person or entity recommended to the Owner by the Design/Builder and the amount of the bid and the schedule of the person or entity designated by the Owner (plus General Conditions and Fee).

10.1.2.4 Except as otherwise agreed in writing by both parties hereto, Design/Builder must competitively bid any Trade Work that Design/Builder wishes to perform with Design/Builder's own forces or through a Design/Builder Affiliate, and shall obtain at least two (2) additional responsive bids from responsible subcontractors acceptable to the Owner. Design/Builder or a Design/Builder Affiliate, shall be permitted to perform such Trade Work only if: (a) Owner consents thereto in writing after full disclosure in writing by Design/Builder to Owner of the affiliation or relationship of the Design/Builder Affiliate to Design/Builder (or other member of the Design/Build Team), and (b) with respect to any Design/Builder Affiliate, Owner approves in writing any subcontract, contract, purchase order, agreement, or other arrangement between Design/Builder (or other member of the Design/Build Team) and such Design/Builder Affiliate in form and substance. Any Trade Work performed by Design/Builder's own forces or by any Design/Builder Affiliate, if required by Owner, shall be covered in a separate agreement between Owner and Design/Builder or the applicable Design/Builder Affiliate. Such agreement shall, without limitation, satisfy all requirements for Subcontracts as set forth in this Agreement.

10.1.2.5 Promptly after Design/Builder (or other Subcontractor) enters into any Subcontract, Design/Builder shall deliver an executed copy of such Subcontract (together with appropriate certificates of insurance evidencing the effectiveness of the insurance policies required to be maintained by the applicable Subcontractor) to Owner for Owner's records.

10.1.3 All work performed for the Design/Builder (or any other Subcontractor) by a Subcontractor (including any member of the Design/Build Team) shall be pursuant to an appropriate written Subcontract between the Design/Builder (or other Subcontractor) and the Subcontractor. Each such Subcontract (including, each Subcontract with any member of the Design/Build Team) shall, in addition to conforming to the requirements of the other provisions of this Agreement, specifically include the obligations set forth in this Section 10.1.3:

10.1.3.1 Each Subcontract (shall require the applicable Subcontractor), to the extent of the portion of the Work to be performed by such Subcontractor, to be bound to the Design/Builder (or higher tier Subcontractor, as the case may be) by the terms of all of the Design/Build Documents, and to assume towards the Design/Builder (or higher tier Subcontractor, as the case may be) all of the obligations and responsibilities which the Design/Builder, by the Design/Build Documents, assumes towards the Owner.

10.1.3.2 Each Subcontract shall contain a reference to this Agreement and the Project Authorization and shall incorporate the terms and conditions hereof to the full extent applicable to the portion of the Work covered thereby (including, but not limited to, the insurance and indemnification provisions for the benefit of the Owner Parties). Each Subcontract shall expressly state that the Subcontractor is bound by and agrees to perform the same terms, conditions and obligations that Design/Builder is bound by and has agreed to perform under this Agreement and the other Design/Build Documents with respect to the services which the Subcontractor will perform, and that the Owner, as a third party beneficiary thereof, has the right to enforce such terms, conditions and obligations against the Subcontractor, including, without limitation, any insurance and indemnity obligations.

10.1.3.3 Each Subcontract shall require each Subcontractor to guarantee or warrant in writing to the Owner that such party will repair or replace any or all Nonconforming Work (together with any other construction that may be displaced, damaged or marred in so doing), all without any additional expense to the Owner. All such guarantees or warranties shall be satisfactory in form and substance to the Owner and, unless otherwise stipulated in the Design/Build Documents, shall be for a period of one year, dated from the date of Substantial Completion of the applicable Design/Build Project.

10.1.3.4 Each Subcontract shall preserve and protect the rights of Owner under this Agreement and the other Design/Build Documents with respect to the services to be performed under the Subcontract so that the subcontracting thereof will not prejudice such rights.

10.1.3.5 Each Subcontract shall require that the services to be provided thereunder be performed in accordance with the requirements of this Agreement, the applicable Project Authorization and the other Design/Build Documents.

10.1.3.6 Each Subcontract shall provide that the Design/Builder (or Subcontractor) assigns its interest in the Subcontract to Owner, which assignment shall become effective only upon the termination or replacement of the Design/Builder and the applicable Subcontractor's receipt of notification from Owner that the assignment is effective, and in connection therewith, each subcontract shall include the following provision:

In the event that the [Design/Builder] is terminated or is otherwise replaced by the Owner or its assignee as the contractor for the project covered by this [Subcontract], at the request and option of the Owner or its assignee, the [Subcontractor] will perform under and in accordance with the terms of this [Subcontract] for Owner, its assignee, or any replacement contractor as long as [Subcontractor] is paid in accordance with the terms and conditions of this [Subcontract]. Owner or its assignee may also elect to take an assignment of [Design/Builder's] rights under this [Subcontract] upon notice to [Subcontractor], but in any event Owner and its assignees are intended third party beneficiaries of this [Subcontract]. None of these provisions shall be construed to impose on Owner or any assignee of Owner any obligation with respect to the [Subcontractor] whatsoever except for services, if any, performed after Owner or its assignee elect to take an assignment of [Design/Builder's] rights under this [Subcontract].

In connection therewith, each Subcontract: (a) shall require the Subcontractor to provide ten (10) Business Days prior written notice to Owner before exercising any right under such Subcontract to stop the applicable portion of the Work or terminate such Subcontract and (b) shall further require the Subcontractor to execute and deliver, to the Owner upon request, a written assignment of subcontracts and purchase orders and such Subcontractor's consent to each such assignment, in a form prepared by the Owner.

10.1.3.7 Each Subcontract shall clearly state that Owner is a third party beneficiary of the obligations to be performed by the Subcontractor and of any and all rights and remedies of Design/Builder (or higher tier Subcontractor) in connection therewith. Owner shall not exercise any of its rights as a third party beneficiary under any Subcontract unless Owner has a good faith reason for doing so after first attempting to resolve the issue with Design/Builder.

10.1.3.8 Each Subcontract shall require submission to the Design/Builder of applications for payment in reasonable time to enable the Design/Builder to apply for payment in accordance with this Agreement.

10.1.3.9 Each Subcontract shall require that all claims for additional costs, extensions of time, damages for delays or otherwise with respect to subcontracted portions of the Work shall be submitted to the Design/Builder in sufficient time so that the Design/Builder may comply in the manner provided in the Design/Build Documents for like claims by the Design/Builder upon the Owner and minimize damages for delay.

10.1.3.10 Each Subcontract shall obligate each Subcontractor specifically to consent to the provisions of this Section 10.1.3. The Design/Builder shall make available to each Subcontractor, prior to the execution of the applicable Subcontract, copies of this Agreement (redacted as to business terms) to which the Subcontractor will be bound by this Section 10.1.3, and (b) identify to the Subcontractor any terms and conditions of its proposed Subcontract which may be at variance with this Agreement. Each Subcontractor shall similarly make copies of this Agreement available to its Subcontractors.

10.1.3.11 Each Subcontract shall require the applicable Subcontractor to maintain the insurance specified in Section 7.1.5 above, and to name the Owner Indemnified Parties as additional insureds under such policies via the form of endorsement described in Section 7.1.2.2, above.

10.1.4 Except to the extent expressly provided to the contrary in this Agreement and the other Design/Build Documents, nothing contained in the Design/Build Documents shall create a professional obligation or contractual relationship between the Owner and any Subcontractor or other third party. Design/Builder agrees that Owner shall not be liable in any manner whatsoever for the acts and/or omissions of any Subcontractor including, without limitation, any Subcontractor recommended by Owner, and Design/Builder waives all claims against Owner in connection therewith.

10.2 USE OF SITE

10.2.1 The Design/Builder shall confine operations at the Site to areas permitted by Applicable Laws, ordinances, permits and the Design/Build Documents and shall not unreasonably encumber the Site with materials or equipment.

10.2.2 Only materials and equipment that are to be used directly in the Work shall be brought to and stored at the Site by the Design/Builder or any Subcontractor. After equipment is no longer required for the Work, it shall be promptly removed from the Site. Protection of construction materials and equipment stored at the Site (or any other location where such items may be stored) from weather, theft, damage, and all other adversity is solely the Design/Builder's responsibility.

10.2.3 Neither the Design/Builder, any Subcontractor nor any entity for which the Design/Builder or any Subcontractor is responsible for shall erect any sign on or at the Site, for which the primary purpose is to display its name, without the Owner's prior written consent, in its sole and absolute discretion.

10.2.4 The Design/Builder shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the Site and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the Site shall be free from all debris, building materials, and equipment. Without limitation of any other provision of the Design/Build Documents, Design/Builder shall use commercially reasonable efforts to minimize any interference with the occupancy or beneficial use of any areas in buildings on or adjacent to the Site (or in the event of partial occupancy, within or at the Site).

10.2.5 The Design/Builder acknowledges that it understands that other portions of the Building (e.g., portions of the Building other than those in which the Work is being performed) are occupied and used and will continue to be occupied and used by Owner and other Persons while the Work is being performed. Accordingly, Design/Builder shall use diligent good faith efforts to perform the Work in a manner which does not unreasonably disturb or interfere with the occupation and use by Owner or such other Persons of such other portions of the Building for the operation of their businesses therein.

ARTICLE 11

TERMINATION OF THE AGREEMENT; RIGHT TO SUSPEND WORK

11.1 OWNER'S RIGHT TO TERMINATE

11.1.1 Owner's Right to Terminate for Cause.

11.1.1.1 If Cause for Termination (defined below) exists, the Owner shall have the right to terminate the Contract in whole or in part (i.e., with respect to one or more Design/Build Projects) and complete the Work with respect to the applicable Design/Build Project(s) including engaging the services of other parties. Any such action by the Owner shall not be deemed a waiver of any other right or remedy of the Owner under the Design/Build Documents or under the law. If Owner delivers a notice of termination under this Section 11.1.1, but it is later determined that no Cause for Termination existed, Owner shall be deemed to have elected to terminate the Contract (or the applicable portion thereof) under Section 11.1.2 below. "**Cause for Termination**" shall exist if the Design/Builder (or any other member of the Design/Build Team) shall: (a) fail to commence the Work in accordance with the provisions of this Agreement, the applicable Project Authorization and the other Design/Build Documents, (b) fail to prosecute the Work, or any Work reflected in a Change Order, Construction Change Directive or other written amendment to this Agreement and/or the applicable Project Authorization, to completion thereof in a diligent, efficient, workmanlike, skillful and careful manner in accordance with the provisions of the Design/Build Documents, (c) fail to use an adequate amount of quality personnel or equipment or materials to complete the Work with respect to any Design/Build Project without delay, (d) fail to substantially complete the Work on or before the Substantial Completion Date as set forth in each applicable Project Authorization, (e) fail to perform any of its obligations under this Agreement or under the Design/Build Documents, (f) fail to make prompt payments to any Subcontractors that are properly due, (g) fail to observe and comply with Applicable Laws, in any such event; provided that, unless any such failure is not amenable to cure, no Cause for Termination shall exist unless Design/Builder shall not cure any such failure within seven (7) Days after Owner's delivery of written notice thereof (or if any such failure is amenable to cure, but the cure thereof will require more than seven (7) Days, unless Design/Builder shall fail to commence the cure of such failure within seven (7) Days after Owner's delivery of notice thereof and diligently prosecute such cure to completion).

11.1.1.2 If, after exercising such remedy, the costs reasonably incurred by the Owner in the performance of the balance of the applicable Design/Build Project(s) is in excess of that portion of the GMP for such Design/Build Project(s) earned by Design/Builder as of the termination date which has not been paid to the Design/Builder hereunder prior to the date of termination, the Design/Builder shall be liable therefor and shall reimburse the Owner for such excess together with interest thereon at the Interest Rate. Reimbursement of such excess amount shall be in addition to any and all other damages resulting from the Owner's termination of the Design/Builder under this Section 11.1.1.

11.1.2 Owner's Right to Terminate without Cause (for Convenience). In addition to the causes for termination set forth in Section 11.1.1, above, the Owner shall have the right to terminate the Contract in whole or in part (i.e., with respect to one or more Design/Build Projects) without cause at any time by giving the Design/Builder ten (10) Business Days written notice thereof. If Owner so terminates the Contract in whole or in part, Owner shall be entitled to assume the obligations of the Design/Builder under any or all of its Subcontracts and purchase orders covering the unperformed parts of the Work with respect to the applicable Design/Build Project(s). Such termination without cause will be in consideration for the payments referred to in Section 11.3.2, below, plus payment to the Design/Builder by the Owner of the sum of One Hundred Dollars (\$100.00).

11.2 DESIGN/BUILDER'S RIGHT TO TERMINATE.

11.2.1 Design/Builder shall have the right to terminate the Contract with respect to any particular Design/Build Project only if any of the following shall occur: (a) if the Work for the applicable Design/Build Project is stopped for a period of ninety (90) Days through no act or fault of the Design/Builder or any of the Subcontractors as a result of: (i) issuance of an order of a court or other public authority having jurisdiction, (ii) an act of government, such as a declaration of national emergency, making material unavailable, or (b) if the Work for the applicable Design/Build Project is stopped for a period of sixty (60) Days (i) by Owner under Section 11.5 (but not under Section 3.3) through no act or fault of the Design/Builder or any of the Subcontractors or (ii) by Design/Builder under Section 11.6.

11.2.2 If any of the circumstances described in Section 11.2.1 shall exist and is continuing, the Design/Builder may, if such circumstances are not remedied or cured within thirty (30) Days following Owner's receipt of written notice thereof from Design/Builder, terminate this Agreement, in which case, Design/Builder shall be entitled to receive payment of the amount described in Section 11.3.2, below.

11.3 PAYMENT TO DESIGN/BUILDER UPON TERMINATION.

11.3.1 If Owner terminates Design/Builder's right to complete the Work with respect to any Design/Build Project(s) under Section 11.1.1 (and/or if Owner completes the Work or any portion thereof), Design/Builder shall receive no further payment (including any progress payment submitted to Owner but unpaid) until the Work with respect to the applicable Design/Build Project(s) is completed and accepted by Owner and by

any governmental authorities whose acceptance is required, in which case, at such time, Owner shall pay Design/Builder the amount owing on the Contract Price together with all duly authorized and executed Change Orders with respect to the applicable Design/Build Project less: (a) all costs reasonably incurred by Owner in completing the Work with respect to the applicable Design/Build Project, and (b) all reasonable attorneys', consultants' and experts' fees incurred by Owner as a result of Design/Builder's default. If the amount unpaid to Design/Builder is less than the costs reasonably incurred by Owner in completing the Work with respect to the applicable Design/Build Project, Design/Builder shall pay to Owner within thirty (30) Days of Owner's invoicing, the amount by which the costs reasonably incurred by Owner in so completing the Work exceeded the unpaid balance due, and such costs shall bear interest at the Interest Rate. Owner shall have a lien and security interest in all Design/Builder's materials, tools, equipment and appliances taken possession of as is permitted by the Agreement, to secure the payment thereof including all cost to remedy any unauthorized change(s) to the Work.

11.3.2 If Owner terminates Design/Builder's right to complete the Work under Section 11.1.2, or if Design/Builder terminates this Agreement under Section 11.2 above, the Design/Builder shall retain all sums of money previously earned and paid to the Design/Builder, and the Owner shall pay to the Design/Builder all retainage, if any, previously retained by the Owner and a sum of money equal to: (a) the cost of all Work properly and timely performed by the Design/Builder with respect to the applicable Design/Build Project for which payments have not previously been made (and an amount equal to the Fee Percentage multiplied by such amount), plus (b) an amount equal to Design/Builder's proven loss with respect to materials, equipment tools, construction equipment and services rendered, plus (c) all unpaid General Conditions Costs previously incurred by Design/Builder (up to the GCC Max Amount) plus all costs reasonably incurred by Design/Builder as a result of such termination, including costs of demobilization and any prepaid insurance premiums.

11.4 DUTIES UPON TERMINATION.

11.4.1 This Section 11.4 shall apply upon any termination of the Contract, in whole or in part, under this Article 11 or otherwise.

11.4.2 Upon receipt (or delivery) of notice of termination for any reason, the Design/Builder shall (and shall cause the Subcontractors to) immediately, in accordance with Owner's instructions, proceed with performance of the following duties:

11.4.2.1 cease operations as directed by the Owner and immediately discontinue the portion of the Work terminated;

11.4.2.2 place no further orders and enter into no further Subcontracts for labor, materials, services or facilities with respect to the portion of the Work terminated;

11.4.2.3 complete performance of any Work not terminated;

11.4.2.4 unless otherwise specified, and after providing written notice to the Owner of which Subcontracts are affected and an opportunity for the Owner to take assignment of such Subcontracts or take such other action as Owner elects to take (or instructs the Design/Builder to take, in its sole and absolute discretion: (a) terminate any or all existing Subcontracts and purchase orders to the extent that the same relate to the Work terminated and (b) assign to the Owner any or all of the Subcontracts and purchase orders (to the extent that the same relate to the Work terminated) that Owner elects to take assignment of, and execute all papers and take all other reasonable steps requested by the Owner which may be required to vest in the Owner all rights, set-offs, benefits and titles necessary to such assignment of such Subcontracts to Owner);

11.4.2.5 transfer to the Owner all materials, supplies, Work in progress, appliances, facilities, machinery, and tools acquired by the Design/Builder (and/or Subcontractors) in connection with the performance of the Contract (to the extent that the same relate to the portion of the Work terminated and to the extent that the cost thereof is included in the Cost of the Work and has been paid for by Owner); and

11.4.2.6 make every reasonable effort to mitigate losses and otherwise take such other actions as may be necessary, or that the Owner may request, for the protection and preservation of the terminated Work.

The Design/Builder's performance of its obligations under this Section 11.4 shall be a condition precedent to the Owner's obligation to comply with its obligations under Section 11.3, above.

11.4.3 The Design/Builder and Owner shall (and shall cause the Subcontractors to) use commercially reasonable efforts to minimize costs that arise between the date of its receipt of (or delivery of) any notice of termination, and the effective date of termination, including, without limitation, by promptly notifying all Subcontractors of such termination.

11.5 OWNER'S RIGHT TO SUSPEND WORK. Notwithstanding anything set forth in this Agreement, the Owner has the absolute right to suspend the Work with respect to any Design/Build Project at any time on ten (10) Days' prior written notice. Thereupon, subject to Article 8, as the Design/Builder's sole remedy; the Owner shall pay the Design/Builder for the Work with respect to the applicable Design/Build Project completed as of the effective date of the suspension, plus all costs reasonably incurred by Design/Builder as a result of such suspension. Any resumption of the Work with respect to such Design/Build Project will be by written notice from Owner, and upon any such resumption, the Contract Time for such Design/Build Project shall be equitably adjusted and the GMP for such Design/Build Project shall be equitably adjusted by the amount of costs that are reasonably incurred by Design/Builder in connection with such suspension (to the extent not previously paid), such as reasonable costs of shut-down, delay and start-up.

11.6 DESIGN/BUILDER'S RIGHT TO STOP THE WORK. Notwithstanding anything set forth in this Agreement, the Design/Builder has the absolute right to suspend the Work with respect to any Design/Build Project at any time on ten (10) Days' prior written notice if: (a) the Owner shall be declared bankrupt or make an assignment for the benefit of creditors or (b) the Owner shall fail to pay Design/Builder any amount properly due with respect to such Design/Build Project within ten (10) Business Days of its due date (other than any amounts which Owner notifies Design/Builder it is contesting good faith) and such failure continues for ten (10) Business Days following Owner's receipt of written notice thereof. Upon resumption of the Work with respect to any Design/Build Project following any such suspension by Design/Builder, the Contract Time with respect to such Design/Build Project shall be equitably adjusted and the GMP for such Design/Build Project shall be equitably adjusted by the amount of costs that are reasonably incurred by Design/Builder in connection with such suspension (to the extent not previously paid), such as reasonable costs of shut-down, delay and start-up.

11.7 INTEREST. Any amounts that are not paid to Design/Builder within ten (10) Business Days following the date that such amounts are payable by Owner to Design/Builder hereunder shall, if such failure continues for ten (10) Business Days following Owner's receipt of written notice thereof, bear interest from the date payment is due at the Interest Rate.

ARTICLE 12 DISPUTES

12.1 DISPUTES BETWEEN OWNER AND DESIGN/BUILDER. In the event of any dispute arising between the Owner and the Design/Builder regarding any part of the Agreement or the Design/Build Documents, or the Parties' obligations or performance thereunder, either Party may institute the dispute resolution procedures set forth in this Article 12. The Parties shall continue performance of their respective obligations hereunder notwithstanding the existence of a dispute.

12.2 DISPUTE RESOLUTION PROCEDURES.

12.2.1 Initial Meeting to Resolve Disputes. Any Party may from time to time call a special meeting for the resolution of disputes that would have a material impact on the cost or progress of any Design/Build Project. Such meeting shall be held at the Site within five (5) Business Days of written request therefor, which request shall specify in reasonable detail the nature of the dispute. The meeting shall be attended by the Owner's Authorized Representative, the Design/Builder's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute.

12.2.2 Mediation.

12.2.2.1 If any dispute has not been resolved within five (5) Business Days after any special meeting described in Section 12.2.1 above has been held (or within thirty (30) Days following the date that one Party first notifies the other of the existence of any Dispute), a mediator, mutually acceptable to the Parties and experienced in design and construction matters shall be appointed, but only if at least one of the Parties delivers to the other Party written notice of its desire to appoint a mediator (and provides the name of a proposed mediator) within ten (10) Business Days after the special meeting described in Section 12.2.1 above has been held (or after expiration of the above described thirty (30) day period). The cost of the mediator shall be shared by the Parties. The mediator shall be given any written statements of the Parties and may review the Site and any relevant documents. The mediator shall call a meeting of the Parties within ten (10) Business Days after his/her appointment, which meeting shall be attended by the Owner's Authorized Representative, the Design/Builder's Authorized Representative and any other person who may be affected in any material respect by the resolution of such dispute. Such Authorized Representatives shall have authority to settle the dispute and shall attempt in good faith to resolve the dispute. During such ten (10) Business Day period, the mediator may meet with the Parties separately.

12.2.2.2 No minutes shall be kept with respect to any mediation proceedings, and the comments and/or findings of the mediator, together with any written statements prepared, shall be non-binding, confidential and without prejudice to the rights and remedies of any Party. The entire mediation process shall be completed within twenty (20) Business Days after the date on which the mediator is appointed, unless the Parties agree otherwise. If the dispute is settled through the mediation process, the decision will be implemented by written agreement signed by the Parties.

12.3 LITIGATION. In the event that mediation was unsuccessful in resolving the matters in dispute, either party shall have the right to initiate litigation against the other in a court of appropriate jurisdiction.

ARTICLE 13 OTHER PROVISIONS

13.1 NO STOP OR DELAY BY DESIGN/BUILDER. Notwithstanding the fact that a dispute, controversy or question shall have arisen in the interpretation of any provision of this Agreement (or any of the other Design/Build Documents), the performance of any Work, the delivery of any material, the payment or lack thereof of any monies to the Design/Builder disputed in good faith by Owner, the value of any Change Order or any Construction Change Directive, the scope of Work to be performed by the Design/Builder under this Agreement or any of the Design/Build Documents, or otherwise, the Design/Builder agrees that it will not (and that it will not permit any Subcontractor to), in any manner, directly or

indirectly stop or delay the Work or any part of the Work (or any other work ordered by Owner) with respect to any Design/Build Project, or stop or delay the delivery of any materials to be delivered, as required under the Design/Build Documents or as ordered by the Owner (except to the extent permitted under Section 11.6 above). Design/Builder further agrees that it will not rescind this Agreement or any of the Design/Build Documents in the event of any such dispute, or otherwise, but will continue to diligently prosecute to completion the Work, including, but not limited to, Work reflected in or required by any Change Order or Construction Change Directive as directed by the Owner.

13.2 NOTICES. All offers, Applications for Payment, requests, notices, elections, acceptances and other matters required to be made under the Design/Build Documents shall be in writing signed by an officer or authorized representative of the party making or giving the same or by agent previously nominated and authorized in writing to act for said party and shall be delivered personally to or sent by registered or certified mail or by private commercial courier (or telecopy transmission if a confirming copy of such notice is sent by any other method permitted hereunder within one (1) Business Day thereafter) to the Person intended to be notified at the address specified in Exhibit "B" attached hereto, and shall be deemed given when received (or when delivery is rejected).

13.3 INTERPRETATION; ENTIRE AGREEMENT; AMENDMENT; SEVERABILITY.

13.3.1 Both the Owner and the Design/Builder shall be deemed to have participated in the drafting of the Design/Build Documents, and accordingly, no ambiguity contained within the Design/Build Documents shall be construed against any party hereto. No prior drafts of the Design/Build Documents shall be admissible to interpret or clarify any of the terms, covenants, conditions or provisions of the Design/Build Documents. The table of contents and the headings of articles, sections, subsections, paragraphs and subparagraphs are for convenience only and shall not modify rights and obligations created by this Agreement. Where reference is made in this Agreement to another Design/Build Document, the reference refers to that provision as amended or supplemented by the other provisions of the Design/Build Documents. Cross references, captions, headings, the index and citations of sections and subsections in this Agreement are for the convenience of the Parties, and are not intended to be plenary or exhaustive nor are they intended to be considered in interpreting this Agreement or any other part of the Design/Build Documents.

13.3.2 The Design/Build Documents (together with any Pre-Design/Build Services Agreement(s) entered into by the Parties) contains all of the agreements and understandings relating to the design and construction of the Project and the obligations of Owner and Design/Builder in connection with such design and construction. Owner has not made, and Design/Builder is not relying upon, any warranties, or representations, promises or statements made by Owner or any agent of Owner, except as expressly set forth in the Design/Build Documents. The Design/Build Documents (together with any Pre-Design/Build Services Agreement(s) entered into by the Parties) supersede any and all prior written or oral agreements and understandings between Owner and Design/Builder and alone expresses the agreement of the Parties.

13.3.3 This Agreement may not be altered, amended or modified except by a written document executed by both Owner and Design/Builder.

13.3.4 If any provision of this Agreement (or any other Design/Build Document) is held to be inoperative or unenforceable as applied in any particular case because it conflicts with any other provision hereof or any constitution, statute, ordinance, rule of law or public policy, or for any other reason, such holding shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case, or of rendering any other provision herein (or therein) contained inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement (or any other Design/Build Document) shall not affect the remaining portions of this Agreement or any part hereof (or any other Design/Build Document or any part thereof), and they shall otherwise remain in full force and effect. The parties agree that in the event two different interpretations may be given to any provision in any of the Design/Build Documents, one of which will render the provision unenforceable, and one of which will render the provision enforceable, the interpretation rendering the provision enforceable shall be adopted.

13.4 PERSONNEL FILES; RETENTION OF RECORDS. Design/Builder shall (and shall cause the other members of the Design/Build Team to) maintain complete personnel files on its employees, including documentation of employment and termination date. Design/Builder must also keep (and cause the other members of the Design/Build Team to keep) personnel records as mandated by any Applicable Laws, which shall include, among other customary information contained in personnel files, immigration and/or naturalization requirements. Design/Builder shall retain (and shall cause the other members of the Design/Build Team to retain) all labor records and documentation relating to this Agreement for a period of at least three (3) years after such employee is no longer employed by Design/Builder (or the or other member of the Design/Build Team).

13.5 PRIOR WORK.

13.5.1 Notwithstanding the fact that this Agreement is executed as of the Effective Date, the Parties recognize that a portion of the Work (including, without limitation, the preparation of cost estimates therefore and the Pre-Design/Build Services (if any)) may have been performed prior to such date, all of which Work shall, except to the extent expressly governed by the terms and conditions of any other written agreement between Owner and Design/Builder, be governed by the terms and conditions of the Design/Build Documents and shall be deemed to be a part of the Work. Without limiting the foregoing, all of Design/Builder's liabilities and obligations to Owner under this Agreement and the other Design/Build Documents shall apply to all work and services (including, without limitation, the Pre-Design/Build Services (if any)) provided by Design/Builder prior to the Effective Date (except to the extent that any of the same that was expressly governed by the terms and conditions of any other written agreement

between Owner and Design/Builder), notwithstanding the fact that such work or services may have been performed prior to the Effective Date pursuant to prior negotiations, representations, agreements, understandings or otherwise.

13.5.2 Without limiting the generality of the foregoing, if Owner and Design/Builder shall have entered into a Pre-Design/Build Services Agreement, then Owner and Design/Builder agree that: (a) the Pre-Design/Build Services performed with respect to each Design/Build Project constitute part of the Work, but (b) any amounts paid by Owner to Design/Builder pursuant to the Pre-Design/Build Services Agreement with respect to any Design/Build Project prior to the date on which the Parties execute a Project Authorization for such Design/Build Project shall be paid to Design/Builder under the Pre-Design/Build Services Agreement and not under this Agreement (and Design/Builder shall not submit an Application for payment hereunder requesting payment of any such amounts).

13.6 APPROVALS. Notwithstanding anything to the contrary contained in any of the Design/Build Documents, all modifications in the plans, Specifications, Drawings and other documents and the like shall require the prior written approval of the Owner. Any review, consent or approval by Owner shall not modify or reduce the duties and obligations of Design/Builder hereunder.

13.7 NON-DISCRIMINATION. Design/Builder shall (and shall cause the all Subcontractors to) comply with all Applicable Laws relating to the terms and conditions of employment of any person employed in connection with the Work to be performed under this Agreement. Design/Builder hereby covenants by and for itself, its heirs, executors, administrators, assigns, and all persons claiming under or through Design/Builder, that this Agreement is made and accepted upon and subject to the condition that, with respect to the terms and conditions of employment of any person, firm, or corporation that is employed in connection with the Work to be performed under this Agreement, there shall be no discrimination against or segregation of any person or group of persons on account of age, sex, sexual orientation, marital status, race, color, religion, creed, national origin or ancestry.

13.8 WAIVER. The waiver by Owner or Design/Builder of any breach of any term, provision or condition in this Agreement (or any other Design/Build Document), or the failure by either party to insist upon strict performance thereof shall not be deemed to be a waiver of such term, provision or condition as to any subsequent breach thereof or a waiver of any other term, provision or condition contained in this Agreement (or any other Design/Build Document). The acceptance of performance by either party shall not be deemed to be a waiver of any breach by the other party. The exercise of any right or remedy hereunder shall not be deemed to preclude or affect the exercise of any other right or remedy provided therein (or in any other Design/Build Document).

13.9 MORTGAGES; LOANS.

13.9.1 This Agreement (and the other Design/Build Documents) shall be and remain absolutely and unconditionally subordinate to: (a) any valid recorded mortgage on the Site and the complex of which the Site is a part whether already or hereafter recorded and (b) any and all liens or lien claims which it may now or at any time hereafter have to secure payment of any sums now or hereafter owing by Owner to Design/Builder under the terms hereof to the lien or liens given or created to secure the repayment of any construction loan or loans made to the Owner in connection with any of the Work. The subordination of this Agreement (and the other Design/Build Documents) shall require the execution of no further documentation, but Design/Builder agrees to execute upon request, such other or further commercially reasonable agreements evidencing such subordination in such form as any such lender or lenders shall require, provided same do not require Design/Builder to perform any Work for any lender without first having been reimbursed all sums properly due Design/Builder in connection with Work performed prior to any lender assuming control of the applicable Project.

13.9.2 In addition, Design/Builder acknowledges and agrees that, Owner shall have the right, without the consent of the Design/Builder, to assign the Contract, to a lender providing construction financing for the Work. In such event, the Owner shall nevertheless remain legally responsible for all of its obligations under the Design/Build Documents. The Design/Builder shall execute promptly upon request such other or further commercially reasonable agreements evidencing such assignment in such form as any such lender or lenders may reasonably require, provided same do not require Design/Builder to perform any Work for any lender without first having been reimbursed all sums properly due Design/Builder in connection with Work performed prior to any lender assuming control of the applicable Project.

13.9.3 Design/Builder agrees to: (a) make the Site available for inspection by Owner's lender(s) and/or its(their) representatives, (b) furnish to Owner any information, documents or other materials that Owner may reasonably request from time to time in order to comply with the requirements of Owner's lender(s), (c) otherwise use its best efforts to comply with all commercially reasonable requirements of the Owner's lender(s) that bear upon the performance of the Work, and (d) to make reasonable Modifications to this Agreement (and the other Design/Build Document) if requested by the Owner's lender(s), provided such Modifications do not materially and adversely affect the costs, obligations, duties, rights, liabilities, and/or risks and/or time of performance of the Work.

13.10 LIMITATIONS ON LIABILITY.

13.10.1 In carrying out any of the provisions of this Agreement (or any of the other Design/Build Documents) or in exercising any power or authority granted to them hereby (or thereby), there shall be no liability upon any member, partner, officer, director, employee or agent of the Owner, the Design/Builder (other than the members of the Design/Build Team), it being understood that in such matters they act as agents and representatives of such parties. In addition, it is further understood and agreed that, no personal liability or personal responsibility of any sort under or with respect to any of the Design/Build Documents or any alleged breach thereof is assumed by, or shall at any time be asserted or enforceable

against Gattaca Capital Midco, LLC, Gattaca Holdings, LLC, Gattaca Management Company, LLC, SLP Gattaca Holding Company, or Silver Lake Partners III, L.P., or any of and their respective Affiliates (except for Owner) and successors and assigns, and all of their respective directors, officers, shareholders, members, employees, agents, constituent partners, affiliates, beneficiaries, trustees and representatives.

13.10.2 At no time shall: (a) Owner be responsible or liable to Design/Builder (or any or other member of the Design/Build Team) for any lost profits, lost economic opportunities, any loss of use, income, profit, financing, business, reputation or productivity or any form of consequential damage (collectively, "**Consequential Damages**") as the result of any actual or alleged breach of any of the Design/Build Documents by Owner of Owner's Contract Undertakings or (b) Design/Builder be liable to Owner for any Consequential Damages as a result of any actual or alleged breach of any of the Design/Build Documents by any of the Design/Builder Parties (except to the extent that any such Consequential Damages are covered by any insurance that Design/Builder (or any or other member of the Design/Build Team) are actually carrying (or that would have been covered if Design/Builder (or other member of the Design/Build Team) were carrying all of the types of coverage required to be carried by the Design/Builder (or other member of the Design/Build Team) under the Design/Build Documents)).

13.10.3 The limitations of liability provided in this Section 13.10 are in addition to, and not in limitation of, any limitation on liability applicable to Owner or Design/Builder, as applicable, provided by law or in any other contract, agreement or instrument.

13.10.4 In the event of assignment by the Owner, Owner shall remain liable for the performance of all of the obligations of Owner under the then existing (i.e., at the time of such assignment) Design/Build Documents.

13.11 GOVERNING LAW; ATTORNEYS' FEES; WAIVER OF TRIAL BY JURY.

13.11.1 The Contract shall be governed by and construed in accordance with the laws of the State of California, and without regard to any principles of conflict of laws. For this purpose, all parties shall be deemed to reside in such State and this Agreement shall be deemed to be performed exclusively in such State. Venue of any Proceeding shall be exclusively in a court of proper jurisdiction in such state or in the County of San Francisco, California.

13.11.2 In the event a dispute arises concerning the performance, meaning or interpretation of any provision of the Contract, the prevailing party in such dispute shall be awarded any and all reasonable costs and expenses incurred by the prevailing party in enforcing, defending or establishing its rights hereunder or thereunder, including, without limitation, court costs and expert witnesses' and attorneys' fees. In addition to the foregoing award of costs and fees, the prevailing party shall also be entitled to recover its court costs and expert witnesses' and reasonable attorneys' fees incurred in any post judgment proceedings to collect or enforce any judgment. This provision is separate and several and shall survive the merger of the Contract into any judgment on the Contract.

13.11.3 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAWS, REGARDLESS WHETHER A DISPUTE IS ARBITRATED OR TRIED IN COURT, OWNER AND DESIGN/BUILDER HEREBY WAIVE, WHERE AND TO THE FULLEST EXTENT PERMITTED BY LAW, TRIAL BY JURY ON ANY MATTER BROUGHT BY EITHER OF THEM AGAINST THE OTHER ARISING OUT OF OR IN ANY WAY, CONNECTED WITH THIS AGREEMENT AND/OR ANY CLAIM FOR INJURY OR DAMAGE ARISING HEREUNDER.

13.12 PUBLICITY; CONFIDENTIALITY.

13.12.1 PUBLICITY. Neither the Design/Builder nor any other member of the Design/Build Team shall use information relating to the Work or Project not otherwise available in the public domain in any advertising or publication without Owner's prior written consent.

13.12.2 CONFIDENTIALITY. Upon Owner's request, Design/Builder shall execute (and shall cause each of the Subcontractors to execute) an agreement, in such form as Owner may reasonably require, to keep in confidence all information intentionally or inadvertently disclosed to them or which becomes known to them due to their access to the Work, which relates to the Project and any research, development and/or business activities of Owner and its Affiliates. Any such confidentiality agreement shall contain an exception with respect to any information that is generally available to the public and disclosures required by law and other customary exceptions. In addition, Design/Builder shall cause each of its employees (and shall cause each of its Subcontractors to cause each of its employees) to execute a Security Authorization in the form of **Exhibit "C"** attached hereto.

13.12.3 This Section 13.12 shall survive completion or termination of this Agreement.

13.13 SUCCESSORS AND ASSIGNS.

13.13.1 Notwithstanding any of the provisions of the Design/Build Documents, the Design/Builder agrees that it may not assign all or any portion of its interest in the Design/Build Documents or, except as anticipated in this Agreement, subcontract its obligations hereunder without Owner's prior written consent.

13.13.2 Design/Builder agrees that Owner may assign all or any portion of the Design/Build Documents (including, but not limited to the warranties and guarantees provided by Design/Builder herein) without the consent of Design/Builder pursuant to Section 13.10.2 or otherwise, and the Design/Builder agrees to: (a) acknowledge such assignment, allowing such person or entity to rely upon the Design/Build Documents, and (b)

acknowledge, where same is true, that Owner is in good standing pursuant to this Agreement. Upon any such assignment Owner shall be relieved of, and such assignee shall be deemed to have assumed, all assigned obligations and liabilities of Owner under this Agreement, which accrue from and after such assignment. In connection with any such assignment by Owner, the Design/Builder agrees to execute and deliver, and to have each of the Subcontractors execute and deliver, to the Owner, a written assignment of subcontracts and purchase orders and such Subcontractors' consent to such assignment, in a commercially reasonable form.

13.13.3 This Section 13.13 shall survive completion or termination of this Agreement.

13.14 COUNTERPARTS; FACSIMILE SIGNATURES. This Agreement, any Project Authorizations and any other Design/Build Documents that are to be executed may be executed in any number of counterparts and each such counterpart shall be deemed to be an original. Each of the parties hereto agree that the delivery of an executed copy of this Agreement, any Project Authorizations and any other Design/Build Documents that are to be executed by facsimile or email shall be legal and binding and shall have the same full force and effect as if an original executed copy of this Agreement (or such other Design/Build Document) had been delivered.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date set forth below Owner's signature below.

"Owner":

GATTACA, LLC

a Delaware limited liability company

By: GATTACA MANAGEMENT COMPANY, LLC

a Delaware limited liability company
its authorized agent

By: _____
Sureel Choksi, its Chief Executive Officer

Date: _____

"Design/Builder":

DPR CONSTRUCTION, A GENERAL PARTNERSHIP

a California general partnership

By: _____

Name: _____

Title: _____

EXHIBIT "A"
FORM OF PROJECT AUTHORIZATION

[attached]

Schedule "1"

Description of Site

Schedule "2"

[[Program]/[Basis of Design]] **MODIFY AS APPLICABLE** for Design/Build Project

Schedule "3"

Owner Governmental Approvals

Schedule "4"

Existing Design/Build Materials With Respect to Design/Build Project

Schedule "5"

Key Personnel With Respect to Design/Build Project

Schedule "6"

Approved Labor Rates

Schedule "7"

Unit Prices, Alternates and Allowance Items; GCC Rates; Excluded Costs

Schedule "8"

Trade Work to be Performed by the Design/Builder and/or any of its Affiliates

None

Schedule "9"

Summary of Guaranteed Maximum Price (GMP) and Fee for Design/Build Project

Schedule "10"

Schedule for Design/Build Project

Schedule "11"

Liquidated Damages for Late Completion/Bonus for Early Completion

1. Liquidated Damages shall be payable by Design/Builder for failure to complete the Work in a timely manner as follows:

Owner and Design/Builder acknowledge and agree that if the Substantial Completion does not occur on or before the Scheduled Date of Substantial Completion for this Design/Build Project (as specified in this Project Authorization), Owner will incur substantial damages and it would be impractical and/or extremely difficult to fix Owner's actual damages therefor, and (b) Design/Builder hereby agrees that, in such case, if the if the Substantial Completion Date does not occur on or before the Scheduled Date of Substantial Completion (as specified in this Project Authorization), (i) Owner shall be entitled to liquidated damages and (ii) a reasonable estimate of the amount of Owner's damages in such case is as follows:

Liquidated Damages: **[\$INSERT AMOUNT]** per Day, for each Day that shall elapse after the Scheduled Date of Substantial Completion and before the date that is [_____] (__) Days after the Scheduled Date of Substantial Completion, and **[\$INSERT AMOUNT]** per Day, for each Day that shall elapse after the date that is [_____] (__) Days after the Scheduled Date of Substantial Completion, in each case, though the actual Substantial Completion Date. **[MODIFY AS APPLICABLE]**

Beginning with the 1st Day after the Scheduled Date of Substantial Completion and continuing through the actual Substantial Completion Date, Design/Builder and the Design/Builder's Surety shall be liable for, and shall pay to Owner as liquidated damages the amount described above for each Day of delay until the Substantial Completion Date actually occurs. Owner may deduct any liquidated damages payable by Design/Builder hereunder from any unpaid amounts due to the Design/Builder under this Agreement, including, without limitation any unpaid retention or progress payment. Any liquidated damages not so deducted from unpaid amounts due the Design/Builder shall be immediately payable to the Owner upon the Owner's demand.

[DELETE IF NOT APPLICABLE]

2. A bonus shall be payable to Design/Builder for early completion of the Work as follows:

[MODIFY AS APPLICABLE]

Section "12"

Subcontractor Bonding Requirements

None

Section "13"

Hazardous Materials Work

[Describe any removal, abatement, and/or remediation that is part of the Work for the applicable Design/Build Project. If none, state "None"]

EXHIBIT "B"
NOTICE ADDRESSES

Owner:

Gattaca Management Company, LLC,
2805 Bowers Ave, Suite 220
Attention: Spencer Myers

with a copy to:

Gattaca Management Company, LLC,
2805 Bowers Ave, Suite 220
Attention: Sureel Choksi

and with a copy of any legal notices to:

Lauren Sykes LLC
8480 E. Orchard Road, Suite 2000
Greenwood Village, CO 80111
Attn: Lauren Sykes, Esq.

Design/Builder:

DPR Construction
1450 Veterans Blvd.
Redwood City, CA 94063
Attn: Mark Thompson

EXHIBIT "C"

FORM OF SECURITY AUTHORIZATION

EXHIBIT "D"
COST OF THE WORK

1. The term **"Cost of the Work"** means costs reasonably and necessarily incurred by the Design/Builder in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid in the vicinity of the Project except with prior written consent of the Owner. As used herein, the term **"costs"** means actual costs paid or payable by the Design/Builder, less all discounts, rebates and salvage value obtained by or on behalf of Design/Builder. Notwithstanding anything to the contrary in this Agreement, the Cost of the Work does not include any of the Excluded Costs (defined below), and in the event that Design/Builder shall incur any Excluded Costs at the request of Owner, or to the extent that it shall be necessary for Design/Builder to incur any Excluded Costs in connection with the Work, Owner shall (in addition to paying Design/Builder the Contract Price), reimburse Design/Builder for such Excluded Costs promptly following receipt by Owner of an invoice therefor (provided that any such invoices shall be submitted at the same time that Design/Builder submits an Application for Payment) together with reasonable supporting documentation. As used herein, **"Excluded Costs"** means only costs specified to be Excluded Costs in the applicable Project Authorization.

The Cost of the Work shall include only the items set forth in this Section 1 of this **Exhibit "D"**:

1.1 **Labor Costs.** Subject to Section 2 of this **Exhibit "D"**, the Cost of the Work shall include:

1.1.1 Labor and employee benefits of construction workers directly employed by the Design/Builder (at the Approved Labor Rates specified in the applicable Project Authorization) to perform the Construction Work at the Site or, with the Owner's approval, at off-Site workshops. The costs of such wages or salaries of such personnel shall be reimbursed at the Approved Labor Rates for such employees working on the Project. **"Approved Labor Rates"** means Design/Builder's good faith estimation of a worker's base pay plus labor burden rates for taxes, insurance, medical and health benefits, benefits required by Law or by collective bargaining agreements, pensions, vacation, sick leave, other standard Design/Builder benefits and car allowance prorated to the Work, as set forth in the applicable Project Authorization (and without any mark up for profit or administration). The Approved Labor Rates specified in any Project Authorization shall not be increased without Owner's written approval (in its sole and absolute discretion).

1.1.2 Labor of the Design/Builder's supervisory and administrative personnel when stationed at the Site or in the Design/Builder's local Regional Office with the Owner's written approval, which approval shall not be unreasonably withheld, delayed or conditioned. The costs of such labor of such personnel shall be reimbursed at the Approved Labor Rates (as set forth in the applicable Project Authorization) for such employees working on the Project.

1.1.3 With Owner's prior written consent, which shall not be unreasonably withheld, delayed or conditioned, wages and salaries of the Design/Builder's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time reasonably required for the Work. The costs of such labor of such personnel shall be reimbursed at the Approved Labor Rates (as set forth in the applicable Project Authorization) for such employees working on the Project.

1.1.4 Costs paid or incurred by the Design/Builder for taxes, insurance, contributions, assessments and benefits required by Law or collective bargaining agreements and, for personnel not covered by such agreements, sick leave, medical and health benefits, holidays, vacations and pensions, life insurance and long term disability insurance per Design/Builder's fringe benefit package approved by Owner, provided such costs are based on labor included in the Cost of the Work under Sections 1.1.1 through 1.1.3 of this **Exhibit "D"**, and, with respect to employees who devote less than full time to the performance of the Work, are reasonably and equitably prorated based on that portion of the labor of such employees that is so included in the Cost of the Work. Such costs will be included in the Approved Labor Rates (as set forth in the applicable Project Authorization).

1.2 **Subcontract Costs.** Subject to Section 2 of this **Exhibit "D"**, the Cost of the Work shall also include:

1.2.1 Payments made by the Design/Builder to the Architect under the Subcontract with the Architect (which shall provide for a lump sum amount for basic services thereunder and provisions regarding Additional Design Services costs).

1.2.2 Payments made by the Design/Builder to approved Subcontractors in accordance with the requirements of the Subcontracts, except that, without the prior written consent of the Owner (in its sole and absolute discretion), unless expressly approved by Owner, no Change Order, Construction Change Directive, order for a minor Change in the Work or other change in a Subcontract, shall result in an increase in the amount payable to the Subcontractor of more than the actual, direct cost to the Subcontractor of making that change plus a mark-up of up to fifteen percent (15%) of such actual cost for the Subcontractor's overhead and profit; provided, however, that if the Owner signs a Change Order or issues a Construction Change Directive which provides for a lump sum adjustment to the Cost of the Work and the GMP, the Owner's acceptance of such lump sum adjustment shall be final and binding upon the Owner unless it is subsequently determined that the amount thereof was based upon false or incorrect information furnished to the Owner by or on behalf of the Design/Builder or a Subcontractor.

1.3 **Costs of Materials and Equipment Incorporated into the Work.** Subject to Section 2 of this **Exhibit "D"**, the Cost of the Work shall also include:

1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed Project, provided that such storage is only on-Site or in a bonded warehouse with evidence of storage security insurance approved in advance by Owner in writing, or, in the case of fabricated steel or other materials stored in the fabricator's warehouse, that such materials are adequately insured, and are subject to a perfected UCC-1 security interest in favor of Owner and Design/Builder.

1.3.2 Costs of materials described in the preceding Section 1.3.1 of this **Exhibit "D"**, in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design/Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

1.4 **Costs of Other Materials and Equipment, Temporary Facilities and Related Items.** Subject to Section 2 of this **Exhibit "D"**, the Cost of the Work shall also include:

1.4.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers or general contractors, that are provided by the Design/Builder at the Site and fully consumed in the performance of the Work; and costs (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Design/Builder. Costs for items previously used by the Design/Builder means fair market value. Rental charges for machinery and equipment shall not exceed the average prevailing local equipment rental rates for the applicable equipment. All such equipment shall be delivered to the job site in good working order and condition.

For the purposes of this Agreement, the salvage value of any item shall be the fair market value thereof at the completion of the Work, determined as follows. No such item that costs more than Three Thousand Dollars (\$3,000), and no group of the same or similar items that cost more than Fifty Thousand Dollars (\$50,000) in the aggregate, shall be purchased by the Design/Builder to be used in the performance of the Work without the prior written consent of the Owner, who may require that any or all such items be rented. For purposes of this Section 1.4.1 of this **Exhibit "D"**, the cost of any item which had been used by the Design/Builder prior to commencement of the Work, or which was acquired by the Design/Builder more than ninety (90) Days (but not used) prior to commencement of the Work, shall be its fair market value at the time of commencement of its use by Design/Builder in the performance of the Work. The burden of establishing such fair market value shall be upon the Design/Builder, and upon request by Owner, Design/Builder shall furnish to Owner such evidence of the original cost of any such item and information regarding the extent of its use prior to the commencement of the Work as the Owner may reasonably request. Where amounts realized from the sale of an item are to be credited to the Owner as provided herein, the price to be obtained by Design/Builder upon a sale of such item in excess of Three Thousand Dollars (\$3,000) shall be subject to the prior written approval of Owner.

1.4.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers or general contractors that are provided by the Design/Builder at the site (whether rented from the Design/Builder or others), and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. All such equipment shall be delivered to the job site in good working order and condition. Rates and quantities of equipment rented shall be subject to the Owner's verification. The cost of all rental equipment, materials or temporary structures owned by Design/Builder may include any repair and maintenance costs except to the extent incurred as a result of normal wear and tear. Rental equipment shall be obtained from the lowest cost rental source whether it is the Design/Builder or a third party. Repair and/or maintenance of Design/Builder's equipment are/is not intended to restore such equipment to a condition better than it was when it initially came to the Project. If the Design/Builder rents equipment from a third party, then the rate shall be the lowest available rate. In addition:

1.4.2.1 The rental equipment rate for equipment owned by Design/Builder shall be charged at the lower of one hundred percent (100%) the current AED Green Books (published by Equipment Watch) published rate or the current rate as listed in the Design/Builder's equipment rental schedule identified as the "Contractor's Equipment Rental Rates" in the attached to the applicable GMP Breakdown, which may be modified by written agreement of Owner and Design/Builder to reflect the then current equipment replacement cost rental schedule and recovery periods. Recovery periods should reflect useful life for each category of equipment.

1.4.2.2 Each item on the schedule of "Contractor's Equipment Rental Rates" shall include adequate identifying information such as use, manufacturer, make, model, dimensions/length, blade size, capacity, fuel usage, horse power, voltage/ampereage, weight, etc., such that accurate identification can be determined. These descriptors shall match owned equipment rental log or Design/Builder.

1.4.2.3 With respect to equipment owned by Design/Builder, rental shall be based on monthly rates but prorated on a daily basis (monthly rate divided by 30.4). Days used to prorate monthly rates to daily should be consistent with the calculation of Days to charge each piece of rental equipment.

1.4.2.4 All rental equipment owned by Design/Builder that has been used to construct the Project and that has accumulated rental charges equal to one hundred percent (100%) of the current replacement cost, shall be provided for the remainder of the Project at no additional rental cost and shall remain as property of the Design/Builder. Replacement costs on a piece of equipment may not be modified during the term of the Agreement.

1.4.2.5 Each piece of equipment that is owned by Design/Builder and is rented to the Project shall be identified by a unique number and the use of each piece of equipment shall be tracked by that number on Design/Builder's owned equipment rental log. The

Design/Builder's owned equipment rental log shall include a unique equipment identification number, a definitive equipment description, date on site, date off site, replacement cost, monthly rate pro-rated to daily, Days billing per month, this month billing calculation and cumulative billing to date, maximum rental allowed for each rented item. The Design/Builder's owned equipment rental log shall be available in Excel format if requested by Owner.

1.4.2.6 Prior to the start of construction, a listing of all of the Design/Builder's owned equipment and temporary structures required for the Work exceeding Five Hundred and 00/100 Dollars (\$500.00) in replacement cost, including replacement cost information, rental rates, and applicable duration of use, proposed to be used shall be provided to Owner, and Owner shall have the right to purchase such items through the Design/Builder as part of the Cost of the Work. After commencement of construction, a listing of all other Design/Builder owned equipment with a cost of Five Hundred and 00/100 Dollars (\$500.00) or more (where the reasonably anticipated rental may exceed fifty percent (50%) of the value) and any office equipment shall be presented to Owner on the same basis, along with replacement cost information, anticipated cumulative rental costs, and rental rates. Such materials, temporary structures, equipment, tools, and supplies that shall have been purchased, when no longer required for the Work, shall, at Owner's discretion, either be sold and the salvage value received shall reduce the Cost of the Work or provided to Owner for its use or disposition.

1.4.2.7 Absent such prior written identification of equipment and temporary structures, all such equipment and temporary structures shall not be reimbursable and, if appropriate, any prior payment shall be reversed in the subsequent Application for Payment.

1.4.3 Costs of removal and disposal of debris from the site less the salvage value, if any, of such debris.

1.4.4 Costs of reasonably required document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the Site.

1.4.5 That portion of the necessary and reasonable expenses of the Design/Builder's personnel incurred while traveling in discharge of duties connected with the Work, not to exceed in the aggregate, the amount, if any, set forth in the GMP Breakdown for travel without the prior written consent of Owner (in its sole and absolute discretion); provided, however, that expenses for travel outside the county in which the Project is located shall not be included as a Cost of Work unless approved in writing by Owner (in its sole and absolute discretion).

1.4.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, to the extent expressly permitted under Section 1.3.1 of this **Exhibit "D"** or otherwise approved in advance by the Owner (in its sole and absolute discretion).

1.5 **Insurance and Bond Costs.** Subject to Section 2 of this **Exhibit "D"**, the Cost of the Work shall also include that portion of insurance premiums that can be directly attributed to this Agreement (and the applicable Project Authorization) less any refunds or price reductions for experience modifications; provided that Design/Builder shall not be reimbursed for (and the Cost of the Work shall not include): (a) that portion of Design/Builder's insurance premium rate which exceeds an amount equal to the Insurance Percentage, multiplied by the Cost of the Work (exclusive of the insurance and bond premiums). Cost of premiums for all bonds provided by Subcontractors deemed necessary or desirable by the Design/Builder (and approved by Owner) shall be charged as part of the Subcontract price.

1.6 **Miscellaneous Costs.** Subject to Section 2 of this **Exhibit "D"**, the Cost of the Work shall also include:

1.6.1 Sales, use, gross receipts or similar taxes imposed by a governmental authority that are reasonably related to the Work under Applicable Law and the Design/Build Documents.

1.6.2 All fees and assessments directly attributable to the Work, including, without limitation, those for design/build permits, permits for deferred approval and anything expressly identified in the Design/Build Documents as an item to be supplied by the Design/Builder or a Subcontractor.

1.6.3 Fees of laboratories for tests required by the Design/Build Documents (except those related to Nonconforming Construction Work for which reimbursement is expressly excluded).

1.6.4 Royalties and license fees paid for the use of a particular design, process or product that is actually required by the Design/Build Documents, together with the reasonable and necessary cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design/Build Documents and payments made in accordance with legal judgments against the Design/Builder (or other member of the Design/Build Team) resulting from such suits or claims and payments of settlements made with the Owner's written consent (in its sole and absolute discretion). provided, however, that: (a) notwithstanding the foregoing, if such royalties, fees and costs are excluded by any other provisions of the Design/Build Documents, then they shall not be included in the Cost of the Work and (b) if any such costs of legal defenses, judgments and settlements are included in the Cost of the Work, such costs shall not be included in the calculation of the Fee or subject to the GMP.

1.6.5 Data processing costs, including, but not limited to, hardware and software that are directly related to the Work and that are not customary in connection with branch office contract administration services (including those described in the definition of General Conditions Costs) provided by Design/Builder.

1.6.6 Deposits lost for causes other than the fault or negligence of Design/Builder or its employees or of any Subcontractors or any of their respective employees, agents or representatives or the failure to fulfill a specific responsibility to the Owner as set forth in the Design/Build Documents.

1.6.7 Legal, and reference costs, including attorneys' fees (other than those arising from disputes between the Owner and Design/Builder (or other member of the Design/Build Team) or Design/Builder (or other member of the Design/Build Team) and any Subcontractor) that are reasonably incurred by the Design/Builder in the performance of the Work, but only with the Owner's prior written approval, which approval shall not be unreasonably withheld, delayed or conditioned.

1.6.8 Expenses incurred in accordance with the Design/Builder's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, but only if and to the extent pre-approved in writing by the Owner.

1.6.9 Other costs incurred in the performance of the Work, if and to the extent expressly included in the Cost of the Work hereunder or approved in advance in writing by the Owner, which approval shall not be unreasonably withheld.

1.6.10 Costs due to emergencies affecting the safety of persons and property (other than any emergencies that result from the breach of any of the Design/Build Documents by or the negligence of Design/Builder or its employees, or any Subcontractors or any of their respective employees, agents or representatives or the failure to fulfill a specific responsibility to the Owner as set forth in the Design/Build Documents, if and to the extent reasonably incurred in taking action to prevent threatened damage, injury or loss.

1.6.11 Subject to the waiver of subrogation at Section 7.2.5, costs of repairing or correcting damaged or Nonconforming Construction Work executed by the Design/Builder or any Subcontractor, but only if and to the extent that : (a) such damaged or Nonconforming Construction Work was not caused by the acts or omissions of the Design/Builder or its employees or any Subcontractors or any of their respective employees, agents or representatives or the failure to fulfill a specific responsibility to the Owner as set forth in the Design/Build Documents, and (b) the cost of repair or correction is not recoverable by the Design/Builder (or other member of the Design/Build Team) from insurance, sureties, Subcontractors or otherwise despite diligent efforts by Design/Builder (and other members of the Design/Build Team) to recover such cost.

2. **Costs not to be Reimbursed.** Notwithstanding anything in the Agreement to the Contrary, the Cost of the Work shall not include any of the following costs and/or expenses (and the Design/Builder shall bear these costs without reimbursement):

2.1 Except as expressly provided in Sections 1.1.2 and 1.1.3 of this **Exhibit "D"**, salaries and other compensation of personnel of the Design/Builder (or other member of the Design/Build Team) stationed at the Design/Builder's (or other member of the Design/Build Team's) principal office or offices other than the on-Site office maintained at the Site.

2.2 Expenses of the Design/Builder's (or other member of the Design/Build Team's) principal office and offices other than the on-Site office maintained at the Site.

2.3 Overhead and general expenses (except as may be included as provided in the express provisions of Section 1 of this **Exhibit "D"**).

2.4 The Design/Builder's (or other member of the Design/Build Team's) capital expenses, including interest on the Design/Builder's (or other member of the Design/Build Team's) capital employed for the Work.

2.5 Except as expressly provided in Section 1.4 of this **Exhibit "D"**, rental costs of machinery and equipment.

2.6 Except as expressly provided in Section 1.6.11 of this **Exhibit "D"**, costs due to the negligent acts or omissions, or failure to fulfill a specific responsibility of the Design/Builder or its employees, or any Subcontractors or any of their respective employees, agents or representatives, including, but not limited to: (a) costs for the inspection, testing and correction of damaged, Nonconforming Construction Work, (b) disposal and replacement of materials and equipment incorrectly ordered or supplied, (c) material and equipment costs incurred in connection with any recovery plan to make up lost time due to improper management or prosecution of the Work in accordance with the Schedule, and (d) repairing damage to property not forming part of the Work (to the extent caused by the negligent acts or omissions of or failure to fulfill a specific responsibility of the Design/Builder or its employees, or any Subcontractors or any of their respective employees, agents or representatives). The Owner may withhold monies otherwise due the Design/Builder to cover any such cost already paid as a Cost of the Work.

2.7 The cost of any dues, assessments or contributions paid to the Design/Builder's (or other member of the Design/Build Team's) technical or trade associations.

2.8 Except as expressly provided in Section 2.9 of the Agreement and Sections 1.1 and 1.6.1 of this **Exhibit "D"**, taxes of any kind.

2.9 The cost of any business license, contractor's license or other similar license required so that the Design/Builder or any Subcontractor may engage in business or carry on the business of an architect, design professional or contractor at the site of the Work or at any other location in the city, county or state in which the Project is located and/or any of the Design Work is performed.

2.10 Any bonuses or other compensation payable to construction workers or any other personnel that are payable in addition to their regular periodic wages or salaries and other amounts included in the Approved Labor Rates (as defined above).

2.11 [Intentionally Omitted]

2.12 Except as expressly provided in Section 1.6.11 of this **Exhibit "D"**, costs of removing and replacing any Nonconforming Construction Work and/or any material condemned or rejected as a result of non-conformance with the Design/Build Documents.

2.13 Costs associated with Design/Builder's failure to obtain any and all permits required to be obtained by Design/Builder hereunder in a timely manner.

2.14 Costs incurred by Design/Builder resulting from the failure of Design/Builder and the Subcontractors to coordinate their work after agreeing to a critical path schedule.

2.15 Costs resulting from the failure of Design/Builder or any Subcontractor to procure and maintain insurance as provided in Article 7 of the Agreement.

2.16 Overtime, acceleration or premium costs, except as may be pre-approved by Owner in the GMP Breakdown, a Change Order or other writing signed by Owner.

2.17 Costs of any lien release bonds required hereunder (except to the extent that any of the same arise directly from Owner's default in its payment obligations hereunder).

2.18 Except as expressly provided in Section 1.5 of this **Exhibit "D"**, any costs or expenses in connection with any indemnity provided by the Design/Builder pursuant to the Design/Build Documents.

2.19 Costs of any fines as imposed by any regulatory agency for violations which occur during performance of the Work, including, without limitation, all acts and omissions which relate to or arise from the Design/Builder's (and other members of the Design/Build Team) and their agents' or Subcontractors', obligations to provide for, and control over, the method, manner and means of performance of the Work, provided; however, that to the extent the cause or cost of the penalty relates: (a) to existing conditions not created by the Design/Builder or other member of the Design/Build Team, or their agents or Subcontractors or (b) to the proper performance of the Work in accordance with the Design/Build Documents and in accordance with the obligations of the Design/Builder and Owner regarding the performance of the Work pursuant to the Design/Build Documents, then this exclusion shall not apply.

2.20 Except to the extent of costs included in Approved Labor Rates (as defined in Section 1.1.1 of this **Exhibit "D"**) expenses, any accrual costs (e.g., labor burden rates).

2.21 Except as expressly provided otherwise in the Agreement, plan check fees and fees and assessments, other than for the building permit and for other permits, licenses and inspections customarily paid at the time the building permit is pulled, which amounts shall be paid directly by Owner (or at the request of Owner, shall be paid by Design/Builder, in which case Owner shall reimburse Design/Builder therefor upon receipt by Owner of an invoice therefor (at the same time that Design/Builder submits an Application for Payment) together with reasonable supporting documentation).

2.22 Any cost not specifically and expressly described in Section 1 of this **Exhibit "D"**.

2.23 The cost of any Changes in the Work not approved, in writing, by (or ordered, in writing, by) the Owner.

2.24 Except to the extent otherwise agreed in writing by Owner pursuant to Article 8 of this Agreement, payments to the Architect in excess of the amount specified in the GMP Breakdown.

2.25 Except to the extent otherwise agreed in writing by Owner (in its sole and absolute discretion), any amount or cost which is inconsistent with this **Exhibit "D"** or the applicable Schedule of Values.

2.26 Any mark up by Design/Builder on any of the costs that may be included in the Cost of the Work.

2.27 Costs, other than costs included in Change Orders approved in writing by the Owner, that would cause the GMP to be exceeded; provided, however, that Design/Builder may allocate any savings or losses among any GMP Breakdown line items, trade allocations or other costs which are reimbursable pursuant to Section 1 of this **Exhibit "D"** as part of the Cost of the Work, as long as such allocations do not cause the GMP to be exceeded.

EXHIBIT "E"
INSURANCE REQUIREMENTS

1. Design/Builder Requirements. The insurance required to be carried by Design/Builder hereunder shall include the following:

1.1 Workers' Compensation Insurance as required by all Applicable Laws and Employer's Liability Insurance with limits of, \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee and policy limit for bodily injury by disease. If there is an exposure of injury to Design/Builder's employees under the U. S. Longshoreman and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims. The Employer's Liability Insurance shall be scheduled as underlying insurance to the Umbrella Excess Liability Insurance policy described in Paragraph 1.4, below.

1.2 Commercial Automobile Liability Insurance on an "accident" basis, with a limit of not less than \$1,000,000 combined single accident against bodily injury and property damage liability arising out of the use by or on behalf of Design/Builder and the Design/Builder Parties of any owned, non-owned or hired automobiles, motor vehicles and mobile equipment. Such Commercial Automobile Liability Insurance shall include contractual liability coverage unless such coverage is included in the Commercial General Liability Insurance required under Paragraph 1.3, below.

1.3 Commercial General Liability insurance ("CGL"), on an "occurrence" basis, covering operations by or on behalf of Design/Builder. Such insurance: (a) shall have limits not less than, (i) \$1,000,000 each occurrence, (ii) \$1,000,000 for personal and advertising injury liability, (iii) \$1,000,000 each occurrence for products and completed operations, and (iv) \$2,000,000 general aggregate (and except with respect to bodily injury and property damage included within the products and completed operation hazards, the aggregate limit, where applicable, shall apply separately to Design/Builder's Work under this Agreement); (b) shall be written on an ISO form CG 0001 12 04 (or a substitute providing reasonably equivalent coverage); (c) shall include cross liability and severance of interest clauses; (d) shall be written to apply to all bodily injury (including death), property damage (including completed operations) and personal and advertising injury losses; (e) shall include the following coverages: (i) premises and operations, (ii) blanket contractual liability (specifically covering, without limitation, Design/Builder's obligations under Section 7.4 of the Agreement), (iii) property damage (including completed operations), (iv) personal injury liability, (v) loss resulting from explosion, collapse or underground hazards, (vi) independent contractor's coverage, (vii) completed operations, and (viii) products liability; (f) shall be endorsed to include as additional insureds Owner and all of the other persons described in Section 7.1.2.2; (g) shall delete ISO endorsement No. 22 43, if attached; and (h) if any portion of the Work includes design services, shall include ISO Endorsement No.22 79 (or its equivalent).

1.4. Umbrella (Excess) Liability Insurance with the policies listed in Paragraphs 1.1, 1.2 and 1.3, above as underlying policies and with limits not less than \$5,000,000. Such coverage shall be in addition to, and at least as broad as the primary coverages in the underlying policies, shall provide for full defense coverage obligations, and shall be endorsed to include as additional insureds, Owner and all of the other persons described in Section 7.1.2.2. The Umbrella Excess Liability Insurance policy or policies shall not contain endorsements which restrict coverages as set forth in Paragraphs 1.1, 1.2 and 1.3, above, and which are provided in the underlying policies, except that that the "Per Project" General Aggregate requirement in Paragraph 1.3, above shall not apply to the Umbrella Excess Liability Insurance. If the Umbrella Excess Liability Insurance policy or policies provided under this Paragraph 1.4 contain(s) aggregate limits applying to other operations of the Design/Builder other than the Work, and such limits are diminished below the amount specified in the first sentence of this Paragraph 1.4 by any incident, occurrence, claim, settlement or judgment against such insurance, the Design/Builder shall take immediate steps to restore such aggregate limits or shall provide other equivalent insurance protection for such aggregate limits.

1.5 [Intentionally Omitted]

1.6 If (and only of) the Design/Builder or any Subcontractors use any owned, leased, chartered or hired aircraft of any type (such as helicopters) in the performance of the Work, they shall maintain aircraft liability insurance in an amount not less than \$10,000,000 per occurrence, including Passenger Liability. Evidence of Coverage in the form of a Certificate of Insurance shall be provided prior to the use of any such aircraft.

1.7 [Intentionally Omitted]

1.8 [Intentionally Omitted]

1.9 Design/Builder shall cause the Architect and Engineers (and any other Person providing design services with respect to any of the Work) to secure and maintain professional liability insurance with limits not less than \$2,000,000 per claim and \$2,000,000 annual aggregate, and such policy shall include (a) limited contractual liability coverage, (b) a retroactive date prior to the Work and (c) an extended reporting period of not less than sixty (60) Days. This insurance shall cover claims arising out of the performance of professional services under the Design/Build Documents and caused by any negligent acts, errors and omissions. This policy, if written on a claims-made basis, shall be secured for a minimum period of 4 years after Final Completion of the Work.

1.10 **Additional Insurance.** At the request of Owner:

1.10.1 Subcontractor Default Insurance with minimum limits specified by Owner, with deductible amounts per loss per Subcontractor as specified by Owner, and otherwise in form and substance acceptable to Owner, which shall insure the Design/Builder against defaults by the Subcontractors of Work under the Contract. The Owner shall be named as an additional insured under such Subcontractor Default Insurance.

1.10.2 A policy of insurance that includes coverage for a pollution incident (including specifically mold) with minimum limits specified by Owner, in form and substance satisfactory to Owner, covering, among other things, liability that Design/Builder becomes legally obligated to pay as a result of a pollution incident (including specifically mold) arising out of its activities or the activities of any Subcontractors or other persons for which Design/Builder is legally responsible. Owner shall be named as an additional insured under any policy of insurance that Design/Builder shall obtain and maintain under this Paragraph 1.10.2. It is understood that, without limitation, any policy of insurance that Design/Builder shall carry pursuant to this Paragraph 1.10.2 may be one of the following: a Pollution Legal Liability policy, a Contractor's Pollution Liability policy, a Contractor's Professional & Pollution Liability policy, or an Environmental Impairment Liability policy. Design/Builder shall consult with Owner with respect to the type and form of the policy of insurance that it obtains and maintains pursuant to this Paragraph 1.10.2.

1.10.3 Property insurance for all the Work to be performed under this Agreement and the Contract Documents. The policy of insurance shall be a builder's risk type or other property policy providing builder's risk coverage on a replacement cost basis, "all risk" form". The coverage of the insurance shall not extend to tools, equipment or materials of the Design/Builder or Subcontractors or property owned by employees of them, vehicles of any kind, trees or shrubs or Drawings or Specifications. Owner shall be named as an additional insured and a loss payee under any insurance policies that Design/Builder shall carry pursuant to this Paragraph 1.10.3.

If Owner requests that Design/Builder carry any of the insurance described in this Paragraph 1.10, the Cost of the Work and the GMP shall be increased by the cost incurred by Design/Builder in obtaining and maintaining such insurance coverage (and, if the cost of such insurance is not included in the GMP specified in the applicable Project Authorization, the Parties shall execute a Change Order documenting such increases).

The insurance coverage specified in Paragraph 1.2 and in Paragraph 1.3, above may be combined in a single policy provided such combined single policy does not diminish the coverage limits established in each such section (it being agreed that the coverage limits established in each such section shall remain independent).

2. Subcontractor Requirements. The insurance required to be carried by all Subcontractors hereunder shall include the following:

2.1 Workers' Compensation and Employer's Liability. As required by any applicable law or regulation. Employer's Liability Insurance shall be provided in amounts not less than:

\$1,000,000 each accident for bodily injury by accident
\$1,000,000 policy limit for bodily injury by disease
\$1,000,000 each employee for bodily injury by disease

If there is an exposure of injury to Subcontractor's employees under the U. S. Longshoremen's and Harbor Workers' Compensation Act, the Jones Act or under laws, regulations or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

2.2 Commercial General Liability. Covering operations by or on behalf of Subcontractor, providing insurance for bodily injury liability and property damage liability for at least the minimum limits of liability indicated below and including coverage for:

- (1) premises and operations;
- (2) products and completed operations;
- (3) broad-form contractual liability;
- (4) broad-form property damage (including completed operations);
- (5) explosion, collapse and underground hazards;
- (6) personal injury liability/advertising injury;

Policy shall not be issued under a "claims-made" policy form or a "modified occurrence" policy form.

Coverage shall be maintained continuously for five (5) years (or more up to ten (10) years, if specifically requested in writing by DPR or Owner) following Project completion.

2.2.1 Minimum Limits of Liability – (Refer to Schedule E-1 – Trade Category List)

Category I, II, and III Trades

\$2,000,000 each occurrence Bodily Injury and Property Damage
\$2,000,000 Personal Injury
\$2,000,000 aggregate for Products - Completed operations
\$2,000,000 general aggregate

Category IV Trades

\$1,000,000 each occurrence Bodily Injury and Property Damage
\$1,000,000 Personal Injury
\$2,000,000 aggregate for Products - Completed operations
\$2,000,000 general aggregate

2.2.2 Per Project General Aggregate. The policy must have an endorsement providing that the general aggregate limit applies separately to this project. If a per-project aggregate is not provided, the total aggregate limit of liability shall be \$5,000,000. The above limits can be satisfied by providing a primary policy or in combination with an excess liability policy.

2.2.3 Automobile Liability. Covering all owned, hired and non-owned automobiles in limits of liability not less than \$2,000,000 combined single limit each accident for bodily injury and property damage.

2.2.4 Other Required Insurance Coverage where Exposure Exists. The following insurance shall be required by the Subcontractor and Sub-subcontractors to the extent that such activities exist in the performance of Work under this Subcontract and are not covered under the General Liability policy or as required pursuant to Schedule E-1 – Trade Category List. Limits of Liability for policies listed below shall supersede the limits listed under Paragraphs 2.2.1 – 2.2.3:

2.2.4.1 Aircraft Liability. Should the Subcontractor's Work include using any owned, leased, chartered or hired aircraft of any type (including helicopters) on the Project, minimum limits in an amount not less than \$10,000,000 per occurrence including Passenger Liability shall apply.

2.2.4.2 Crane Services Liability. Should Subcontractor's Work include providing Crane Services, then Commercial General Liability shall be amended to apply with minimum limits of liability to insure against bodily injury and property damage arising from such crane operations. The policy shall include coverage for Rigger's Liability and shall not exclude coverage for damage to property being lifted.

\$10,000,000 each occurrence Bodily Injury and Property Damage
\$10,000,000 Personal Injury
\$10,000,000 aggregate for Products - Completed operations
\$10,000,000 general aggregate

Subcontractor's coverage for Crane Services may be provided either by Subcontractor's own policy(ies), or by the policy(ies) of a lower tier contractor providing such Crane Services for Subcontractor. The policy shall include a "Per Project General Aggregate" pursuant to Paragraph 2.2.2.

2.2.4.3 Professional Liability. If Subcontractor or any Sub-subcontractor of any tier is providing any professional services, including but not limited to, design, engineering or design/build services on the Project, minimum limits of \$2,000,000 per Claim / Aggregate shall apply. If coverage is issued on a claims-made form, such coverage shall apply with a retroactive date to reflect the date in which professional services commenced under this Subcontract. Coverage shall also be maintained continuously for a minimum of five (5) years (or more up to ten (10) years, if specifically requested in writing by DPR or Owner) following Project completion or included with an Extended Reporting Period for the equivalent minimum number of years requested.

2.2.4.4 Contractor's Pollution Liability.

(a) Hazardous Materials Remediation. If Subcontractor's or its Sub-subcontractor's Work includes remediating hazardous material including but not limited to asbestos containing materials, silica, lead, PCBs, contaminated soil etc., minimum limits of liability of \$2,000,000 per claim or per occurrence, and not less than \$2,000,000 aggregate shall apply to cover liability for bodily injury, property damage or clean-up costs resulting from pollution conditions.

(b) Mold, Fungi, & Bacteria (Refer to Schedule E-1–Trade Category List).

(i) Category I Trades – If Subcontractor's general liability policy has an exclusion for losses due to mold, fungi or bacteria, minimum limits of liability of \$2,000,000 per occurrence and \$2,000,000 aggregate shall apply to include coverage for mold, fungus, or bacteria.

(ii) Category II Trades - If a Subcontractor's general liability policy has an exclusion for losses due to mold, fungi or bacteria, and they or one of their Subcontractors are performing work that is associated with keeping moisture out of the building, work that penetrates the building enclosure, or work with liquid conveying piping systems inside the building, minimum limits of liability of \$2,000,000 per occurrence and \$2,000,000 aggregate shall apply to include coverage for mold, fungus or bacteria.

(iii) Should Subcontractor not be able to provide such required pollution coverage subject to Category I and II Trades, DPR may provide, at its sole discretion and for its own benefit, such pollution coverage in Subcontractor's name, for losses, damages, etc. from a pollution event arising out of the Subcontractor's Work. In the event DPR does provide this excess coverage, Subcontractor shall not be obligated to, but is nevertheless recommended to, provide a "Contractor's Pollution" policy. Subcontractor's indemnification obligations under the Subcontract are not altered by any insurance provided hereunder by DPR or Subcontractor.

(iv) Category III & IV Trades - Subcontractor is not required to provide Mold, Fungi or Bacteria Coverage.

(c) Automobile Pollution Liability. If Subcontractor or its Sub-subcontractors of any tier haul hazardous waste, Automobile Liability limits of at least \$2,000,000 combined single limit each accident for Bodily Injury and Property Damage applicable to all hazardous waste hauling vehicles and include a MCS 90 endorsement. In lieu of this coverage, DPR shall accept a Transportation Coverage Endorsement extension from Subcontractor or their subcontractors' respective Contractor's Pollution Liability Policy to cover this requirement, but only to the extent that such endorsement has been attached to the Certificate.

(d) If coverage required under this Paragraph 2.2.4.4 is issued on a claims-made form, such coverage shall apply with a retroactive date to reflect the date in which Work commenced under this Subcontract. Coverage shall also be maintained continuously for a minimum of five (5) years (or more up to ten (10) years, if specifically requested in writing by DPR or Owner) following Project completion or included with an Extended Reporting Period for the equivalent minimum number of years requested.

SCHEDULE E-1
Insurance Requirements by Trade

Trade Category I Full Insurance & Mold Requirements

Infection Control	Lath & Plaster	
Tilt-Up Concrete	Tile	
Glass-Fiber-Reinforced Concrete	Louvers & Vents	
Stone/Marble (Adhered)	Environmentally Controlled Rooms	
Stone/Marble (Mechanically Fastened)	Clean Rooms	
Expansion Control	Pre-Engineered Structures	
Dampproofing and Waterproofing	Hydraulic Elevators and Lifts	
Exterior Insulation and Finish Systems (EIFS)	Process Piping	
Metal Roof and Wall Panels	Medical Gases	
Roofing	Fire Protection	
Flashing and Sheet Metal	Pre-Action Fire Suppression	
Joint Sealants	Plumbing	
Entrances and Storefronts	Heating Ventilating Air Conditioning	
Automatic Entrance Doors	Electrical	
Windows - Wood & Vinyl	Instrumentation & Controls	Building
Skylights	Systems Controls	
Glass & Glazing (Exterior)	Site Remediation & HazMat Abatement	

Trade Category II Full Insurance & Conditional Mold Requirements

Groundwater Treatment Systems	Masonry
Demolition	Wood Framing
Dewatering	Glass & Glazing (Interior)
Tunneling, Boring and Jacking	Specialty Glazing
Fountains & Water Features	Framing & Drywall
Landscaping & Irrigation	Painting & Wallcovering
Cast-in-Place Concrete (Contractors)	Commercial Laundry & Dry Cleaning
Pneumatically Placed Concrete (Shotcrete)	Food Service Equipment
Sand & Water Blasting	Residential Laundry/Kitchen Equipment
Precast Concrete	Swimming Pools and Spas
Cementitious Decks and Underlayment	Elevators III
Concrete Restoration and Cleaning	

Trade Category III Full Insurance & No Mold Requirements

Testing & Inspection Services	Asphalt Concrete Paving
Const. Elevator/Hoist/Cranes	Paving Specialties
Scaffolding	Concrete
Construction Aids	Unit Pavers
Traffic Control	Athletic and Recreational Surfaces
Jobsite Security Guard Service	Fences and Gates
Survey & Layout	Retaining Walls
Machinery & Equipment Moving (Rigging)	Structural Excavation & Backfill
Shoring and Underpinning	Concrete Formwork (Non-Skin)
Earthwork	Concrete Accessories
Soil Stabilization & Erosion Control	Concrete Reinforcement
Soil Treatment	Post-Tensioning
Driven Piles	Concrete Pump
Site Utilities	Concrete Finishing
Site Utilities (Dry) - Electrical & Tel/Data	
Traffic Signs & Signals	

Trade Category III Full Insurance & No Mold Requirements (continued)

Granite Countertops	Structural Steel
Welding	Structural Steel Erection
	Metal Joists/Trusses

Metal Deck
Channel Frame Strut
Miscellaneous Metals
Metal Stairs & Ladders
Handrails and Railings
Ornamental Metal
Finish Carpentry & Millwork
Plastic Fabrications
Traffic Coatings
Building Insulation
Fireproofing
Fire stopping
Metal Doors, Frames & Hardware
Doors, Frames & Hardware - Installation
Doors - Packaged (Total Doors)
Wood and Plastic Doors
Specialty Doors
Coiling Doors and Grilles
Acoustical Ceilings
Floor Treatment & Coatings
Specialty Flooring
Wood Flooring
Resilient Flooring
Carpet & Resilient Flooring
Acoustical Wall Treatment
Special Coatings (Epoxy Coatings)
Intumescent Fireproofing
Access Flooring
Fabric/Canvas Awnings Canopies
Operable Partitions
Storage Shelving
Sun Control Devices
Window Washing Equipment
Theater and Stage Equipment
Retail Fixtures & Showcases
Loading Dock Equipment
Athletic, Recreation, & Therapy Equipment
Laboratory Equipment
Lab Equipment Salvage
Medical Equipment
Lab & Medical Casework Systems
Manufactured Wood Casework
Furniture
Multiple Seating
Radiation Protection
Tennis Court Construction
Escalators and Moving Walks
Non-Hydraulic Elevators and Lifts
Conveyors
Chutes
Pneumatic Tube Systems
Hoists and Cranes
High Purity QAQC
Testing, Adjusting and Balancing
Communications
Fire Alarm Systems
Security Systems
Audio Visual System

Trade Category IV Minimum Insurance & No Mold Requirements

Temporary Facilities and Controls
Jobsite Trailer Rental & Lease
Temporary Barriers, Enclosures & Fencing
Product Delivery Requirements
Equipment Suppliers
Cleaning
Site Furnishings
Pavement Markings
Concrete Ready Mix
Lumber Suppliers
Prefabricated Structural Wood
Roof Accessories
Access Doors and Panels
Specialties
Chalkboards & Markerboards
Signage
Lockers
Fire Extinguishers/Cabinets
Postal Specialties

EXHIBIT "F"
PROCEDURES FOR REVIEW OF DESIGN MATERIALS

The following procedures shall apply if and to the extent that the Design Materials with respect to any particular Design/Build Project are not fully developed prior to the date the Project Authorization with respect to such Design/Build Project is executed.

1. The Design/Builder shall cause the Architect and other members of the Design/Build Team and the Engineers to commence and diligently prosecute the preparation of the Schematic Design Documents and the Initial Basis of Design, the Design Development Documents and the Interim Basis of Design, and Construction Documents and Final Basis of Design, upon issuance of the Design Notice to Proceed and shall submit the Schematic Design Documents and the Initial Basis of Design, the Design Development Documents and the Interim Basis of Design, and Construction Documents, and Final Basis of Design as provided below, to the Owner for review, evaluation, comment and approval (a "Milestone Review") in accordance with the following schedule:

1.1. Upon completion of the Schematic Design Documents and Initial Basis of Design, which shall occur no later than the date therefor specified in the Schedule with respect to the applicable Design/Build Project;

1.2. Upon fifty percent (50%) and one hundred percent (100%) completion of the Design Development Documents and Interim Basis of Design, which shall occur no later than the dates therefor specified in the Schedule with respect to the applicable Design/Build Project;

1.3. Upon seventy-five percent (75%) completion of the entire scope of the Construction Documents and Final Basis of Design (which stage of completion shall be determined by the Owner taking into account in the aggregate the various stages of completion of all drawings, plans, specifications and calculations and other design and construction documents), which shall occur no later than the date therefor specified in the Schedule with respect to the applicable Design/Build Project; and

1.4. Upon completion of all of the Construction Documents and Final Basis of Design, which shall occur no later than the date therefor specified in the Schedule with respect to the applicable Design/Build Project.

2. Throughout the development of the Schematic Design Documents and the Initial Basis of Design, the Design Development Documents and the Interim Basis of Design, and the Construction Documents and the Final Basis of Design, the Design/Builder and Architect and other members of the Design/Build Team shall meet and confer on a regular basis with the Owner and its consultants, representatives, agents and employees to review and discuss the documents then in the process of being prepared. During the periods when the Owner is performing its Milestone Reviews, the Design/Builder shall cause the Architect and other members of the Design/Build Team and their consultants to continue their design activities and their prosecution of the design documents then in progress.

3. The Owner shall commence each Milestone Review upon its receipt of a Schematic Design Documents and Initial Basis of Design, Design Development Documents and Interim Basis of Design or Construction Documents and Final Basis of Design, as applicable ("Submissions"), and shall complete each Milestone Review and respond to Design/Builder within ten (10) Business Days of submission. The Design/Builder and the Architect and other members of the Design/Build Team shall be available at all reasonable times during the period of each Milestone Review to respond to any of the Owner's comments, questions, directions, objections and recommendations in connection with the content of the Submissions. Upon completion of each Milestone Review, the Owner shall furnish the Design/Builder with a written report setting forth in reasonable detail those instances where the Submissions are not consistent with either the Program or previously approved Submissions (the "Owner Report").

4. The Design/Builder shall cause the Architect and other members of the Design/Build Team to modify or revise the Submissions to the extent necessary to comply with or incorporate, as applicable, the deviations noted by the Owner in the Owner Report. The Design/Builder shall not, however, be entitled to an adjustment in the GMP or any extension of time in the Schedule, to compensate the Design/Builder for modifying or revising a Submission in accordance with the deviations noted in the Owner Report.

5. If the Owner directs the Design/Builder to make modifications or revisions to a Submission on account of items it wishes to change, but which are consistent with either the Program or previously approved Submissions, the Owner shall so direct the Design/Builder.

6. The Design/Builder shall notify the Owner, in writing, of any dispute it has regarding any item in an Owner Report. Such notice shall be given promptly following the Design/Builder's receipt of the Owner Report. In the event of any such dispute, the same shall be resolved in accordance with the dispute resolution procedures of this Agreement.