

February 11, 2015

To those interested in IPD contracting:

With a multi-billion dollar capital project budget, the Sutter Health Facility and Property Services team in 2004 launched the implementation of the industry leading “Lean and Integrated Project Delivery practices” by rolling out the **Five Big Ideas** – our guiding principles with our trade partners and vendors:

1. Collaborate; really collaborate throughout design, planning and execution
2. Increase relatedness among all project participants
3. Projects are networks of commitments
4. Optimize the project not the pieces
5. Tightly couple action with learning

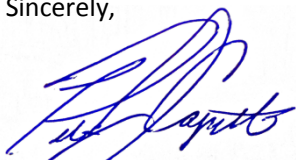
In the decade since our original implementation, we have learned a great deal from applying these LEAN principles to real project delivery on dozens of projects. With each iteration, we’ve coupled learning with action and have adjusted/adapted the tools and processes to capture improvements. Our latest version of the Integrated Form of Agreement (IFOA) reflects the current evolution of this contracting methodology taken from our experiences over many projects. While previous versions of the contract agreement focused on development and description of the proscriptive “how to” aspects of LEAN and Integrated Project Delivery, the current version of the IFOA recognizes the maturity of the marketplace as well as our trade partners. The contract is streamlined to focus more on the compensation, risk sharing and legal accountabilities of the parties; then allowing for project teams to determine appropriate relationships, behaviors and processes tailored to meet specific project needs.

This contract requires activation and participation by experienced and practiced trade partners and specific individuals who bring a solid understanding of the means and methods that will bring about the benefits associated with this form of project delivery. In other words, a contract, no matter how good, will never replace the benefits a careful partner and staff selection that have the relevant experience and a mindset that aligns project team shared goals with the outcomes desired by the owner.

Sutter Health has a long-standing commitment to the advancement of Lean and Integrated Project Delivery for our industry as a whole. We are pleased to share our current version of the IFOA openly with everyone in the industry - however, we caution that value of this method of project delivery will not be realized through execution of this or any contract. True project delivery improvements will be realized through the thoughtful and conscious application of the Five Big Ideas in an orchestrated effort to drive reliability, predictability and value into projects.

We are open to, and invite discussion on any questions or concepts relative to Lean and Integrated Project Delivery.

Sincerely,



Peter J. Caputo
Administrative Director
(408) 210-4935
caputopj@sutterhealth.org

Integrated Form of Agreement (IFOA)

PROJECT: (Fill in Project)

This Agreement is executed as of (fill in the date) ("Effective Date") by and among the Owner, Architect and CM/GC (the "Parties"), for complete design and construction of the Project in accordance with their respective roles and obligations and the terms and conditions below. By executing this Agreement, each of the Signatories represents that he or she has authority to bind the Party on whose behalf his or her execution is made.

Owner:

(Fill in Legal Entity Name for SHA)

Telephone:

Email:

Executed By: _____

[title]

Architect:

(Fill in Architect)
(Fill in entity type)

Telephone:

Email:

Executed By: _____

[title]

License No. _____

CM/GC:

(Fill in Contractor)
(Fill in entity type)

Telephone:

Email:

Executed By: _____

[title]

License No. _____

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PROJECT MANUAL

The Project Manual is referenced in this Agreement for convenience. Revisions to portions of the Project Manual require either Core Group or FPS approval (as applicable) but will not require Amendment or Change Order to the Agreement. The most current approved portions of the Project Manual are incorporated by reference based on the provisions of this Agreement.

Tab 1	Project Roster
Tab 2	Projected Cost Model and Milestone Projected Cost Models
Tab 3	Current Billing Rates
Tab 4	Current Equipment Rates

SAMPLE

1. DEFINITIONS

1.1 Defined Terms. Defined terms and titles of Exhibits will be capitalized throughout the Agreement and General Conditions to the Agreement (Exhibit 2D). The definitions for this Agreement and the General Conditions are set forth in alphabetical order in Exhibit 1. The Owner, Architect, and CM/GC may be individually referred to as a "Party" and will collectively be referred to throughout this Agreement as the "Parties." References to "subcontractor" or "consultant" in lower case refer to all subcontractors and consultants of any tier, including those subcontractors and consultants who are R/R Members.

2. PROJECT, PERFORMANCE AND RELATIONSHIPS

2.1 Project. The Project is described in Exhibit 8A of this Agreement and consists of programming, design, construction and commissioning of the Project developed in accordance with the Agreed Program. There are 3 Project Stages: Planning Stage, Design Stage, and Construction Stage. The EMP will be established at the end of the Planning Stage per Section 6.1.3.

2.2 Work. The Architect, CM/GC and their consultants and subcontractors (inclusive of tiers), and suppliers will timely and properly perform their respective portions of the Work in accordance with the performance requirements set forth in Section 2.3, the Contract Documents, and all applicable laws, building codes, ordinances, rules, regulations, and lawful orders of Governmental Authorities.

2.3 Performance Requirements. The Architect, CM/GC and their consultants and subcontractors (inclusive of tiers), and suppliers will perform their respective Work using the integrated project delivery tools set forth in the Project Charter (Exhibit 8D). The IPD Team will actively participate and collaborate with other IPD Team members in the Target Value Design process to achieve best value based on the Agreed Program, optimize design, increase labor efficiency, and eliminate waste and re-work through utilization of Lean Project Delivery methods and Building Information Modeling ("BIM"). The IPD Team members will adhere to the values set forth in the Project Charter and make meaningful commitments to one another, and keep their respective commitments, with respect to timely and properly performing all Work and providing all required deliverables under their respective agreements and the Contract Documents. In addition, the R/R Members are required to submit a productivity analysis as described in Section 9.2.3 in a format approved by the Core Group. The Core Group may use a 3rd party consultant to ensure that the IPD Team's performance is in compliance with the terms and conditions of this Section 2.3.

2.4 Licensing. The Architect and CM/GC will both be properly licensed pursuant to the applicable laws governing design and construction in the State of California. Nothing in this Agreement requires the Architect or CM/GC to perform any Work outside of their respective licenses or contrary to the laws, codes or regulations of the State of California.

2.5 Standard of Care.

2.5.1 Architect. The Architect and its consultants and tier-consultants will timely perform their portions of the Services using their best skill and judgment consistent with

the degree of care ordinarily used by competent licensed architects or registered professional engineers designing projects of similar size, scope, and complexity within the State of California.

2.5.2 CM/GC. The CM/GC will timely perform all Construction Work using its best skill and attention in a workman-like manner consistent with the degree of care customarily exercised by prudent licensed general contractors performing preconstruction services and constructing projects of similar size, scope, and complexity within the State of California.

2.6 Relationship of the Parties. Although this Agreement establishes a relationship of mutual trust and good faith among the Parties, who recognize that their individual success is directly tied to the performance of the IPD Team, it does not create an agency relationship, fiduciary relationship, partnership, or joint venture among or between Sutter Health, the Parties or other IPD Team members. The Owner, Architect, and CM/GC are each an independent contractor solely responsible for directing and managing their own forces and services within their respective licensing and area of responsibility as described in Sections 2.4 and Article 3. The Parties acknowledge that this Agreement is not a design-build agreement and that each Party, and each individual entity that makes up a Party, is responsible for its own errors, omissions or construction defects to the extent provided in this Agreement. Likewise, nothing contained in this Agreement will make any Party jointly and severally liable for the negligent acts or omissions of any other Party, except that the CM/GC is responsible for the acts, errors, or omissions of its subcontractors, tier-subcontractors, and suppliers, and the Architect is responsible for the acts, errors, or omissions of its consultants and tier-consultants.

2.7 Project Staffing and Key Personnel. The Architect's and CM/GC's personnel will be identified in their respective Resource Loaded Work Plans ("RLWP") set forth in Exhibit 3A and Exhibit 3B, respectively, and the Agreed Billable Rates will be designated in Exhibit 3C. The Architect, CM/GC, and their respective consultants and subcontractors (inclusive of tiers) must provide an adequate number of competent management and field personnel, and failure to do so will be deemed a Willful Default. The adequate number of personnel and competency of such individuals is subject to determination by a majority of the Core Group. R/R Members' key personnel will be set forth in the Project Roster [Tab 1, Project Manual]. Unless otherwise requested by the Owner or FPS Representative, key personnel of R/R Members may not be removed from, or added to, the Project without prior written consent of FPS Representative except for death, disability, or departure of person from employment. Penalty for removal of key personnel for reasons other than those set forth above will be \$100,000 or 10 percent of the R/R Member's dollar amount of its Risk/Reward Share set forth in Exhibit 3E, whichever is more. Payment of any penalty will be made by check payable to Owner, or will appear as a reduction in the Schedule of Values line item for that R/R Member's Chargeable Costs and withheld from payment. If a replacement occurs, the proposed key personnel will have substantially equivalent or better qualifications than the former employee, and all candidates are subject to final approval by the Owner and FPS Representative. Owner's representatives and FPS Representatives are key personnel and, except for death, disability, or departure from employment, may not be removed from the Project without prior written consent of the other Core Group or Senior Executive Team ("SET") members.

3. THE PARTIES AND THEIR OBLIGATIONS

3.1 Owner. The Owner will collaborate with the other IPD Team members in the Target Value Design process and timely participate and perform the necessary Owner tasks in support of successfully delivering the Project in accordance with the Contract Documents.

3.1.1 **Owner's Representatives and Authority.** The Owner has assigned a primary and alternative representative to serve on the Core Group per Section 4.1 and the SET per Section 4.3. The Owner's representatives for the Core Group and SET are identified in the most current approved Project Roster [Tab 1, Project Manual] and are authorized to make decisions on behalf of the Owner.

3.1.2 **FPS Representatives and Authority.** FPS will have a primary and alternate representative that serves on the Core Group per Section 4.1 and the SET per Section 4.3. FPS Representatives for the Core Group and SET are identified in the Project Roster [Tab 1, Project Manual]. FPS Representatives are the Owner's agents and will actively participate, facilitate, administrate, and coordinate the activities of the Core Group and SET and oversee delivery of the Project on behalf of the Owner. As the Owner's agents, FPS Representatives have the authority to make decisions on behalf of the Owner if the Owner's representative is absent from the Core Group meeting. FPS Representatives have the sole authority to give direction to the IPD Team on decisions to proceed with Work on this Project and will be responsible for updating approved changes to the Project Manual. FPS Representatives will procure all necessary Separate Contractors and Separate Consultants on behalf of Owner as described in Section 5.7 and coordinate action among the IPD Team, Owner's personnel and Separate Contractors.

3.1.3 **Owner Provided Information.** The property and site description are set forth in Exhibit 8A. The Owner will provide the name of the construction lender, if any, in Exhibit 4A. The Owner will provide access to existing site documentation and other Owner provided information per Section 1 of the General Conditions (Exhibit 2D).

3.1.4 **Permits, Fees and Inspections.** Permits, fees and inspections will be in accordance with Section 1 of the General Conditions (Exhibit 2D).

3.1.5 **Legal, Accounting and Insurance Services.** The Owner will provide legal, accounting and insurance services for the Project.

3.1.6 **Other Obligations.** In addition to the above, the Owner will make timely payments and perform other Owner obligations required by the Contract Documents.

3.2 Architect. The Architect is the architect of record and therefore responsible for developing Construction Documents that meet or exceed the overall design criteria and requirements of the Agreed Program. The Architect will timely perform all Services in accordance with the Contract Documents and the performance requirements set forth in Section 2.3. The Architect will review those portions of the Project that are being designed through its consultants, as well as any design-build subcontractors, for general conformance with the overall Project design. The Architect and its consultants will perform all design Services in accordance with the standard of care for design professionals set forth in Section 2.5.

3.2.1 Authority of Architect's Representatives. The Architect has assigned a primary and alternate representative to serve on the Core Group per Section 4.1 and the SET per Section 4.3. The Architect's representatives for the Core Group and SET are identified in the Project Roster [Tab 1, Project Manual] and are authorized to make decisions on behalf of the Architect.

3.2.2 Architect's Consultants. The Architect will retain the necessary design consultants to perform those portions of the Services that Architect is not self-performing but that are required under this Agreement per Article 5. The Architect's consultants will be identified on the Project Roster [Tab 1, Project Manual]. The Architect is responsible for managing its consultants and coordinating their portion of the Services with the work or services performed by other IPD Team members.

3.2.3 General Duties and Obligations. The Architect will perform all of its obligations under the Contract Documents including, but not limited to, the following services:

(a) Prepare a Resource Loaded Work Plan as part of the EMP Breakdown identifying Architect's and its consultants' staff members, and allocating portions of its Agreed Billable Rates based on each staff member. The RLWP should be broken down by Project Stage. The RLWP will be amended into the Agreement as Exhibit 3A and will be used as a management tool to track variations in Chargeable Costs related to labor expenses for Services performed during the Design Stage and Construction Stage.

(b) Prepare a Schedule of Values as part of the EMP. As part of the EMP, the Architect will submit a Schedule of Values allocating the Chargeable Costs for design services included in the EMP Breakdown (Exhibit 4B). The Schedule of Values will be incorporated into this Agreement by Amendment as Exhibit 4D and will be submitted with each application for payment reflecting the Chargeable Costs for Services performed based on the percentage of completion. The Architect's Schedule of Values and the CM/GC's Schedule of Values required under Section 3.3.3 (b), will be combined in Exhibit 4D, but the Architect and CM/GC are allowed to bill separately under Article 9.

(c) Develop a complete set of coordinated Construction Documents using Building Information Modeling that meet or exceed the requirements of the Agreed Program incorporating the best design and construction solutions identified by the IPD Team by actively collaborating with the other IPD Team members throughout the design process. The Construction Documents will be amended into the Agreement as part of Exhibit 2B upon issuance of the building permit.

(d) Engage in "pull-based" planning for design production utilizing Lean Project Delivery methods to avoid advancing aspects of the design beyond what is called for in the work plan or identified as workable backlog. Progression of design from stage to stage is dependent upon conformance with the goals set forth in the Agreed Program and Core Group review and approval.

(e) Provide all applicable performance specifications and design criteria for design-build Work.

(f) Manage and timely coordinate all design submissions, questions, and responses to all applicable Governmental Authorities and reviewing and permitting agencies that have jurisdiction over the Project.

(g) Sign and affix its professional seal on all Construction Documents prepared by Architect and arrange for its consultants to do the same for their respective design documents, to the extent required by the Governmental Authorities.

(h) Review and approve all Submittals in accordance with Section 5.5 of the General Conditions (Exhibit 2D) prepared by CM/GC and its subcontractors and tier-subcontractors for general conformance with the Project's design requirements.

(i) Coordinate and interface with Governmental Authorities throughout the Project as required.

(j) In addition to the above, the Architect will make timely payments to its consultants and perform all other Architect obligations.

3.3 CM/GC. The CM/GC will timely perform all Construction Work (except for those services provided through Separate Contractors) in accordance with the Contract Documents and performance requirements set forth in Section 2.3. The CM/GC is responsible for the means and methods for all Construction Work and for supervising, directing, managing, coordinating, and timely performing its portion of the Work in a manner that meets or exceeds the requirements of the Contract Documents. CM/GC will comply with the standard of care for a licensed contractor set forth in Section 2.5.

3.3.1 Authority of CM/GC's Representatives. The CM/GC has assigned a primary and alternative representative to serve on the Core Group per Section 4.1 and SET per Section 4.3. The CM/GC's representatives for the Core Group and SET are identified in the Project Roster [Tab 1, Project Manual] and are authorized to make decisions on behalf of the CM/GC.

3.3.2 CM/GC's Subcontractors. The CM/GC will retain the necessary subcontractors to perform those portions of the Work that CM/GC is not self-performing but that are required under the Contract Documents per Article 5. The CM/GC's subcontractors will be identified on the Project Roster [Tab 1, Project Manual]. The CM/GC is responsible for managing its subcontractors and suppliers, and for coordinating their portions of the Work with the work or services performed by other IPD Team members.

3.3.3 Duties and Obligations. The CM/GC will perform all of its obligations under the Contract Documents including, but not limited to, the following services:

(a) Prepare a Resource Loaded Work Plan as part of the EMP Breakdown identifying CM/GC's staff members, and allocating portions of its Agreed Billable Rates based on each staff member. The RLWP should be broken down by Project Stage. The RLWP will be amended into the Agreement as Exhibit 3B and will be used as a management tool to track variations in Chargeable Costs related to labor expenses for Construction Work performed by CM/GC during the Design Stage and the Construction Stage.

(b) Prepare a Schedule of Values as part of the EMP. As part of the EMP, the CM/GC will submit a Schedule of Values allocating the Chargeable Costs for preconstruction and construction services amongst the various line items included in the EMP Breakdown (Exhibit 4B). The Schedule of Values will be incorporated into this Agreement by Amendment as Exhibit 4D and will be submitted with each application for payment reflecting the Chargeable Costs for Construction Work performed based on the percentage of completion. The CM/GC's Schedule of Values and the Architect's Schedule of Values required under Section 3.2.3(b) will be combined in Exhibit 4D, but the Architect and CM/GC are allowed to bill separately under Article 9.

(c) Actively collaborate with the Architect and other IPD Team members throughout the design process, using BIM, to assist the Architect in developing a complete set of coordinated Construction Documents that meet or exceed the requirements of the Agreed Program, incorporating the best design and construction solutions identified by the IPD Team, and to avoid conflicts in the field during construction.

(d) Provide all required Project administration per Article 5 of the General Conditions (Exhibit 2D).

(e) Perform all Construction Work in accordance with the construction operations requirements and quality of Construction Work requirements set forth in Articles 6 and 7 of the General Conditions (Exhibit 2D).

(f) Comply with all safety, infection control, and hazardous materials procedures set forth in Articles 8 and 12 of the General Conditions (Exhibit 2D).

(g) Provide all protection, temporary facilities and clean-up as required under Articles 9, 10 and 13 of the General Conditions (Exhibit 2D).

(h) Deliver all required Project close-out documentation per Section 6.4.

(i) Coordinate and interface with Governmental Authorities throughout the Project as required.

(j) Under direction of the Core Group, the CM/GC will schedule and coordinate with the necessary inspectors and IPD Team members, and oversee the final testing and start-up of utilities, operational systems and equipment, and assist the Owner and FPS with the building commissioning and close-out per Section 6.3 and 6.4.

(k) In addition to the above, the CM/GC will make timely payments to its subcontractors and suppliers and perform all other CM/GC obligations.

4. PROJECT MANAGEMENT

4.1 Core Group. The Core Group is responsible for the overall management of the Project consistent with the Contract Documents using Lean Project Delivery methods, collaborative planning, Target Value Design, and design and construction management. The

Core Group includes representatives from each of the Parties and FPS. In addition, each Party and FPS will identify an alternate representative in the Project Roster [Tab 1, Project Manual] who is capable of serving in the absence of the designated Core Group member.

4.1.1 Authority. Each Core Group member (and alternate member) must have the authority to act on behalf of its entity, and fulfill his or her responsibilities as a Core Group member. Members of the Core Group may be changed from time to time during the Project upon approval of the Parties and FPS. A Core Group member may also be removed from the Core Group and replaced with another representative upon request by a Core Group member and approval by the SET per Section 15.6. The Project Roster will be updated as necessary to reflect the current Core Group members and the alternate members.

4.1.2 Decision Making. The Core Group will develop benchmarks, and metrics or standards for progress evaluation and for making decisions with respect to cost and schedule. All Core Group decisions must be in the best interests of the Project and, unless otherwise provided in this Agreement, must be by unanimous agreement among the Core Group members. All decisions that would revise the Agreed Program, Construction Documents, EMP, ART, Incentive Threshold or Contract Time or modify the terms and conditions of the Agreement must be documented as a part of a Change Order as set forth in Article 11 or through Amendment, and are subject to the Signatories' approval. If the Core Group reaches an impasse, the matter will be referred to the SET under Section 15.6.

4.1.3 Facilitation and Management. The Core Group is responsible for ensuring that the Project meets the requirements set forth in the Contract Documents. To that end, the Core Group is responsible for confirming that the IPD Team has mechanisms in place to monitor the IPD Team's performance against the requirements in the Contract Documents per Section 2.3, and to make sure that the IPD Teams' behaviors and processes are aligned with achieving the Agreed Program. The Core Group is not responsible for supervising or controlling any person either directly or indirectly employed by any of the Parties in connection with this Project as such responsibility remains solely with the entity where the person is employed.

4.2 Meetings

4.2.1 Regular Meetings. The Core Group will establish a schedule for its regular meetings, which will be no less frequently than monthly. Core Group meetings will be held to review, discuss, and evaluate the current status of the Project with respect to design issues, cost, and schedule, maintain the Project Manual, determine if any Interim R/R Distributions should be made, and implement programs to improve overall Project performance. Core Group meetings may be held separately from other meetings to assure proper management of the Project and encourage candor among the Core Group members. An FPS Representative will facilitate and manage the meetings. Unless otherwise directed by the FPS Representative, the Architect will record the meeting minutes during the Planning Stage and Design Stage, and the CM/GC will record the meeting minutes during the Construction Stage. The Core Group may invite necessary SET or IPD Team members to attend certain Core Group meetings to discuss any design, coordination, cost or scheduling issues that require their input in order to make informed decisions in the best interest of the Project.

4.2.2 Special Meetings. In addition to the regularly scheduled meetings, a special meeting may be requested by any IPD Team member to assemble the Core Group to address Claims, disputes, or matters of urgency on the Project as described in Section 15.5.

4.3 Senior Executive Team ("SET"). The SET consists of one executive level officer from each of the Parties and FPS. The SET members are identified in the Project Roster [Tab 1, Project Manual].

4.3.1 Authority and Responsibility. The SET members will help resolve disputes in accordance with Section 15.6. Members of the SET may be changed from time to time during the Project upon approval of the Signatories and FPS. The Project Roster [Tab 1, Project Manual] will be updated as necessary to reflect the current membership of the SET.

4.3.2 Meetings. The SET members will attend regular and special Core Group meetings upon request of the Core Group for observations and advice. If the Core Group reaches an impasse, under Section 4.1.2, the Core Group will request a SET Meeting to render decisions per Section 15.6.

5. SUBCONTRACTS, CONSULTING AGREEMENTS, AND SEPARATE CONTRACTS

5.1 Written Agreements. The Work performed under this Agreement will be executed by various consultants, subcontractors, and suppliers. Consultants and subcontractors may be R/R Members or may be Standard Subcontractors or Standard Consultants. All subcontractors and consultants will be retained through written subcontracts to the CM/GC or consulting agreements to the Architect that bind the subcontractors and consultants to the CM/GC or Architect (as applicable) by the terms of the Contract Documents and preserve and protect the rights of the Owner under the Contract Documents so that subcontracting the Work does not prejudice the Owner's or Sutter Health's rights. R/R Members will be engaged through subcontracts or consulting agreements that incorporate the risk/reward and liability allocation provisions of this Agreement. All R/R Members retained by CM/GC or Architect will be engaged through subcontracts or consulting agreements agreed to by the Core Group, the terms of which may not be modified without the Core Group's written approval. No other subcontracts or consultant agreements (inclusive of all tiers) can be contracted on an uncapped, cost reimbursable basis without the express written approval of the Core Group. If any R/R Member violates this provision or any provision set forth in this Article 5, that R/R Member will be in Willful Default and subject to the Allowed Claims provision set forth in Section 12.2.

5.1.1 Selection. The Architect and CM/GC will provide the Core Group, in writing, with the names of consultants and subcontractors proposed to perform a portion of the Work. Prior to submission of the names, the proposing Party will evaluate the proposed firms' technical qualifications, experience, and financial resources; confirm that the proposed entity has a firm culture that is consistent with collaboration and utilizing integrated and Lean processes as further defined in the Project Charter (Exhibit 8D); and confirm that the proposed firm is capable of successfully completing the proposed scope of work or services in accordance with the performance requirements set forth in Section 2.3. The proposed firms may be reviewed by the Core Group prior to solicitation of proposals.

5.1.2 **Transparency in Negotiating and Bidding.** All subcontractors, suppliers, and consultants will be selected on an open bid or negotiated basis after review of their respective detailed breakdowns and proposals. The Core Group may, in its sole discretion, request review of certain key subcontractors', consultants' and suppliers' proposals.

5.1.3 **R/R Subcontractors and R/R Consultants.** Those subcontractors and consultants engaged as R/R Subcontractors and R/R Consultants will become R/R Members and are therefore subject to similar terms and conditions as the Architect and CM/GC with respect to compensation, benefits and risk allocation. R/R Members must provide detailed information regarding their respective estimated Chargeable Costs (including their direct salary expense and percentage for overhead), Risk/Reward Amounts, and percentage for profit on Change Orders. All consultants and subcontractors who are R/R Members will execute a risk/reward subcontract prepared by the CM/GC and risk/reward consultant agreement prepared by the Architect that, at a minimum, must include similar licensing requirements to those set forth in Section 5.5 of the Agreement, and incorporate the pass through provisions set forth in Section 5.6.1. The form of risk/reward subcontract and risk/reward consultant agreement is subject to FPS review.

5.1.4 **Standard Subcontractors and Consultants.** The remainder of the subcontractors and consultants will submit detailed cost proposals based on their portions of the Work, including total costs and mark-ups for Change Orders. Those subcontractors and consultants will be retained, as applicable, through standard subcontracts with the CM/GC or standard consulting agreements with the Architect. Standard forms of agreements may be subject to Core Group review prior to execution and must include the provisions set forth in Section 5.6.2.

5.2 Timing. Key subcontractors, consultants and suppliers will either be procured during the Planning Stage or early in the Design Stage as directed by the Core Group to allow greater Project integration.

5.3 Award. Upon completion of the selection process for R/R Subcontractors, R/R Consultants, and other key subcontractors and consultants, the CM/GC or Architect will make a written recommendation to the Core Group for contract award. If the Core Group reasonably objects to a person or entity proposed by the Architect or CM/GC, the proposing Party will propose another person or entity to which the Core Group has no reasonable objection. The CM/GC or Architect will not be required to contract with an entity to which it reasonably objects.

5.4 Replacement. At any time, any R/R Member may request replacement of a subcontractor or consultant whose continued participation is not in the best interest of the Project. All replacements must be approved by the Core Group and must be in the best interest of the overall Project. Disputes regarding this issue are subject to SET review per Section 15.6.

5.5 Licensing Requirements.

5.5.1 **General.** All subcontractors and consultants will be properly licensed as required by the State of California for their respective portions of the Work.

5.5.2 Design-Build. To the extent CM/GC is providing design-build services as part of its portion of the Work, the design-build services will be provided by appropriately licensed subcontractors and design professionals and all design-build documents will be stamped and signed by either a registered professional engineer or architect licensed in accordance with the legal requirements of the State of California. Design-build subcontractors will furnish all reports, affidavits, certificates, and other documents required by Governmental Authorities and will comply with the applicable building codes, laws, and regulations governing those portions of the Work. All Work performed by design-build subcontractors must meet the standard of care for a design professional and a licensed contractor under Section 2.5. Owner and Sutter Health must be named third party beneficiaries of all design-build subcontracts and therefore entitled to enforce all obligations and obtain all benefits under the subcontract, including any ownership rights as described in Article 14.

5.6 Required Pass Through Provisions. The Architect and CM/GC must pass the following provisions through to their respective consultants, subcontractors and any major suppliers through their respective agreements.

5.6.1 R/R Members. At a minimum, the R/R Member subcontracts and consulting agreements will incorporate the requirements set forth in Article 5, as well as the following:

(a) Waiver of Liability and Claims. Clauses substantially similar to Sections 12.1 and 12.2 regarding waiver of liability and Claims against the Parties and other R/R Members.

(b) Compensation. The same Chargeable Costs under Article 7 and substantially similar compensation and payment terms as set forth in Articles 8 and 9, and Exhibit 3A(R/R Consultants), Exhibit 3B (R/R Subcontractors), Exhibit 3C, Exhibit 3D(R/R Subcontractors), Exhibit 3E, Exhibit 3F, and Exhibit 4A.

(c) Change Orders and Delays. Provisions substantially similar to Articles 10 and 11.

(d) Termination and Suspension. Clauses substantially similar to Article 16 regarding termination and suspension of the Work.

(e) Project Staff and Key Personnel. Provisions substantially similar to Section 2.7.

(f) Those provisions required by Section 5.6.2.

5.6.2 All consulting agreements, subcontracts, and certain purchase orders.

(a) Contract Flow-Through. The Architect and CM/GC will require each of their respective subcontractors and consultants, to the extent of their respective work or services, to be bound by the terms of the Contract Documents, and to assume toward the CM/GC or Architect all the obligations and responsibilities that the CM/GC or Architect assumes toward the Owner or each other through the Contract Documents. Each subcontract and

consulting agreement will preserve and protect the rights of the Parties under this Agreement with respect to the work or services to be performed so that subcontracting work or services will not prejudice the Parties' rights. Unless otherwise approved by the Core Group, the Parties will require each subcontractor and consultant to enter into similar agreements with lower-tier subcontractors and lower-tier consultants.

(b) **Assignment.** All subcontracts and consulting agreements will include assignment of such agreements by Architect or CM/GC (as applicable) to the Owner provided that the assignment is effective after termination of this Agreement by the Owner pursuant to Article 16 and only for those subcontracts and consulting agreements that the Owner accepts in writing. If the subcontract or consulting agreement is assigned to Owner as a result of a termination, and the Work has been suspended for more than 30 calendar days, the subcontractor's or consultant's compensation will be adjusted for actual increases in cost resulting from the suspension. If required by Owner's lender, CM/GC and Architect will provide for assignment of all subcontracts and consulting agreements to lender and subordination of any lien rights upon lender's demand.

(c) **Insurance.** The applicable insurance requirements set forth in Section 12.3 and Exhibit 6 will be included in all subcontracts and consulting agreements and the CM/GC and Architect (as applicable) must be named additional insured in addition to those set forth in Exhibit 8E. The Parties will be additionally insured parties under all subcontractors' and consultants' commercial general liability policies and auto insurance policies.

(d) **Standard of Care.** The subcontracts and consulting agreements will include a standard of care for subcontractors and consultants that are substantially similar to Section 2.5 based on the nature of the services and work being provided.

(e) **Performance Requirements.** The subcontracts and consulting agreements will include the performance requirements set forth in Section 2.3 and include Exhibit 2D.

(f) **Indemnification.** Indemnification provisions for subcontractors and consultants who are also R/R Members will be substantially similar to, and governed by, Section 12.4. Sutter Health, the Owner and other R/R Members will be indemnified parties under all such provisions. All other subcontracts and consulting agreements will require that the Standard Subcontractor or Standard Consultant defend, indemnify, and hold harmless the Owner, Sutter Health, Architect, and CM/GC, and their respective officers, directors and employees from any and all claims, causes of action, damages, costs, expenses (including legal, expert witness, and consulting fees and costs), losses, or liabilities, in law or equity, alleged by any third parties (including employees) arising out of, or resulting from, their respective actual or alleged negligence, willful injury, willful misconduct, or breach of contract, including but not limited to liability for personal injury (including sickness, disease, and death) and/or property damage (other than the Construction Work itself and including loss of use), but not including the active negligence or willful misconduct of the person or entity being indemnified. Standard Subcontractor and Standard Consultant agreements must also include indemnification provisions indemnifying Owner, Sutter Health, Architect, and CM/GC to the fullest extent permitted by law for failure to comply with their respective insurance requirements; penalties, fees and costs imposed on account of violations of the law; mechanics liens or stop payment

notice claims for work or services performed on the Project; infringement of intellectual property rights; and claims or liability arising out of, or resulting from, subcontractors' or consultants' (inclusive of tiers) negligent acts or omissions that cause or permit any Hazardous Materials to be specified, generated, released, disposed, discharged, brought onto, or stored at the Project site, or used in the Construction Work.

(g) **Dispute Resolution Proceedings.** The subcontracts and consulting agreements will require subcontractors and consultants to be bound to the dispute resolution proceedings set forth in Article 15 and to joint defense provisions set forth in Section 12.9.

(h) **Audit.** The subcontracts and consulting agreements will require all subcontractors and consultants to be bound to the audit provisions set forth in Section 9.12.

(i) **Lean Project Delivery.** The subcontracts and consulting agreements will require all subcontractors and consultants to follow the Lean Project Delivery principles set forth in the Project Charter (Exhibit 2D).

(j) **Ownership of Documents.** The subcontracts and consulting agreements will require all subcontractors and consultants to be bound to the ownership of documents provisions set forth in Article 14.

(k) **Warranty.** All subcontracts must include warranty and correction provisions that align with the CM/GC's obligations and requirements set forth in Article 13.

(l) **Miscellaneous Provisions.** The subcontracts and consulting agreements will require all consultants, subcontractors and suppliers to be bound by the miscellaneous provisions set forth in Sections 17.1, 17.3, 17.4, 17.6, 17.8, 17.9, 17.10, and 17.14.

(m) **Exhibits.** All subcontracts and consulting agreements will include or incorporate the following Exhibits of this Agreement: (i) Definitions, to the extent applicable (Exhibit 1); (ii) Design Documents (Exhibit 2B) (if engaged before Construction Documents), Applicable Building Codes and Regulations (Exhibit 2C), and General Conditions to this Agreement (Exhibit 2D); (iii) Master Schedule (Exhibit 5D) and Logistics Plan (Exhibit 5E); (iv) Business Ethics Policy (Exhibit 7); (v) Project Charter (Exhibit 8D), and (vi) Additional Insureds (Exhibit 8E).

5.7 Separate Contractors and Separate Consultants. The Owner may retain Separate Contractors and Separate Consultants through written agreement to perform work or services related to the Work under this Agreement. The Separate Contractors and Separate Consultants will be retained as independent contractors and will not have the authority to act on behalf of the Owner or Sutter Health. Owner's Separate Contractors and Separate Consultants will carry appropriate insurance for their respective work and services per Exhibit 6 and will be required to comply with the indemnification provisions set forth in Section 12.4.3 of the Agreement and the applicable provisions of the General Conditions (Exhibit 2D).

6. DELIVERABLES

6.1 Planning Stage. The following will be completed upon completion of the Planning Stage.

6.1.1 Joint Site Investigation. The Owner and R/R Members will conduct a Joint Site Investigation to review all existing site information; perform certain investigations and surveys; document all site-related information needed to develop the Construction Documents; verify existing conditions within the Project site and the accuracy of existing as-built documents provided by the Owner; and gain information necessary for proper development of the design and construction of the Project.

6.1.2 Agreed Program. The Agreed Program will be jointly developed by FPS and the Parties establishing the Project requirements and standards for measuring the overall success of the Project.

6.1.3 Estimated Maximum Price ("EMP"). Before completion of the Planning Stage, and as part of the Agreed Program, the Architect and CM/GC will develop the EMP, which upon review and approval by the Core Group will be incorporated into the Agreement as Exhibit 4B. All unit pricing or alternate prices will be included in Exhibit 4C. The EMP will include a breakdown of the Chargeable Costs as defined in Article 7 plus an IFOA Contingency, Allowance items (if any), and the Risk/Reward Amount. The Risk/Reward Amount is the cumulative sum of 100% of the R/R Members' fixed profit. All direct labor expenses for Architect and CM/GC staff will be based on the Agreed Billing Rates set forth in Exhibit 3C, and pricing for equipment will be based on the agreed Equipment Rates set forth in Exhibit 3D. The total EMP is set forth in Exhibit 4A and the Risk/Reward Amount and Risk/Reward Shares are set forth in Exhibit 3E. Throughout the Design Stage and the Construction Stage, the EMP will be updated through the Projected Cost Model [Tab 2, Project Manual].

(a) At-Risk Threshold. The At-Risk Threshold ("ART") is the maximum Project cost acceptable to the Owner before the Risk/Reward Amounts will be applied to cover IFOA Team cost overruns. The ART includes Chargeable Costs and the IFOA Contingency. The ART does not include the Risk/Reward Amounts. The ART is set forth in Exhibit 4A.

(b) Incentive Threshold. The Incentive Threshold also includes Chargeable Costs and the IFOA Contingency but will be set at or below the ART and will be used to determine whether Incentive Amounts are earned at Final Completion.

(c) IFOA Contingency. The ART includes an IFOA Contingency that may be used to fund direct Chargeable Costs set forth in Sections 7.1 through 7.4, without mark up for overhead per Section 7.5 or profit, as determined by the Core Group to fund minor revisions to due to design errors or omissions, coverage for CM/GC's scope gaps during procurement of subcontractors, unanticipated field conditions that do not constitute an Unforeseen and Differing Site Condition, or re-sequencing of the Work and/or acceleration of the Project schedule for improvement in the Project outcome. The IFOA Contingency will be set forth as a separate line item in the EMP Breakdown and tracked in the Schedule of Values. The Core Group will determine when and how the IFOA Contingency will be used. IFOA

Contingency may not be used for Change Order conditions set forth in Article 11 of the Agreement.

(d) Labor and Material Escalation. Labor and material escalation is to be included in the CM/GC's Chargeable Costs but not as an Allowance.

(e) Allowances. The ART may also include appropriate Allowances for undefined, but anticipated Chargeable Costs that the Core Group deems necessary to carry as an Allowance item when establishing the EMP, ART, and Incentive Threshold. Allowances included in the EMP will be listed separately in Exhibit 4B. The Allowance items will be reconciled through Change Order upon completion of each Allowance item and prior to calculating any Interim R/R Distributions (if applicable under Exhibit 3F). Allowances are profit neutral so the EMP, ART and Incentive Threshold will be adjusted based on the Chargeable Costs, but there will not be a Risk/Reward Adjustment. All unspent Allowance money accrues 100% to the Owner through Change Order upon reconciliation.

6.1.4 Key Business Terms Matrix. The R/R Members will finalize all key business terms and complete the Key Business Terms Matrix (Exhibit 4A).

6.1.5 R/R Subcontractors and R/R Consultants. Procure R/R Subcontractors and R/R Consultants and determine the Risk/Reward Amount and Risk/Reward Share (Exhibit 3E).

6.1.6 Projected Cost Model. The Core Group will develop the Projected Cost Model based on the line items of the EMP Breakdown. The Projected Cost Model will be maintained in Tab 2 of the Project Manual and updated monthly as part of the payment application process.

6.1.7 RLWP. The Architect and CM/GC will develop their respective RLWPs per Sections 3.2.3(a) and 3.3.3(a), respectively, for review and approval by the Core Group and incorporation into the Agreement by Amendment as Exhibit 3A and Exhibit 3B, respectively.

6.1.8 Logistics Plan. The CM/GC will prepare a Logistics Plan for Core Group approval per Section 6.4 of the General Conditions (Exhibit 2D), and incorporation into the Agreement by Amendment as Exhibit 5E.

6.1.9 Building Information Modeling. The Core Group will determine the level and extent to which a BIM will be developed and used throughout the Design Stage.

6.2 Design Stage. The following will be completed during the Design Stage.

6.2.1 Target Value Design Process. Throughout the Project, the Core Group and other IPD Team members will actively engage in the Target Value Design process to meet or exceed the Agreed Program.

6.2.2 Building Information Modeling. The IPD Team will develop and complete the BIM to the level and extent determined by the Core Group under Section 6.1.9.

6.2.3 Interim R/R Distribution Plan. If applicable, the Core Group will develop and agree to the Interim R/R Distribution Plan, which will be incorporated into this Agreement through Amendment as Exhibit 3F.

6.2.4 Government Regulations. The IPD Team will identify and determine the meaning and effect of applicable building code provisions (Exhibit 2C), as well as other building restrictions and requirements of Governmental Authorities, including OSHPD requirements. The Architect, in conjunction with any necessary IPD Team members, will assist the Owner with filing all required applications, drawings, specifications, calculations or other documents required for permits.

6.2.5 Engagement of IPD Team Members. The remaining key subcontractors, consultants, and Separate Contractors and Separate Consultants will be contracted by the Parties pursuant to Article 5 above. The Project Roster will be updated to include all members of the IPD Team.

6.2.6 Early Release and Prefabrication. The Core Group may authorize early release of certain systems, phases, or prefabrication of materials or equipment.

6.3 Construction Stage. The following will be completed during the Construction Stage.

6.3.1 Commencement of the Construction Work. Upon receipt of all entitlements, approval of the Construction Documents by all Governmental Authorities, and provided that Construction Work is ready to commence in the field, the FPS Representative will issue a Project Authorization authorizing the Construction Work to proceed. The Project Authorization will be executed by the Parties and must set forth the date of commencement of the Construction Work. The applicable IPD Team members will perform all work or services necessary to meet or exceed the Contract Documents and will construct and administer the Project in accordance with the approved and fully permitted Construction Documents.

6.3.2 Contract Administration. The Project will be administered by the Core Group in accordance with the terms and conditions set forth in the General Conditions (Exhibit 2D) and the Project Manual.

6.3.3 Building Information Model. A Record Model will be created based on the approved Construction Documents. The Model will be updated throughout the Construction Stage and the As-Built Model will reflect the as-built conditions of the Project at Final Completion.

6.3.4 2-D Records. The CM/GC will create a record set of the 2-D Construction Documents and redline the 2-D Construction Documents, for those elements that were not modeled, throughout the Construction Stage to record the as-built conditions.

6.3.5 Commissioning. The CM/GC, in conjunction with any IOR and other necessary IPD Team members and Owner's maintenance personnel, will schedule and oversee the final testing and start-up of utilities, operational systems and equipment, and will assist the Owner with the building commissioning. All inspections and testing will be conducted by the

Owner, any commissioning authority, the IOR, or by other Governmental Authorities. During commissioning and before Final Completion, the CM/GC and other necessary participants will oversee the subcontractor operation, adjustment and balancing of all equipment, and training of Owner's employees in the correct operation and maintenance of equipment per the Contract Documents and in accordance with the Owner's Conditions of Satisfaction included in the Project Charter (Exhibit 8D).

6.4 Close-Out. Before Final Completion of the Project, the CM/GC will transmit to the Architect and FPS Representative, for review and transmission to Owner, the As-Built Model together with 2-D as-built documents, operation and maintenance manuals, warranties, and other Project close-out documentation required by the Contract Documents and in accordance with the Owner's Conditions of Satisfaction (Exhibit 8D).

7. CHARGEABLE COSTS

7.1 General. Chargeable Costs for R/R Members include only those reimbursable items set forth in this Article 7 without profit mark-up or any duplicative charge for items that fit into more than one category. Direct Chargeable Costs include those items set forth in Sections 7.1 through 7.4. Overhead and burden are described in Section 7.5. Chargeable Costs are subject to the compensation provisions set forth in Article 8. All other costs are either included in the Risk/Reward Amount under Section 8.1.2 or excluded unless agreed to in advance by the Core Group.

7.2 Labor and Services.

7.2.1 Architect and R/R Consultants. Chargeable Costs for Architect's employees and R/R Consultants performing Services will be based on the Agreed Billable Rates maintained in the Project Manual [Tab 3] and in accordance with the terms and conditions in Exhibit 3C, plus the home office overhead allocable to this Project per the Key Business Terms Matrix (Exhibit 4A). The Architect and R/R Consultants overhead calculation is subject to the terms and conditions of Section 7.5.

7.2.2 CM/GC's and R/R Subcontractors. Chargeable Costs for CM/GC's employees and R/R Subcontractors will be charged per the Agreed Billable Rates maintained in the Project Manual [Tab 3] and in accordance with the terms and conditions in Exhibit 3C, plus the home office overhead allocable to this Project per the Key Business Terms Matrix (Exhibit 4A).

(a) **Field Labor Costs.** Field labor costs are limited to hours of labor performed by workers performing Construction Work on-site or at off-site locations. The labor rates must be inclusive of basic hourly wages, payroll taxes, and employer benefit payments for health and welfare, pensions, vacations/holidays, supplemental dues, and training, plus any other benefits or payments required by law or applicable collective bargaining agreements. The labor costs associated with foremen and lead-men are included in field labor and all self-performed Construction Work will be compensated as field labor.

(b) **General Conditions.** General conditions include employee costs for project management, superintending, engineering, accounting, planning and scheduling,

purchasing, estimating, and BIM modeler(s) who are specifically assigned to this Project and stationed on-site, but only for that portion of employee time required for the Project.

7.2.3 Consultant and Subcontractor Costs. Payments made by Architect to its consultants or CM/GC to its subcontractors per their written agreements.

7.3 Cost of Materials and Equipment Incorporated Into the Project. CM/GC's actual costs for materials and equipment, including transportation and storage of materials and equipment incorporated or to be incorporated into the Project, and including costs of materials in excess of those actually installed to allow for reasonable waste and spoilage, and hand tools (not customarily owned by field labor) that are provided by the CM/GC at the site and fully consumed in the performance of the Construction Work. Unused excess materials, if any, will become the Owner's property at Substantial Completion or, at the Owner's option, will be sold by the CM/GC. Any amounts realized from the sales will be credited to the Owner through the payment application process.

7.3.1 Stored Materials and Equipment. Costs of materials and equipment suitably stored off-site.

7.3.2 Discounts, Rebates, and Refunds. CM/GC will notify other Core Group members of available discounts, rebates, and refunds. Cash discounts received, and any trade discounts, will accrue to the Project. Rebates, refunds, or amounts received from sales of surplus materials and equipment will be credited to the Owner through the payment application process.

7.4 Miscellaneous Costs.

7.4.1 Data Processing and Communications. Cost for copiers, postage, office supplies and equipment. Data processing costs are limited to the cost of computer hardware (including servers and printers) used in handling normal day-to-day Project administration, management and control of the Project, and internet access. Software license fees incurred specifically for the Project to the extent purchase is previously approved by the Owner or FPS Representative.

7.4.2 Costs for trailers or office space.

7.4.3 Costs for temporary facilities such as power, water, and sanitary.

7.4.4 Costs for security and fences.

7.4.5 Costs associated with the safety program directly related to the Project including temporary protection and barricades, signage, and traffic control.

7.4.6 Rental Charges. All rental charges for temporary facilities that are provided by CM/GC at the site, whether rented from the CM/GC or others, including costs for transportation, installation, minor repairs and replacements, dismantling, and removal. Rates for equipment either owned by the CM/GC or an affiliate or rented will be subject to the terms and conditions in Exhibit 3D.

7.4.7 Waste Removal. Costs of removal and disposal of debris from the site and recycle costs not offset by recycle fees or rebates.

7.4.8 Reproduction. Cost for reproducing or printing Project documents.

7.4.9 Models & Mock-Ups. Costs for physical models and mock-ups requested and approved by the Core Group.

7.4.10 Taxes. Sales, use, or similar taxes imposed by a Governmental Authority that are related to the Construction Work.

7.4.11 Project Insurance. Costs for insurance coverage required under Exhibit 6 and deductibles directly attributable to the Project provided that the Party whose insurance is triggered satisfies the requirements in Sections 3.9 of Exhibit 6A and Exhibit 6B (as applicable), and only to the extent that the EMP has not been exceeded at the time of occurrence or at Final Completion. Costs for self-insurance will be reimbursable only if the arrangements for self-insurance are first disclosed in writing to the Core Group and an agreed methodology for allocating a fair and equitable portion of the actual cost of the self-insurance out-of-pocket costs incurred to settle Claims related to the Work performed is reached.

7.4.12 Payment and Performance Bonds. To the extent required in writing by Owner or the Core Group, cost for CM/GC's or its subcontractors' payment and performance bonds.

7.4.13 Fees. Fees and assessments for plan check, permits, licenses and inspections, and laboratory tests required by the Contract Documents and that are not paid directly by Owner.

7.4.14 Travel. Mileage, if beyond a 100 mile radius of the Project site, as well as any motor vehicle expenses, and per diem for CM/GC's and Architect's personnel incurred while traveling related to the Project including reasonable hotel expenses, economy class airfare, and other such costs will be reimbursable in accordance with the Sutter Reimbursable Expense Guidelines. FPS Representative prior approval is required for reimbursement for any travel expenses.

7.4.15 Royalties and Licenses. Royalties and license fees paid for the use of a particular process or product required by the Contract Documents and the cost of defending any suits or Claims for infringement of patent rights arising from specific requirements of the Contract Documents where the CM/GC did not know that the use of the particular design, process, or product was an infringement, provided that those portions of the Work were not performed on a design-build basis.

7.4.16 Emergencies. Costs incurred in taking action to prevent threatened damage, injury, or loss in case of an emergency that threatens the safety of persons or property as directed by FPS Representative.

7.4.17 Lost deposits and other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Core Group.

7.4.18 Costs incurred by CM/GC or Architect in pursuing recovery of any Risk/Reward Amount or other losses, expenses, or damages from any terminated subcontractor or consultant when the termination is approved in advance by the Core Group per Section 5.4.

7.5 Overhead. General home office overhead expenses are chargeable only at the percentages noted in the Key Business Terms Matrix Exhibit 4A based on the Chargeable Costs billed per Section 9.2 up to the not-to-exceed dollar amount in Exhibit 4A. The percentages in the Key Business Terms Matrix (Exhibit 4A) include full compensation for any home office personnel who are not directly assigned to this Project or included in the Agreed Billable Rates, as well as any other home office overhead expenses. FPS may audit overhead records, at their sole discretion. Overhead items that are specifically included in the labor rates set forth in Section 7.2 cannot be separately chargeable for overhead under this Section 7.5. All R/R Consultants and R/R Subcontractors are subject to the same limitation of home office overhead at the rates noted in Exhibit 4A. The following expenses may be included in the calculation of overhead (items listed in Section 8.1.2 may not be included in overhead):

7.5.1 Any home office salaries inclusive of vacation pay without any mark-up for annual bonuses or non-customary benefits.

7.5.2 Administrative expenses for home office including IT.

7.5.3 Reasonable recruiting, marketing, and advertising expenses.

7.5.4 Home office equipment repair and maintenance.

7.5.5 Home office rent and utilities.

7.5.6 Home office property taxes and insurance.

7.5.7 Owned and operated vehicle expenses.

7.5.8 Ownership and operation of shops.

7.5.9 Reasonable one time expenses related to business operations provided that such expenses are depreciated over the scheduled useful life.

7.6 Non-Reimbursable Expenses. All other costs not specifically included as a Chargeable Cost under Sections 7.1 through 7.5.

8. COMPENSATION

8.1 General. Architect and CM/GC will be compensated by Owner for all Chargeable Costs pursuant to the payment provisions set forth in Article 9, plus any Risk/Reward Share and any Incentive Amount earned subject to the claw-back provision set forth in Section 8.1.4.

8.1.1 Chargeable Costs. The Chargeable Costs are those reimbursable expenses defined in Article 7.

8.1.2 Risk/Reward Amount. The Risk/Reward Amount set forth in Exhibit 3E is only earned to the extent provided in Section 8.3. To the extent Interim R/R Distributions are allowed per Exhibit 3E, a portion of Risk/Reward Amount may be paid through an Interim R/R Distribution based on the Risk/Reward Share if the conditions in Section 8.4 are met. The Risk/Reward Amount earned is subject to the claw-back provision set forth in Section 8.1.4. The following costs are in the R/R Members' profit included in the Risk/Reward Amount.

- (a) Any benefits and burdens not expressly included in the Agreed Billable Rates.
- (b) Annual bonuses and non-customary benefits on salaried employees.
- (c) Repair for warranty work after Final Completion per Section 13.1.
- (d) Any home office salaries for the CM/GC or its R/R Subcontractors above 75% of Construction Employers Association Annual Compensation Survey Report based on the area and size of the firm.
- (e) Home office costs that are not included as overhead per Section 7.5 and that are unrelated to performance of the Work.
- (f) Charitable contributions or donations.
- (g) Bank penalty fees and charges.
- (h) One time occurrence for legal fees, settlements, and/or judgments.
- (i) Meals and entertainment expenses.
- (j) Property damages other than to the Project.
- (k) Traffic and parking citations.
- (l) Bad debts.

8.1.3 Incentive Amount. If, upon Final Completion, the Final Actual Cost is less than the Incentive Threshold, the R/R Members will earn an Incentive Amount based on the applicable Incentive Percentage (See Exhibit 4A for Incentive Threshold and Incentive Percentage). The Incentive Amount is calculated by subtracting the Final Actual Cost from the adjusted Incentive Threshold and then multiplying the resulting savings by the applicable Incentive Percentage noted in the Business Terms Exhibit 4A. The Incentive Amounts will be distributed to the R/R Members in the same proportions as the Risk/Reward Share (Exhibit 3E) with the remaining portion of the savings accruing to the Owner. The Architect and CM/GC will each be responsible for paying their respective portions of the Incentive Amount to their respective R/R Subcontractors and R/R Consultants within 10 business days' receipt of payment from Owner.

8.1.4 Claw-Back. The claw-back provisions set forth in subsection 8.1.4 (a) are applicable if distribution of the Risk/Reward Amount is deferred until Final Completion. If Interim R/R Distributions are allowed per Exhibit 3E, then the claw-back provisions set forth in subsection 8.1.4 (b) are applicable.

(a) If at any time during the Project, the Projected Actual Cost exceeds the ART, then the Risk/Reward Amount will be reduced dollar for dollar to cover the amount of the overrun until the Risk/Reward Amount is exhausted. The Owner will only continue to pay Chargeable Costs through Final Completion, subject to the not-to-exceed amounts set forth in Exhibit 4A for overhead expenses described in Section 7.5. If the Risk/Reward Amount is not exhausted, then the Owner will pay the R/R Members in accordance with the final Risk/Reward Adjustment provisions set forth in Section 8.3. Payments will be made to the CM/GC and Architect for distribution to their respective R/R Subcontractors and R/R Consultants.

(b) If at any time during the Project, the Projected Actual Cost exceeds the ART, then the previously disbursed Risk/Reward Amount will be deducted from the current Chargeable Costs due and owing to the R/R Members until the Owner has been reimbursed for all Risk/Reward Amounts previously disbursed through Interim R/R Distributions up to the amount of the overrun. To the extent that the previously disbursed Risk/Reward Amount does not cover the cost overrun, the Owner will only continue to pay Chargeable Costs (subject to the not-to-exceed amounts set forth in Exhibit 4A for overhead expenses described in Section 7.5), and the Risk/Reward Amount will be reduced dollar for dollar to cover the amount of the overrun. If the Final Actual Cost exceeds the ART, the R/R Members will upon 30 calendar days' written notice reimburse the Owner dollar for dollar for all previously disbursed Risk/Reward Amount up to the amount of the overrun until the Risk/Reward Amount is exhausted. If a Party or other R/R Member is terminated for cause per Section 16.3, the terminated R/R Member will return its Risk/Reward Share of the previously disbursed Risk/Reward Amount. All payments and reimbursements will flow through the CM/GC and Architect who will be responsible for distribution to, or collection from, their respective R/R Subcontractors and R/R Consultants.

8.2 Determination of Final Actual Cost. After Owner's receipt of Architect's and CM/GC's affidavit stating the total Chargeable Costs incurred for the Project upon Final Completion, the Core Group will meet to determine the Final Actual Cost.

8.2.1 Allowances. Before determining the Final Actual Cost, all unused Allowance funds will be deducted from the ART and Incentive Threshold through Change Order. The actual Chargeable Costs for Allowance items that exceed the applicable Allowance amount, to the extent not already addressed by Change Order, will adjust the ART and Incentive Threshold upward by the incremental overage through Change Order.

8.2.2 IFOA Contingency. When determining the Final Actual Cost, any unused IFOA Contingency funds will remain in the ART and will be distributed through the Incentive Amount per Section 8.1.3, subject to the conditions set forth in Section 8.3.

8.3 Final Risk/Reward Adjustment. The final Risk/Reward Adjustment is based on a comparison of the Final Actual Cost to the final ART and Incentive Threshold as follows.

8.3.1 At-Risk Threshold.

(a) If the Final Actual Cost is at or above the Incentive Threshold but at or below the ART, the R/R Members will share in the Risk/Reward Amount based on their Risk/Reward Share (Exhibit 3E), but will not earn any Incentive Amount under Section 8.3.2. To the extent Interim R/R Distributions are made per Exhibit 3F, payment will be made based on the balance of the Risk/Reward Amount.

(b) If the Final Actual Cost exceeds the ART, the Risk/Reward Amount will be reduced pursuant to the applicable claw-back provision in Section 8.1.4. If the Risk/Reward Amount is not exhausted, each R/R Member will receive its respective portion of the remaining Risk/Reward Amount based upon its Risk/Reward Share (Exhibit 3E). If the Risk/Reward Amount is exhausted, the R/R Members will be paid for all Chargeable Costs incurred through Final Completion, subject to the not-to-exceed amounts set forth in Exhibit 4A for overhead expenses described in Section 7.5.

8.3.2 Incentive Threshold.

(a) If the Final Actual Cost is less than Incentive Threshold, the R/R Members will share in the Risk/Reward Amount based on the applicable Incentive Percentage set forth in Exhibit 4A and their respective portion of the Incentive Amount calculated in accordance with their Risk/Reward Share (Exhibit 3E).

8.4 Interim R/R Distributions. To the extent Interim R/R Distributions are allowed under Exhibit 3E, a portion of Risk/Reward Amount may be distributed at certain milestones if the conditions of this Section are met. If applicable, the schedule and potential amounts of Interim R/R Distributions will be included in the Interim R/R Distribution Plan (Exhibit 3F). If distribution of the Risk/Reward Amount is deferred until Final Completion, this Section 8.4 and Exhibit 3F are inapplicable.

8.4.1 Milestone Projected Cost Model. When an Interim R/R Distribution milestone is achieved, the CM/GC will prepare a Milestone Projected Cost Model that is current as of the date of the milestone achievement. Within 10 business days of receipt of the Milestone Projected Cost Model, the Core Group will either approve it or FPS Representative may request verification from an independent cost consultant chosen by, and paid for by, the Owner. If FPS Representative requests verification, then the independent cost consultant will review the proposed Milestone Projected Cost Model and either accept it, accept it with modification, or reject it. If rejected, the independent cost consultant must provide a detailed estimate based on the same categories of item included in the Milestone Projected Cost Model. If the Core Group does not unanimously approve the Milestone Projected Cost Model and Owner does not elect verification from an independent cost consultant, or if the CM/GC and Architect both disagree with the independent cost consultant's opinion, then the matter may be pursued through the SET per Section 15.6.

8.4.2 Conditions. The Core Group will determine if the conditions for an Interim R/R Distribution at a milestone have been achieved based on the schedule of Interim R/R Distributions (Exhibit 3F). Interim R/R Distributions are only allowed if the Core Group determines per Section 8.4.1 that the Milestone Projected Cost Model indicates that the Chargeable Costs are less than or equal to the adjusted ART. Approved Interim R/R Distributions are made as part of a progress payment, and the Architect and CM/GC will each pay their respective R/R Consultants and R/R Subcontractors their Risk/Reward Share of any Interim R/R Distribution.

8.4.3 Skipped Distribution. If an Interim R/R Distribution is skipped because the Milestone Projected Cost Model exceeds the adjusted ART but a subsequent Milestone Projected Cost Model is less than the adjusted ART, then the subsequent Interim R/R Distribution will be paid together with any previously skipped and unpaid milestone payment(s).

8.4.4 Overpayment. All Interim R/R Distributions are subject to the claw-back provisions set forth in Section 8.1.4(b). Any offset under this Section will be reversed under Section 8.4.3 if the conditions of Section 8.4.2 are later satisfied.

8.5 Extra Owner Costs. If Owner incurs additional Project-related costs owed to Separate Contractors, Separate Consultants, Governmental Authorities, or other third parties because of an Allowed Claim under Section 12.2, the cost will appear as a reduction in the Schedule of Values line item for the responsible R/R Members' Chargeable Costs and withheld from payment. Owner will provide reasonable documentation substantiating the additional costs incurred.

9. PAYMENT

9.1 Payment Applications. Payment applications will be prepared by the Architect and CM/GC in the format agreed to by the Core Group. The period covered by each payment application will be one calendar month. The payment application will include a breakdown of the Chargeable Costs incurred by the Architect and CM/GC for that particular calendar month, plus any approved Change Orders, costs for stored materials and equipment, and Interim R/R Distributions (if applicable). Monthly payment applications will be submitted in accordance with Section 9.2.

9.2 Progress Payments. The Architect's and CM/GC's draft payment applications will be submitted by the 5th day of the subsequent month for review by the Core Group. The Core Group will resolve any disagreements regarding amounts shown before formal submission of the payment application. The Architect and CM/GC will submit their final progress payment applications no later than the 10th day of the subsequent month. Subject to Section 9.5, the Owner will make payment for all approved amounts within 5 business days of the submission of the finalized payment application.

9.2.1 Standard Subcontractor Retention. Unless otherwise determined by the Core Group, the Owner will retain 10% for all Construction Work performed by Standard Subcontractors and suppliers. Once the Standard Subcontractors' and suppliers' portion of the Construction Work is 50% complete, the amount of retention may be reduced to 5% upon Core Group approval provided that the Construction Work has been properly performed. Final

retention on Standard Subcontractors and suppliers may be released upon satisfactory completion of their respective portion of the Construction Work and approval by the Core Group.

9.2.2 **Schedule of Values.** The Schedule of Values amended into the Agreement as Exhibit 4D will be used as a basis for reviewing the Architect's and CM/GC's progress payments. Payments will be made based on actual Chargeable Costs incurred by the Architect and the CM/GC.

9.2.3 **Productivity Analysis.** Each R/R Member will submit a productivity analysis with each monthly application for payment in a format approved by the Core Group. The productivity analysis must include information that will allow the FPS Representative to determine the earned value based on Actual Cost incurred by R/R Members on each applicable line item and the actual Work completed rather than just a percentage of the total amount of the EMP. If the Actual Cost for any line item in the Schedule of Values exceeds the percentage of Work completed, the CM/GC and Architect, in collaboration with the applicable R/R Subcontractors and/or R/R Consultants, are required to provide a mitigation plan acceptable to the Core Group or, if a mitigation plan is not necessary, an explanation for the line item overrun that is acceptable to the Core Group.

9.2.4 **Materials and Equipment.** Progress payments may include payment for materials and equipment delivered and suitably stored on-site for subsequent incorporation into the Construction Work or, with FPS Representative's prior approval, suitably stored off-site. Any materials or equipment stored off-site will be insured or stored in a bonded warehouse and must be segregated and marked "Property of Sutter Health" and include the Project name and number. As a condition to payment for materials and equipment stored on or off the site, CM/GC must comply with procedures satisfactory to FPS Representative to establish Owner's title to stored materials and equipment, insure the materials and equipment against loss or damage, and otherwise protect Owner's interest. When those conditions are met, payment will include the costs of applicable insurance, storage, and transportation to the site. The risk of loss will remain on CM/GC for all materials and equipment stored off-site. CM/GC will not make advance payments to subcontractors or suppliers for stored materials or equipment without the FPS Representative's approval.

9.2.5 **Interim R/R Distributions.** To the extent that Interim R/R Distributions are allowed under Exhibit 3F, Interim R/R Distributions may be included as part of a progress payment, subject to the provisions in Section 8.4.

9.3 Final Payment. The Owner will make final payment to the Architect and CM/GC within 30 calendar days after Final Completion, receipt of an approved payment application for final payment, all close-out deliverables, and determination of the Final Actual Cost and final Risk/Reward Adjustment per Section 8.3. The Core Group must approve the payment application for final payment. Final payment does not waive Owner's right to later object to defective design, materials or workmanship; waive any warranty rights the Owner may have; or release any Party from its indemnification and defense obligations set forth in Section 12.4.

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

9.4.1 Sufficient documentation supporting the Chargeable Costs claimed in the payment application including the productivity analysis per Section 9.2.3, as well as other information reasonably required by FPS Representative.

9.4.2 Duly executed conditional waiver and release forms complying with California Civil Code section 8132 and 8136 as may be amended covering all Work performed during the billing period by the Architect, CM/GC, subcontractors, consultants, suppliers, or any other party entitled to record a mechanics lien or serve a stop payment notice. Unconditional waiver and release forms per Civil Code section 8134 covering Work performed during the prior billing period will be provided with submission of subsequent progress payment applications.

9.4.3 Certification from the Architect and CM/GC attesting to the accuracy of the application for payment and that all consultants, subcontractors, and suppliers have been paid to date or will be paid with the proceeds received from Owner for Work covered under the payment application and that they have no knowledge or any stop payment notices or mechanics liens related to the portions of the Work performed by others. To the extent any stop payment notices are served or mechanics liens are recorded, the appropriate Party will bond or otherwise discharge or expunge the lien or stop payment notice per Section 12.8.

9.4.4 In addition to the above, within 10 calendar days after receipt of final payment, the Architect and CM/GC will provide Owner and FPS Representative with duly executed unconditional waiver and release forms complying with Civil Code section 8138 covering all Work performed by the Architect, CM/GC, subcontractors, consultants, suppliers, or any other party entitled to record a mechanics lien or serve a stop payment notice for labor, services, equipment, or material rendered or provided for the Project.

9.5 Right to Withhold. Owner may refuse to approve any portion of a payment application, or may nullify any part of a prior payment application, to the extent FPS Representative determines it is necessary to protect Owner from loss due to one or more of the conditions listed in 9.5.1 through 9.5.5. When and to the extent the reason for withholding payment no longer applies, the withheld amount will be paid without interest.

9.5.1 Nonconforming Work not remedied;

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

9.5.3 Failure of Architect or CM/GC to make timely payments to subcontractors, consultants, or suppliers for services, labor, materials, or equipment provided in connection with the Project;

9.5.4 Damage to Owner or its Separate Contractors or Separate Consultants if the CM/GC, Architect, or any entity working directly for CM/GC or Architect is potentially liable;

9.5.5 Failure to carry out the Work according to the Contract Documents;

9.5.6 Failure to comply with the scheduling requirements or provide the Core Group with timely updates;

9.5.7 Insufficient documentation, erroneous estimates for value of the Work performed, or other incorrect statements in a payment application; or

9.5.8 Failure to keep the site premises clean.

9.6 No Right to Stop Work. If a Party disputes any determination with respect to any payment application, the Party will nevertheless expeditiously continue to prosecute the Work, provided that undisputed amounts are timely paid. Owner will not be deemed to be in default or breach of this Agreement for withholding of any payment under Section 9.5. However, the Party disputing the reason for withholding payment may submit the payment dispute for determination under Article 15.

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

9.8 Warranty of Title. CM/GC warrants that title to all Construction Work, materials, and equipment covered by a payment application, whether incorporated into the Project or not, will pass to Owner at the time of payment by Owner, free and clear of all liens, claims, security interests or encumbrances in favor of CM/GC, subcontractors, suppliers, or other persons or entities entitled to make a Claim by reason of having provided labor, materials, or equipment relating to the Construction Work. CM/GC will defend, indemnify and hold the Owner and Sutter Health harmless pursuant to Section 12.8 from all liens, stop payment notices, security interests and encumbrances arising out of the performance of the Construction Work provided CM/GC has received payment for the Construction Work at issue pursuant to this Agreement. The Core Group will determine if the costs of defense for any lien, stop payment notice, security interest or encumbrance will be included in the Chargeable Cost taking into consideration final resolution of the matter.

9.9 No Waiver. Payment by Owner will not constitute approval or acceptance of any Chargeable Cost included in the payment application or final acceptance or approval of that portion of the Work to which the partial payment relates.

9.10 Payments to Subcontractors. The Owner and Architect do not have any obligation to pay, or to see that payment is made to a subcontractor or supplier except as may otherwise be required by law. The CM/GC will make payments to its subcontractors and suppliers no later than 10 calendar days after receipt of CM/GC's payment from Owner.

9.11 Payment to Consultants. The Owner and CM/GC do not have any obligation to pay, or to see that payment is made to any Architect's consultants except as may otherwise be required by law. The Architect will make payments to its consultants no later than 10 calendar days after receipt of Architect's payment from Owner.

9.12 Audit Right. The Owner, at its expense, may audit any or all R/R Members' company records related to the Project at any time throughout the duration of the Project and for a period up to 3 years after Final Completion of the Project upon 10 business days' written notice. The audit will take place during normal business hours and will be coordinated with the party who is subject to the audit. The FPS Representative may also conduct verifications such as counting employees at the Project site, and verifying information and amounts through interviews and written confirmations with employees, consultants, subcontractors and suppliers (including tiers). The Owner will pay for the cost of the auditor. However, should the audit indicate that a R/R Member's records were fraudulently or negligently prepared or maintained, the Owner reserves the right to seek damages and legal remedies from the Architect and/or CM/GC (as applicable) including, but not limited to, the cost of the audit and recovery of amounts overbilled. The CM/GC will be responsible for pursuing recovery from a responsible R/R Subcontract, and the Architect will be responsible for pursuing recovery from a responsible R/R Consultant.

9.12.1 Availability of Records. Upon notice of audit, a R/R Member will produce all records related to: (i) establishing the EMP, ART, Incentive Threshold and Master Schedule; (ii) Chargeable Costs, home office overhead, and profit; (iii) Risk/Reward Amounts and Incentive Amounts; (iv) procurement of subcontractors, suppliers, or consultants (inclusive of tiers); (v) payment applications; (vi) Change Orders or any back-charges; (vii) insurance; and (viii) any other supporting evidence deemed necessary by the Owner or FPS Representative to substantiate charges related to the Work.

9.12.2 Other Documents. The audit may also require inspection and copying of any and all information, materials, and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and all other agreements, sources of information, and matters that may, in the Owner's or FPS Representative's judgment, have any bearing on or pertain to any matters, rights, duties, or obligations under the Contract Documents.

9.12.3 Medicare Audit. Upon written request of the Owner or FPS Representative, the CM/GC and/or Architect and any entity providing work, labor, materials or equipment to the Project will make available to the Secretary of Health and Human Services or the Comptroller General, or any of their duly authorized representatives, this Agreement and books, documents and records that are necessary to verify the nature and extent of the cost of the services provided for a period of 4 years after completion of such services when required by applicable law. The CM/GC and Architect will require each consultant, subcontractor and supplier (inclusive of tiers) to comply with this provision.

10. CONTRACT TIME AND SCHEDULING

10.1 Master Schedule and Contract Time. The Contract Time is the time allotted in the Master Schedule to achieve Final Completion of the Work. The Master Schedule is set forth in Exhibit 5D and includes the dates for Substantial Completion, Final Completion, and other Project milestones. Time is of the essence with respect to Final Completion, which can only be adjusted through executed Change Order. The Master Schedule will be used as a management

tool to track whether the Project is proceeding within the projected Contract Time. The Master Schedule will be updated as required to reflect the most current approved Contract Time and other milestone dates that have been amended through Change Order.

10.2 Project Scheduling and Performance. During the Project, the IPD Team will utilize pull scheduling to develop more detailed work plans within each major phase of the Work, that align with the key milestone dates included in the Master Schedule. The Parties and applicable IFOA Team members will diligently prosecute the Work that is approved based on the applicable work plans.

10.3 Project Delays. If the Architect or CM/GC are delayed in the commencement, prosecution or completion of their Work by one of the conditions set forth in Section 11.2, and, as a direct result of the delay, the Final Completion is extended, then the Contract Time may be extended per Section 11.3, for the same period of time that the Final Completion date was delayed less the duration, if any, for delays caused by the fault, neglect, act or omission of the Architect, CM/GC or any of their respective employees, consultants, subcontractors, or suppliers ("concurrent delays"). If the Contract Time is extended, the EMP, ART and Incentive Threshold will be adjusted for Chargeable Costs associated with the delay, subject to the provisions of Article 11. However, no adjustments to Contract Time or compensation will be allowed unless written notice was provided to the Core Group within 5 business days of commencement of the delay. The notice must briefly describe the circumstance and provide a rough estimate of the delay time. Prior to any adjustments in Contract Time or compensation, the Architect and/or CM/GC must demonstrate the duration of the day after taking into account any concurrent delays, that the delay could not have been anticipated or avoided, and that all available means were taken to mitigate or minimize the consequences of the delay.

10.3.1 Schedule Slippage. The CM/GC and/or Architect will notify the Core Group within 5 business days of slippage in any Project milestone dates as a result of its Work and must submit a recovery plan for evaluation by the Core Group.

10.3.2 Acceleration. The Core Group may determine that it is in the best interest of the Project to direct certain subcontractors to work overtime, or for certain consultants to work additional time, in an attempt to re-capture any delay to the Contract Time or other Project milestone dates.

10.4 Substantial Completion. When Substantial Completion is acknowledged by the Governmental Authorities, the Architect will submit all verified reports to OSHPD for review and approval and the Core Group and IOR will finalize the Punch List.

10.4.1 Partial Occupancy or Use. Owner may occupy or use any completed or partially completed portion of the Construction Work at any stage, provided that the occupancy or use is authorized by the Governmental Authorities and occupancy does not hinder the timely completion of the Work.

10.5 Final Completion. After Substantial Completion, the CM/GC will diligently complete the remaining Construction Work in accordance with the Contract Documents. When final inspection has been completed per Section 7 of the General Conditions and the Core

Group agrees that Final Completion has been achieved, FPS Representative will issue notices to the Architect and CM/GC that Final Completion has been achieved.

11. CHANGES

11.1 General. Without invalidating this Agreement, the Owner may order changes in the Work that are consistent with the Contract Documents or changes in the Work that impact the EMP, ART, Incentive Threshold, Risk/Reward Amount and/or Contract Time through Change Orders executed by the Signatories. Change Orders for Standard Consultants, Standard Subcontractors and suppliers will be negotiated in accordance with the terms and conditions of their respective subcontracts and consulting agreements subject to certain approval requirements set forth in this Article. All R/R Members are subject to the limitations set forth in Sections 11.2 and 11.5.1.

11.2 Permitted Changes. The EMP, ART, Risk/Reward Amount, Incentive Threshold, or Contract Time may only be adjusted for the conditions set forth in Sections 11.2.1 through 11.2.6. To the extent that one or more of the conditions occur, the EMP, ART, Incentive Threshold, and Risk/Reward Amount will be adjusted by the agreed increase or decrease in Chargeable Costs caused by the change and, if applicable, the Contract Time may be adjusted per Section 11.3.

- 11.2.1 Owner Generated Scope Changes;
- 11.2.2 Unforeseen and Differing Site Conditions;
- 11.2.3 Adverse Weather;
- 11.2.4 Force Majeure;
- 11.2.5 Suspension of the Work under Section 16.2; or
- 11.2.6 Reconciliation of Allowances per Section 8.2.1.

11.3 Contract Time. To the extent that the Contract Time is extended based on one of the conditions in Section 11.2 and subject to the conditions in Section 10.3, the R/R Members will be entitled to additional general conditions, general requirements, and overhead and burden per Section 11.5.2.

11.4 Procedure.

11.4.1 Change Orders. The Owner, the Architect or CM/GC may request a Change Order through a Change Proposal Request ("CPR") for one of the conditions set forth in Section 11.2. The Architect and/or CM/GC will provide FPS Representative with notice and a rough order of magnitude within 5 business days' receipt of a CPR or condition necessitating the change, and a detailed CPR within 10 business days' receipt of the CPR unless the Core Group mutually agrees otherwise. Upon receipt, the Core Group will review the CPR and either: (i) accept the request, (ii) accept the request in part or with modification, (iii) request additional information, or (iv) deny the CPR. If a CPR is accepted by the Core Group, then the FPS

Representative will issue a Change Order for execution by the Signatories formally modifying the Contract Documents. An executed Change Order constitutes a final agreement of all matters related to the change. Failure to comply with the timing requirements waives the Architect's and CM/GC's right to an adjustment for claims related to the facts of the CPR and condition necessitating the changes. If there is an impasse, the matter will be resolved in accordance with the dispute resolution procedures in Article 15.

11.4.2 Minor Changes. The FPS Representative may direct minor changes in the Work that are consistent with the intent of the Agreed Program and Contract Documents and do not impact the EMP, ART, Incentive Threshold or Contract Time. The changes will be effected by written direction from the FPS Representative to the Architect and CM/GC through supplemental instructions or field sketches. The Architect and/or CM/GC will promptly review the supplemental instructions or field sketches and notify the FPS Representative through the Change Order process under Section 11.4.1 to claim any adjustment to the EMP, ART, Incentive Threshold or Contract Time.

11.5 Pricing Methods. The FPS Representative may select the method used for determining adjustments to the EMP, ART and Incentive Threshold, which include: (i) mutual acceptance of a lump sum for the cost of the change when supported with sufficient substantiating data to determine an estimate of the Chargeable Cost impacts multiplied by the Change Order Percentage (if any); or (ii) Work performed on a time and material basis based upon Chargeable Costs multiplied by the Change Order Percentage (if any). If the Work is performed on a time and material basis, Architect and/or CM/GC will keep and present an itemized accounting for the Chargeable Costs. Regardless of the pricing method used, Architect and CM/GC must use the Agreed Billable Rates and Equipment Rental Rates set forth in Tab 3 and Tab 4 of the Project Manual as well as any unit prices included in establishing the EMP (Exhibit 4C). Pricing method selected does not impact the progress payment provisions under Article 9 with respect to payment for portions of Change Order Work performed.

11.5.1 R/R Members. If a R/R Member's Chargeable Cost is affected by one of the change conditions under Section 11.2, then there will be a Risk/Reward Adjustment, but the adjustment in the Risk/Reward Share cannot exceed the R/R Member's Change Order Percentage multiplied by the estimated or actual Chargeable Costs. The Change Order must include a reconciliation of the redistribution of any Risk/Reward Share based on the Risk/Reward Adjustment. Change Orders may increase or decrease the Risk/Reward Amount and adjust the Risk/Reward Share of certain R/R Members. The earned Risk/Reward Amount will be disbursed per Section 8.3 or 8.4, if applicable.

11.5.2 Overhead, General Conditions and General Requirements. If the Contract Time is extended due to a delay under Section 10.3, the CM/GC and subcontractors who are R/R Members will only be entitled to Chargeable Costs for additional general conditions as defined in Section 7.2.2(b), and general requirements as defined in Section 7.4 of the Agreement and Sections 9 and 10 of the General Conditions (Exhibit 2D), plus overhead and burden per Exhibit 4A. To the extent the Change Order requires additional general conditions or general requirements but the Contract Time is not impacted, the CM/GC and subcontractors who are R/R Members will only be entitled to Chargeable Costs for additional general conditions as defined in Section 7.2.2(b), and general requirements as defined in Section 7.4 of the Agreement and Sections 9 and 10 of the General Conditions (Exhibit 2D).

11.5.3 Overhead and Profit for Standard Subcontracts. Unless otherwise agreed to by the Owner, overhead and profit for Standard Subcontractors who are not R/R Members cannot exceed 15% of their respective Chargeable Costs.

11.5.4 Profit Multiplier for Standard Consultants. Unless otherwise agreed to by the Owner, the profit multiplier for Standard Consultants cannot exceed 20% of their respective Chargeable Costs.

12. LIABILITY ALLOCATION

12.1 Waiver of Liability. The Owner and the R/R Members waive and release all claims and liability between and among each other and FPS related to this Project except for the Allowed Claims listed in Section 12.2. Nothing in this Section will be construed to waive or release any Claims of Owner or any R/R Members against Standard Subcontractor or Standard Consultants or against any party for fraud, willful injury, or violation of the law as defined under California Civil Code section 1668, and the party who committed the fraud, willful injury, or violation of the law will be responsible for any damages resulting from such actions to the fullest extent permitted under California State law. If more than one party has sustained a loss as a result of the fraud, willful injury or violation of the law of another party, the parties that sustained the loss may agree to jointly pursue recovery of damages.

12.2 Allowed Claims. Allowed Claims are limited to the following:

13. 12.2.1 Warranty Claims. Claims for breach of warranty obligations under Article

12.2.2 Willful Default. Claims for breach of contract due to Willful Default.

12.2.3 Project Performance. Claims for loss or damage first occurring after Final Completion for (i) bodily injury or property damage, including loss of use, caused by the failure of the Construction Work to be executed in conformance with the Construction Documents; (ii) bodily injury or property damages, including loss of use, caused by negligent acts, errors or omissions in the design of the Project or its component systems; and (iii) the repair, modification, or replacement of components or systems that do not meet the functional and performance requirements of the Agreed Program or Contract Documents, subject to the standard of care set forth in Section 2.5.

12.2.4 Third-Party Claims. Claims against Owner or a R/R Member for contribution or indemnification from claims by third parties arising from acts or omissions of the Owner or another R/R Member and their respective subcontractors, suppliers, consultants, or Separate Contractors resulting from the performance of the Work.

12.2.5 Unresolved Change Orders. Change Orders that have not been resolved under Article 11.

12.2.6 Non-Payment. Claims from the Owner's failure to pay undisputed amounts due under this Agreement or amounts withheld by Owner pursuant to Section 9.5.

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

12.2.8 Indemnity. Claims to enforce indemnification obligations set forth in Sections 12.4 through 12.8, 16.1.3 or elsewhere in this Agreement or the General Conditions (Exhibit 2D).

12.2.9 Insurance. Claims for failure to procure the insurance required under Section 12.3 and Exhibit 6, and Claims to the extent insurance proceeds are exhausted or unavailable for Allowed Claims;

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

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

12.3 Insurance. The Parties will procure the insurance required under Exhibit 6. The Parties will require through written agreement that their respective consultants, subcontractors, Separate Consultants and Separate Contractors carry similar types of insurance coverage at appropriate limits for their portions of the work or services included in the Project, as submitted and approved by the Core Group. Proof of appropriate insurance, including endorsements of additional insureds for all separate policies, except for errors and omissions policies, must be submitted to the Core Group before commencement of the Work. Architect, CM/GC and their respective consultants and subcontractors will provide additional insured status to Owner, Sutter Health, and any other entities or persons set forth in Exhibit 8E to the Agreement on all required coverage except for errors and omissions policies. The availability of insurance does not limit the indemnification and defense responsibilities of any Party, nor limit any other remedy available to a Party.

12.4 Indemnification and Defense.

12.4.1 CM/GC's Indemnification and Defense Obligations.

(a) General. To the fullest extent permitted by law, the CM/GC will (and CM/GC will require its subcontractors and suppliers to) defend (with counsel acceptable to the Owner), indemnify, and hold the Owner, Sutter Health, and the other R/R Members and their respective officers, board members, directors, partners, members, agents, employees, affiliates, parents, and subsidiaries ("Indemnitees") harmless from and against any and all Claims, losses, damages, liabilities, and expenses (including legal, expert witness, and consulting fees and costs) alleged by any third parties (including any of their respective employees), arising out of, or resulting from, sickness, bodily injury (including disease and death), or damage to tangible property (other than the Construction Work itself), and including loss of use, but only to the extent caused by the negligent acts or omissions of the CM/GC and its subcontractors and suppliers (including all tiers) or anyone directly or indirectly employed by any of them for whose acts the CM/GC may be liable. The indemnification obligations set forth in this Section will not be limited in any way by the amount or type of damages, compensation, or benefits payable by

or for the CM/GC or its subcontractors or suppliers (inclusive of tiers) under the Workers' Compensation Acts, disability benefit acts, or other employee benefit acts.

(b) Environmental. To the fullest extent permitted by law, the CM/GC will (and CM/GC will require its subcontractors and suppliers to) defend (with counsel acceptable to the Owner), indemnify, and hold the Owner, Sutter Health, Architect, and its consultants and each of their respective officers, directors, and employees harmless from any Claims or liability, including future exposure Claims made by third parties, that allegedly arise out of, or result from: (i) the negligent mishandling of any pre-existing Hazardous Materials discovered at the Project site during performance of the Construction Work; (ii) the negligent mishandling of any specified Hazardous Materials; or (iii) generating, releasing, disposing, discharging, negligently storing, or introducing unspecified Hazardous Materials at the Project site during performance of the Construction Work but only to the extent that such Claims or liability were caused by the negligent acts or omissions of the CM/GC and its subcontractors and suppliers (including all tiers) or anyone directly or indirectly employed by any of them for whom the CM/GC may be liable.

12.4.2 Architect's Indemnification and Defense Obligations.

(a) General. To the fullest extent permitted by law, the Architect will (and Architect will require its consultants to) defend (with counsel acceptable to Owner), indemnify, and hold the Owner, Sutter Health, and the other R/R Members and their respective officers, board members, directors, partners, members, agents, employees, affiliates, parents, and subsidiaries ("Indemnitees") harmless from and against any and all Claims, losses, damages, liabilities, and expenses (including legal, expert witness, and consulting fees and costs) alleged by any third parties (including any of their respective employees), arising out of, or resulting from, sickness, bodily injury (including disease and death), or damage to tangible property (other than the Construction Work itself), and including loss of use, but only to the extent caused by the negligent acts or omissions of the Architect and its consultants (including all tiers) or anyone directly or indirectly employed by any of them for whose acts the Architect may be liable. The indemnification obligations set forth in this Section will not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for the Architect or its consultants (inclusive of tiers) under the Workers' Compensation Acts, disability benefit acts, or other employee benefit acts.

(b) Environmental. To the fullest extent permitted by law, the Architect will (and Architect will require its consultants to) defend (with counsel acceptable to Owner), indemnify and hold the Owner, Sutter Health, CM/GC and its subcontractors and suppliers, and each of their respective officers, directors, and employees harmless from any Claims or liability, including future exposure Claims made by third parties, that allegedly arise out of, or result from Hazardous Materials negligently specified by the Architect or any of its consultants if a non-hazardous alternative material was available at the time of specifying or before the material is procured. The Architect and its consultants will not be liable for negligent misuse or handling of specified Hazardous Materials or to the extent of the negligent acts, omissions or willful misconduct of the Owner, Sutter Health, CM/GC or its subcontractors and suppliers, or Separate Contractors, or anyone directly or indirectly employed by any of them for whom they may be liable.

12.4.3 Owner's Indemnification and Defense Obligations.

(a) **General Indemnity.** To the fullest extent permitted by law, the Owner will (and Owner will require its Separate Contractors and Separate Consultants to) defend, indemnify, and hold the R/R Members and their respective officers, board members, directors, partners, members, agents, employees, affiliates, parents, and subsidiaries ("Indemnitees") harmless from and against any and all Claims, losses, damages, liabilities, and expenses (including legal, expert witness, and consulting fees and costs) alleged by any third parties (including Owner's and its Separate Consultants' and Separate Contractors' respective employees), arising out of, or resulting from, sickness, bodily injury (including disease and death) or damage to tangible property (other than the Construction Work itself) and including loss of use, but only to the extent caused by the negligent acts or omissions of the Owner, its Separate Contractors, Separate Consultants (including all tiers) or anyone directly or indirectly employed by any of them for whose acts the Owner may be liable. The indemnification obligations set forth in this Section will not be limited in any way by the amount or type of damages, compensation, or benefits payable by or for the Owner, or its Separate Consultants or Separate Contractors under the Workers' Compensation Acts, disability benefit acts, or other employee benefit acts.

(b) **Environmental Indemnity.** To the fullest extent permitted by law, the Owner will indemnify and hold the R/R Members, and their respective employees, subcontractors and consultants harmless from any Claims or liability, including future exposure claims made by third parties, that allegedly arise out of, or result from pre-existing Hazardous Materials or Hazardous Materials brought onto the site by Owner's Separate Contractors or anyone directly or indirectly employed by the Owner's Separate Contractors provided that the liability did not arise from any negligent acts or omissions of the R/R Members or their respective employees, subcontractors or consultants (including all tiers), or anyone directly or indirectly employed by any of them for whom they may be liable. The Owner's duty to defend will not arise until after adjudication of its liability.

12.5 Safety Responsibility. The CM/GC is the "controlling employer" as defined by CalOSHA and is solely responsible for training and supervising its employees, subcontractors and suppliers regarding site safety, and for adhering to the Owner's policies and procedures for health and safety and all applicable laws governing health and safety on construction sites. The CM/GC will defend, indemnify, and hold the Owner, Sutter Health, Architect and its consultants, and their respective officers, directors, affiliates and employees harmless from and against all demands, causes of action, and other Claims for damage, loss, and expense, including but not limited to attorneys' fees, resulting from bodily injury, sickness, disease, death, injury, or tangible property damage (other than to the Construction Work itself) caused, in whole or in part, from actual or alleged failure to train, initiate, maintain, or supervise safety precautions and programs in connection with CM/GC's portion of the Construction Work. Owner's Separate Contractors will be solely responsible for training of their employees, subcontractors and suppliers, and for adhering to the Owner's policies and procedures for health and safety.

12.6 Patent and Copyright. CM/GC and Architect represent and warrant that designs, processes, methods or materials used by each for the Project do not and will not violate any patents, copyrights, or trademarks. CM/GC and Architect each will defend and indemnify Owner and Sutter Health from and against Claims, damages, losses, and expenses,

including, without limitation, attorneys' fees attributable to patent, copyright, or trademark violations. The Architect and CM/GC each have a duty to notify the other Core Group members if it has reason to believe that any required design or construction process or product infringes on any intellectual property right or interest. All royalty and licensing fees associated with the Work are included in the EMP, ART and Incentive Threshold.

12.7 Remediating Damages. CM/GC will promptly remedy all damage and loss to property caused, in whole or in part, by the CM/GC, its subcontractors, or anyone employed directly or indirectly by any of them for whom CM/GC and/or its subcontractors are liable. All costs associated with the repair will be a Chargeable Cost except to the extent the damage was caused by willful injury or willful misconduct. Insurance proceeds will be applied first for damages covered by insurance.

12.8 Lien-Free Obligation. If any subcontractor, supplier, or consultant records or files, or maintains any action on or respecting a claim of mechanics lien, stop payment notice, or notice of *lis pendens* relating to the Work, the CM/GC or Architect, as applicable, will resolve the Claim prior to Final Payment, provided that the Owner has paid the CM/GC or Architect for that portion of the Work per this Agreement. If Architect or CM/GC fails to make timely payments to its respective consultants, subcontractors, and suppliers as required, the Owner may settle or bond over those Claims, or take other actions necessary to prevent a default under any other agreement affecting the Project, and CM/GC or Architect, as applicable, will upon written demand reimburse Owner for any substantiated amounts that were necessary to satisfy Architect's or CM/GC's obligation to satisfy, discharge, or defend against any Claim of lien or stop payment notice. The Architect and CM/GC will each defend, indemnify and hold harmless the Owner and Sutter Health from any Claims filed by their respective consultants, subcontractors, or suppliers for foreclosure on mechanics liens or stop payment notices, provided the Owner has made payment to the Architect and CM/GC for their respective Work per this Agreement. Nothing contained in this Section requires the CM/GC or Architect to provide release bonds for any valid mechanics lien, stop payment notice, notice of *lis pendens*, or other Claim due to the Owner's non-payment or a valid dispute between the Parties.

12.9 Joint-Defense of Third-Party Claims. Because the Parties have a similar interest in the outcome of the Project, the Parties will endeavor to resolve any third-party claims (including subcontractor and consultant claims) under a joint defense agreement establishing the procedures and rights of the Parties. To the greatest extent possible, the Parties will jointly address, investigate, manage, defend, settle, or otherwise resolve all third-party claims arising from or related to the Project or the Contract Documents, subject to applicable legal and ethical considerations, including the need for independent legal counsel.

12.10 Over-Stamping Liability. If Architect or its consultants are required to over-stamp a subcontractor's design-build or design-assist documents to meet the requirements of any Governmental Authority (including OSHPD and the State Fire Marshal), neither Architect nor its consultants will assume liability for authorship of those documents except for information, if any, prepared by Architect or its consultants and included in those documents.

13. WARRANTY

13.1 Basic Warranty and Correction Period. CM/GC warrants that all Construction Work will be of good quality, free from defects, and conforming to the Construction Documents and applicable law. For a period of 1 year commencing from Substantial Completion and for longer periods specified in the Construction Documents for certain equipment manufacturers or suppliers, CM/GC will repair or replace any and all deficient or defective Construction Work, provided that the Work was properly maintained and used, together with any other Work that is damaged during repair or replacement. The Owner will pay reasonable Chargeable Costs associated with warranty work until final payment per Section 9.3. After final payment, the cost will be borne solely by the CM/GC or other subcontractor, tier-subcontractor, or supplier. CM/GC's warranty excludes improper or insufficient maintenance, improper operation (other than by CM/GC and those for whom it is responsible), and normal wear and tear. CM/GC will procure all subcontractor and manufacturer express warranties required under the Construction Documents on the Owner's behalf and will transmit the warranties to FPS Representative before Final Completion and Project close-out. Establishment of the 1 year express warranty period for correction of Construction Work relates only to the CM/GC's specific warranty obligation to correct defective or non-conforming Construction Work, and has no relationship to any statute of limitations periods for legal Claims arising from the Contract Documents including, but not limited to, any Claims for defective Construction Work subject to the statute of repose.

14. OWNERSHIP OF DOCUMENTS

14.1 Design and Construction Documents. If the Owner has complied with the payment provisions set forth in Article 9, the Owner and Sutter Health will own and have all rights, title, and interests under common law, federal law, and California state law in the Project's Design and Construction Documents. The Architect, its consultants, and the CM/GC and its design-build subcontractors may retain a record set of each of the Design and Construction Documents for the purpose of defense of any subsequent Claims or disputes involving this Project. The Architect, CM/GC, design consultants and subcontractors will not own or claim a copyright in the Design and Construction Documents and other documents prepared for this Project. The Design and Construction Documents and other documents prepared by the Architect and CM/GC are being developed and furnished for use solely with respect to this Project. The Design and Construction Documents may not be used by the Architect, its consultants, CM/GC or its subcontractors on other projects outside the scope of the Work without the written consent of Sutter Health.

14.1.1 Exception. Nothing contained in Section 14.1 limits the rights, title and interest of the Architect, its consultants, the CM/GC, and its design-build or design-assist subcontractors to continue to use their respective general design details that each of them uses or has used on multiple projects, or new standard design details that were developed during design of this Project.

14.2 Building Information Model. The As-Built Model, Record Model and subsidiary models used for design and construction of the Project are the property of the Owner and Sutter Health, and the Parties agree to provide the Owner, as a deliverable before Final Completion, the As-Built Model and any other BIM files that the Core Group deems necessary. Despite the above, design elements that were created by any member of the IFOA Team, before execution

of this Agreement, as extensions to commercially available BIM software will remain the property of the respective party that created the extension, regardless of whether it was used in a Model for this Project, and Owner and Sutter Health will hold a perpetual, non-exclusive, royalty-free license to those design elements for purposes of designing, constructing, operating and maintaining this Project.

14.3 Licensing. The Architect, its consultants, the CM/GC and its subcontractors are each granted a limited, non-exclusive, royalty-free license to use and reproduce applicable portions of the Design and Construction Documents and other documents prepared by the IPD Team for use in the performance of the Work under this Agreement. Additionally, the Owner grants the R/R Members a non-exclusive, royalty-free, perpetual license for use or display of the Model or 2-D information solely for educational purposes. R/R Members may also use the Model for promotional purposes upon written approval by Owner.

14.3.1 Copies. All copies made under the license will bear the statutory copyright notice, if any, shown on the Design and Construction Documents and any other documents prepared by the Architect, its consultants, the CM/GC, and its design-build subcontractors. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project will not be construed as publication in derogation of the Owner's copyright or other reserved rights and interests.

15. DISPUTE RESOLUTION

15.1 Scope. All Claims among the Parties or other IPD Team members arising from, or in connection with, the Contract Documents that are not resolved by the Core Group or through the Change Order process will be resolved as provided in this Article. The responsibility to substantiate a Claim rests on the Party making the Claim. The Owner and R/R Members are subject to limitation of liability per Article 12.

15.2 Permitted Claims. No Claims proceedings relating to the Contract Documents may be initiated or prosecuted by any person or entity, except for unresolved Claims.

15.3 Notice. An IPD Team member may initiate the dispute resolution procedures by providing the Core Group with written notice of a potential Claim specifying the nature of the Claim in reasonable detail, the remedy sought and request for informal resolution through Sections 15.5 and 15.6, respectively.

15.3.1 Time Limits. The notice must be given no later than 10 business days following the occurrence of the event or conditions or circumstances giving rise to the dispute or the Claim is waived.

15.4 Continued Performance. The Parties will continue to perform all Work during the pendency of a Claim or dispute resolution process provided Owner continues to make payments for undisputed Work in accordance with Article 9.

15.5 Special Meeting. Upon receipt of request for a special meeting under Section 4.2.2 regarding a dispute among the IPD Team members or an urgent matter for the Project, the Core Group will meet and attempt to resolve the dispute through informal, good faith, business

negotiations. The special meeting will be held within 5 business days after receipt of the request and will be attended by the Core Group members (or their designee) and senior representatives from any other parties involved that have the authority to resolve the dispute on behalf of their entity. Legal representation is not permitted.

15.6 Senior Executive Team Meeting ("SET Meeting"). Upon receipt of a Core Group request, the SET representatives will schedule a face-to-face meeting to review any unresolved dispute or issue in detail and resolve the matter. The SET Meeting will take place within 10 business days after receipt of notice of impasse from the Core Group, unless the Parties agree upon a longer period of time. This meeting will be for the express purpose of exchanging and reviewing all pertinent documents and information relating to the dispute, or issue; freely and candidly discussing the merits of the dispute or issue, and each party's position; and reaching agreement upon a reasonable compromise. If the SET is unable to reach a unanimous decision or action, FPS Representatives will resolve the impasse by making the decision. The Architect or CM/GC may request a Change Order under Article 11, if FPS Representatives' decision affects the Contract Documents, EMP, ART, Incentive Threshold or Contract Time. All SET decisions will be issued in writing and signed by a majority of the SET members. If an affected party contests the SET's decision, the matter will be subject to the Claims provisions set forth below.

15.7 Claims of \$500,000 or Less. If the amount of the Claim is \$500,000 or less and the Claim is not resolved through informal business negotiations set forth in Sections 15.5 and/or 15.6, the claimant may request binding arbitration by providing 30 calendar days' written notice to the Core Group and all relevant parties that are necessary to resolve the dispute per Section 15.10. The binding arbitration will be conducted by the Judicial Arbitration Mediation Service, a Delaware corporation ("JAMS"), in accordance with the JAMS Engineering and Construction Arbitration Rules and Procedures for Expedited Arbitration. The dispute will be before a single JAMS arbitrator who is acceptable to the Parties involved in the Claim. The arbitrator must be neutral and not have any conflicts of interest, and must have formerly been or currently be a construction attorney with at least 15 years of experience in resolving design and construction disputes for complex construction projects. The parties to the dispute will bear the arbitration fees and costs equally. Unless otherwise agreed to by the Owner, the arbitration must be concluded within 180 calendar days after the filing of the arbitration Claim and the final award will be conclusive and binding. The arbitration will take place at a mutually agreeable location. Judgment upon award may be entered and enforced in the appropriate state or federal court having jurisdiction over the county where the Project is situated, and is only subject to challenge on grounds set forth in California Code of Civil Procedure section 1285, et seq. and 9 USC sections 10-11 (as applicable). The arbitrator will have the power to grant all legal and equitable remedies available to the parties under California State or federal law (as applicable); however, under no circumstances will the arbitrator be empowered to award punitive damages. The final arbitration award will state all findings of fact and conclusions of law based on California State law or federal law (as applicable). The parties to the dispute agree that the prevailing party will be entitled to reasonable attorney's fees and other legal expenses and costs per Section 17.13, except for the fees and cost of the arbitration as described above.

15.8 Claims over \$500,000. If the amount of the Claim is over \$500,000 and the Claim is not resolved through the informal business negotiations set forth in Sections 15.5

and/or 15.6, the Owner, in its sole discretion, may elect to either have the dispute determined by binding arbitration pursuant to Section 15.8.1 or litigation under Section 15.8.2.

15.8.1 If the Owner elects to have the dispute resolved through binding arbitration, the dispute will be determined before a panel of 3 JAMS arbitrators; the Owner will select one JAMS arbitrator and the other Parties to the dispute will mutually agree to the second arbitrator. The two selected JAMS arbitrators will agree to a third JAMS arbitrator. The terms and provisions set forth in Section 15.7 will be applicable except for the number of arbitrators as described in this Section 15.8.1.

15.8.2 The Owner, in its sole discretion, may elect to pursue resolution of the Claim through litigation.

15.9 Enforceability. The Architect and CM/GC have reviewed the dispute resolution procedures with legal counsel and agree to the terms and conditions set forth in this Article 15. To the extent a court of competent jurisdiction finds any term or provision in this Article 15 to be void or unenforceable, the unenforceable term or provision will be severed and the remainder of the terms and provisions in this Article 15 will remain in full force and effect. Nothing contained in this dispute resolution process prevents CM/GC or Architect and their respective subcontractors, consultants or suppliers (inclusive of tiers) from timely filing a civil action to perfect a mechanics lien or action to foreclose on a stop payment notice. However, the parties agree to stipulate to a stay in the proceedings pending attempts to resolve the matter pursuant to the process defined in this Article.

15.10 Joinder. The Parties consent to the joinder of other necessary IPD Team members in any dispute resolution procedure, if Claims for or against the Parties arise from the same, substantially the same, or interrelated facts, issues, or incidents relating to the Project, or where separate dispute resolution processes create a risk of inconsistent awards or results.

16. DEFAULT, SUSPENSION AND TERMINATION

16.1 Termination for Convenience. The Owner may terminate this Agreement, in whole or in part, for convenience at any time upon 15 calendar days' written notice to the terminated Party. The notice will state the extent and effective date of the termination, and, on the effective date, the terminated Party will: (i) to the extent directed, stop Work under this Agreement; (ii) terminate or assign all subcontracts and consulting agreements to Owner as directed; and (iii) take other actions as may be necessary or requested by Owner to protect and preserve the Work and any other property in the terminated Party's possession in which Owner has or may acquire an interest.

16.1.1 Termination Before Construction Commences. If the Owner terminates this Agreement for convenience before the Construction Stage commences, the R/R Members will be compensated for all unpaid Chargeable Costs incurred as of the effective date of termination plus any Risk/Reward Amount that the party is projected to earn based on the Projected Actual Cost at the nearest Interim R/R Distribution milestone and subject to the terms and conditions of Section 8.4.

16.1.2 Termination After Construction Stage Commences. If the Owner terminates this Agreement for convenience after the Construction Stage commences and provided that the Project is less than 85% complete, the R/R Members will be compensated for all Chargeable Costs incurred (including reasonable expenses related to termination such as demobilization, securing the site, and protection of Construction Work) as of the effective date of termination plus any Risk/Reward Amount that the party is projected to earn based on the Projected Actual Cost at the nearest Interim R/R Distribution milestone and subject to the terms and conditions of Section 8.4. If the Project is 85% or more complete, the R/R Members may also earn Incentive Amounts provided that Projected Actual Cost is less than the Incentive Threshold. The R/R Members will share in the Risk/Reward Amount based on the applicable Incentive Percentage set forth in Exhibit 4A and their respective portions of the Incentive Amount calculated in accordance with the Risk/Reward Share (Exhibit 3E).

16.1.3 Ownership of Design and Construction Documents. Termination of the Agreement does not affect the rights of the Owner and Sutter Health under Article 14. If the Owner modifies the Design and Construction Documents for continuation of the Project following a termination for convenience, Owner will indemnify, defend, and hold harmless Architect and its design consultants and CM/GC and its design-build subcontractors from any liability arising from modification to the Design and Construction Documents. However, the terminated design member (including design-build subcontractors) will remain responsible and liable for the Design and Construction Documents provided up to the effective date of termination.

16.2 Suspension. FPS Representative may, without cause, order the Core Group to suspend, delay or interrupt the Project for as long as the Owner or FPS may determine. If the Project is suspended for reasons other than the acts or omissions of the Architect, CM/GC or their respective consultants, subcontractors or suppliers (including all tiers), then the Architect or CM/GC may request a Change Order in accordance with Section 11.2.5.

16.3 Owner Termination for Cause. The Owner may terminate this Agreement, or a Party to this Agreement, upon 15 calendar days' prior written notice, and an additional 15 calendar days to cure, if any of the following conditions occur: (i) failure of one or more Parties to this Agreement to provide adequate labor or other resources to achieve the Contract Documents; (ii) refusal by a Party to rectify Work that is not in accordance with the Contract Documents; (iii) failure of a Party to work cooperatively with the IPD Team for the benefit of the Project; (iv) failure of the Architect or CM/GC to properly pay their respective consultants, subcontractors, and suppliers; (v) bankruptcy or insolvency of a Party to this Agreement; or (vi) acts of Willful Default by Architect or CM/GC. The effective date of termination will be 30 calendar days from the date of the notice if the condition is not cured to Owner's satisfaction or unless the cure period is extended by Owner through written notice. Termination does not affect the Owner's rights under Article 14.

16.3.1 Owner Remedies. If Owner terminates a Party for cause, the terminated party will lose its Risk/Reward Share (Exhibit 3E) in the Risk/Reward Amount, and will reimburse Owner for any previously disbursed Risk/Reward Amount in accordance with Section 8.1.4. The Owner may, without prejudice to any other rights or remedies, and after giving the Party and its surety (if any) prior written notice: (i) take possession of the site and all materials, equipment and machinery purchased for installation at the Project; (ii) accept assignment of any

construction equipment leases, rental agreements, subcontracts or consulting agreements per Section 5.6.2(b); and (iii) finish the Work by whatever reasonable method Owner may deem expedient. There will be a Risk/Reward Adjustment to the extent that a new R/R Member is not added to replace the terminated Party. After determining the Final Actual Cost (including all costs and expenses incurred due to the termination for cause and before distribution of any Incentive Amount per Section 8.3.2), the Owner will pay the terminated R/R Member previously unpaid Chargeable Costs for which the Owner received value, and that were incurred before the effective date of the termination, up to the remaining balance of the Chargeable Costs included in the EMP, but only to the extent that such balance exists.

16.4 Conversion to Termination for Convenience. If an arbitrator or court of competent jurisdiction, as applicable, deems that termination of the Party was wrongful or otherwise improper, the termination will be deemed a termination for convenience under Section 16.1.

16.5 Architect / CM/GC Termination for Cause. The Architect or CM/GC may terminate this Agreement for cause upon 15 calendar days' prior written notice and an additional 30 calendar days to cure if any of the following occur: (i) Owner fails to pay undisputed amounts due pursuant to Article 9 of the Agreement; or (ii) Owner's suspension of the Project under Section 16.2 exceeds 60 consecutive days after Construction Work has commenced. The effective date of termination will be 30 calendar days from the date of the notice if the problem is not cured or unless the cure period is extended by the initiating Party through written notice.

16.5.1 Payment. If the Agreement is terminated under Section 16.5, the Owner will pay the terminated Party in accordance with the payment provisions in Section 16.1. Any payment under this Section is subject to Owner's receipt of all requested statutory lien waiver and release forms, as well as other documentation required for payment under Section 9.4 and subject to withholding by Owner for reasons in Section 9.5. Payment will be considered final payment consistent with the requirements of Section 9.3. Any dispute over the amount to be paid upon termination will be resolved per the dispute resolution procedures set forth in Article 15.

17. MISCELLANEOUS PROVISIONS

17.1 Confidentiality. The R/R Members will be disclosing information concerning their methods of accounting, pricing of products and services, and other confidential information, and the Owner may be disclosing certain information regarding business strategy, operations and legal affairs of a sensitive nature. Handling of confidential information is defined in the Business Ethics Policy (Exhibit 7). Additionally, Architect and CM/GC acknowledge through execution of this Agreement that any and all patient information is subject to protection under Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as may be amended, and all consultants, subcontractors and suppliers (of any tier) coming into contact with patient health information are strictly prohibited from disclosure in violation of the HIPAA privacy rule. The Parties will place similar confidentiality restrictions and HIPAA compliance requirements in their respective agreements with consultants, subcontractors or vendors of any tier.

17.2 Notices. Any notice required to be given by this Agreement will be in writing and deemed effective upon: (a) the date of personal delivery, fax or email delivery with proof of

receipt indicating that addressee received fax or email before 5:00 p.m. local time on a business day; (b) 3 business days after being sent via registered or certified mail with a return receipt requested; or (c) 1 business day after being sent by overnight commercial courier providing next-business-day delivery. Fax delivery must be evidenced by an automated fax confirmation. Delivery by email requires printed proof of receipt and is not deemed effective if the sender receives an automated reply indicating that the email was not delivered to the intended recipient or that the intended recipient was out of the office. Notices will be addressed to the Party representatives in the Core Group and SET as designated in the Project Roster set forth in Tab 1 of the Project Manual.

17.3 Governing Law. This Agreement will be governed and construed under the laws of the State of California without giving effect to any choice of law or rule of conflict that would cause the application of the laws of any other jurisdiction.

17.4 Commencement of Statute of Limitations. Causes of action between the Parties to this Agreement pertaining to acts or failures to act will be deemed to have accrued and the applicable statutes of limitations will commence to run: (i) on the date of Substantial Completion or, if applicable, the date of a recorded notice of completion, whichever is later; or (ii) if correction in the Work is performed after the corrective Work is completed, the statute of limitations for causes of action arising out of this Agreement will recommence upon completion of the corrective Work.

17.5 Assignment. The Parties respectively bind themselves, their partners, successors, assigns, and legal representatives to the other Parties to this Agreement. The CM/GC and Architect may not assign this Agreement without the Owner's written consent, and any unconsented assignment will be void. Upon notice, the Owner may assign this Agreement to Sutter Health or any of its other affiliates, or to any lender in obtaining Project financing, and the Architect and CM/GC will cooperate with the Owner and execute, and require all subcontractors and consultants to execute, all required assignment and subordination agreements.

17.6 Interpretation and Severability. This Agreement's terms and conditions will be interpreted according to their plain meaning, and not strictly for or against any Party. Any contrary rule of construction or interpretation will be of no force or effect with respect to this Agreement. If a court of competent jurisdiction finds any term or provision of this Agreement to be void or unenforceable for any reason, the term or provision will be deemed severed, with the remainder of the Agreement remaining in full force and effect to the maximum extent permitted by law and consistent with the Parties' overall intent.

17.7 Third-Party Beneficiaries. Sutter Health is an express third party beneficiary to this Agreement and FPS and FPS Representative have a right to enforce all terms and conditions of this Agreement on behalf of the Owner with respect to the Architect and CM/GC's performance of the Work. Nothing contained in this Agreement creates a contractual relationship with Sutter Health, or a cause of action in favor of, any third party against Owner or Sutter Health, including CM/GC's employees, subcontractors or suppliers, or Architect's employees and consultants.

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

17.9 Survival. The following provisions will survive the termination or expiration of this Agreement: (i) Section 2.4; (ii) Section 2.5; (iii) Section 8.5; (iv) Section 9.5 and 9.12; (v) Section 10.3; and (vi) Articles 12 through 17.

17.10 Waiver. Unless otherwise indicated in this Agreement, no Party's action or failure to act will waive any right or duty it has under the Agreement, and such action or failure to act will not be an approval of or acquiescence in a breach of the Agreement, unless specifically agreed to in writing by the Party.

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

17.12 Interest. Payments due and unpaid under this Agreement will bear interest from the date payment is due either at an annual rate equal to the most recent prime rate published by the Wall Street Journal or at 4% per annum, whichever is less.

17.13 Attorneys' Fees. In the event that any Party commences an action or binding alternative dispute resolution process in accordance with the terms and provisions of this Agreement against another Party for Claims arising out of or in connection with the Contract Documents, the prevailing Party will be entitled to recover all reasonable attorneys' fees and costs (including charges and expenses related to the suit, expert witness and consultants' fees) as may be determined by a court with competent jurisdiction or an arbitrator.

17.14 Equal Employment Opportunity. The Parties and their respective subcontractors, consultants, vendors, and suppliers will maintain policies in compliance with California State and federal law regarding equal employment opportunities.

17.15 Exhibits. The Exhibits listed after the Table of Contents to this Agreement are incorporated by reference as though set forth in full.

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

This Agreement is executed as of the Effective Date by the Signatories as set forth on the cover page of the Agreement.

Exhibit 1 – Definitions

1. **"Actual Cost"** includes all Chargeable Costs incurred for design and construction of the Work without the Risk/Reward Amounts. The "Final Actual Cost" is the Actual Cost determined upon Final Completion of the Project. The "Projected Actual Cost" is the total of the Chargeable Costs incurred to-date plus the remaining Chargeable Costs (including IFOA Contingency and Allowances) projected to occur by Final Completion as demonstrated through the Projected Cost Model or Milestone Projected Cost Model (to the extent Interim R/R Distributions are allowed).
2. **"Adverse Weather"** means more than 15 rain days per year, which will be cumulative based on the duration of the Project. In order to qualify as a rain day, the construction crews' ability to perform Construction Work on the Project must be prevented or substantially impeded for more than half of a normal work day and the CM/GC's inability to perform the scheduled Construction Work must result in an actual delay to the Contract Time.
3. **"Agreed Billable Rates"** are the approved direct salary and burden expenses for R/R Member personnel. The FPS approved Agreed Billable Rates and approved updated Agreed Billable Rates will be kept in Tab 3 of the Project Manual. The most current approved Agreed Billing Rates are used for review of progress billings.
4. **"Agreed Program"** is jointly developed by the Parties and FPS and includes the Owner's Program (Exhibit 8B), Project Charter (Exhibit 8D), the Design Documents included in (Exhibit 2B), the EMP Breakdown, which includes that At-Risk Threshold ("ART") and Incentive Threshold with any Clarifications and Assumptions (Exhibit 4B) and Unit Prices / Alternate Prices (Exhibit 4C), and Master Schedule (Exhibit 5D).
5. **"Agreement"** is the Sutter Health Integrated Form of Agreement executed by and among the Owner, Architect and CM/GC.
6. **"Allowances"** are expected Chargeable Costs, included within the ART and Incentive Threshold, to cover components and/or systems that are anticipated but cannot reasonably be defined or estimated at the time the EMP is established.
7. **"Allowed Claims"** are the limited categories of Claims that the Owner and R/R Members may bring pursuant to Section 12.2 of the Agreement.
8. **"Amendment"** is a document executed by the Signatories that amends the terms and/or conditions of this Agreement.
9. **"Architect"** means the licensed architectural firm responsible for the overall design of the Project that is identified as the Architect on the cover page of the Agreement.
10. **"As-Built Model"** is the version of the BIM that has been updated to reflect the as-built conditions of the Project at Final Completion.
11. **"At-Risk Threshold" or "ART"** is the agreed total of estimated Chargeable Costs, IFOA Contingency, and Allowances, which establishes the maximum Project cost

Exhibit 1 – Definitions

acceptable to the Owner before the Risk/Reward Amounts will be applied to cover Project cost overruns.

12. "Building Information Model" ("BIM" or "Model") is a parametric, computable representation of the designated portions of the Project design developed by the Architect, its consultants, Separate Consultants, and any design-build subcontractors, and includes construction details developed by the CM/GC and its subcontractors, as well as any Separate Contractors. As used in this Agreement, references to BIM or the Model include the primary design model or models developed during design and construction and all linked, related, affiliated or subsidiary models. The portions of the Model prepared by the Architect, its consultants, Separate Consultants, and design-build subcontractors, and those portions prepared by CM/GC or design-assist subcontractors under the responsible control of a licensed design professional, are Construction Documents. The portions of the Model prepared by the CM/GC, design-assist subcontractors, or Separate Contractors to illustrate means and methods for constructing, fabricating or installing portions of the Construction Work are Submittals, which are not Construction Documents. The current Model will include more construction details than shown in the Plans but must not deviate from the Governmental Authority approved two-dimensional ("2-D") Plans and Specifications.

13. "Business Terms" are defined in Exhibit 4A.

14. "Change Order" is a written order that modifies the Construction Documents and authorizes an increase or decrease to the EMP, ART, Incentive Threshold, Risk/Reward Amounts, and/or an extension or reduction in the Contract Time. In order to be valid, a Change Order must be signed by the Signatories.

15. "Change Order Percentage" is the percentage of mark-up allowed for profit on Chargeable Costs for Change Orders. The Change Order Percentage is used to calculate Risk/Reward Adjustments and unless otherwise specifically defined in the Business Terms will be the same percentage used to calculate profit.

16. "Change Proposal Request" or "CPR" is a document submitted to the FPS Representative as a result of one of the limited Change Order conditions set forth in Section 11.2 of the Agreement. The CPR must describe the change, substantiate the reason or need, and provide a detailed estimate of any impacts on the EMP, ART, Incentive Threshold, and Contract Time (as applicable).

17. "Chargeable Costs" include the reimbursable cost categories for the R/R Members' use in determining progress billing and the Actual Cost incurred for the Work. The Chargeable Costs are specifically defined in Article 7 of the Agreement.

18. "Claim" is an unresolved dispute among the Parties or R/R Members arising out of a permitted change under Section 11.2 or an Allowed Claim under Section 12.2; or any unresolved dispute among the Parties or other IPD Team members that arises out of, or relates to, the Project or the Contract Documents.

Exhibit 1 – Definitions

19. **"CM/GC"** means the licensed general contractor firm responsible for performance of the Construction Work that is identified as the CM/GC on the cover page of the Agreement.
20. **"Construction Documents"** means the 2-D Plans and Specifications, developed by the Architect, its consultants, Separate Consultants, and design-build subcontractors and assembled by the Architect, that are approved for construction by the necessary Governmental Authorities, together with those parts of the Model described as Construction Documents in the definition of Building Information Model above.
21. **"Construction Stage"** includes actual construction activities as well as building commissioning and Governmental Authority approval for beneficial occupancy, stocking, and staffing.
22. **"Construction Work"** includes all labor, materials, equipment, appurtenances and services necessary for proper preconstruction, construction and commissioning of the Project in accordance with the Contract Documents and any governmental requirements including, but not limited to, applicable building codes and OSHPD requirements. Construction Work does not include work or services performed by Separate Contractors.
23. **"Contract Documents"** means this Agreement, inclusive of all referenced Exhibits, and any subsequent Amendments and Change Orders, the Agreed Program, the Construction Documents, Owner's documentation provided under Article 1 of the General Conditions (Exhibit 2D), and any reports or documents generated by the Joint Site Investigation.
24. **"Contract Time"** is the period of time allotted in the Master Schedule to achieve Final Completion of the Work, as adjusted by Change Order.
25. **"Core Group"** includes a primary and alternative representative from each of the Owner, FPS, Architect and CM/GC. The Core Group is responsible for the overall management and administration of the Project in accordance with the Contract Documents and Lean Project Delivery principles.
26. **"Design and Construction Documents"** include the Agreed Program, the BIM, all 2-D Plans and Specifications, as well as any other documents, calculations, specifications or schedules prepared by the Architect or any of its consultants, and the CM/GC or its design-build subcontractors that are used for design and construction of the Project.
27. **"Design Stage"** is the second Project Stage where the IPD Team members engage in Target Value Design to develop Construction Documents within the ART and obtain approval of the final Construction Documents from applicable Governmental Authorities.
28. **"Effective Date"** is the date that the Parties agree the Agreement was executed. The Effective Date is set forth on page 1 of the Agreement.
29. **"Estimated Maximum Price" or "EMP"** is the sum of the ART (estimated Chargeable Costs + IFOA Contingency + Allowances) and the Risk/Reward Amounts.

Exhibit 1 – Definitions

30. **"Final Actual Cost"** is the Actual Cost determined upon Final Completion of the Project.
31. **"Final Completion"** means the date after Substantial Completion when all Work has been finally completed in accordance with the Contract Documents; all Punch List items have been completed and accepted by the Parties, the FPS Representative, and the IOR (if applicable); the building has been commissioned; all verified reports have been submitted and accepted by OSHPD (if applicable); all close-out documentation required under the Contract Documents have been transmitted to the Owner; the Owner's personnel have received the required training sessions regarding operation of the building systems; a permanent certificate of occupancy has been issued by applicable Governmental Authorities; and the facility is ready to open for business as defined in the Owner's Conditions of Satisfaction included in Exhibit 8D.
32. **"Force Majeure"** means a natural disaster, civil disobedience, an act of terror, labor strikes by workers that cannot be resolved through a dual gate, or unavoidable casualties beyond the control of, and not due to any act or omission of, the R/R Members or their respective consultants and subcontractors.
33. **"FPS"** means Sutter Health Facility and Property Services, a division of Sutter Health.
34. **"FPS Representative"** is the FPS person who acts in the capacity of a project manager on behalf of the Owner.
35. **"General Conditions"** are the conditions to this Agreement regarding administration of the Project that are set forth in Exhibit 2D.
36. **"Governmental Authority"** or **"Governmental Authorities"** means any and all federal, state, county or municipal boards, departments, courts, offices or agencies (including OSHPD) that have jurisdiction over the Project.
37. **"Hazardous Materials"** means any substance, product, waste, or other material that is or becomes listed, regulated or addressed under the federal Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the federal Resources Conservation and Recovery Act ("RCRA"), or any other applicable federal, California state or local ordinance or regulation concerning hazardous, toxic or dangerous substances, waste or materials.
38. **"IFOA Contingency"** is the contingency amount carried as a separate line item within the ART and Incentive Threshold. The IFOA Contingency is available to the Core Group per Section 6.1.3 (c) to fund issues that were not fully anticipated when the ART and Incentive Threshold were established and for situations that do not meet the conditions for a Change Order under Article 11.
39. **"IFOA Team"** includes the Owner, FPS, Architect, CM/GC, consultants, subcontractors and suppliers performing any work or services in connection with the scope of

Exhibit 1 – Definitions

Work defined within this Agreement. The IFOA Team is a part of the IPD Team but does not include Owner's Separate Consultants or Separate Contractors.

40. "Incentive Amount" or "Incentive Amounts" means the aggregate potential funds that the R/R Members will share if the Final Actual Cost is less than the Incentive Threshold, as adjusted by Change Order (including reconciliation of Allowances). Remaining IFOA Contingency is included in the ART.

41. "Incentive Percentage" is the percentage applied to the savings between the Final Actual Cost and the Incentive Threshold to determine the Incentive Amounts available for distribution to the Owner and R/R Members. The Incentive Percentage will be determined based on the Incentive Amounts available per Exhibit 4A.

42. "Incentive Threshold" is the threshold set below the ART that will be compared to the Final Actual Cost, to determine the savings for calculation of the Incentive Amount. The Incentive Threshold is noted in the Business Terms (Exhibit 4).

43. "Interim R/R Distribution" or "Interim R/R Distributions" refers to payment of a portion of the Risk/Reward Amount per Section 8.4 of the Agreement at a milestone as defined in the Interim R/R Distribution Plan (Exhibit 3F). If Exhibit 3F is not included in the Agreement, Interim R/R Distributions are inapplicable to the Agreement.

44. "Interim R/R Distribution Plan" will be included and maintained in Exhibit 3F, if applicable. The Interim R/R Distribution Plan will show the current R/R Members, their Risk/Reward Shares, the description of the Interim R/R Distribution milestones, and the calculations for distributions to R/R Members based on the Risk/Reward Amounts available for those milestones.

45. "IOR" is the Inspector of Record retained by the Owner who is assigned to inspect the Construction Work pursuant to California state requirements.

46. "IPD Team" includes the FPS, the Owner, its Separate Contractors and Separate Consultants, the R/R Members and their respective consultants, subcontractors and suppliers performing any work or services in connection with this Project.

47. "Joint Site Investigation" is a site investigation attended by IPD Team members for the purpose of reviewing existing information, verifying existing conditions within the Project site, confirming the accuracy of existing as-built documents provided by the Owner, and investigating the Project site to identify deficiencies and discrepancies to determine the extent of any additional investigations or testing required for proper design and construction.

48. "Lean Project Delivery" means utilizing principles and techniques to promote efficient and effective project delivery that maximizes Owner value through open communications, reliable promising, collaboration, waste reduction, commitment-based planning, aligned incentives and continuous improvement through root cause assessment. Sutter Health's Lean approach is founded on the "Five Big Ideas:"

Exhibit 1 – Definitions

- Increase relatedness among all project participants
- Collaborate, *really* collaborate, throughout design, planning, and execution
- Projects are networks of commitments
- Optimize the Project, not the pieces
- Tightly couple action with learning

49. "Logistics Plans" are documents that describe any requirements, constraints, or planned configuration of the Project, such as any Owner constraints on the site, any site workflow configuration plans created by the IPD Team, work hours and restrictions, health and safety manual requirements, and interim life safety protocols.

50. "Master Schedule" is the summary of the Project schedule showing major milestone dates for design and construction including Governmental Authority deadlines, procurement and submittal for long lead items, critical Construction Work items, and the Substantial Completion and Final Completion dates. The Contract Time will be established by the Final Completion date set forth in the Master Schedule (Exhibit 5D), and documented in the Business Terms (Exhibit 4), subject to extension through approved Change Order.

51. "Milestone Projected Cost Model" is the Projected Cost Model that will be used to record the basis of any Interim R/R Distributions, if applicable, per Exhibit 3F.

52. "OSHPD" is the Office of Statewide Health Planning and Development in California.

53. "Owner" is the Sutter Health affiliate identified as the Owner on the cover page of this Agreement.

54. "Owner Generated Scope Changes" are changes directed by Owner to the scope of Work described in the Agreed Program that impact the EMP, ART, Incentive Threshold, or Master Schedule and are not: (i) reasonably inferable from the Agreed Program; or (ii) required as a result of a design error or omission.

55. "Party" means the Owner, Architect, or CM/GC. "Parties" means the Owner, Architect and CM/GC.

56. "PCA Log" is a log maintained by the IFOA Team which identifies and tracks Project issues, problems or other matters that could impact the ability of the IFOA Team to meet the requirements of the Agreed Program within the ART or Contract Time.

57. "Planning Stage" is the first Project Stage where the Owner and R/R Members document the Agreed Program and establish the EMP, the ART and the Incentive Threshold.

Exhibit 1 – Definitions

58. "Plans" means the 2-dimensional graphics illustrating the Project design, how the buildings are situated on the site, and the location, building elevations and sections, plan views, dimensions, and details of the Construction Work.

59. "Product Data" are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Separate Contractors, CM/GC, subcontractors, or suppliers to illustrate materials or equipment for some portion of the Construction Work.

60. "Project Manual" is a compilation of Project documents that will be developed and maintained by the FPS Representative outside of the Agreement that includes (but is not limited to): 1) Project Roster; 2) current Projected Cost Model and any Milestone Projected Cost Models (if applicable); 3) current Agreed Billable Rates; and 4) current approved Equipment Rates.

61. "Project Roster" is a current list of the IPD Team members' representatives, key personnel and each Party's representatives that sit on the Core Group, the SET, and who are Signatories. The most current approved Project Roster is located in Tab 1 of the Project Manual and will be updated by the Core Group as it deems necessary.

62. "Projected Actual Cost" is the total of the Chargeable Costs incurred to date plus the remaining Chargeable Costs (including IFOA Contingency and Allowances) projected to occur by Final Completion as demonstrated through the Projected Cost Model or Milestone Projected Cost Model (to the extent Interim R/R Distributions are allowed).

63. "Projected Cost Model" is a line item breakdown of the EMP tracking the original EMP and Change Order updates indicating the Projected Actual Cost, and any predicted variance for each line item. The Projected Cost Model will be updated as determined by the Core Group and will be used monthly by the IFOA Team as a part of the progress billing process.

64. "Project Stage" means the Planning Stage, Design Stage, or Construction Stage. "Project Stages" means the Planning Stage, Design Stage, and Construction Stage.

65. "Pull Scheduling" is a planning system based on requests from IPD Team members to other Project performers upon whom the requester's work is dependent, and receipt of reliable promises made by the upstream performer about when it will finish the work agreed upon per the hand-off criteria, in order to enable the downstream performers to begin their respective portions of the work. The planning system must be consistent with the requirements in the Sutter Health Lean Guidelines and include a milestone schedule incorporating the Project milestone dates, collaboratively created phase plans, make-ready look-ahead plans, weekly work plans, and a method for measuring, recording, and improving planning reliability.

66. "Punch List" is a comprehensive list prepared by the Core Group and IOR (if applicable) itemizing building components or elements to either be completed or corrected before Substantial Completion or Final Completion, as applicable.

Exhibit 1 – Definitions

67. **"Record Model"** is a version, or versions, of the BIM that match the Construction Documents included in the permit set, or phases of the permit set.

68. **"Resource-Loaded Work Plan" or "RLWP"** is the cost loaded staffing plan prepared by the Architect and CM/GC as part of the EMP breakdown allocating their respective Chargeable Costs related to labor expenses for Services and Construction Work broken down by Project Stage and spread over the duration of the Master Schedule.

69. **"Risk/Reward Adjustment"** is a financial adjustment of the Risk/Reward Amount that can occur due to changes in the number of R/R Members, approved Change Orders, or adjustments after Final Completion of the Project per Section 8.3. Risk/Reward Adjustments will be tracked through approved Change Order.

70. **"Risk/Reward Amount"** is the aggregate amount of the R/R Members' 100% profit placed at risk (Exhibit 3E) and through approved Change Order will include any Risk/Reward Adjustments. Exhibit 3E will include a breakdown of each R/R Members' initial 100% profit placed at risk. Dependent on the Final Actual Cost, the R/R Members may earn all, a portion of, or no Risk/Reward Amount.

71. **"Risk/Reward Share"** is the pro rata share that each R/R Member has in the Risk/Reward Amount. The Risk/Reward Share is stated in Exhibit 3E.

72. **"R/R Consultants"** are consultants engaged by the Architect to perform a portion of the Services per the obligations stated in their respective risk/reward consultant agreements and that have placed 100% of their profit at risk and are therefore eligible to share in the Risk/Reward Amount and any Incentive Amount.

73. **"R/R Member"** means the Architect and CM/GC, plus any of their respective consultants and subcontractors who are R/R Subcontractors or R/R Consultants.

74. **"R/R Subcontractors"** are subcontractors engaged by the CM/GC to perform a portion of the Construction Work per the obligations stated in their respective risk/reward subcontracts and that have placed 100% of their profit at risk and are therefore eligible to share in the Risk/Reward Amount and any Incentive Amount.

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

76. **"Schedule of Values"** is a document that allocates the Chargeable Costs included in the EMP.

77. **"Senior Executive Team" ("SET")** includes 1 executive level officer from each of the Parties and FPS. SET members may attend Core Group meetings as requested or quarterly but their main function is to provide mentoring to the Core Group and assist with resolution of any claims or disputes that arise and are not resolved by the Core Group prior to mediation.

Exhibit 1 – Definitions

78. "Senior Executive Team Meeting" ("SET Meeting") is a meeting requested by the Core Group as part of the dispute resolution process when the Core Group is unable to resolve pending claims or disputes among any IFOA Team members.

79. "Separate Consultants" means those consultants other than Architect or its consultants that enter into a direct agreement with the Owner to perform work or services related to this Project.

80. "Separate Contractors" means those contractors or vendors other than CM/GC or its subcontractors and suppliers that enter into a direct agreement with the Owner to perform work or services related to this Project.

81. "Services" are all design and construction administration services performed by Architect or its consultants under this Agreement.

82. "Shop Drawings" are drawings, diagrams, schedules and other data specially prepared for the Construction Work by CM/GC, or its subcontractors, suppliers or distributors to illustrate some portion, component or detail of the Project and/or how the Construction Work will be performed.

83. "Signatory or Signatories" are those persons authorized by the Owner, Architect and CM/GC respectively to execute this Agreement, any Amendments and any Change Orders. Signatories will be identified in the Project Roster (Tab 1 of the Project Manual).

84. "Specifications" are the written requirements for materials, equipment, systems, standards, execution and workmanship for the Construction Work, and performance of related services. The Specifications are included in the Contract Documents.

85. "Standard Consultants" are consultants retained by the Architect that are not R/R Members. These consultants will be retained, as applicable, through standard consultant agreements with the Architect.

86. "Standard Subcontractors" are subcontractors retained by the CM/GC that are not R/R Members. These subcontractors will be retained, as applicable, through standard subcontracts with the CM/GC.

87. "Submittals" include Shop Drawings, Product Data, Samples and similar documents prepared by CM/GC, or its subcontractors or suppliers regarding installation of the Construction Work that are submitted for review by the Architect and its consultants and OSHPD, if required, pursuant to the Contract Documents.

88. "Substantial Completion" means the point when the Construction Work (or a phase thereof) is complete, other than minor Punch List items, and the applicable areas have received required Governmental Authority approvals for beneficial use and occupancy of those portions of the Project for staffing, stocking and training and Owner's legal occupancy of the

Exhibit 1 – Definitions

Project (or portions of the Project) for its intended use. Substantial Completion does not require patient care licensing.

89. "Sutter Health" is a not-for-profit network of doctors and hospitals providing healthcare services to Northern California.

90. "Target Value Design" is a design process that requires Project values, cost, schedule, and constructability to be basic components of the design criteria, and uses cost targets to drive innovation in designing a project that provides optimum value to Owner. Target Value Design uses constructability reviews and rapid cost analysis from key IPD Team members before design decisions are made to allow the design to progress within the ART and Master Schedule. Target Value Design estimates should include life cycle cost analysis for systems being considered, design details as they are being developed, and portions of the Construction Work that the Core Group deems necessary for accurate cost modeling.

91. "Unforeseen and Differing Site Conditions" means discovery of an unforeseen, subsurface or otherwise concealed physical condition that differs materially from the conditions indicated in the Contract Documents or the information obtained from the Joint Site Investigation; an unknown physical condition of an unusual nature that differs materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character and nature provided for in the Contract Documents; or an unknown, pre-existing hazardous substance or condition that requires removal or remediation.

92. "Willful Default" is one of the following: (i) actual or constructive abandonment of the Project; (ii) persistent and repeated failure, after written notification, to correct Work that significantly and materially deviates from the Contract Documents or applicable laws, codes or regulations; (iii) failure of a R/R Member to properly contract with subcontractors or consultants pursuant to the provisions set forth in Article 5; or (iv) failure to provide an adequate number of competent management and field personnel after written notification and an opportunity to cure. Actual abandonment occurs if the Architect and/or CM/GC, without justification, cease performing Work for a period of 14 consecutive days. Constructive abandonment occurs if the Architect and/or CM/GC, without justification, expend(s) so little effort on the Project that there is no meaningful progress for 21 consecutive days.

93. "Work" means all labor, materials, equipment, appurtenances and services required of the Architect and CM/GC and their respective consultants and subcontractors to plan, design, construct, and commission the Project in accordance with the Contract Documents, and includes all Services and Construction Work.

Exhibit 2 – Project Scope

A: Scope of Work

B: Design Documents

C: Applicable Building Codes and Regulations

D: General Conditions to Agreement

SAMPLE

Exhibit 2A – Scope of Work

A: Scope of Work

(Insert Scope of Work)

SAMPLE

Exhibit 2B – Design Documents

B: Design Documents

1. Conceptual Design (See attached)
2. Construction Documents (To be amended into the Agreement)

SAMPLE

Exhibit 2C – Applicable Building Codes and Regulations

C: Applicable Building Codes and Regulations

The Project will comply with all applicable codes and should consider the following regulations and guidelines. The inclusion or exclusion of codes and regulations (or listed versions of such) below will not relieve the CM/GC or Architect of the obligation to comply with all applicable codes, regulations, and standards:

California Building Standards Administrative Code (Part 1, Title 24 CCR)
California Building Code (Part 2, Title 24, CCR)
California Electrical Code (Part 3, Title 24, CCR) California Mechanical Code (Part 4, Title 24, CCR)
California Plumbing Code (Part 5, Title 24, CCR)
California Energy Code (Part 6, Title 24, CCR)
California Fire Code (Part 9, Title 24, CCR)
California Building Code (Part 10, Title 24, CCR) California Reference Standards Code (Part 12, Title 24, CCR)
Acoustical Society of America
American Concrete Institute
American Gas Association
American Institute of Steel Construction (AISC)
American National Standards Institute (ANSI)
American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE)
American Society of Mechanical Engineers
American Society for Testing and Materials (ASTM)
American Water Works Association
2010 Americans with Disabilities Act Standards for Accessible Design or most current relevant publication
Associated Air Balance Council
California Code of Regulations
Title 8 - Industrial Relations (OSHA)
Title 9 - Rehabilitation & Development Services
Title 17 - Public Health
Title 19 - Public Safety
Title 20 - Public Utilities & Energy
Title 21 - Public Works
Title 22 - Social Security
Title 23 - Waters
Title 24 - State Building Code
Title 26 - Toxics
Title 27 - Environmental Protection
California Children's Services Manual of Procedures
2009 California Disabled Accessibility Guidebook Interpretive Manual (CalDAG) or most current relevant publication
2010 Guidelines for Design and Construction of Healthcare Facilities or most current relevant publication
Guidelines for Restraints of Mechanical Systems and Plumbing Piping Systems
California Health and Safety Code
Illuminating Engineering Society
Institute of Electrical and Electronic Engineers
2000 Life Safety Code (NFPA 101) or most current version being used for Certification by Joint Commission
National Institute of Standards and Technology
National Electrical Code Standards
National Electrical Manufacturers Association
National Fire Codes
National Fire Prevention Association (NFPA)
Sheet Metal and Air Conditioning Contractors National Association (SMACNA)
Single Ply Roofing Institute
Specific Site Response Design Spectra For Irregular Buildings
The Joint Commission Statement of Conditions™
Underwriters Laboratory, Inc. (UL)

Exhibit 2D – General Conditions to Agreement

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SAMPLE

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1. OWNER PROVIDED INFORMATION AND COSTS

1.1 Access to Existing Documents. Owner will provide the IFOA Team access to all existing documentation regarding the Project site in Owner's possession, as requested by the Core Group, including all geotechnical or environmental impact reports, surveys, legal description of the property, existing conditions, engineering and environmental test results, and as-built documentation.

1.2 Project Description. Owner will provide the IFOA Team with the Project Description and Site Description (Exhibit 8A) for use in developing the Design and Construction Documents.

1.3 Owner's Program and Conditions. Owner will provide the IFOA Team with the Owner's Program (Exhibit 8B) which will include design objectives, Owner constraints and criteria, including space requirements and relationships, flexibility and expandability, special equipment and systems, site requirements, aesthetics, as well as the Conditions of Satisfaction (Exhibit 8D). This information will be analyzed and used by the IFOA Team in developing the Design and Construction Documents.

1.4 Team Review. IFOA Team members will review the information furnished by Owner under Sections 1.1 through 1.3 with reasonable care and advise the Core Group in writing of any errors, inconsistencies, inaccuracies, or incompleteness discovered.

1.5 Permits and Fees. The Owner will pay for all entitlements, easements, assessments and fees required for the development, use or occupancy of the Project. Specialty permits related to the Construction Work will be included in the EMP and are a Chargeable Costs under Article 7 of the Agreement.

1.6 Testing and Inspections. The Owner will be responsible for all third party testing and inspections required of Owner by law, including those required by the Inspector of Record ("IOR") to the extent applicable under Section 3.3. CM/GC will be responsible for coordination of third party testing and inspections per Section 7.2 and for any other testing, inspections, and reports required by law or by the Contract Documents. CM/GC provided testing and inspections are Chargeable Costs under Article 7 of the Agreement.

2. OWNER'S SEPARATE CONTRACTORS AND SEPARATE CONSULTANTS

2.1 General. The Owner is responsible for the timeliness and quality of the work and services of its Separate Consultants and Separate Contractors. IFOA Team members will collaborate with the Core Group and Separate Consultants and Separate Contractors in the Target Value Design process (to the extent applicable) and will coordinate their respective Work with the Separate Contractors' work and Separate Consultants' services to effect smooth and efficient workflow and an integrated work product. Coordination will include reviewing and coordinating design requirements, layout, plans, specifications, site logistics, and schedules throughout the various Project Stages.

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2.2 Coordination During the Construction Stage. CM/GC and its subcontractors must afford Owner and those Separate Contractors performing construction work reasonable opportunity for introduction and storage of materials and equipment for performance of their work. As directed by the Core Group, the CM/GC will include Separate Contractors performing construction work in scheduling, field coordination and conflict resolution and site safety programs. Separate Contractors must adhere to the safety and infection control procedures under Article 8 but will remain responsible and liable for all safety violations arising from their respective work.

2.2.1 Quality Assurance. If part of the Construction Work depends upon construction or operations by Separate Contractors, the CM/GC and its subcontractor(s) will coordinate the conditions of satisfaction and hand-off criteria, and will be jointly responsible for confirming that the work meets the requirements of their respective agreements and other contract documents. Before proceeding with subsequent Construction Work, CM/GC and its subcontractors will promptly review the installed condition for proper installation and report any discrepancies or non-conforming work to the Core Group. Unless the non-conforming or defective work could not have reasonably been discovered, CM/GC's failure to report defective or non-conforming work performed by Separate Contractors will be deemed acceptance that the work or condition is fit for subsequent Construction Work.

2.2.2 Cutting and Patching. Separate Contractors will be responsible for their own cutting and patching. To the extent cutting and patching is necessary, the Separate Contractor will seek Core Group approval prior to performing the work. All areas requiring cutting, fitting, or patching will be restored to the condition existing prior to the cutting, fitting, or patching.

2.2.3 Clean-up. If a dispute arises among CM/GC and Separate Contractors regarding responsibility under their respective contracts for maintaining the site and surrounding area free from waste materials and rubbish, Owner may, after 48 hours written notice, clean up and allocate the cost among the responsible IPD Team members.

3. OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT (OSHPD)

3.1 Hospital Safety Act of 1983. If this Project is subject to the Hospital Safety Act of 1983, the Project is subject to OSHPD jurisdiction and the provisions set forth in this Article 3 are applicable to the Parties. If applicable, the Architect and CM/GC each acknowledge that: (i) they are familiar with all provisions and the applicable duties of an architect and CM/GC under the Hospital Safety Act of 1983; (ii) the Construction Documents will be reviewed, approved and accepted by OSHPD prior to issuance of a permit; and (iii) changes in the permitted Work may not commence without approval by OSHPD and the issuance of an OSHPD Change Order, except as otherwise permitted under the building code. If the Project is not subject to OSHPD jurisdiction, all references to OSHPD, verified reports and the IOR in the Contract Documents are inapplicable.

3.2 Submittals. If the Project is subject to OSHPD jurisdiction, CM/GC and Architect acknowledge that certain Submittals may require OSHPD approval (see Section 5.5) and that

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Architect and its consultants will be responsible for submission of all verified reports required by OSHPD for beneficial occupancy.

3.3 Inspector of Record ("IOR"). If the Project is subject to OSHPD jurisdiction, the Owner will engage an IOR. The IOR will inspect and observe the Construction Work under California Health & Safety Code section 129825 and California Administrative Code, Title 24. Inspection of the Construction Work will not relieve the CM/GC and its subcontractors from performing their respective portions of the Construction Work in accordance with the Construction Documents or from any liability associated with proper performance of the Construction Work under the Contract Documents.

4. BUILDING INFORMATION MODEL

4.1 Building Information Model. Unless otherwise directed by the Core Group, the IFOA Team will do the following:

4.1.1 Design the structure and major systems of the Project using BIM, with all major dimensions included in the Model(s);

4.1.2 resolve spatial conflicts/interferences among Project components through the Model(s); and

4.1.3 construct the modeled components of the Project in accordance with the dimensions in the Model(s) unless the Core Group determines that it would be more dimensionally accurate to use some other method for certain Project components.

5. PROJECT ADMINISTRATION

5.1 Project Manual. The Project Manual is maintained outside of the Agreement by the FPS Representative and includes those documents identified in the Project Manual table on page 7 of the Agreement as well as any other documents that the Core Group deems appropriate.

5.2 Progress Monitoring. The IFOA Team will develop protocols for Target Value Design and Lean processes, and for monitoring cost, schedule, submittals, quality and safety. The Core Group will determine which party is best suited to maintain progress monitoring for particular information. At a minimum, the protocols will include the following management tools:

5.2.1 Daily Construction Reporting. A daily log will be established and maintained containing a record of weather, each subcontractors' Work on the site, the number of workers per trade, identification of equipment, Construction Work accomplished, problems encountered, and other similar relevant data. A copy of all daily construction reports will be kept at the Project office.

5.2.2 PCA Log. The IFOA Team will keep and maintain a PCA Log for identifying and tracking Project issues, problems, or any other matters that impact the ability of the IFOA Team to meet the requirements of the Agreed Program within the ART or Contract

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Time. The PCA Log will monitor the risk items and memorialize resolutions. The PCA Log will be maintained at the Project office and accessible to any IFOA Team member.

5.2.3 Submittal Log. A Submittal log will be established and maintained containing a record of all Submittals, the date submitted to the Architect, the date returned to the CM/GC and whether the Submittal was approved or requires resubmission. Any IFOA Team member can access the Submittal log at the Project office.

5.2.4 Performance Indicators. The Core Group will establish and monitor performance requirements found in Article 2 of the Agreement and elsewhere in the Contract Documents.

5.2.5 Request for Information ("RFI") Log. A log of all RFIs will be established and maintained by the CM/GC. The log will set forth the RFI number, the date the RFI was submitted, the submitting party, and the date it was executed to document the solution reached through collaboration, and the date the RFI was returned to the field for implementation.

5.2.6 Projected Cost Model Review. FPS and/or an independent consultant will monitor the Projected Actual Cost and compare against the At-Risk Threshold ("ART") and Incentive Threshold throughout the design and construction process. The Projected Cost Model will show Actual Cost for activities in progress and the remaining Chargeable Costs including Change Orders, Allowances, remaining IFOA Contingency, Risk/Reward Adjustments and estimates for incomplete tasks by way of comparison between the monthly Projected Cost Model and the EMP. The monthly Projected Cost Model review will be used to support the Target Value Design process.

5.2.7 Schedule Updates. The Master Schedule will be updated as required by the IFOA Team to reflect the most current approved Contract Time and other milestone dates that have been amended through Change Order.

5.2.8 Test and Inspection Logs. The CM/GC will maintain an on-site inspection log that is accessible by the Core Group, IOR and other Governmental Authorities. The log will document all tests and inspections performed at the Project during the Construction Stage and will be available at the Project office.

5.3 Project Meetings. Project meetings will be held in accordance with Section 4.2 of the Agreement. Unless otherwise directed by the Core Group, the Architect will record the meeting minutes during the Planning Stage and Design Stage and the CM/GC will record the meeting minutes during the Construction Stage. All meeting minutes are subject to Core Group approval.

5.4 Requests for Information

5.4.1 During Design Stage. To the greatest extent possible, questions, conflicts and issues regarding coordination and constructability should be resolved through collaboration with the appropriate IPD Team members during the Design Stage. Resolutions

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reached during the Design Stage will be included in the Construction Documents without the need for a formal RFI.

5.4.2 After Construction Stage Commences. To the extent that information or clarification is needed after the Construction Stage has commenced, the party seeking clarification will first attempt to resolve the matter informally through collaboration with the IPD Team member(s) who is the best responder. If the requesting and responding parties are able to resolve the issue, they will generate an RFI documenting the solution. If the requesting and responding parties are unable to resolve the issue through their initial informal collaboration, the party seeking the information will indicate when the issue needs to be resolved to avoid delaying the Work and the appropriate responding party will reliably commit to answering the RFI to avoid delaying the Construction Work. As part of the performance requirements, the IPD Team will create an efficient RFI process where they target to resolve 98% of RFIs on the first review. If the RFI efficiency falls below 95% resolution on the first review, then the Core Group will meet to review and implement corrected measures to improve the process to the expected target of 98%. If the EMP or Contract Time is impacted, the RFI will require Core Group direction prior to implementation. The use of RFIs must be consistent with OSHPD requirements for documenting changes, if applicable.

5.5 Submittals and Shop Drawings. The CM/GC will timely submit all Submittals required by the Construction Documents to the Architect or its consultant who is responsible for that specific design discipline (with a copy to the Architect) per Section 5.5.1, in accordance with the most current, approved, Submittal schedule avoiding delays in the Work or in the activities of other IPD Team members performing work or services. Each Submittal will be prepared by the responsible subcontractor or supplier in accordance with the Contract Documents to demonstrate the construction means and methods proposed for installation of a building system or component in a coordinated manner with other contiguous work and consistent with the design expressed in the Construction Documents. As part of the performance requirements, the IPD Team will create an efficient Submittal process where they target to resolve 95% of all Submittals on the first review. If the Submittal efficiency falls below 90% resolution on the first review, then the Core Group will meet to review and implement corrected measures to improve the process to the expected target of 95%. The IPD Team may incorporate concepts of pre-submittals or slip sheeting Submittals to meet this performance requirement. Submittals that are not prepared, signed and sealed by a design-build subcontractor under Section 5.5.4 are not considered Construction Documents.

5.5.1 Submittal Scheduling. CM/GC in collaboration with the Architect will submit a proposed schedule to the Core Group that complies with the milestones established in the Master Schedule and indicates deadlines for submission of Submittals and when approval must be received to allow for timely procurement of materials and equipment. To the maximum extent possible, Submittals should be reviewed and approved during the Design Stage. The proposed Submittal schedule must allow adequate time for design review, allowing for the incorporation of collaborative Submittal review to meet the 95% performance requirement, and is subject to approval by the Core Group. Disputes regarding the Submittal schedule will be referred to the Core Group for resolution pursuant to Section 4.1 of the Agreement.

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5.5.2 Electronic Submission and Archiving. The IFOA Team will establish a system to track and archive Submittals and their reviews, which will be available to all IPD Team members. To the extent possible, Submittals will be delivered in an electronic format capable of being read and integrated into the Model. By transmitting a Submittal, the CM/GC and its subcontractor represent that they have reviewed the submission for accuracy and compliance with all Contract Documents, coordinated the information contained within the Submittal with the existing field conditions and requirements of the Work and other contiguous work, and that all original engineering, if required, has been performed by a California State registered professional engineer or licensed architect. All Submittals will include a request that the Submittal be reviewed and returned by a certain date to conform with the most current approved Submittal schedule.

5.5.3 Review. The Architect and its consultants will review the Submittals for conformance with the Construction Documents or design criteria and approve or take other appropriate action. Approval of a Submittal by the Architect or OSHPD (if required) does not relieve the CM/GC or its subcontractors and suppliers from any of their respective contractual obligations and will not constitute approval of any safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's or OSHPD's approval of a specific item does not constitute approval of an assembly of which the item is a component. If any Submittal is returned without approval, the rejecting party will discuss with the submitting party the reason for rejection and describe the necessary modifications. The CM/GC will require the appropriate party to make the necessary correction required and furnish the corrected re-submission to the Architect and applicable consultants for approval. The re-submission must direct specific attention to those parts of the re-submittal that have been revised. No Construction Work will be performed for which the Construction Documents require a Submittal until the Submittal has been approved by the Architect and OSHPD (if required). Upon receipt of approval on a Submittal, the CM/GC will notify the relevant IFOA Team members and post a final corrected copy.

5.5.4 Design-Build Subcontractors. If the Agreement requires the CM/GC to subcontract for design-build services for certain trades, the design-build Submittals must be prepared by, or under the responsible charge of, a California State registered professional engineer or licensed architect who will sign and seal all design-build Submittals indicating that the design professional is the registered engineer or architect of record. Submittals will be in accordance with the provisions set forth in Sections 5.5.1 through 5.5.3. The design-build subcontractor will remain liable and responsible for all design-build Submittals. The Architect will review design-build Submittals to confirm that the Submittals are in general conformance with the published design criteria and to coordinate the design-build Submittals with the design prepared by Architect and its consultants.

6. CONSTRUCTION OPERATIONS

6.1 Compliance with Law. The Architect and CM/GC and their respective consultants and subcontractors will comply with all applicable federal, state and local laws, codes (including building codes), rules, regulations and ordinances in effect as of the Effective Date of the Agreement through Final Completion of the Project.

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6.2 Supervision of Construction Work. The CM/GC will supervise and direct the Construction Work using its best skill and judgment. The CM/GC will be solely responsible for all fabrication, shipment, delivery and coordination of all portions of the Construction Work under the Contract Documents. The CM/GC is responsible for all means, methods, sequences and safety procedures related to the Construction Work. The CM/GC is responsible for the acts and omissions of its employees, agents, subcontractors and suppliers and anyone performing Construction Work directly or indirectly for any of them on this Project.

6.3 Labor and Materials. The CM/GC will provide all labor, materials, equipment and appurtenances necessary to properly construct the Project in accordance with the Contract Documents, except the work provided by Separate Contractors.

6.4 Use of Site. The CM/GC will prepare a Logistics Plan per Section 6.2.2 of the Agreement. The Logistics Plan must be coordinated with the most current approved Master Schedule, will confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents, and will consider such things as phasing and establishing areas of the site that will be used for trailers, deliveries, staging, storage, ingress and egress. IPD Team members' use of the site will be consistent with the most current, approved Logistics Plan.

6.4.1 Materials and Equipment. Unless otherwise required by the Construction Documents, all materials and equipment required under the Contract Documents will be new and of good quality. Once the Construction Documents are approved, no substitutions will be accepted unless: (i) the specified materials or equipment have been discontinued; (ii) the Governmental Authority has rejected the use of certain specified materials or equipment; or (iii) the Owner and the Governmental Authority (if applicable) have approved the substitution through written approval. All substitutions must be approved by the Architect before they are incorporated into the Project. Materials and equipment will be furnished in ample quantities and procured in time to ensure uninterrupted progress of the Construction Work. All materials and equipment will be properly stored and protected as required by the Contract Documents and any loss or damage due to improper storage or protection will be borne by the CM/GC.

6.4.2 Shipment and Deliveries. Prior to shipment, delivery and installation of materials and equipment, the CM/GC will verify the stage of completion of the Project to determine the availability of facilities for access, delivery, transportation and storage, and to correlate these observations with the requirements of the most current, approved, Logistics Plan. All shipments and deliveries will be scheduled and coordinated in accordance with the current Logistics Plan and the current approved Master Schedule.

6.4.3 Storage of Materials and Equipment. CM/GC will maintain, or cause its subcontractors to maintain, all storage areas and will keep storage areas clean, safe and secure. Any materials or equipment stored offsite will be insured or stored in an insured or bonded warehouse unless the FPS agree that materials and equipment can be safely stored on-site. The risk of loss will remain on the CM/GC for all materials and equipment stored off-site.

6.5 Layout and Staking. The CM/GC will employ a license surveyor to locate and provide all line and grade staking and benchmarks and will preserve and protect all benchmarks. The CM/GC, working from the established benchmarks, will properly layout and

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establish all lines, levels, grades and locations of all parts of the Construction Work and is responsible for the accuracy and proper correlation of the data with the Construction Documents and the Construction Work.

6.6 Field Coordination. Before starting each portion of the Construction Work, the CM/GC will: (i) review and compare the various Construction Documents relative to that portion of the Construction Work, as well as the information furnished by other IPD Team members that may affect proper installation of the Construction Work; (ii) field measure existing conditions related to that portion of the Construction Work; and (iii) observe any conditions at the site directly affecting that portion of the Construction Work.

6.7 Cutting and Patching. The CM/GC will be responsible for all cutting, fitting or patching required for completion of the Construction Work or to make its parts fit together properly. The CM/GC will not damage or endanger a portion of the Construction Work, or fully or partially completed Construction Work, by cutting, patching or otherwise altering the construction. The CM/GC will not cut or otherwise alter the construction by Separate Contractors except with written consent of the FPS Representative.

6.8 Taxes. The CM/GC has included estimates for all sales, consumer, use, gross receipts, and other similar taxes legally enacted as of the Effective Date of the Agreement in the EMP. All taxes associated with the Construction Work are Chargeable Costs per Article 7 of the Agreement.

6.9 Legal Notices. The CM/GC will comply with and provide all notices required by laws, ordinances, and regulations applicable to Construction Work in the State of California.

6.10 Use of Equipment or System. CM/GC may use equipment or systems prior to Substantial Completion; however, all such equipment or systems will be cleaned and restored to prime condition before Owner's final acceptance. Temporary use of equipment or systems will not trigger commencement of the warranty period.

7. QUALITY OF WORK AND SERVICES

7.1 Built-in Quality. The CM/GC and all subcontractors will perform the Work in compliance with any built-in quality program established by the Core Group. CM/GC will keep quality control reports as required by the program certifying that the relevant areas of the Construction Work have been inspected, noting any non-conforming conditions, including any non-conforming conditions of work performed by Separate Contractors that CM/GC discovers.

7.2 Testing and Inspections. Tests, inspections and approvals of portions of the Construction Work required by the Contract Documents, or by laws, ordinances, rules, regulations or orders of Governmental Authorities will be coordinated by the CM/GC. When portions of the Project are ready for third party inspection, the CM/GC will make arrangements for tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, and with the IOR (if applicable) and other appropriate Governmental Authorities. The CM/GC will provide the IOR (if applicable) and any Governmental Authorities notice of when and where tests and inspections are to be made so that the appropriate parties may be

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present for the procedures. The CM/GC will provide necessary labor to make the Construction Work ready for inspection, including labor to uncover and re-cover any Construction Work.

7.2.1 **Cost of Inspections.** The cost of inspections is a Chargeable Cost for the R/R Members, including costs associated with required re-inspection of Construction Work. However, Standard Subcontractors will bear all costs associated with re-inspection if the Construction Work was not ready for inspection or because the subcontractor negligently performed its portion of the Construction Work causing rework and re-inspection.

7.2.2 **Covered Work Before Inspection.** If a portion of the Construction Work is covered before inspection by Governmental Authorities, it will be uncovered for inspection and examination, and be replaced without change in the EMP, ART, Incentive Threshold or Contract Time.

7.2.3 **Additional Testing.** If the Core Group, IOR (if applicable), or other Governmental Authorities require additional testing and inspection, the CM/GC will make the necessary arrangements and provide notice of when and where the additional testing will occur. The cost for additional testing is a Chargeable Cost for the R/R Members. Standard Subcontractors will bear all costs associated with additional testing if the additional testing reveals that their respective portions of the Construction Work fail to comply with the Contract Documents.

7.2.4 **Certifications.** All required certifications for testing, inspections, and approvals will be procured by the CM/GC and maintained in the Project files until Final Completion of the Work. Upon Final Completion of the Work, all certifications will be transmitted to the FPS Representative along with other close-out documentation as required by the Contract Documents.

7.3 Non-Conforming Work. The CM/GC will promptly commence correction of Construction Work that is rejected by the Owner, FPS Representative, or Architect for failing to conform to the requirements of the Contract Documents or is rejected by any Governmental Authority or IOR (if applicable). Correction of non-conforming Construction Work performed by R/R Members are Chargeable Costs but only to the extent that the EMP has not been exceeded at the time of the occurrence, or at Final Completion. Correction of non-conforming Construction Work performed by R/R Members in excess of the EMP, or non-conforming Construction Work performed by Standard Subcontractors, will be remedied at the CM/GC's and/or subcontractors' sole expense.

7.4 Punch List. When the CM/GC believes that it has achieved Substantial Completion, the CM/GC will notify the Core Group, and the Core Group will direct review of all Construction Work and preparation of a list of any remaining items that were either not identified or not completed as part of the quality control program ("Punch List") and need to be completed, repaired, or replaced before Substantial Completion. After a certificate of Substantial Completion has been issued, the CM/GC and its subcontractors will diligently complete any remaining Construction Work in accordance with the Contract Documents. After CM/GC notifies the Core Group that it believes the Project has achieved Final Completion, the Core Group will direct review of the entire Project and preparation of a final Punch List indicating final items that

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need to be completed, repaired, or replaced before Final Completion. Correction of all Punch List items in accordance with the Contract Documents and to the Owner's satisfaction is a condition precedent to Final Completion.

8. SAFETY AND INFECTION CONTROL PROCEDURES

8.1 Safety Laws. CM/GC will give notice and comply with all applicable laws, ordinances, rules, regulations and lawful orders of Governmental Authorities bearing on safety of persons or property or their protection from damage, injury or loss.

8.2 Notices and Signs. Throughout the Construction Stage, the CM/GC will erect and maintain signage and notices for safety and protection against hazards as required by California state and federal laws and applicable safety regulations.

8.3 Safety Meetings. During the Construction Stage, CM/GC will hold safety meetings with its subcontractors to review compliance with the health and safety program.

8.4 Safety Inspections. CM/GC will conduct jobsite inspections to verify that the Construction Work is being performed in a safe and workmanlike manner and in accordance with the health and safety program. CM/GC will provide written notice to its subcontractors demanding immediate correction of any known safety violation. CM/GC will also notify the FPS Representative of any known safety violations of Separate Contractors.

8.5 Material Safety Data Sheets ("MSDS"). CM/GC must comply with all requirements of the Hazardous Communications Standard (Title 29, Code of Federal Regulations, Part 1910, as amended). At a minimum, CM/GC will: (i) keep all MSDS on file at the Project site and update as necessary; (ii) cause all subcontractors and employees to clearly label all hazardous compounds as to content with appropriate warnings noted and the name and address of the manufacturer listed; and (iii) require that all subcontractors and employees using hazardous compounds are trained in protective handling and are knowledgeable about the potential hazards.

8.6 Emergencies. The CM/GC may act in its sole discretion in case of an emergency to protect persons or property from threatened injury, damage or loss.

8.7 Ultra-Hazardous Activity. When use or storage of ultra-hazardous materials or unusual methods are necessary for the performance of the Construction Work, the CM/GC will exercise the utmost care and carry on the activity under direct supervision of a properly qualified person.

8.8 Accidents and Reporting. The CM/GC will promptly notify and report all accidents to the proper authorities as appropriate regarding accidents arising from the Construction Work that result in death, personal injury or fire. The CM/GC will also promptly report all accidents to the FPS Representative and provide a detailed, written accident report for the Project files.

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8.9 Required Training. The Architect and CM/GC are responsible for requiring their respective employees, subcontractors, suppliers, and consultants to be trained in the Project's interim life safety procedures, Owner's infection control procedures, all applicable requirements regarding confined spaces per OSHA Standards for Confined Spaces (29 CFR section 1910.146, as amended), lockout/tagout procedures per OSHA Standards for Control of Hazardous Energy (29 CFR section 1910.147, as amended), and any applicable California state and local safety requirements.

9. PROTECTION

9.1 Site Utilities. CM/GC will contact the appropriate local authorities to locate all site and public utilities prior to commencement of the Construction Stage. CM/GC will provide notice to all public utility companies before commencement of the Construction Stage for coordination of structures and public utilities that are immediately adjacent to the Project site that may be impacted by construction operations.

9.2 Adjacent Properties. If required, the CM/GC will provide at least 2 business days' notice to all adjacent property owners before commencement of the Construction Stage.

9.3 Barriers and Warnings. CM/GC will provide barriers and signs to prevent unauthorized entry to construction areas, to allow for Owner's safe use of the Project premises, and to protect existing facilities and adjacent properties from damage from construction operations.

9.4 Water Precautions. If applicable to the Construction Work, CM/GC will grade the Project site as required by the civil design included in the Construction Documents. During construction, the CM/GC will maintain all trenches and excavated areas free from water accumulation and will provide the necessary barriers to protect the Project site from ponding, running water, and soil erosion. The CM/GC will provide for increased drainage of storm water and any water that may be applied or discharged on the Project site during performance of the Construction Work. All drainage facilities will be adequate to prevent damage to the Construction Work, Project site, and adjacent property. CM/GC will construct dikes, if necessary, to divert any increased runoff from entering adjacent property (except in natural channels), to protect Owner's facilities and the Construction Work, and to direct water to drainage channels or conduits. CM/GC will provide ponding as necessary to prevent downstream flooding.

9.5 Pollution Control. If applicable to the scope of Work, the CM/GC will prepare a pollution control plan that meets the requirements of California Quality Association's Construction Best Management Practice Handbook/Portal (as may be amended, see <http://www.cabmphandbooks.com/>) to prevent the pollution of drains and watercourses by sanitary wastes, sediment, debris, and other substances and/or soil erosion during construction operations.

9.5.1 No sanitary wastes will be permitted to enter any drain or watercourse other than sanitary sewers. No sediment, debris, or other substance will be permitted to enter sanitary sewers without authorization of the receiving sanitary sewer service, and all possible

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best management practices will be taken to prevent unauthorized materials from entering into any drain or watercourse.

9.5.2 If dewatering of excavations is required, CM/GC will obtain the necessary permits from local Governmental Authorities for discharge of the dewatering effluent. The CM/GC will be responsible for assuring that water quality of the discharge meets the appropriate permit requirements prior to any discharge.

9.6 Erosion Control. If applicable to the Construction Work, the CM/GC will collaborate with the civil engineer during the design process to develop an erosion control plan that is consistent with Storm Water Pollution Prevention Plan ("SWPPP") requirements to prevent soil erosion at the Project site and adjacent property resulting from construction operations. Effective measures will be initiated before commencement of clearing, grading, excavation, or other operations that will disturb the natural protection.

9.6.1 Erosion and sedimentation control practices will include installation of silt fences, straw wattle, soil stabilization, re-vegetation, and runoff control to limit increases in sediment in storm water runoff, including but not limited to, detention basins, straw bales, silt fences, check dams, geo-fabrics, drainage swales, and sand bag dikes.

9.6.2 The Construction Work will be scheduled to expose areas subject to erosion for the shortest possible time, and natural vegetation will be preserved to the greatest extent practicable. Temporary storage and construction buildings will be located, and construction traffic routed, to minimize erosion. Temporary fast-growing vegetation or other suitable ground cover will be provided as necessary to control runoff.

9.7 Traffic Control. CM/GC will prepare a traffic control plan in accordance with the California Department of Transportation Traffic Manual as part of its Logistics Plan set forth in Exhibit 5E.

9.7.1 Traffic control will include signs, warning lights, reflectors, barriers, and other necessary safety devices and measures, including sufficient flagmen to direct vehicular traffic through the construction areas. No material or equipment will be stored or parked where it will interfere with the free and safe passage of public traffic.

9.7.2 All traffic associated with construction operations including, without limitation, delivery and mail trucks, will enter through the construction site access gate. CM/GC will provide signs directing construction and delivery traffic to this gate and will take all necessary steps to minimize inconvenience to the Owner and the general public throughout the construction process. No driveways or private roads will be blocked without notifying the property owner, and access must be restored during all non-working hours.

9.7.3 Safe access must be maintained for pedestrian traffic throughout any public work area at all times.

9.7.4 At least one lane of traffic in each direction on roads used on the Project must be kept open at all times unless prior approval is provided by the Core Group and any

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affected Governmental Authorities. No roads will be blocked or made inaccessible without prior consent of the Core Group and the affected Governmental Authorities. Under no circumstances will CM/GC block or obstruct fire lanes.

10. TEMPORARY FACILITIES

10.1 Temporary Electricity. CM/GC will provide and maintain temporary electrical power at the Project site for construction purposes and trailers as required. In certain situations, permanent power may be available through Owner, but the CM/GC must provide all necessary wiring and appurtenances for connection to Owner's system and meter all connections to Owner's system to determine usage rates. For smaller loads, such as test equipment, work area lighting, and small hand tools, CM/GC may use Owner's electrical circuits following Core Group approval.

10.2 Temporary Communications. CM/GC will provide and maintain applicable communications and data service connections for field offices.

10.3 Temporary Water. CM/GC will provide and maintain all required potable water for construction field personnel, as well as water required for, and in connection with, the construction operations such as dust control.

10.4 Temporary Fences. CM/GC will provide all necessary temporary fencing and gates required for the Project site. Temporary fencing will be subject to restrictions in any use permit. The CM/GC will maintain all fences through Final Completion of the Project. Gates are to remain closed and locked during off-hours.

10.5 Temporary Sanitary Facilities. CM/GC will provide and maintain all required temporary toilets and sinks for use of design and construction personnel and field labor through Final Completion of the Project. The Core Group will direct personnel to use temporary sanitary facilities rather than Owner's facilities. All temporary sanitary facilities will comply with the Department of Public Health standards.

11. UNFORESEEN AND DIFFERING SITE CONDITIONS

11.1 Notification and Investigation. The CM/GC must timely notify the Core Group in writing after discovering an Unforeseen and Differing Site Condition and before the condition is disturbed. The Core Group will arrange for prompt determination of whether an Unforeseen and Differing Site Condition exists and make a determination. If the Core Group determines that the condition is not an Unforeseen and Differing Site Condition, the Core Group will provide written notice to the CM/GC stating the reasons. If the Core Group determines that the condition is an Unforeseen and Differing Site Condition, the EMP, ART, Incentive Threshold and Contract Time may be adjusted per Section 10.3 and Article 11 of the Agreement.

12. HAZARDOUS MATERIALS

12.1 Hazardous Materials. The Architect and its consultants will not specify any known Hazardous Material except for commonly used construction materials for which there is

Exhibit 2D – General Conditions to Agreement

no reasonable substitute. CM/GC and its subcontractors will not cause or permit any Hazardous Materials to be generated, released, disposed, discharged, or brought onto or stored at the Project site or used in the Construction Work unless specified and only if there is not a reasonable substitute for the specified material. All environmental permits and surveys necessary for the performance of the Construction Work will be obtained by the Owner.

12.2 Discovery, Reporting, and Verification. Upon discovery of any Hazardous Material, CM/GC will immediately stop all Construction Work in the area if necessary and notify the Core Group and any necessary authorities. Promptly after providing notice, the Core Group will meet together and with other appropriate authorities and determine whether portions of the Construction Work may proceed. The Owner will retain the services of a licensed laboratory to verify the presence or absence of the Hazardous Material and to verify when the Hazardous Material has been rendered harmless. If the Hazardous Material is deemed an Unforeseen and Differing Site Condition, the EMP, ART, Incentive Threshold and Contract Time may be adjusted under Section 10.3 and Article 11 of the Agreement. If the Hazardous Material was specified all costs associated with the services rendered by the licensed laboratory and any remedial cleanup work performed by the CM/GC will be a Chargeable Cost. If the Hazardous Material was not specified and brought on the site by a Standard Subcontractor, the responsible party will bear all costs associated with the services rendered by the licensed laboratory and any remedial clean-up work. If the responsible party is a R/R Member, the cost of the licensed laboratory and remedial work will be a Chargeable Cost. The provisions set forth in this paragraph do not impact the defense and indemnification obligations of the Parties as set forth in Section 12.4 of the Agreement.

12.3 Notification of Suspected Hazardous Material. CM/GC will immediately notify the Core Group, in writing, if it discovers any substance or material which reasonably could be Hazardous Material in, on, or under the Project premises or migrating from any adjacent property, even if that substance or material would have no impact on the Construction Work.

13. CLEANING UP AND RECYCLING

13.1 Material Recycling. The CM/GC and its subcontractors will comply with the California Green Building Standards Code and any municipal code standards regarding reduction of the amount of waste material generated during construction, and reuse/recycle materials where possible.

13.2 Cleaning Up. The CM/GC and its subcontractors will keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by construction operations. At completion of the Construction Work, the CM/GC and its subcontractors are responsible for removing waste materials, rubbish, construction tools and equipment, machinery, and surplus materials from and about the Project. If the CM/GC or any Risk/Reward Subcontractors fail to clean up as provided in the Contract Documents, the Owner may do so and the cost associated with the clean-up will be a Chargeable Cost. If any Standard Subcontractors fail to clean up as provided in the Contract Documents, the CM/GC will back-charge the responsible subcontractor for all costs associated with that portion of the clean-up.

Exhibit 3 – Compensation

A: Architect's Resource Loaded Work Plan (Broken Down by Project Stage)

B: CM/GC's Resource Loaded Work Plan (Broken Down by Project Stage)

C: Agreed Billable Rates

D: Equipment Rental Rates

E: Risk/Reward Amounts and Risk/Reward Share

F: Interim Risk/Reward Distribution Plan (**Attach, if applicable**)

SAMPLE

Exhibit 3A – Architect's Resource Loaded Work Plan

A: Architect's Resource Loaded Work Plan

(Insert RLWP)

SAMPLE

Exhibit 3B – CM/GC's Resource Loaded Work Plan

B: CM/GC's Resource Loaded Work Plan

(Insert RLWP)

SAMPLE

Exhibit 3C – Agreed Billable Rates

C: Agreed Billable Rates

1. Agreed Billable Rates

1.1 General. The R/R Members' Agreed Billable Rates will be submitted, approved by the FPS Representative, and maintained in Tab 3 of the Project Manual. All Agreed Billable Rates will be based on a 2,080-hour work year and will be computed using the employee's direct salary as defined in Sections 1.2.2 and 1.3. The Agreed Billable Rates are subject to audit before FPS Representative approval, and the party will provide payroll records on staff up to a year before being assigned to a Sutter project as part of the initial audit. The Agreed Billable Rates must be approved by the FPS Representative before being used as the basis of progress billings. The most current approved Agreed Billable Rates at the time of progress billing will be used to process applications for payment. R/R Members will be compensated at actual cost based on the Agreed Billable Rates. Unless there is a change in Project personnel, Agreed Billable Rates will only be adjusted on an annual basis. Annual salary increases greater than 5% for an individual employee will have to be reviewed and approved by the FPS Program Manager.

1.1.1 Limitations. Salaried personnel of R/R Members cannot bill for days when they are not working on the Project including sick time, vacation days or holidays. Salaried personnel of R/R Members cannot bill in excess of 40 hours per work week unless agreed to by the Core Group prior to the time being incurred and only in an amount agreed to by the Core Group as appropriate.

1.2 Architect and R/R Consultants.

1.2.1 Overhead and Burden Expenses. The Architect's and R/R Consultants' overhead and burden expenses include home office overhead as defined in Section 7.5 (overhead) of the Agreement, employer benefit payments for health insurance (net of employee contribution withholding), long term disability, sick leave, 401K, pensions and vacation accruals, holidays, Social Security (FICA), Medicare (FMI), unemployment insurance (FUI & SUI), and workers compensation, as well as any discretionary incentives or bonuses, or other discretionary labor charges, and profit.

1.2.2 Direct Salary Expense. Direct salary expenses are the actual salaries paid to the Architect's and R/R Consultants' employees (as the case may be) in a calendar year divided by 2080 hours per work year.

1.2.3 Agreed Billable Rates. The Architect's and R/R Consultants' Agreed Billable Rates are the product of their respective direct salary expense as defined in Section 1.2.2 and the overhead and burden rate set forth in Exhibit 4A. Subject to the 7% annual salary cap in Section 1.1, the Architect and R/R Consultants will submit Agreed Billable Rates annually for FPS approval, which will not be unreasonably withheld.

1.3 CM/GC and R/R Subcontractors. The direct salary expense includes basic employee compensation (hourly wages or salary without any overhead and profit) plus customary benefits including health and life insurance (net of employee contribution

Exhibit 3C – Agreed Billable Rates

withholding), long term disability, accidental death/dismemberment, sick leave, 401K, pensions, vacation accruals, holidays, Social Security (FICA), Medicare (FMI), any other required payroll taxes, unemployment insurance (FUI & SUI), and workers' compensation, and other regularly incurred cost items such as computers, cell phones, communication radios, cameras, gas/tolls/commuter benefits or vehicle allowance, as approved by the FPS Representative, but excluding any discretionary incentives, bonuses, and profit.

SAMPLE

Exhibit 3D – Equipment Rental Rates

D: Equipment Rental Rates

1. Equipment Rental Rates

1.1 CM/GC or Other R/R Member Owned Equipment. For temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, provided by the CM/GC or other R/R Members, the CM/GC or other R/R Member will provide the Core Group: (i) proposed rental rates, (ii) fair market value, and (iii) estimated total rent for each piece. This information is to be submitted for approval prior to its being used in connection with the Work to enable the Core Group to determine if the proposed equipment is to be rented or purchased by the Project. If the equipment is purchased by the Project, all insurance, maintenance and repair costs, operating costs and other costs associated with the equipment will be Chargeable Costs. If the equipment is not purchased by the Project, the rental rates will be as proposed, and a copy of all approved rental rates is to be maintained in Tab 4 of the Project Manual. The most current approved Equipment Rental Rates at the time of a progress billing will be used to process applications for payment. All Equipment Rental Rates are subject to Section 7.4 of the Agreement.

1.2 CM/GC Non-Owned Equipment. For temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, provided by the CM/GC and rented from others, the CM/GC will provide the Core Group: (i) proposed rental rates, (ii) unless otherwise agreed by Core Group, after receipt of 2 bona fide price quotations from reputable equipment suppliers to validate the reasonableness of the rental rates, (iii) fair market value, and (iv) estimated total rent for each piece. This information is to be submitted for approval prior to CM/GC non-owned equipment being used in connection with the Work to enable the Core Group to determine if the proposed equipment is to be rented or purchased by the Project. If the equipment is purchased by the Project, all insurance, maintenance and repair costs, operating costs and other costs associated with the equipment will be Chargeable Costs. If the equipment is not purchased by the Project, a copy of all approved Equipment Rental Rates is to be maintained in Tab 4 of the Project Manual. The most current approved Equipment Rental Rates at the time of a progress billing will be used to process applications for payment. All Equipment Rental Rates are subject to Section 7.4 of the Agreement.

1.3 Equipment/Consumables. All temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers with a replacement value of \$500 or less will be purchased by the Project and will be considered consumables under Section 7.3 of the Agreement. All temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers with a replacement value of over \$500 are subject to determination of whether such items should be rented or purchased under Sections 1.1 and 1.2 above, and if purchased, such items will be tracked and inventoried under Section 1.4.

1.4 Inventory. CM/GC will be required to maintain a detailed equipment inventory and the inventory will be available to Owner and FPS Representative each month.

1.5 Limitations. If, from the time any one piece of equipment is placed in service for this Project, the aggregate rental amount for that piece of equipment, whether owned by the CM/GC, a R/R Member, or a local equipment yard, reaches 100% of its fair market value, rental

Exhibit 3D – Equipment Rental Rates

charges will no longer be charged. Reasonable costs for maintenance and service will continue to be paid by the Owner even after 100% of the fair market value is reached. The fair market value must be determined based on the type of equipment used rather than the serial number for a specific piece of equipment.

SAMPLE

Exhibit 3E – Risk/Reward Amounts and Risk/Reward Share

E. Risk/Reward Amounts and Risk/Reward Share

R/R Members	Risk/Reward Amount (100% profit in \$ amount)	Risk/Reward Share (%)	Risk/Reward Share (\$)	*R/R Percentage for Change Orders (%)
	\$	%	\$	%
	\$	%	\$	%
	\$	%	\$	%
	\$	%	\$	%
	\$	%	\$	%
	\$	%	\$	%
	\$	%	\$	%
	\$	%	\$	%
	\$	%	\$	%
	\$	%	\$	%
	\$	%	\$	%

*Note: Unless otherwise agreed by the parties, the R/R Percentage for Change Orders will be the same percentage that is used by each R/R Member in calculating its initial Risk/Reward Amount based on the Chargeable Costs included in the EMP and ART. For example, if 5% is used to calculate profit for the Risk/Reward Amount, the R/R Percentage for Change Orders will also be 5%.

Exhibit 3F – Interim Risk/Reward Distribution Plan

F: Interim Risk/Reward Distribution Plan

(Attach, if applicable)

SAMPLE

Exhibit 4 – Business Terms

A: Key Business Terms Matrix

B: EMP Breakdown with Clarifications and Assumptions

C: Unit Prices / Alternate Prices

D: Schedule of Values

SAMPLE

Exhibit 4A – Key Business Terms Matrix

A: Key Business Terms Matrix

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

Estimated Maximum Price (Total Contract Value)	Total = Architect + CM/GC \$ _____ \$ _____ \$ _____		
At-Risk Threshold ("ART") (EMP-P)	\$ _____		
Incentive Threshold	\$ _____		
Incentive Percentage	Final Actual Cost < Incentive Threshold	R/R Members'	Owner's
	\$1 to \$X	35%	65%
	\$X+1 to \$Y	50%	50%
	\$Y+1 to \$Z	65%	35%
Risk/Reward Amounts	See Exhibit 3E		
Risk/Reward Shares	See Exhibit 3E		
R/R Team Members' Home Office Overhead and Burden defined in Section 7.5 of the Agreement:			
	_____ % up to the not-to-exceed amount of \$ _____ (on Direct Chargeable Costs per Section 7.1 – 7.4 of Agreement)		
	_____ % up to the not-to-exceed amount of \$ _____ (on Direct Chargeable Costs per Section 7.1 – 7.4 of Agreement)		
	_____ % up to the not-to-exceed amount of \$ _____ (on Direct Chargeable Costs per Section 7.1 – 7.4 of Agreement)		
	_____ % up to the not-to-exceed amount of \$ _____ (on Direct Chargeable Costs per Section 7.1 – 7.4 of Agreement)		
	_____ % up to the not-to-exceed amount of \$ _____ (on Direct Chargeable Costs per Section 7.1 – 7.4 of Agreement)		
	_____ % up to the not-to-exceed amount of \$ _____ (on Direct Chargeable Costs per Section 7.1 – 7.4 of Agreement)		
Risk/Reward Percentage for Change Orders	See, Exhibit 3E		
Date for Substantial Completion	(insert date)		
Lender for Project (if applicable)	(name of lender) (street address) (city, zip)		

Exhibit 4B – EMP Breakdown with Clarifications and Assumptions

B: EMP Breakdown with Clarifications and Assumptions

1. EMP Summary and Detailed Estimate
2. Clarifications and Assumptions

SAMPLE

Exhibit 4C – Unit Prices / Alternate Prices

C: Unit Prices / Alternate Prices

(Insert unit prices / alternate prices, if any)

SAMPLE

Exhibit 4D – Schedule of Values

D: Schedule of Values

(To be provided by CM/GC and Architect)

SAMPLE

Exhibit 5 – Scheduling and Planning

- A: Owner's Schedule **(Not Applicable to this Contract Type)**
- B: Design Schedule **(Not Applicable to this Contract Type)**
- C: Preconstruction Schedule **(Not Applicable to this Contract Type)**
- D: Master Schedule
- E: Logistics Plan

SAMPLE

Exhibit 5D – Master Schedule

D: Master Schedule

(To be provided by CM/GC)

SAMPLE

Exhibit 5E – Logistics Plan

E: Logistics Plan

(To be provided by CM/GC)

SAMPLE

Exhibit 6 – Insurance Requirements

A: CM\GC's Insurance Requirements

B: Architect's Insurance Requirements

SAMPLE

Exhibit 6A – CM\GC's Insurance Requirements

1. EMP Between \$30,000,000 and \$100,000,000

1.1 If the EMP is between \$30,000,000 and \$100,000,000, the CM/GC must carry the following minimum insurance coverages:

Workers' Compensation Employers' Liability	Statutory Limits \$1,000,000 each accident
Commercial General Liability (Occurrence Form Only)	\$10,000,000 each occurrence \$10,000,000 general aggregate/per project \$10,000,000 products/completed operations aggregate \$15,000,000 excess
Automobile Liability	\$5,000,000 each accident
CM/GC's Tools & Equipment	Fair market value
Pollution Liability	\$5,000,000 per occurrence/aggregate
Professional Liability	\$5,000,000 per claim/aggregate

2. EMP Under \$30,000,000

2.1 If the EMP is less than \$30,000,000, the CM/GC must carry the following minimum insurance coverages:

Workers' Compensation Employers' Liability	Statutory Limits \$1,000,000 each accident
Commercial General Liability (Occurrence Form Only)	\$5,000,000 each occurrence \$5,000,000 general aggregate/per project \$5,000,000 products/completed operations aggregate \$5,000,000 excess
Automobile Liability	\$1,000,000 each accident
CM/GC's Tools & Equipment	Fair market value
Pollution Liability	\$1,000,000 per occurrence/aggregate
Professional Liability	\$1,000,000 per claim/aggregate

3. PROVISIONS APPLICABLE TO ALL INSURANCE REQUIRED FOR THIS PROJECT

3.1 **Term of Insurance Policies.** All liability insurance must be in force prior to any Work being performed under this Agreement and must be maintained and in force for 10 years following Substantial Completion except for professional liability insurance, which must be maintained for at least 3 years after Substantial Completion. Workers' compensation insurance must be in force from the inception of this Agreement through Final Completion and closeout. Builder's risk insurance must be in force prior to commencement of construction and if equipment or material is purchased prior to construction, must either be in force prior to the purchase or the purchase must be insured against loss or damage under other property insurance.

Exhibit 6A – CM\GC's Insurance Requirements

3.2 Qualifications and Rating. All insurance must be placed with insurers that are admitted or licensed to issue insurance in the State of California. All insurers must maintain an A.M. Best rating of at least A VII.

3.3 Additional Insureds. The Owner, Sutter Health and any other entities set forth in Exhibit 8E will be named as additional insureds on all required commercial general liability and automobile policies for Work performed under or incident to this Agreement. If the additional insured has other insurance applicable to the loss, it will be on an excess or contingent basis. The amounts and types of insurance will conform to the minimum terms, conditions, and coverages of the Insurance Service Office ("ISO") policies, forms, and endorsements in effect when this Agreement is executed, but which must be at least as broad as ISO CG 20 10 07 04 and ISO CG 20 37 07 04 unless pre-approved by the Owner.

3.4 Insurance Certificates and Copies of Policies. Before commencing any Work under this Agreement, the CM/GC will provide the FPS Representative with insurance certificates and endorsements reflecting the insurance required by this Agreement. Receipt of insurance certificates or copies of policies without objection by the Owner or FPS Representative does not constitute acceptance or approval of insurance or relieve the CM/GC of its obligation to provide the required insurance under this Exhibit 6A. Upon renewal of any required insurance that expires before Final Completion, the applicable party must provide the FPS Representative with renewal certificates not less than 15 days prior to the expiration. The CM/GC will promptly furnish copies of all required policies of insurance, including any renewal or replacement policies, within 10 days of the Owner's or FPS Representative's written request.

3.5 Subcontractors and Tier-Subcontractors. Subcontractors and tier-subcontractors will deliver certificates of insurance and required endorsements to the CM/GC with a copy to the FPS Representative before commencing any portion of the Work in connection with this Project. CM/GC, through written subcontract, will pass-through: (i) additional insured provisions set forth in Section 3.3 and include CM/GC as an additional insured; and (ii) the waiver of subrogation provisions set forth in Section 3.8. The CM/GC will ensure that the certificates of insurance and endorsements indicate that subcontractors and their respective tier-subcontractors are in compliance with the insurance limits indicated in their respective subcontracts.

3.6 No Reduction, Modification or Cancellation of Coverage. No insurance required by this Agreement or any subcontract (including all tiers) may be reduced in coverage, modified or cancelled without 30 days' advance written notice to Owner and FPS Representative. All policy renewals during the term of insurance policies must be equal, or better, in terms and limits.

3.7 Primary Insurance. All liability policies required by CM/GC under this Agreement and any subcontracts are primary and non-contributory to any similar insurance maintained by Owner or Sutter Health for their own respective benefits.

3.8 Waivers of Subrogation. CM/GC and its subcontractors (inclusive of tiers) will waive all rights against Owner, Sutter Health, as well as any other entities set forth in Exhibit 8E for loss or damage to the extent reimbursed by any property or equipment insurance applicable

Exhibit 6A – CM\GC's Insurance Requirements

to the Work, except such rights as CM/GC or its subcontractors may have to the proceeds of the insurance or to the extent prohibited by an applicable professional liability policy. A waiver of subrogation is effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. This waiver does not apply to faulty workmanship in the design or construction of the Project. If any applicable policies of insurance require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of those policies will cause them to either provide a "blanket waiver" endorsement or a subrogation endorsement that includes the name of the Project and the location of the Project site.

3.9 Deductibles and Self-Insured Retentions. If the EMP is over \$30,000,000 all deductibles and/or self-insured retentions over \$100,000 are subject to Owner approval, and unless approved in writing, are the sole responsibility of the first named insured and not a Chargeable Cost. If the EMP is \$30,000,000 or less, all deductibles and/or self-insured retentions over \$25,000 are subject to Owner approval, and unless approved in writing, are the sole responsibility of the first named insured and are not a Chargeable Cost. Reimbursement for self-insurance and any deductibles are also subject to the Chargeable Cost conditions set forth in Section 7.4.11 of the Agreement.

4. SPECIFIC PROVISIONS.

4.1 Workers Compensation. Coverage will include insurance as required by California state law or the law of the state where the Work is being performed and employer's liability coverage per Article 1 or 2 (as applicable).

4.2 Commercial General Liability (CGL). Commercial general liability coverage must be issued on a policy at least as broad as ISO form CG 0001 with Project specific endorsement ISO CG 12 04 with combined single limits and aggregates in the amounts listed in Article 1 or 2 (as applicable). Limits may be met by a combination of primary limits and umbrella/excess coverage. The insurance must cover all operations of the CM/GC and its subcontractors (inclusive of tiers) and must include, but is not limited to: (i) premises, operations and mobile equipment liability; (ii) completed operations and products liability; (iii) contractual liability for liability assumed under this Agreement; (iv) broad form property damage liability; (v) medical and personal injury liability including coverage for sickness and death; (vi) explosion, collapse, and underground hazards; (vii) personal and advertising injury; (viii) severability of interests; (ix) pollution; and (x) cross-liability.

4.2.1 Umbrella/Excess Policies. Umbrella/excess policies must be following form or written on policies with coverage at least as broad as each and every one of the underlying policies, including completed operations and contractual liability, with limits as stated in Article 1 or 2 (as applicable).

4.3 Automobile Liability. Commercial automobile liability Insurance must be issued on policies at least as broad as ISO Form CA 00 01, CA 00 05, CA 00 12 or CA 00 20 with each accident limits as stated in Article 1 or 2 (as applicable). This insurance must apply to bodily

Exhibit 6A – CM\GC's Insurance Requirements

injury and property damage for all owned, non-owned, or hired vehicles to be used by the insured in performance of its obligations under this Agreement.

4.4 Occurrence Basis. All commercial general liability, automobile liability and any umbrella/excess policies must be written on an occurrence basis.

4.5 Tools and Equipment. With respect to CM/GC and its subcontractors' operations, each will purchase, maintain and pay for all-risk contractor's equipment floater on all machinery, tools, equipment and other similar property in an amount at least equal to their fair market value and any deductible will be paid by the CM/GC. This insurance coverage will be the sole and complete means of recovery for any loss on machinery, tools, equipment, and other similar property.

4.6 Pollution Coverage. If pollution coverage is claims-made, the retroactive date will be prior to the commencement of the Work and maintained for 5 years after Substantial Completion. Unless otherwise approved by the Owner, the policy will provide the following: (a) inclusion of contractual liability coverage; (b) inclusion of hazardous transporters pollution liability coverage; (c) no limitation or exclusion for claims by one insured party against another insured; (d) severability of interests; (e) natural resource damages coverage; and (f) mold coverage.

4.7 Professional Liability. CM/GC must have Project specific coverage for damages caused by negligent acts, errors or omissions arising out of the performance of professional services or the Work for which CM/GC or its subcontractors are legally liable. All coverage must be in amounts specified in Article 1 or 2 (as applicable). Coverage must include, but is not limited to: (i) preconstruction, design-assist and design-build, if applicable; (ii) coverage for BIM model management, if applicable; and (iii) insured's interest in joint ventures, if applicable,

5. MISCELLANEOUS

5.1 Evidence Prior to Final Payment. Prior to receipt of final payment under the Agreement, the CM/GC and its subcontractors (including tiers) must provide evidence that their respective insurance coverages are effective, as required by this Exhibit 6A.

5.2 Modifications Only in Writing. The coverage and limits of insurance required by this Exhibit 6A may not be altered, modified, or changed except as expressly agreed to in writing. No course of dealing or acceptance of certificates or policies will constitute a waiver of any of these insurance requirements.

5.3 Additional Owner Remedy. If the CM/GC does not comply with the requirements of this Exhibit 6A, the Owner may provide insurance coverage to protect the Owner and back-charge CM/GC for the cost of that insurance.

5.4 Insurance Does Not Limit Liability. Insurance coverage maintained by the CM/GC and its subcontractors does not limit the extent of liability or indemnity of the CM/GC or its respective subcontractors or consultants under the Agreement or applicable law.

Exhibit 6A – CM\GC's Insurance Requirements

6. OWNER'S PROPERTY INSURANCE (BUILDER'S RISK)

6.1 General. The Owner will obtain and maintain in force during the term of this Agreement a builder's risk insurance policy separate from CM/GC's other insurance, which will insure against physical loss and/or damage on an "all risks" replacement cost basis to all buildings, structures, materials and real property on site, which are intended to be, or have already been incorporated into and form part of the Project. The builder's risk policy must be purchased and maintained by a company or companies lawfully authorized to do business in the State of California and written on a replacement cost basis. This property insurance will be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, from commencement of the construction Work until the later of either Final Completion, or when no entity other than the Owner has an insurable interest in the covered property. This insurance will include the interests of the Owner, CM/GC, and its subcontractors and tier-subcontractors performing construction Work on the Project.

6.2 Separate Property. If, during construction, the Owner insures properties at or adjacent to the Project site under property insurance policies separate from those insuring the Project, the Owner waives all subrogation rights to the extent reimbursed by its separate property insurance for damages caused by fire or other causes of loss covered by such policies, except such rights as the insureds may have to the proceeds of insurance. All separate policies will provide for a similar waiver of subrogation.

6.3 Insurance Proceeds. The Owner has the sole right and power to adjust and settle a loss with its insurers, subject to the dispute resolution procedures set forth in the Agreement, and any settlement payments will be made payable to the Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause or clauses with respect to the Owner's property damage. The policy will also provide for the recovery by the CM/GC of reasonable costs incurred to repair and/or replace damaged property. Upon the occurrence of an insured loss or claim of loss, monies received will be held by Owner who will make distribution in accordance with an agreement to be reached in such event between Owner and CM/GC. The CM/GC will pay subcontractors their just shares of insurance proceeds received by the CM/GC and will require subcontractors to make payments to their tier-subcontractors in similar manner. The Owner will pay all deductibles in connection with the loss or claim against the builder's risk insurance.

6.4 Partial Occupancy. Partial occupancy or use of the Project in accordance with the Agreement will not start until the property insurer(s) have consented to the partial occupancy or use. The Owner and CM/GC will take reasonable steps to obtain consent of the property insurer(s) and will take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

Exhibit 6B – Architect's Insurance Requirements

1. EMP Between \$30,000,000 and \$100,000,000

1.1 If the EMP is between \$30,000,000 and \$100,000,000, the Architect must carry the following minimum insurance coverages:

Workers' Compensation Employers' Liability	Statutory Limits \$1,000,000 each accident
Commercial General Liability (Occurrence Form Only)	\$5,000,000 each occurrence \$5,000,000 general aggregate/per project \$5,000,000 excess
Automobile Liability	\$5,000,000 each accident
Professional Liability	\$5,000,000 per claim/aggregate
Valuable Papers	\$500,000

2. EMP Under \$30,000,000

2.1 If the EMP is less than \$30,000,000, the Architect must carry the following minimum insurance coverages:

Workers' Compensation Employers' Liability	Statutory Limits \$1,000,000 each accident
Commercial General Liability (Occurrence Form Only)	\$2,000,000 each occurrence \$2,000,000 general aggregate/per project \$3,000,000 excess
Automobile Liability	\$1,000,000 each accident
Professional Liability	\$2,000,000 per claim/aggregate
Valuable Papers	\$500,000

3. PROVISIONS APPLICABLE TO ALL INSURANCE REQUIRED FOR THIS PROJECT

3.1 Term of Insurance Policies. All liability insurance must be in force prior to any Services being performed under this Agreement and must be maintained in force for 3 years following Substantial Completion. Workers' compensation insurance must be in force from the inception of this Agreement through Final Completion and closeout. In the event of cancellation or non-renewal, the reporting period during which a claim may first be made will be extended until at least 3 years after cancellation or non-renewal.

3.2 Qualifications and Rating. All insurance must be placed with insurers that are admitted or licensed to issue insurance in the State of California. All insurers must maintain an A.M. Best rating of at least A VII.

3.3 Additional Insureds. The Owner, Sutter Health, and any other entities set forth in Exhibit 8E will be named as additional insureds on all required commercial general liability and automobile policies for Services performed under or incident to this Agreement. If the additional insured has other insurance applicable to the loss, it will be on an excess or contingent basis. The amounts and types of insurance will conform to the minimum terms,

Exhibit 6B – Architect's Insurance Requirements

conditions, and coverages of the Insurance Service Office ("ISO") policies, forms, and endorsements in effect when this Agreement is executed, but which must be at least as broad as ISO CG 20 10 07 04 and ISO CG 20 37 07 04 unless pre-approved by the Owner.

3.4 Insurance Certificates and Copies of Policies. Before commencing any Services under this Agreement, the Architect will provide the FPS Representative with insurance certificates and endorsements reflecting the insurance required by this Agreement. Receipt of insurance certificates or copies of policies without objection by the Owner or FPS Representative does not constitute acceptance or approval of insurance or relieve the Architect and its consultants from the obligation to provide the required insurance under this Exhibit 6B. Upon renewal of any required insurance that expires before Final Completion, the applicable party must provide the FPS Representative with renewal certificates not less than 15 days prior to the expiration. The Architect will promptly furnish copies of all required policies of insurance, including any renewal or replacement policies, within 10 days of the Owner's or FPS Representative's written request.

3.5 Consultants and Tier-Consultants. Consultants and tier-consultants will deliver certificates of insurance and required endorsements to the Architect with a copy to the FPS Representative before commencing any portion of the Services in connection with this Project. Architect, through written agreement, will pass through: (i) additional insured provisions set forth in Section 3.3 and include Architect as an additional insured; and (iii) the waiver of subrogation provisions set forth in Section 3.8. The Architect will ensure that the certificates of insurance and endorsements indicate that consultants and their respective tier-consultants are in compliance with the insurance limits indicated in their respective agreements.

3.6 No Reduction, Modification or Cancellation of Coverage. No insurance required by this Agreement or any consultant agreement (including all tiers) may be reduced in coverage, modified, or cancelled without 30 days' advance written notice to Owner and FPS Representative. All policy renewals during the term of insurance policies must be equal, or better, in terms and limits.

3.7 Primary Insurance. All liability policies required by Architect under this Agreement and any consultant agreements are primary and non-contributory to any similar insurance maintained by Owner or Sutter Health for their own respective benefits.

3.8 Waivers of Subrogation. Architect and its consultants (inclusive of tiers) will waive all rights against Owner, Sutter Health, as well as any other entities set forth in Exhibit 8E for loss or damage to the extent reimbursed by any property insurance. A waiver of subrogation is effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. This waiver does not apply to professional liability insurance. If any applicable policies of insurance require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, the owners of those policies will cause them to either provide a "blanket waiver" endorsement or a subrogation endorsement that includes the name of the Project and the location of the Project site.

Exhibit 6B – Architect's Insurance Requirements

3.9 Deductibles and Self-Insured Retentions. If the EMP is over \$30,000,000 all deductibles and/or self-insured retentions over \$100,000 are subject to Owner approval, and unless approved in writing, are the sole responsibility of the first named insured and not a Chargeable Cost. If the EMP is \$30,000,000 or less, all deductibles and/or self-insured retentions over \$25,000 are subject to Owner approval, and unless approved in writing, are the sole responsibility of the first named insured and are not a Chargeable Cost. Reimbursement for self-insurance and any deductibles are also subject to the Chargeable Cost conditions set forth in Section 7.4.11 of the Agreement.

4. SPECIFIC PROVISIONS.

4.1 Workers Compensation. Coverage will include insurance as required by California state law or the law of the state where the Services are performed and employer's liability coverage per Article 1 or 2 (as applicable).

4.2 Commercial General Liability (CGL) Commercial general liability coverage must be issued on a policy at least as broad as ISO form CG 0001 with Project specific endorsement ISO CG 12 04 with combined single limits and aggregates in the amounts listed in Article 1 or 2 (as applicable). The insurance must cover all operations of the Architect and its consultants (inclusive of tiers) and must include, but is not limited to: (i) premises and operations liability; (ii) completed operations and products liability; (iii) contractual liability for liability assumed under this Agreement; (iv) broad form property damage liability (including loss of use); (v) medical and personal injury liability including coverage for sickness, disease, and death; (vi) explosion, collapse, and underground hazards; (vii) personal and advertising injury; (viii) severability of interests; and (ix) cross-liability.

4.2.1 Umbrella/Excess Policies. Umbrella/excess policies must be following form or written on policies with coverage at least as broad as each and every one of the underlying policies with limits as stated in Article 1 or 2 (as applicable).

4.3 Automobile Liability. Commercial automobile liability Insurance must be issued on policies at least as broad as ISO Form CA 00 01, CA 00 05, CA 00 12 or CA 00 20 with each accident limits as stated in Article 1 or 2 (as applicable). This insurance must apply to bodily injury and property damage for all owned, non-owned, or hired vehicles to be used by the insured in performance of its obligations under this Agreement.

4.4 Occurrence Basis. All commercial general liability and automobile liability policies must be written on an occurrence basis.

4.5 Pollution Coverage. If the nature of the Services involves remediation or abatement of Hazardous Materials, or if the Owner elects to require pollution insurance based on results of the site investigation, then Architect will provide for pollution coverage for its professional liability, either by endorsement to the general professional liability policy or by a separate environmental consultant's professional liability policy, in form and with limits approved by the Owner and FPS Representative. If pollution coverage is claims-made, the retroactive date will be prior to the commencement of the Services. Unless otherwise approved by the Owner, the policy will provide the following: (a) inclusion of contractual liability coverage; (b)

Exhibit 6B – Architect's Insurance Requirements

inclusion of hazardous transporters pollution liability coverage; (c) no limitation or exclusion for claims by one insured party against another insured; (d) severability of interests; (e) natural resource damages coverage; and (f) mold coverage.

4.6 Professional Liability. Architect must have general office coverage for damages caused by negligent acts, errors, or omissions arising out of the performance of the Services for which Architect or its consultants are legally liable. Architect's coverage must be in the amounts specified in Articles 1 and 2 (as applicable).

4.7 Valuable Papers. Insurance with limits per Sections 1 or 2 (as applicable) covering loss, destruction, damage, injury or corruption of valuable papers, records, digital media, Drawings, Specifications, CAD drawings, Building Information Models, reports, maps, books, blueprints, and other printed and electronic documents and data.

5. MISCELLANEOUS

5.1 Evidence Prior to Final Payment. Prior to receipt of final payment under the Agreement, the Architect and its consultants (including tiers) must provide evidence that their respective insurance coverages are effective as required by this Exhibit 6B.

5.2 Additional Owner Remedy. If the Architect does not comply with the requirements of this Exhibit 6B, the Owner may provide insurance coverage to protect the Owner and back-charge Architect for the cost of that insurance.

5.3 Insurance Does Not Limit Liability. Insurance coverage maintained by the Architect and its consultants (inclusive of tiers) does not limit the extent of liability or indemnity of the Architect or its respective consultants under the Agreement or applicable law.

5.4 Modifications Only in Writing. The coverage and limits of insurance required by this Exhibit 6B may not be altered, modified, or changed except as expressly agreed to in writing. No course of dealing or acceptance of certificates or policies will constitute a waiver of any of these insurance requirements.

Exhibit 7 – Business Ethics Policy

1. CM/GC and Architect certifies that it is not currently named as an excluded entity or individual on the "List of Excluded Individuals/Entities" of the Department of Health and Human Services Office of the Inspector General.
2. CM/GC and Architect is expected to disclose in writing to Sutter Health and Owner any business arrangements such as commission arrangements, referral fee arrangements, ownership interests, profit sharing arrangements, bonus arrangements, etc. that its organization, any affiliated organization, or any representatives (or relatives of representatives) of their organization have with any other contractor, Owner's representative, or consultant involved in any way with this Project.
3. During the course of pursuing contracts with Sutter Health and/or Owner and while performing Work in accordance with this Agreement, CM/GC and Architect agree to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the dealings with Sutter Health or other Sutter Health affiliates.
4. CM/GC and Architect will not have a business interest as a partner, joint venturer, officer, director, more than five percent (5%) shareholder, advisor, employee, or otherwise ("Business Interest") in, or undertake a business opportunity or form a business venture with, any employee, officer, or director of Owner or Sutter Health, without first disclosing such interest in writing to Sutter Health and Owner and receiving their consent in writing.
5. CM/GC and Architect should not make or provide to be made any employment, gifts, extravagant entertainment, payments, loans, free work, substantially discounted work, or similar items of value to Owner's or Sutter Health's representatives, employees, or their relatives. Similarly, CM/GC and Architect's employees, agents, or subcontractors and their tier subcontractors (or their relatives) should not receive any commissions, gifts, extravagant entertainment, payments, loans, free work, substantially discounted work, or similar items of value from representatives of subcontractors or material suppliers performing Work on this Project.
6. CM/GC and Architect agree to notify an appropriate uninvolved representative of Sutter Health and Owner as soon as possible after becoming aware of any instance where there has been a failure to comply with the provisions of this policy.
7. Upon Sutter Health's or Owner's request, CM/GC and Architect agree to provide a management representation letter in a form agreeable to Sutter Health stating that it understands Sutter Health has a Business Ethics Policy which provides that no Owner or Sutter Health employees or members of their family will accept anything of value from contractors, suppliers, vendors, or others transacting or seeking to transact business with Owner or Sutter Health and that they are not aware of any situations violating that policy, which have not been previously reported to Sutter Health as provided above.
8. Each Party will hold the other's and Sutter Health's proprietary and confidential records and information in strict confidence and not disclose the same to any other person or entity except as provided below.

Exhibit 7 – Business Ethics Policy

8.1 "Confidential Information" includes but is not limited to business plans, financial data, and trade secrets that are not in the public domain.

8.2 A Party may disclose Confidential Information to the personnel within its organization, including its legal and accounting advisors who require the Confidential Information in connection with the Party's internal business processes and its rights and obligations under this Agreement, provided that such disclosing Party uses commercially reasonable efforts to require any such recipient to use the information solely for these purposes and to keep it strictly confidential, except as required by law and subject to the requirements of Section 8.3 below.

8.3 A Party may disclose Confidential Information as required by law, provided that the disclosing Party provides reasonable prior notice to Sutter Health and the other Party to enable Sutter Health and the other Party to attempt to prevent or limit the disclosure and the disclosing Party assists Sutter Health and the other Party upon request in seeking relief from or limiting the disclosure.

8.4 In addition, Owner or Sutter Health may disclose contract terms, conditions, and pricing terms, as well as other Confidential Information to those parties and/or consultants not already mentioned above that Owner has or will contract with in the course of managing its business, provided those parties/consultants agree, in writing, that they will not use or divulge such Confidential Information to any third party except as necessary for the discharge of their obligations to Sutter Health and Owner or as required by law.

8.5 A Party may disclose Confidential Information with the prior written consent of Sutter Health and the other Party.

Exhibit 8 – Owner's Data and Requirements

A: Project Description / Site Description

B: Owner's Program

C: Owner's Project Budget and Construction Budget

D: Project Charter

E: Additional Insureds

F: Owner's Separate Consultants and Separate Contractors

SAMPLE

Exhibit 8A – Project Description / Site Description

A: Project Description / Site Description

(Insert Project / Site Description)

SAMPLE

Exhibit 8B – Owner's Program

B: Owner's Program

(Insert Owner's Program)

SAMPLE

Exhibit 8C – Owner's Project and Construction Budget

C: Owner's Project Budget and Construction Budget

(See attached)

SAMPLE

Exhibit 8D – Project Charter

D: Project Charter (Fill-in template or insert previously agreed Project Charter)

Project Title: **Project Title**
Client: **Affiliate**
Location: **Street Address**
Project #: **Enter here**

Project Description

(Insert brief summary of Project definition, major components, phases, etc.)

Mission/Vision

Sutter Health Mission: We enhance the well-being of people in the communities we serve through a not-for-profit commitment to compassion and excellence in health care services.

Project Mission:
(Insert here)

Sutter Health Vision: Sutter Health leads the transformation of health care to achieve the highest levels of quality, access and affordability.

Project Vision:
(Insert here)

Values

Sutter Health Values:

- Excellence and Quality
- Innovation
- Affordability
- Teamwork
- Compassion and Caring
- Community
- Honesty and Integrity

Project Values:

1. (Insert here)
2. (Insert here)
3. (Insert here)
4. (Insert here)

Project Metrics and Performance Indicators

1. (Insert here)
2. (Insert here)
3. (Insert here)

Exhibit 8D – Project Charter

4. (Insert here)

Project Conditions of Satisfaction (Conditions ranked by Priority)

1. (Insert here)
2. (Insert here)
3. (Insert here)
4. (Insert here)
5. (Insert here)

Key Project Team Members

Members:	Roles/Responsibilities:
• (Insert here)	• (Insert here)
• (Insert here)	• (Insert here)
• (Insert here)	• (Insert here)
• (Insert here)	• (Insert here)

Project Scope Definition

Scope Will Include:	Scope Will Not Include:
• (Insert here)	• (Insert here)
• (Insert here)	• (Insert here)
• (Insert here)	• (Insert here)
• (Insert here)	• (Insert here)

Owner's Project Scope, Budget, and Schedule (Ranked according to Priority 1 being the most important; rank accordingly)

Scope	Schedule	Budget
2	1	3

Milestones for Master Schedule (Add project specific deadlines and deliverables as needed)

Milestone Deadlines:	Project Deliverables:
(Insert here)	1. (Insert here) 2. 3. 4. 5.
(Insert here)	
(Insert here)	

Exhibit 8D – Project Charter

(Insert here)		
(Insert here)		
(Insert here)		
(Insert here)		

IPD Tools

- Co-Location
- BIM
- LEAN

[Refer to PDG and best practices guide for samples.]

Project Sponsors

(Insert name)
Affiliate CEO

(Insert name)
Affiliate Point of Contact

(Insert name)
Director Planning

(Insert name)
Director Project Management

SAMPLE

Exhibit 8E – Additional Insureds

E: Additional Insureds

Sutter Health, (insert legal entity name of SHA), and each of their respective agents, affiliates, members, officers, directors, successors and assigns, employees, and inspectors.

(Each named additional insured should be specifically listed in this Exhibit 8E)

SAMPLE

Exhibit 8F – Owner's Separate Consultants and Separate Contractors

F: Owner's Separate Consultants and Separate Contractors

(Insert Owner's Separate Consultants and Separate Contractors)

SAMPLE

Exhibit 9 – Exceptions to Agreement

The Parties agree to the following revisions to the terms of the Agreement:

(List the "exceptions" or insert "none")

OWNER: (Fill in Legal Entity Name for SHA)	CM/GC: (Fill in CM/GC)
By _____ (Signature)	By _____ (Signature)
	ARCHITECT: (Fill in Architect)
	By _____ (Signature)