Standard Form of Agreement between Owner and Consultant

AGREEMENT

Made as of the \_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in the year of \_\_\_\_.

Between \_\_\_\_\_\_\_\_\_\_\_\_, the “Owner”, as represented by (Agent):

Company Name

Address

Address

And the Consultant:

Consultant’s Discipline or Services:

The Architect has made an agreement dated \_\_\_\_\_\_\_\_\_ with the Owner:

For the following Project:

Which agreement is hereinafter referred to as the Prime Agreement and which provides for furnishing professional services in connection with the Project described therein. A copy of the Prime Agreement (from which compensation amounts may be deleted) is available on request.

The Owner and the Consultant agree as set forth below.

I. THE CONSULTANT shall provide for the Owner, in accordance with the Terms and Conditions of this Agreement, the following professional services which the Architect is required to coordinate for the Owner under the Prime Agreement: (Describe the type of consulting services)

Civil Engineering

The part of the Project for which the Consultant is to provide such services is hereinafter called This Part of the Project.

The Consultant is an independent contractor for This Part of the Project, responsible for methods and means used in performing the Consultant’s services under this Agreement, and is not an employee, agent or partner of the Architect or Owner.

II. THE ARCHITECT shall be general coordinator and administrator of the professional services for the Project, and shall facilitate the exchange of information among the Architect and the consultants retained by the Owner for the Project as necessary for the coordination of This Part of the Project.

Except as authorized by the Owner, all communications between the Consultant and the Owner, Contractor or other consultants for the Project shall be forwarded to and/or through the Architect.

Terms and Conditions of Agreement between Owner and Consultant

ARTICLE 1

Consultant’s Responsibilities

1.1 CONSULTANT’S SERVICES

1.1.1 The Consultant’s services consist of those services performed by the Consultant and Consultant’s employees as enumerated in Articles 1 and 3 of this Agreement and any other services included in Article 12.

1.1.2 The Consultant’s services shall be performed according to this Agreement with the Owner in the same manner and to the same extent that the Architect is bound by the attached Prime Agreement to perform such services for the Owner. Except as set forth herein, the Consultant shall not have any duties or responsibilities for any other part of the Project.

1.1.3 The Consultant shall designate, when necessary, a representative authorized to act in the Consultant’s behalf with respect to This Part of the Project.

1.1.4 The Consultant’s services shall be performed in manner, sequence and timing so that they will be coordinated with those of the Architect and other consultants for the Project.

1.1.5 The Consultant shall recommend to the Architect that appropriate investigations, surveys, tests, analyses and reports be obtained as necessary for the proper execution of the Consultant’s services.

1.1.6 The Consultant shall provide progress copies of drawings, reports, specifications and other necessary information to the Architect and other consultants for coordination and review. All aspects of the Work designed by the Consultant shall be coordinated by the Consultant, and the consultant shall also become familiar with the Work designed by the Architect and other consultants as necessary for the proper coordination of This Part of the Project.

1.1.7 The Consultant shall cooperate with the Architect in determining the proper share of the construction budget to be allocated to This Part of the Project.

1.1.8 The Consultant shall not be responsible for the acts or omissions of the Architect, Architect’s consultants, Contractor, Subcontractors, their agents or employees, or other persons performing any of the Work.

1.1.9 The Consultant’s services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request of the Owner, the Consultant shall submit for the Owner’s approval a schedule for the performance of the Consultant’s services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner’s and Architect’s review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule and approved by the Architect shall not, except for reasonable cause, be exceeded by the Consultant or Architect. The Consultant shall not be responsible for delays beyond the Consultant’s control.

ARTICLE 2

Scope of Consultants Basic Services

2.1 DEFINITION

2.1.1 The Consultant’s Basic Services consist of those services described in Paragraphs 2.2 through 2.6 and other services identified in Article 12 as part of Basic Services, including computer aided design and drafting (“CADD”) services.

2.2 SCHEMATIC DESIGN PHASE

2.2.1 The Consultant shall ascertain the requirements for This Part of the Project and shall confirm such requirements to the Architect.

2.2.2 The Consultant shall review alternative systems with the Architect, attend necessary conference, prepare necessary analyses, drawings and other documents, be available for general consultation, and make recommendations regarding basic systems for This Part of the Project. When necessary, the Consultant shall consult with public agencies and other organizations concerning utility services and requirements.

2.2.3 The Consultant shall prepare and submit to the Architect a preliminary estimate of Construction Cost of This Part of the Project based on current area, volume or other unit costs, as directed by the Architect.

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 When authorized by the Architect, the Consultant shall prepare design Development Documents from the Schematic Design Studies approved by the Owner and confirmed by the Architect. The Design Development Documents shall consist of the drawings and other documents to fix and describe This Part of the Project, including materials, equipment, component systems and types of construction as may be appropriate, all of which are to be approved by the Owner and Architect.

2.3.2 The Consultant shall advise the Architect of adjustments to the primary estimate of Construction Cost for This Part of the Project.

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 When authorized by the Architect, the Consultant shall prepare, from the Design Development Documents approved by the Owner and confirmed by the Architect, drawings and Specifications setting forth in detail the requirements for the construction of This Part of the Project, all of which are to be approved by the Owner and Architect. The Consultant shall prepare the Drawings and Specifications in such format as the Architect may reasonably require. It is the Consultant’s responsibility to make sure that its documents are fully coordinated with the Architect’s and other consultants documents (including all existing conditions).

2.4.2 The Consultant shall advise the Architect of adjustment to previous preliminary estimates of Construction Cost for This Part of the Project indicated by changes in requirements or general market conditions.

2.4.3 The Consultant shall assist the Architect as necessary in connection with the Owner’s responsibility for filing the documents concerning This Part of the Project required for the approval of governmental authorities having jurisdiction over the Project.

2.4.4 The Consultants plans and specifications for the various phases shall be furnished to the Architect in a timely manner in accordance with the Architect’s timetable (attached).

2.5 BIDDING OR NEGOTIATION PHASE

2.5.1 If required by the Architect, the Consultant shall assist the Architect and Owner in obtaining the evaluating bids or negotiated proposals, and assist in awarding and preparing contracts for construction.

2.6 CONSTRUCTION PHASE – ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Consultant’s responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and continues until the issuance to the Owner of the final Certificate for Payment, final acceptance of the Work and all required governmental approvals and certificates of occupancy unless extended under terms of Subparagraph 10.3.4.

2.6.2 The Consultant shall assist the Architect in the administration of the Contract for construction with respect to This Part of the Project, as set forth below and in the edition of AIA Document A201, General Conditions of the Contract for Construction, identified in the Prime Agreement, unless otherwise provided in this Agreement.

2.6.3 The Consultant shall visit the site at intervals appropriate to the stage of construction for This Part of the Project, or as otherwise agreed with the Owner or Architect in writing, to become generally familiar with the progress and quality of the Work completed for This Part of the Project and to determine in general of the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. However, the Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work for This Part of the Project. On the basis of such on-site observations as a consultant, the Consultant shall keep the Architect informed of the progress of the Work for This Part of the Project and shall endeavor to guard the Owner against defects and deficiencies in such Work.

2.6.4 The Consultant shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work for This Part of the Project, since these are solely the Contractor’s responsibility under the Contract for Construction. The Consultant shall not be responsible for the Contractor’s or a Subcontractor’s schedule or failure to carry out the Work in accordance with the Contract Documents. The Consultant shall not have control over or charge of acts or omissions of the Contractor, Subcontractors, their agents or employees or other persons performing portions of the Work.

2.6.5 The Consultant shall at all times have access to the Work for This Part of the Project, wherever it is in preparation or progress.

2.6.6 Based on the Consultant’s observations and evaluations of the Contractor’s Applications for Payment, the Consultant shall assist the Architect in determining the amounts due the Contractor for This Part of the Project and shall certify such amounts to the Architect in writing.

2.6.7 Certification for payment by the Consultant to the Architect of the amounts due the Contractor shall constitute a representation to the Architect based on the Consultant’s observations at the site as provided in Subparagraph 2.6.3.and on the data comprising the Contractor’s Application for Payment, that the Work for This part of the Project has progressed to the point indicated and that, to the best of the Consultant’s knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of such Work for completion, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion, and to specific qualifications expressed by the Consultant.

2.6.8 Upon written request of the Architect, the Consultant shall furnish to the Architect, with reasonable promptness, in writing or in the form of drawings, interpretations of the Contract Documents prepared by the Consultant, if, in the opinion of the Architect, such interpretations are necessary for the proper execution or progress of the Work.

2.6.9 The Consultant shall within a reasonable time render written recommendations on claims, disputes and other matters in question between the Owner and Contractor relating to the execution or progress of This Part of the Project as provided by the Contract Documents.

2.6.10 The Consultant shall assist the Architect in determining whether the Architect shall reject Work for This Part of the Project which does not conform to the Contract Documents or whether additional inspection or testing is required.

* + 1. The Consultant shall review and approve, or take other appropriate action upon and forward to the Architect for final disposition, Contractor’s submittals such as Shop Drawings, Product Data and Samples with respect to This Part of the Project; but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Consultant’s action will be taken with such reasonable promptness as to cause no delay in the construction of the Owner or of separate contractors, while allowing sufficient time in the Consultant’s professional judgement to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required for This Part of the Project by the Contract Documents. The Consultant’s review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Consultant, of construction means, methods, techniques, sequences or procedures. The Consultant’s approval of a specific item shall not indicate approval of an assembly of which the item is a component. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Consultant shall be entitled to rely upon such certifications to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.
    2. The Consultant shall assist the Architect in reviewing Change Orders for This Part of the Project for the Owner’s approval and execution in accordance with the Contract Documents, including those pursuant to Construction Change Directives, and may recommend to the Architect minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.
    3. The Consultant shall assist the Architect in conducting inspections, with respect to This Part of the Project, to determine the date or dates of Substantial Completion and the date of final completion, and shall review and approve, or take other appropriate action on, the Contractor’s list of items to be completed or corrected, and shall forward the list to the Architect for final disposition. The Consultant shall assist the Architect in receiving and forwarding to the Owner for the Owner’s review and records written warranties and related document required by the Contract Documents assembled by the Contractor with respect to This Part of the Project. If requested, the Consultant shall issue to the Architect a final certification in writing with respect to final payment for This Part of the Project. The Consultant shall, together with the Architect review, amend and add items, if necessary, to the Contractor’s consolidated “punch list” of deficiencies in This Part of The Work for correction by the Contractor.
    4. The Consultant will provide the Architect, at the completion of the project, a set of Mylar reproducible Drawings and Specifications of the project, which shall be the property of the Owner.
  1. OWNER’S REPRESENTATIVE

2.7.1 The Architect is the Owner’s Administrator and Director of this project. The Consultant will take and follow directions from the Architect with respect to the design and timing of deliverables as if they were issued by the Owner. The consultant may rely upon directions from the Architect as if they were received from the Owner, without having to verify or confirm them with the Owner.

* 1. GENERAL
     1. The Consultant covenants and agrees to use and apply its professional skill, judgement and ability to design the Project and to carry out its responsibilities under this Agreement in accordance with the prevailing professional standards for projects of similar design and complexity and in compliance with all applicable federal, state, county, city and other laws, regulation, codes and ordinances applicable in the local jurisdiction at the time of issuance of the building permit. The term “code” shall also include the most current version of any governmental, quasi-governmental and/or industry standard setting organizations industry standards applicable in the local jurisdiction at the time of issuance of the building permit. (e.g. NFPA, ASHRAE, ANSI, etc.) The Consultant’s obligation to apply such professional skill, judgement and ability includes the obligation, where consistent with such professional standards, to discover conflicts, defects or other problems with the Contract Documents (and/or to discover conflicts, defects or other problems with any Work with respect to which the Architect is responsible hereunder for review and/or recommending approval, disapproval, acceptance, rejection and/or payment sooner rather than later, and no qualifications of or limitations on the Consultants responsibilities or obligations hereunder, shall relieve the Consultant of such obligation.
     2. The consultant shall take special care to advise the Owner, prior to the Consultant or the Owner expending time or money pursuing any particular course of action, whether such course of action is of the sort which typically creates base building conflicts. The Consultant should keep the requirements of this Paragraph 2.28.2 in mind while performing its Work hereunder, including but not limited to, in preparing and/or reviewing the program, the preliminary drawings, plans and specification, the schematic designs and related documentation and materials and the Construction Drawings.
     3. Nothing in the Agreement, including, but not limited to, any disclaimer, release, qualification or the like, shall relieve the Consultant of it’s other obligations under the Agreement, or for liability for the breach thereof or the failure to adequately perform its obligations including, but not limited to, coordination with the Architect, and/or other Consultants, and/or any obligations or liabilities arising in connection with or pursuant to Paragraph 12.5 and any services, Services, work or Work provided or required in connection with such breach or failure shall be provided by the Architect at its sole cost and expense.

2.9 In the event of any dispute between the Consultant, Architect and/or the owner regarding whether work required of the Consultant is Basic Services or Additional Services, the Consultant shall nevertheless continue to perform same and no such dispute shall ever give rise to any right of any person to slow, stop or otherwise decrease the scope, thoroughness, quality or schedule of its work.

ARTICLE 3

Additional Services

* 1. General

3.1.1 The services described in this Article 3 are not included in Basic Services unless identified in Article 12 and shall only be provided if authorized or conformed in writing by the Architect.

* 1. PROJECT REPRESENTATION BEYOND BASIC SERVICES
     1. If more extensive representation at the site than is described under Subparagraph 2.6.3 is required for This Part of the Project, the Consultant shall, if requested by the Architect and confirmed by the Owner, provide one or more Project Representatives to assist the Consultant in carrying out such additional on-site responsibilities.
     2. Project Representatives shall be selected, employed and directed by the Consultant, and the Consultant shall be compensated therefor as agreed by the Owner and Consultant. The duties, responsibilities and limitation of authority of Project Representatives shall be as described in an exhibit to this Agreement.

3.2.2 Through the observations by such Project Representatives, the Consultant shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work for This Part of the Project, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Consultant as described elsewhere in this Agreement.

3.3 CONTINGENT ADDITIONAL SERVICES

3.3.1 Making revisions in Drawings, Specifications or other documents when such revisions are:

.1 Inconsistent with approvals or instructions previously given by the Owner, including revisions made necessary by any significant changes in the program or Project budget;

.2 Required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or

.3 Required as a result of the Owner’s failure to render decisions in timely manner.

3.3.2 Providing services required because of significant changes for This Part of the Project including, but not limited to, changes in size, quality and complexity, Owner’s schedule, method of bidding or negotiating and contracting for construction Work, other than those required as a result of negligent error or omission by the Consultant.

3.3.3 Preparing Drawings, Specifications and other documentation and supporting data, and providing other services in connection with Change Orders and Construction Change Directives, other than those required as a result of a negligent error or omission by the Consultant.

3.3.4 Providing services in connection with evaluating substitutions proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

3.3.5 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

3.3.6 Providing services made necessary by the default of the Contractor, or by major defects or deficiencies in the Work of the Contractor or by failure of performance of either the Owner or Contractor under the Contract for Construction.

3.3.7 Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work for This Part of the Project.

* + 1. Providing services in connection with a public hearing, arbitration proceeding or legal proceeding, not included as part of this work.
  1. OPTIONAL ADDITIONAL SERVICES

3.4.1 Providing analyses of the Owner’s needs and programming the requirements for This Part of the Project.

3.4.6 Providing financial feasibility or other special studies.

3.4.7 Providing planning surveys, site evaluations or comparative studies of prospective sites.

3.4.8 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

* + 1. Providing services relative to future facilities, systems and equipment.

3.4.10 Providing services to investigate existing conditions or facilities, or to make measured drawings thereof.

3.4.11 Providing services to verify the accuracy of drawings or other information furnished by the Architect.

3.4.12 Providing coordination of construction performed by separate contractors or by the Owner’s own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.

* + 1. Providing services in connection with the work of a construction manager retained by the Owner.
    2. Providing detailed estimates of Construction Cost.
    3. Providing detailed quantity surveys or inventories of material, equipment and labor.
    4. Providing analyses of owning and operating costs.

3.4.17 Providing services or special consultants related to interior design services and other similar services required for, or in connection with, the selection, procurement or installation of furniture, furnishings and related equipment.

* + 1. Providing services for planning tenant or rental spaces.

3.4.19 Making investigation, inventories of materials or equipment or valuations, and detailed appraisals of existing facilities.

3.4.20 Preparing a set of reproducible record drawings showing significant changes in the Work for This Part of the Project made during construction, based on marked-up prints, drawings and other data furnished by the Contractor to the Architect.

3.4.21 Providing assistance in the utilization of equipment or systems, such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

3.4.22 Providing services of sub-consultants for other than the normal consulting services for This Part of the Project provided as part of Basic Services.

* + 1. Providing coordination of Work in connection with equipment supplied by the Owner.

3.4.24 Providing any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted consulting practice for This Part of the Project.

ARTICLE 4

Architect’s Responsibilities

4.1 The Architect shall, with reasonable promptness, provide available information regarding requirements for This Part of the Project.

4.2 The Architect may designate a representative authorized to act on the Architect’s behalf with respect to This Part of the Project. The Architect or such authorized representative shall render decisions in a timely manner pertaining to documents submitted by the Consultant in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant’s services.

4.3 If the Consultant considers it necessary for This Part of the Project, the Architect shall request that Owner furnish the services of other consultants when such services are reasonably required by the scope of the Project, including surveys describing physical characteristics, legal limitations and utility locations for the site of the Project and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; right-of-way, restrictions, easement, encroachments, zoning, deed restriction, boundaries and contours of the site; locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines both public and private, above and below grade, including inverts and depths. All information on the survey shall be referenced to a project benchmark.

4.4 On the Consultant’s request for This Part of the Project, the Architect shall furnish to the Consultant, with reasonable promptness, (1) detailed layouts showing the location of connections, and (2) tabulations giving sizes and loads of equipment designed, specified or furnished by others for incorporation into other parts of the Project.

4.5 On the Consultant’s request for This Part of the Project, the Architect shall request the Owner to furnish, with reasonable promptness, the services of geotechnical engineers. Such services may include, but are not limited to, test boring, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

4.6 On the Consultant’s request for This Part of the Project, the Architect shall request the Owner to furnish structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials and other laboratory and environmental tests, inspections and reports required by law or the Contract Documents.

4.7 The services, information, surveys and reports required by Paragraphs 4.3 through 4.6 shall be furnished at no expense to the Consultant, who shall be entitled to rely upon the accuracy and completeness thereof.

4.8 Prompt written notice shall be given by the Architect to the Consultant if the Architect becomes aware of any fault or defect with respect to This Part of the Project or nonconformance with the Contract Documents.

4.9 The Architect shall confer with the Consultant before issuing interpretations or clarifications of documents prepared by the Consultant and shall request the recommendation of the Consultant before providing interpretations or clarifications of Shop Drawings, Product Data, Samples or other submissions of the Contractor, or of Change Orders and Construction Change Directives affecting This Part of the Project.

4.10 The Architect shall furnish to the consultant a copy of preliminary estimates of Construction Cost or detailed estimates of Construction Cost as submitted to the Owner, bidding documents, bid tabulations, negotiated proposals and Contract Documents, including Change Orders and Construction Change Directives as issued, to the extent that they pertain to This Part of the Project.

4.11 The Architect shall advise the Consultant of the identity of other consultants participating in the Project and the scope of their services.

4.12 The Architect shall review the Consultant’s work for compliance with the Owner’s program and for overall coordination with the architectural and engineering requirements.

ARTICLE 5

Construction Cost

5.1 DEFINITION

5.1.1 The Construction Cost shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Architect, the Owner’s consultants, or the Architect’s consultants. The Construction Cost of This part of the Project shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Consultant.

5.1.2 The Construction Cost or the Construction Cost of This Part of the Project shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect or Consultant, plus a reasonable allowance for the Contractor’s overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work during construction.

5.1.3 Construction Cost does not include the compensation of the Architect, Architect’s consultants, the Owner’s consultants, the costs of the land, right-of-way and financing, or other costs which are the responsibility of the Architect as provided in Article 4 of this Agreement, or which are the responsibility of the Owner as defined in the Prime Agreement.

5.2 RESPONSIBILITY FOR CONSTRUCTION COSTS

5.2.1 Evaluations of the Owner’s Project budget, preliminary estimates of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Consultant for This Part of the Project, represent the Consultant’s best judgement as a professional familiar with the construction industry. It is recognized, however, that neither the Consultant on or Architect has control over the cost of labor, materials or equipment, over the Contractor’s methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the consultant cannot and does not warrant or represent that bids or negotiated prices for this Part of the Project will not vary from the Owner’s Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Consultant.

5.2.2 The Architect and consultant shall establish, if practicable, a fixed limit of Construction Cost for This Part of the Project, which may be fixed independently of the limit, if any established in the Prime Agreement. If such a fixed limit has been established, the Consultant, after conferring with the Architect, shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents with respect to This Part of the Project, to make reasonable adjustment in the scope of This part of the Project and to include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit for this Part of the Project. Such fixed limit shall be increased in the amount of any increase in the Contract Sum related to This part of the Project occurring after execution of the Contract for Construction.

5.2.3 If the Bidding or Negotiation Phase for This Part of the Project has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Costs for this Part of the Project established as a condition of this Agreement shall be adjusted to reflect changes in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which bids or proposals are sought.

5.2.4 If a fixed limit of Construction Cost for This Part of the Project (adjusted as provided in Subparagraph 5.2.3) is exceeded by the lowest bona fide bid or negotiated proposal, the Architect may require the Consultant, without additional charge, to modify the Consultant’s Drawings, Specifications and other documents for this Part of the Project as necessary to bring the Construction Costs thereof within such fixed limit for This Part of the Project. If it was not practicable to establish a fixed limit of Construction Cost for This Part of the Project, and if the lowest bona fide bid or negotiated proposal, the detailed estimate of Construction Cost or the preliminary estimate of Construction Cost established for the entire Project (including the bidding contingency) exceeds the fixed limit of Construction Cost of the entire Project and the budget for this Part of the Project is exceeded, the Architect may require that the Drawings, Specifications and other documents prepared by the Consultant be modified without additional compensation to the Consultant, so that the Consultant may bear a reasonable portion of the burden of reducing the Construction Costs of This Part of the Project so that the fixed limit of Construction Cost for the entire Project is not exceeded. The providing of such service shall be the limit of the Consultant’s responsibility in this regard, and having done so, the Consultant shall be entitled to compensation for all services performed in accordance with this Agreement.

ARTICLE 6

Use of Consultant’s Drawings, Specifications and other Documents

6.1 Except for reference and coordination purposes in connection with future additions or alterations to the Work, Drawings, Specifications and other documents prepared by the Consultant are instruments of the Consultant’s service for use solely with respect to this Project and, unless otherwise provided, the Consultant shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including the copyright. The Architect and Owner shall be permitted to retain copies, including reproducible copies, of the Consultant’s Drawings, Specifications and other documents for information and reference. The Consultant’s Drawings, Specifications or other documents shall not be used by the Architect or others, for completion of this Project by others, unless the Consultant is adjudged to be in default under this Agreement.

6.1.1 The foregoing notwithstanding, the Owner, the Construction Manager, the Contractors , the Subcontractors, the Sub-subcontractors, and the materialmen engaged in connection with the Work, their respective consultants, agents and contractors, and the respective successors and assigns of the foregoing, are hereby granted an absolute and irrevocable right and license to use the Drawings, Schedules and Specifications in connection with the Project including, but not limited to, for completion of the Project by others, and/or in connection with other related or similar projects then or thereafter undertaken, including future tenant construction, in the Building for the Owner, in all such cases without any further or other compensation due Architect and/or any of the Architect’s consultants, and without any necessity that the Architect be terminated or removed from the Project, or retained for such other projects, provided, however, that in the event such use of Drawings, Schedules and Specifications is in connection with the termination or removal of the Architect from the Project and provided further that it is ultimately determined that such termination or removal was wrongful and without just or reasonable cause or basis then the Architect and the Architect’s consultants shall be entitled to compensation for such right and license, such compensation to be reasonable. The Owner, the Construction Manager, the Contractors, the Subcontractors, the Sub-subcontractors and the material and equipment suppliers engaged in connection with the Work, their respective consultants, agents and contractors and the respective successors and assigns of the foregoing, shall be entitled to rely upon the completeness, accuracy, correctness and adequacy of all Drawings, Schedules and Specifications and no such persons, and no appointed successors and assigns of the foregoing, shall be entitled to rely upon the accuracy, correctness and adequacy of all Drawings, Schedules and Specifications and no such persons, and no appointed successor to the Architect (or to the services or functions which were previously being performed by the Architect), shall have any duty to discover or correct errors or omissions of the Architect or of the Architects consultants in such Drawings, Schedules or Specifications except for such errors or omissions as are readily and easily apparent; and in such later event, the duty owed shall not be to the Architect or to the Architect’s consultants (including, but not limited to, by way of subrogation or otherwise), but such duty shall be owed solely to the Owner.

6.2 The Architect and Consultant shall not make changes in each other’s Drawings, Specifications and other documents without written permission of the other party.

6.3 The Consultant shall maintain on file and make available to the Architect design calculations for This Part of the Project, and shall furnish copies thereof to the Architect on request.

6.4 Submission or distribution of consultant’s documents to meet official regulatory requirements or for similar purposes in connection with This Part of the Project is not to be construed as publication in derogation of the Consultant’s reserved rights.

ARTICLE 7

Arbitration

7.1 Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof, shall be subject to and decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise.

7.2 Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statues of limitations.

7.3 No arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement except by written consent containing a specific reference to this Agreement and signed by the Architect, Owner, Consultant and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in questions not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

7.4 The award rendered by the arbitrator or arbitrators shall be final, and judgement may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 8

Termination, Suspension or Abandonment

8.1 This Agreement may be terminated at any time with or without cause or at such time as the Prime Agreement is terminated. The Owner shall promptly notify the Consultant of such termination.

8.2 If the Project is suspended for more than 30 consecutive days, for reasons other than the fault of the Consultant, the Consultant shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Consultant’s compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Consultant’s services.

8.3 If the Project is abandoned by the Architect because of the Owner’s abandonment of the Project for more than 90 consecutive days, the Consultant may terminate this Agreement by giving written notice to the Owner.

8.4 This Agreement may be terminated by either party upon not less than seven days’ written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

8.5 If the Prime Agreement is terminated through no fault of the consultant, the consultant’s compensation for This Part of the Project, for services performed and expenses incurred prior to the date of termination, and Termination Expenses, if any, shall be limited to a prorated payment equal to the percentage received by the Architect.

ARTICLE 9

Miscellaneous Provisions

9.1 Unless otherwise provided, this Agreement shall be governed by the law of the principal place of business of the Owner.

9.2 Terms in this Agreement shall have the same meanings as those in AIA Document A201, General Conditions of the Contract for Construction, current as of the date identified in the Prime Agreement.

9.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statues of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion.

9.4 The Architect and Consultant waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, but only to the extent covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance as set forth in the edition of AIA Document A201, General Conditions of the Contract for Construction, current as of the date identified in the Prime Agreement. The Consultant and Architect shall require similar waivers from the Consultant’s contractors, consultants and agents.

9.5 The Owner and Consultant, respectively, bind themselves, their partners, successors, assigns and legal representative to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither Owner nor Consultant shall assign this Agreement without written consent of the other. Notwithstanding anything contained in this Agreement to the contrary, Owner shall have the right, without the prior consent of Consultant, to assign its rights, benefits, obligations and duties under this Agreement to any assignee (an “Assignee”), provided that: (a) the Assignee is an affiliate or subsidiary of, or other entity related to, controlled by, or under common control with, Owner, or is an entity in which any member, partner, principal, entity or individual owning an interest in Owner or an affiliate or subsidiary of, or other entity related to, controlled by, or under common control with, Owner, holds an ownership interest, directly or indirectly, (b) the Assignee has agreed in writing to assume the obligations of Owner under the Agreement and to be bound by the terms thereof, (c) the Assignee has purchased the Project, or is the contract purchaser by assignment or otherwise under a purchase and sale agreement wherein the owner of the Project has agreed to sell the Project, (d) the Assignee is a bond fide lender on the property as evidenced by a written mortgage or deed of trust on the property and (e) Owner has provided written notice to Consultant that the Agreement has been assigned to the Assignee, which notice shall (I) include the name and address of the Assignee, and (ii) include a copy of the assignment and assumption agreement pursuant to which the Agreement was assigned from Owner to the Assignee and whereby the Assignee has agreed to assume the obligations of Owner under the Agreement. Provided that the foregoing obligations have been satisfied, Owner shall be automatically, without the need for any further writing, be released from all obligations under this Agreement and Consultant agrees, thereafter, to look solely to the Assignee for the satisfaction of any and all obligations and liabilities under this Agreement. All other assignments of this Agreement by Owner shall be subject to the prior written consent of Consultant. Notwithstanding the provisions of Paragraph 9.5 to the contrary, the Owner may assign the Agreement to any construction or permanent leader(s) or trustee(s) providing financing on the Project without obtaining the written consent of the Architect. Such assignee shall have all of the rights and remedies available to the owner under the Agreement except for any liability first accruing after such assignment and such assignee’s assumption of the Owner’s control and responsibilities hereunder.

9.6 This Agreement represents the entire and integrated agreement for This Part of the Project between the Architect and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Architect and Consultant.

9.7 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Architect, Owner, or Consultant.

9.8 Unless otherwise provided in this Agreement, the Architect and Consultant shall have no responsibility for the discovery, presence, handling, removal, or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances.

ARTICLE 10

Payments to the Consultant

10.1 DIRECT PERSONNEL EXPENSE AND DIRECT SALARY EXPENSE

10.1.1 Direct Personnel Expense is defined as the direct salaries of the Consultant’s personnel engaged on the Project, and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, and similar contribution and benefits.

10.1.2 Direct Salary expense is defined as the direct salaries of Consultant’s personnel engaged on the Project but does not include the cost of related mandatory and customary contributions and benefits.

10.2 REIMBURSABLE EXPENSES

10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Consultant and Consultant’s employees and subconsultants in the interest of the Project, to the extent they are reimbursable by the Owner under the Prime Agreement, as identified in the following Clauses.

10.2.2 .1 Expense of transportation in connection with the Project; expenses in connection with authorized out of town travel; long-distance communication; and fees paid for securing approvals of authorities having jurisdiction over the Project.

.2 Expense of reproductions, postage and handling of Drawings, Specifications and other documents.

.3 If authorized in advance by the Architect and the Owner, expense of overtime work requiring higher than regular rates.

.4 Expense of renderings, models and mock-ups requested by the Architect.

.5 Expense of additional insurance coverage or limits, including professional liability insurance in excess of the requirements of Paragraph 11.5.

10.3 PAYMENTS ON ACCOUNT OF SERVICES

10.3.1 Payments for Basic Services, Additional Services and Reimbursable Expenses shall be made on the basis set forth in Article 11.

10.3.2 The Consultant shall submit invoices for Basic Services, additional Services and reimbursable Expenses in accordance with the provisions of the Prime Agreement. The Architect shall review such invoices and, if they are considered incorrect or untimely, the Architect shall review the matter with the Consultant and confirm in writing to the Consultant within ten days from receipt of the Consultant’s billing the Architect’s understanding of the disposition of the issue. No Additional Services exceeding Five Hundred Dollars ($500.00) as to any one item, person or event, or Two Thousand ($2,000.00) as to any one month, and no Reimbursable Expense exceeding Seven Hundred Fifty Dollars ($750.00) as to any one item, person or event, or Two Thousand Dollars ($2,000.00) as to any one month, shall be payable or reimbursable hereunder unless same shall have been expressly authorized in writing by the owner prior to being incurred. Payments on account of Additional Services and/or Reimbursable Expenses are subject to verification and unverified amounts, or other amounts as to which there is a reasonable basis for dispute, shall not be considered due or payable until such amounts are verified and/or such dispute resolved, as the case may be. Subject to the foregoing and to the other terms hereof, (1) payments on account of Additional Services and/or Reimbursable Expenses shall be due and payable only after the Owner receives appropriate invoices therefor, in accordance with any reasonable form specified by the Owner, and containing such reasonable back-up or substantiation as the Owner may reasonably request, and (2) payments for appropriate and substantiated invoices shall be due within thirty (30) days following receipt thereof by the Owner.

10.3.3 The Consultant shall submit invoices for Basic Services, Additional Services and Reimbursable Expenses in accordance with the provisions of the Prime Agreement. The Architect and the Owner shall review such invoices and, if they are considered incorrect or untimely, the Architect and/or the Owner shall review the matter with the Consultant and confirm in writing to the consultant within ten days from receipt of the consultant’s billing, the Architect’s or the Owner’s understanding of the disposition of the issue.

10.3.4 If and to the extent that the time initially established in Subparagraph 11.4.1 of this Agreement is exceeded or extended through no fault of the Consultant, compensation for services rendered during the additional period of time shall be completed in the matter set forth in Paragraph 11.2..

10.3.5 Payments to the Consultant will be made promptly after the Architect is paid by the Owner under the Prime Agreement.

10.4 PAYMENTS WITHHELD

10.5.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of a multiple of Direct Personnel Expense shall be available to the Architect or Owner at mutually convenient times.

10.6 INSURANCE

10.6.1 The Consultant shall obtain insurance covering claims arising out of the performance of professional services under this Agreement and caused by errors, omissions, or negligent acts for which the Consultant is legally liable. This insurance shall be maintained in force by the Consultant for a reasonable period after the date of Substantial Completion of the Project as agreed to by the Owner and Consultant.

10.6.2 Unless otherwise agreed, the Architect and Consultant shall each provide insurance to protect themselves from claims under workers’ or workmen’s compensation acts; from claims for damages because of bodily injury, including personal injury, sickness, disease, or death of any employees or of any other person; from claims for damages because of injury to or destruction of property including loss of use resulting therefrom; and from damage to or destruction of property including valuable papers and records coverage and including loss of use resulting therefrom.

10.6.3 The insurance required pursuant to Subparagraphs 10.6.1 and 10.6.2 shall be in not less than the minimum limits required by law or by Paragraph 11.5.

10.6.4 The Consultant shall furnish to the Owner Certificates of Insurance evidencing the insurance required by Subparagraphs 10.6.1 and 10.6.2, including appropriate evidence that each type of insurance includes appropriate coverage for this specific Project. Certificates shall contain provisions that at least 30 days’ prior written notice will be given to the Owner in the event of cancellation, reduction in or nonrenewal of the insurance.

ARTICLE 11

Basis of Compensation

The Owner shall compensate the Consultant as follows:

11.1 BASIC COMPENSATION

11.1.1 For Basic Services, as described in Paragraphs 2.2 through Subparagraph 2.6.13 and other services included in article 12 as part of Basic Service, Basic Compensation shall be computed as follows:

11.1.2 Where compensation is based on a stipulated sum or percentage of Construction Cost for This Part of the Project, Progress payments for Basic Services in each phase shall total the following percentages of the total Basic Compensation payable:

|  |  |  |  |
| --- | --- | --- | --- |
| Schematic Design Phase: |  | percent | ( %) |
| Design Development Phase: |  | percent | ( %) |
| Construction Documents Phase: |  | percent | ( %) |
| Bidding or Negotiation Phase: |  | percent | ( %) |
| Construction Phase: |  | percent | ( %) |
| Total Basic Compensation | One hundred | Percent | (100%) |

11.2 COMPENSATION FOR ADDITIONAL SERVICES

11.2.1 For Project Representation beyond Basic Services, as described in Paragraph 3.2, compensation shall be computed as follows:

11.2.2 For additional services of the consultant, as described in Article 3, other than (1) Additional Project Representation described in Subparagraphs 3.2.1 through 3.2.3, (2) services required to meet a budget modified by the Owner and (3) services excluding services of sub-consultants for other than the normal consulting services for this Part of the Project, compensation shall be computed as follows:

11.2.3 For additional services of sub-consultants for other than normal consulting services for This Part of the Project, as provided under Subparagraph 11.2.2 or identified in Article 12 as Additional Services, a multiple of (1.10) times the amounts billed to the Consultant for such services.

11.3 REIMBURSABLE EXPENSES

11.3.1 For Reimbursable expenses, as described in Paragraph 10.2, a multiple of (1.10) times the expenses incurred by the Consultant, consultant’s employees and sub-consultants in the interest of This Part of the Project.

11.4 ADDITIONAL PROVISIONS

11.4.1 If Basic Services covered by this Agreement have not been completed within twenty-four (24) months of the date thereof, thorough no fault of the Consultant for This Part of the Project, extension of the Consultant’s services beyond that time shall be considered Additional Services and the amounts of compensation set forth in this Agreement shall be equitably adjusted as provided in Subparagraph 11.2.2.

11.4.2 The rates set forth for Additional Services shall be annually adjusted in accordance with normal salary review practices of the Consultant.

* + 1. PAYMENT PROVISIONS

All invoices to be submitted by the 25th of the month for payment the following month. Invoices submitted after the 25th may, at the Owners discretion, be processed the next month.

11.5 INSURANCE COVERAGES

11.5.1 Insurance and Liability. The Consultant shall insure and shall require each of its contractors, subcontractors, consultants and agents (collectively, “consultants”) to insure against the following risks to the extent stated.

(a) Comprehensive General Liability Insurance (including the use of umbrella coverage) and contractual liability coverage, written on an occurrence basis, with not less than a Two Million Dollars ($2,000,000) combined single limit of liability; the consultants shall maintain a similar policy of insurance covering as insured each consultant.

(b) Valuable Papers Insurance, written on an occurrence basis, covering as insured the Consultant, the Owner insuring all plans, designs, drawings, models, specifications and documents produced or used under this Agreement by the Consultant or any consultant in a total amount not less than One Hundred Thousand Dollars ($100,000.00). The Consultant may furnish full coverage under one policy or may submit separate policies from its consultants for their proportionate shares of said coverage. In the event of a recovery under the policy for valuable papers insurance as requited herein, the Consultant shall deposit the full amount of any payment with respect to all benefits, up to the limits required in this Subparagraph 11.5.1(b), upon submission of a valid claim made directly to the Architect, into a separate escrow account with a bank or other financial institution reasonably acceptable to the Owner. The Consultant shall cause all sums deposited into escrow by the Consultant in accordance with this Subparagraph 11.5.1(b) to be paid out of such escrow account directly to the Owner, as the Consultant may be instructed by the Owner, but the Consultant shall not be responsible for loss of such funds after deposit into such escrow account.

1. Worker’s Compensation Insurance providing applicable statutory coverage for the benefit of the Consultant’s employees and the employees of each consultant as requited by the applicable Worker’s Compensation laws. All required insurance shall be maintained with responsible insurance carriers qualified to do business in the jurisdiction in which the Project is located.
2. Consultant’s Professional Liability Insurance (Errors and Omissions), written on an occurrence basis, if available, covering as insured the Consultant with a Two Million Dollars ($2,000,000.00) limit of liability per claim/aggregate.

11.5.2 Riders providing substantially as follows shall be made a part of insurance policies herein before described other than Worker’s Compensation Insurance:

(a) “The insurance company hereby agrees that it will give the Owner at least thirty (30) days prior written notice of any material change in, or cancellations of, any of the coverages shown in this certificate and shall accept payment by the Owner in cure of any payment defaults.”

1. “Notice of accident shall be given by the Consultant to the insurance company as required under the terms of this policy. Notice of claim may also be given by the Owner. Notice to the insurance company by any party shall be deemed sufficient notice under the policy.”

11.5.3 Insurance described in Subparagraphs 11.5.1(a),(b),(c), and (d) shall name the Owner, the Architects, the Construction Manager as an additional insureds. As soon as practicable upon execution of this Agreement and before commencing any performance hereunder, the Consultant shall deposit, and shall cause each Consultant to deposit, with the Owner, the Certificates therefore, bearing notations or accompanied by other evidence satisfactory to the Owner of the payment of premiums. Thereafter, renewed certification shall be deposited with the Owner not less than ten (10) days before the expiration dates of the expiring policies. In the case of Valuable Papers Insurance, original policies, not certificates, must be deposited.

11.5.4 The insurance obtained by the Consultant as required by this Paragraph 12.13 shall in no manner lessen, diminish, limit or affect the Consultant’s obligations set forth in any provision of this Agreement.

ARTICLE 12

Other Conditions or Services

* 1. Interface and coordinate as required with the Owner’s and the Owner’s consultants (if any) such as telecommunications, records, word processing, management and data information systems, library administration, construction management, etc., to the extent necessary to include their requirements, as the case may be, in the Program, the Schematic Design Documents, the Construction Drawings, any Owner equipment drawings and the other Contract Documents. This interface and coordination is a Basic Service if information is received by the Architect prior to completion of the Construction Documents phase. Changes required later are Additional Services.
  2. The approval by the Owner of any drawings, specifications, bid packages, documents or other work prepared by the Consultant and/or by any of the consultant’s consultants shall not relieve the Consultant of responsibility for design of the Project and its components, and to design a Project which adequately provides for the program and other requirements of the Owner, and the Consultant understands and agrees that the Owner may, through their respective designated representative or representatives, actively participate in the Project, and that the Owner’s participation shall in no way relieve the Consultant of its duties and responsibilities under applicable law or under this Agreement. Approval by the Owner of any Construction Drawings and/or other drawings, plans, specification or materials shall not constitute a defense to the Consultant with respect to errors, omissions or deficiencies therein.

12.3 The Consultant shall be responsible for the work product of and the performance of the work of all consultants and engineers engaged by it. This shall include, but not be limited to, the maintenance of schedules, coordination or work, and resolution of all differences between them. The Consultant shall be solely responsible for payment of any person engaged by it. It is understood that all engineers and other consultants engaged by the Consultant are independent contractors to the Consultant and not to the Owner and that the Consultant alone is responsible for their work.

12.4 To the fullest extent permitted by law, the Consultant shall indemnify and hold harmless the Owner and its respective officers, partners, agents and employees, from and against all claims, damages, losses and expenses, including, but not limited to, reasonable attorneys’ fees, arising out of or resulting from any accident, injury or damage caused to any person, or the tangible property of any person, in consequence of the performance of the Work, and occurring on or about the Project site, provided that any such claim for damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including loss of use resulting therefrom, and (b) is caused in whole or in part by any negligent act or omission on the part of the Consultant (or anyone acting or claiming by, through or under the Consultant), but in all such cases except to the extent caused by or resulting in connection with any acts or omissions of any party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as provided by this Agreement or as otherwise provided by law. The obligation of the Consultant under this Subparagraph 12.13.5 shall survive for a period of three (3) years beyond the termination of this Agreement.

12.5 Notices

Any contract notice, demand or statement hereunder shall be in writing and shall be deemed to have been given when either delivered personally, delivered by courier or messenger service or commercial overnight delivery service or sent by registered or certified mail, postage prepaid, return receipt requested, addressed to the last known address of the other party, and in all such cases against receipt. Any person may at any time change its address by delivering or mailing, as aforesaid, to the other party or parties for notices (including the Owner) a notice stating the change and the changed address. Whenever herein notice to or approval of any person is required, such notice or approval shall be pursuant to a separate written letter or memorandum and not a part of general reporting materials. Not notice or approval shall be inferred from the daily or other logs maintained for the Project or on the basis of meeting minutes or consents.

The Agreement entered into as of the day and year first written above.

OWNER CONSULTANT

Signature Signature

Print name and title Print name and title