

ATTACHMENT B

AGREEMENT FOR COLLABORATIVE PROJECT DELIVERY AND INCENTIVE PROFIT POOL PROGRAM

**THIS AGREEMENT FOR COLLABORATIVE PROJECT DELIVERY
AND INCENTIVE PROFIT POOL PROGRAM** (“Agreement”) is made effective the _____ day of 2025 among _____ (“Owner”), _____ (“Construction Manager”), _____ (“Designer”), and _____ (“Program Manager”).

RECITALS

A. The Owner provides wide-ranging health care services. The Owner is developing new facilities for its services. This Agreement addresses the project(s) known as _____. The potential Projects are referred to individually and collectively as “Project” or “Projects.”

B. Owner has begun contracting for design, construction, and program management for the Project. Owner has selected Program Manager to provide the services specified in the _____ Agreement dated _____ (the “PM Agreement”). Owner has selected Designer to provide design services as specified in the _____ Agreement dated _____ (the “Design Agreement”). Owner has selected Construction Manager to provide construction management services as specified in the _____ Agreement dated _____ (the “CM Agreement”). Designer, Construction Manager and Program Manager are the “Participants” hereunder and, with Owner, are the “Parties.” The various contracts between Owner and any Participant with respect to a Project, whether executed before or after the effective date of this Agreement, and including any modifications thereto, are collectively referred to as the “Project Contracts.”

C. Owner may from time to time add or delete potential Projects or phases of Projects, contract with new or different entities for services related thereto, request to add new

Participants to this Agreement, and/or elect to terminate or not execute any contract with any Participant, all at its sole discretion or, where required, in accordance with Project Contracts executed with Participants.

D. This Agreement establishes a Collaborative Project Delivery (CPD) program for the Project and an Incentive Profit Program to accompany that CPD program that rewards Participants *collectively* for meeting specified success goals known as “Conditions of Satisfaction” by increasing the amount of profit that can be earned on the Project. The Incentive Profit Program also limits liability for Participants in certain respects and carries some downside risks for Participants, all as identified below. Success depends on the success of the Participants as a whole, not the performance of any individual Participant.

ARTICLE 1: COLLABORATIVE PROJECT DELIVERY

1.1 Owner and Participants collectively form a CPD Team to facilitate the successful planning, design, construction, and commissioning of the Projects. This CPD Team approach recognizes that each Party’s success is tied directly to the overall success of all Parties and the Project. The CPD approach and this Agreement are intended to incentivize behaviors that contribute to Project success, including:

- a.** openly sharing information in a transparent and collaborative exchange in regard to all matters relating to the Project;
- b.** actively promoting harmony and cooperation among all Parties and with subcontractors and subconsultants and others not parties to this Agreement;
- c.** organizing and integrating their respective roles, responsibilities and expertise among themselves and all Project participants;
- d.** identifying and aligning each Party’s expectations and objectives with those of all Project participants;

- e.** committing to open communications, transparent decision making, proactive and non-adversarial interaction, problem-solving and the sharing of ideas and constructive and forward-looking critique and recommendations with all;
- f.** regularly seeking to collaboratively improve Project scheduling, planning, design, construction, and commissioning processes; and
- g.** at all times, proactively identifying and addressing problems to minimize adverse impacts to a Project and to each Party and making recommendations and taking actions to push the collective success of the Parties and the Project.

1.2 Each Party will propose a representative to be a part of the Project CPD Leadership Team. The initial members are _____. The CPD Leadership Team will work collaboratively to provide management-level leadership throughout the Project. The CPD Team will always exercise its responsibilities in the best interests of the Project, in accordance with their roles and responsibilities stated in the respective Project Contracts and with the requirements of this Agreement. CPD Leadership Team members may be changed with the consent of Owner, which will not be unreasonably withheld.

1.3 The CPD Leadership Team will participate in creating the Conditions of Satisfaction for each Project contemplated by Article 3 below. The CPD Leadership Team will meet regularly at established intervals, initially established in Article 3, to review the CPD Team's progress in meeting the identified Project delivery goals, including the Conditions of Satisfaction, to review Project status, schedule issues, cost, quality, safety issues or problems, and to identify opportunities for improvement, and discuss the progress against the Conditions of Satisfaction and related evaluations contemplated by Article 3 of this Agreement. Because the failure to meet the Schedule in the CM Agreement creates liability for Participants under Section 4.2 below, the CPD Leadership Team will, if possible, approve the final Schedule for construction by unanimous consent. If that is not possible, the Schedule will be that agreed to between the Owner and the Construction Manager.

Commented [A1]: This should not be acceptable. The decision should be made by consensus.

1.4 If a Project issue arises that requires immediate attention, any member of the CPD Leadership Team may call for a meeting on one business day's written notice that includes a thorough description of the issues to be addressed. CPD Leadership Team meetings may be conducted through any medium the CPD Leadership Team members mutually agree upon or the Owner reasonably requires, including telephone, video, or web-conferencing.

1.5 The CPD Leadership Team will make every effort to resolve disputes under the Project Contracts. All issues that might require "notice" or result in a "default" or other adverse action by any Party under a Project Contract will be addressed first by any involved Party to the CPD Leadership Team before acting under the applicable Project Contract, with specific factual issues and possible solutions identified for discussion. The CPD

Leadership Team will provide recommended solutions, consistent with the goals and obligations of this Agreement and the best interests of the Project, to the involved Parties. To encourage dispute resolution under this Section, the Parties agree that any deadlines in a Project Contract for notice or other required actions, including mediation or formal dispute proceedings, prompted by the act or omission of another Party will, except in an emergency threatening personal injury or property damage, be suspended and tolled until the majority of the CPD Leadership Team determines that dispute resolution obligations under this Section have been satisfied or impasse over solutions has been declared by the aggrieved Party. The dispute resolution efforts and recommendations of the CPD Leadership Team are not binding on any Party and each Party retains all rights and remedies available under the applicable Project Contract.

1.6 The timely sharing of accurate and reliable information among CPD Team members and, when applicable, among other Project participants, is critical to the success of the Projects. Each CPD Leadership Team member will communicate in an open, honest, and clear manner that accurately conveys the relevant Project issues, conflicts, deliverables, or reliable commitments. Each CPD Leadership Team member will take all reasonable steps necessary to encourage the prompt communication of such information directly between the CPD Leadership Team and all separate contractors, consultants, and lower tier subcontractors and suppliers.

1.7 This Agreement does not and will not include as Parties any subcontractors and/or Consultants that may be selected by Construction Manager and/or Architect, with Owner's consent as required by any CM or Architect Agreement, to provide design-assist services. With the written consent of the Owner, which will not be unreasonably withheld, Construction Manager and/or Architect may elect to create an incentive agreement and incentive pool for design-assist subcontractors or consultants, in which the Construction Manager or Architect shares any part of its interest in the Incentive Profit Pool with those parties or otherwise creates incentives in those subcontractors or consultants that are consistent with the goals of this Agreement. These agreements can include guaranteed maximum price (GMP) subcontracts with savings provisions, if approved by the Owner in writing. The Owner is not a party to any such agreement. In its discretion, and on 48 hour

Commented [A2]: Or consultants

Commented [A3]: Or Architect

written notice to other CPD Leadership Team members, any Party may permit subcontractors, suppliers or other third parties to attend any CPD Leadership Team meetings or otherwise provide input to the CPD Leadership Team.

1.8 Because unspent contingency under the CM Agreement can be a source of funding for the Incentive Profit Pool as explained in Article 2 below, the CPD Leadership Team will review and discuss the use of the contingencies and analyze and promote practices that reduce the need to spend funds out of contingency. The CPD Team will endeavor to reach a consensus on whether any design/construction contingency, Owner contingency or Owner change order is the appropriate funding mechanism for unbudgeted expenses that arise during any aspect of the Project. Similarly, because buy-out savings in the CM Agreement can also be a source of additional Incentive Profit Pool funding, the CPD Leadership Team will continuously monitor value engineering and other costs savings possibilities and make recommendations on the same to the Owner.

Commented [A4]: Acceptable?

1.9 The CPD Leadership Team will give particular focus and attention to schedule compliance and problems, quality and quality control programs, and safety programs and issues. The CPD Leadership Team will use its best professional efforts to ensure on-time delivery of each Project, and/or timely completion of any milestone dates in a Project Contract, all with the highest level of quality that is consistent with the applicable Project Contract and in a construction environment that minimizes disruption to Owner's operations and places a premium on a "no harm" construction process.

Commented [A5]: Should this be tied to the SOC for the Designer?

1.10 The effectiveness of the CPD Leadership Team depends upon making and fulfilling commitments made to other Parties in the CPD Process. Each CPD Leadership Team member will have full authority to make commitments on behalf of his or her Party. The CPD Leadership Team will strive for unanimous consent on important decisions affecting performance and required actions, however, final authority on all matters addressed to the CPD Leadership Team on which decisions by Owner are required by any Contract remains with the Owner. Similarly, responsibility for work and services under the Project Contracts remains with the Party charged with responsibility thereunder. The Parties agree to be

bound by Owner decisions, subject to any appropriate Change Order requests as permitted by the relevant Contract.

1.11 This Article is not intended to be a comprehensive statement of all responsibilities under or goals of the CPD Program. The obligations for the CPD Program here should be read to be consistent with, and supplemental to, those in the Project Contracts. The CPD Leadership Team will develop new protocols and processes based on circumstances and Project-specific issues. All such steps will be consistent with the goals and obligations of this Article and when approved by Owner will be part of the evolving CPD Program.

ARTICLE 2: FUNDING AND STRUCTURE OF THE INCENTIVE PROFIT POOL

2.1 The Incentive Profit Pool is intended to incentivize behaviors and outcomes consistent with the goals of CPD. As explained in this Article 2, the program and the Incentive Profit Pool are structured to provide the potential for growing financial benefit for Participants because of the willingness: (i) of the Participants, to commit portions of what they might otherwise request to charge as profit to create the Incentive Profit Pool; and (ii) of the Owner, to increase the initial Incentive Profit Pool amounts with funds that the Owner would otherwise receive itself through the Project Contracts or through discretionary contributions. The program is designed to encourage and reward superior performance and Project success.

2.2 The Incentive Profit Pool is initially funded by contributions of Participants under Project Contracts with Owner. The initial percentage interest of each Participant in the Incentive Profit Pool is based on its relative financial contribution to the Incentive Profit Pool. The Participants have initially contributed the lump sum amounts noted below and initially have the specified percentage interests in the Incentive Profit Pool:

a. Construction Manager: \$_____, in respect of its Work under the CM Agreement, before any change orders thereunder. Construction Manager has a __% initial interest in the Incentive Profit Pool.

Commented [A6]: Note for the Project Team: make sure you thoroughly understand the profit sharing framework before agreeing to pricing/fee terms.

b. Designer: \$ _____, in respect of its Basic Services charges for the Project under the Design Agreement, before any charges for Additional Services thereunder. Designer has a ____% initial interest in the Incentive Profit Pool.

c. Program Manager: \$ _____, in respect of its Basic Service charges for the Project under the PM Agreement, before any charges for Additional Services thereunder. Program Manager has a ____% initial interest in the Incentive Profit Pool.

d. Based on the lump sum contributions above and the negotiated agreements between the Owner and the Participants, the Parties have agreed that, with respect to change orders (for the Construction Manager) and/or Additional Services (for the Designer and/or the Program Manager) the following will be added to the Incentive Profit Pool:

1. For changes to the Construction Manager, ____% of the approved Cost of Work for the change order.

2. For Additional Services of the Designer, ____% of the approved and billed charge for the Additional Service or, if appropriate, ____% of the Costs of the Work in the CM Agreement.

3. For Additional Services of the Program Manager, ____% of the approved and billed charge for the Additional Service or, if appropriate, ____% of the Costs of the Work in the CM Agreement.

2.3 If the initial contributions and resulting percentage interests in the Incentive Profit Pool have been established under Section 2.2 prior to final agreement on a Guaranteed Maximum Price in the CM Agreement, or if the Parties determine that other circumstances warrant adjustments to the initial contributions and resulting percentages established in Section 2.2, then the contributions and percentages will be equitably adjusted. Similarly, if the Project is divided into phases, or if a new Project is added, the respective contributions and any other relevant terms will be equitably adjusted. All such adjustments will be reflected in an Amendment to this Agreement executed by all Parties.

2.4 As the Project progresses, contributions and percentage interests will be adjusted by adding to the initial contributions in Section 2.2: (i) any adjustments under Section 2.3; and (ii) contributions made in respect of change orders to Construction Manager and in respect of Additional Services charges for Designer and Program Managers in accordance with Section 2.2d. above. Reimbursable Expenses payable to Designer or Program Manager are not subject to the obligation to contribute funds to the Incentive Profit Pool.

2.5 Accounting by the Owner for contributed amounts and percentage interests will be reported transparently and monthly, or upon written request at any time, to all Participants. Final interests in the Incentive Profit Pool will be determined based on the relative percentage of a Participant's contributions to the total contributions by all Participants, at Final Completion of the construction of the Project.

2.6 The Incentive Profit Pool contributions are "funded" only by journal entry under this Article; no dedicated monetary account is established to hold Incentive Profit Pool funds. Unless the Owner subsequently agrees otherwise, each Participant will carry in its billings to the Owner a line item that includes the full approved amount of its accumulated contributions to the Incentive Profit Pool under Sections 2.2 through 2.4. Participants may bill against the Incentive Profit Pool line item when and to the extent that this Agreement authorizes distribution of all or part of the Incentive Profit Pool, or to the extent that the Owner otherwise approves, in its discretion, distributions in writing. Owner contributions to the Incentive Profit Pool under Section 2.8 will be added to the accumulated Participant contributions only at final calculation of amounts due each Participant.

2.7. No Participant has any property interest in any funds in the Incentive Profit Pool until the final calculation of amounts due each Participant, issued in writing by Owner. No Participant may assign or transfer its rights or interest in this Agreement or potential rights or claims in the Incentive Profit Pool without the written consent of the Owner, which may be withheld in its discretion; any such assignment or transfer is void without further action of the Owner.

2.8 In addition to the contributions of the Participants specified above, the Incentive Profit Pool will be increased by the following, subject in part to the overall cap specified in Section 2.12 below:

- a.** all (or ___% of) line item (buy-out) savings under the CM Agreement (which would otherwise revert to Owner); and
- b.** all (or ___% of) unused Construction Manager contingency under the CM Agreement (which would otherwise revert to Owner); and
- c.** ___% of the amount of any identified and unspent Owner construction and design contingencies (but not including any contingency for medical equipment, Project development, legal, or other expenses); and
- d.** additional amounts, if any, that the Owner elects in its discretion to add to the Incentive Profit Pool based on its assessment of overall financial and schedule success, value engineering and similar efforts, and overall team performance in CPD efforts.

2.9 Unless the Owner elects in its discretion to calculate earlier, amounts eligible for contribution under Sections 2.8 (a) - 2.8(c) will not be calculated until Final Completion and acceptance of all construction and until the Participants have satisfied all conditions of Final Payment under the applicable Project Contract.

2.10 This Agreement does not: (i) obligate Construction Manager to a GMP with “line-item integrity;” nor (ii) limit the rights of Construction Manager to use Construction Manager contingency, subject to the terms in Section 1.8 above and the terms of the CM Agreement. Owner will define its design/construction contingency and provide Participants with information on charges to those contingencies.

2.11 All Parties acknowledge that the Incentive Profit Pool consists only of contributed, at-risk profit and amounts specified in Section 2.8 that the Owner would not otherwise be obligated to share with any Participant.

2.12 The contributions to the Incentive Profit Pool from savings under Section 2.8 (a) through 2.8(c) are subject to an overall cap that is equal to ____ % of the cumulative contributions of the Participants, so that (for example) an Incentive Profit Pool consisting of cumulative Participant contributions of \$____ would be subject to an overall cap of \$ _____. Amounts, if any, contributed by the Owner in its discretion under Section 2.8 (d) are not subject to the cap. The total cumulative Participant contribution amount used to calculate the cap will not be reduced for the amounts of any interim distributions under Section 4.6 below.

2.13 Should new Participants be added after this Agreement, the percentage interests will be limited to its contributions, as compared to those of other Participants, only in respect of Projects or phases on which the new Participant joins.

2.14 Any line item or contingency savings that are not designated as funding the Incentive Profit Pool (such as savings that would exceed the cap) are for the use and benefit of the Owner and not for any Participant.

2.15 If a tribunal determines that a Participant was properly terminated for default by Owner under any Project Contract, or files for bankruptcy, the terminated Participant's rights under this Agreement are likewise terminated; the terminated Participant forfeits all rights under this Agreement and has no claim under any circumstances for payments from the Incentive Profit Pool. If the Owner elects to terminate this Agreement or any Project Contract for convenience before Final Completion, the rights of Participants, if any, will be based on the evaluations and determinations by the CPD Leadership Team on the Project through the date of termination, the interest of the Participants in the Incentive Profit Pool at the time of termination, and the amounts contributed by Participants through that time and contributions, if any, under Sections 2.8 (a) and/or (b) as determined by unanimous consensus of the CPD Leadership Team in its discretion.

2.16 The Participants acknowledge that there are no guarantees of funding increases under Section 2.8.

Commented [A7]: If this is truly to be CPD, and since participants are willingly putting profit at risk, the CPD should be the deciding voice for all matters of profit distribution--especially for sources of pool not coming from owner. If owner is to be sole decider for distribution from owner savings/contingencies, that can be discussed.

ARTICLE 3: THE CONDITIONS OF SATISFACTION

AND THE WEIGHTED SCORECARDS

3.1 Critical to the CPD process, the success of the various Projects, and the potential for incentive profit for Participants is a comprehensive and on-going evaluation process that involves all Participants. To facilitate that evaluation process, the Owner has identified initial “Conditions of Satisfaction,” attached as Exhibit A, to be used in the evaluation process. The CPD Leadership Team will by unanimous consensus create the final Conditions of Satisfaction for the Project, however, in the absence of consensus, the Owner has discretion in setting Conditions of Satisfaction. The Conditions of Satisfaction include both objective and subjective criteria.

3.2 The CPD Leadership Team will also, by unanimous consensus, create the “Weighted Scorecard” that identifies factors relevant to the Conditions of Satisfaction on the Project. Performance is graded. The evaluation grading scale is “5” through “1” where a “5” indicates superior performance that materially exceeds expectations, “3” indicates average performance, and “1” indicates failing. Each scorecard is weighted so that some factors relevant to the Conditions of Satisfaction have greater importance than others in the evaluation process. As with the Conditions of Satisfaction, the Owner will determine the Weighted Scorecard only if unanimous CPD Leadership Team consensus cannot be reached.

3.3 The CPD Leadership Team will meet monthly to review progress and status of the Conditions of Satisfaction and the Weighted Scorecard. On a quarterly basis, and more frequently if the CPD Leadership Team unanimously decides otherwise, each Participant’s CPD Leadership Team member will “score” the interim performance *of the entire CPD Team* in pursuing or meeting the Conditions of Satisfaction on the Project(s) at issue. Each CPD Leadership Team member will complete its scorecard and all evaluations will be reviewed at a meeting of the CPD Leadership Team. Each scorecard should include recommendations for improvement where appropriate.

3.4. Following discussions of the interim Participant evaluations, the Owner will complete its interim evaluation and its Weighted Scorecard and share the results with the CPD Leadership Team.

3.5 The interim evaluations on a Project are then used to determine whether there will be any interim distribution under Section 4.6 and to create a final evaluation for a Project. At Final Completion of construction, the Parties will meet to review overall final scores for the Project, based on the interim scores, improvement over time and final performance against the Conditions of Satisfaction. The Owner's scoring and evaluations as reflected in the final overall Project evaluation, after the input of the CPD Team, will be shared with the CPD Leadership Team. The Owner's comprehensive evaluation is used as one of the factors in determining entitlement to potential payment of Incentive Profit Pool funds.

3.6 The weighting of factors and of the evaluations and scores used in determining any Incentive Profit Pool pay-outs are committed at all times to the discretion of the Owner, but with the advice and input of all Participants.

3.7 All scoring and evaluations are based on the overall performance of the CPD Team against the Conditions of Satisfaction, not the performance of any individual CPD Team member. Recommendations for future action should, to the extent reasonable, be directed to the Parties as a whole, but recommendations for specific actions by a Party, where proper, are encouraged. The review of evaluations at the periodic meetings is intended to encourage free and frank discussion not only of scores and evaluations but of ways for improved performance of all Project participants, including subcontractors and suppliers.

3.8 Except as set forth in Section 4.6 concerning interim distributions, there is no precise mathematical relationship between the final cumulative evaluation scores and the amount paid out of the Incentive Profit Pool to Participants. The scorecard evaluations are to be used by the Owner and are determinative of final amounts in the Incentive Profit Pool, if any, that will be paid to Participants under Article 4 below. For evaluation and planning purposes, however, it should be anticipated that scores of "3", indicating average

performance, will at best result only in a return of amounts contributed by Participants. Scores below “3”, indicating below-average performance, should be anticipated to mean, at a minimum, that all or a substantial part of any Incentive Profit Pool funds (from all sources) are at risk; the program is intended to encourage and reward superior performance and results, not average performance. Scores above “3”, indicating superior performance, will likely result in return of contributions and increasing payment of part or all of the Owner contributions to the Incentive Profit Pool as scores increase.

ARTICLE 4: CHARGES AGAINST AND PAYMENT OF THE INCENTIVE PROFIT POOL

4.1 Payment to Participants, if any, is based on the total amount in the Incentive Profit Pool, the relative percentage interests of the Participants based on their respective contributions, and the success of the Projects and the Participants in jointly meeting the Conditions for Satisfaction described in Article 3 as finally evaluated by the CPD Leadership Team.

4.2 Consistent with the fact that success of the CPD Team potentially leads to financial success and benefit for the Participants, problems that are caused by joint acts or omissions of Participants can affect the financial outcome of all Participants. The amounts in the Incentive Profit Pool that are otherwise eligible for payment to Participants are subject to offset and reduction, or even elimination, before payment calculations because of certain problems identified in this Section 4.2.

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4.3 The Incentive Profit Pool will not be reduced in connection with costs arising from force majeure events or discretionary Owner changes, nor in respect of damages to the extent that the CPD Leadership Team determines were caused by the fault of a single Participant.

Commented [A8]: Need a different approach to incentivizing and holding schedule. We also can't agree to a document like this without knowing what the schedule is, how compacted or conservative it is, how much contingency is in the schedule to begin with. Too many issues right now, such as with supply chain, beyond this teams control that are not force majeure.

Commented [A9]: This should really focus on use of owners contingency, reducing owners contribution as the incentive. Not bypassing our insurance E/O.

Commented [A10]: Should be by Leadership team.

4.4 The Owner may pursue claims against any responsible Participant(s) consistent with its Project Contract with the Participant. Disputes involving Owner claims against a single Participant, including any that result in a reduction of that Participant's Incentive Profit Pool funds, are governed by the disputes clauses of the applicable Project Contract.

4.5 After all Project construction has reached Final Completion, and after written notice of and explanations for any reductions in the amounts in the Incentive Profit Pool made under Section 4.2, the Owner will calculate the final Incentive Pool Payment amounts based on the final comprehensive evaluation under Article 3.

4.6 Notwithstanding any other term of this Agreement, Participants are eligible for interim distributions as specified in this Section. When construction of the Project has reached 50% completion (or at other Project milestones as agreed to by the Parties), as determined by unanimous consensus of the CPD Leadership Team, the Parties will meet and review team evaluations to that point. Provided that team scores are "3" or better and that the CPD Leadership Team find by unanimous consensus that the Project is substantially on schedule (as adjusted) and substantially on budget (as adjusted), the Owner will release 50% of the total amounts then-contributed by Participants to the Incentive Profit Pool. The distributions will be based on the percentage held by each Participant in the Incentive Profit Pool at the time. The Owner may in its discretion elect to make interim distributions of funds it has contributed or expects to contribute to the Incentive Profit Pool under Section 2.8 at any time during the course of the work or services on the Projects.

4.7 While pay-outs from the Incentive Profit Pool are committed to the discretion of the Owner except as specified in Section 4.6, any Participant concluding that it has been treated unfairly or in a manner not consistent with this Agreement may ask for a meeting with the CPD Leadership Team for full and frank discussion of the issues.

ARTICLE 5: MISCELLANEOUS

5.1 The Recitals are true and accurate and are part of this Agreement.

5.2 The obligations and rights of the Parties to this Agreement, including the Owner, supplement any Party's obligations and rights under any Project Contract. If there is a conflict between any term of a Contract and this Agreement, this Agreement governs on terms stated herein. The Participants agree that each Participant has the right, upon request, to review and copy the Project Contract(s) between the Owner and any other Participant, for the purpose of ensuring consistency with the obligations and goals of this Agreement. A Participant may redact business confidential information before producing its Contract(s).

5.3 The Parties accept the relationship of mutual trust and confidence this Agreement establishes between them, and will use their best efforts, professional skill and judgment to perform the services and the work required of them hereunder in an expeditious and economical manner consistent with the interests of the Project, and in a manner designed to maximize the success of the Project and the potential for payments to Participants under this Agreement. This Agreement does not, however, create any fiduciary obligations between or among any Parties.

5.4 This Agreement does not modify any risks, obligations or liabilities of the Parties that are specified in a Project Contract, except as related to the requirement to participate in the CPD process, the sharing or uses of any savings or contingency under any CM Agreement with Owner, potential pay-out to Participants of the Incentive Profit Pool established by this Agreement and the Owner's right to apply Incentive Profit Pool funds to its unanticipated costs, all as addressed in this Agreement. This Agreement does not create any rights for one Participant against another Participant, whether in contract or tort, including professional negligence. Each Participant waives all potential suits, demands and claims against each other Participant in connection with the creation of, or contributions to the Incentive Profit Pool.

5.5 This Agreement provides for various actions that the Owner may take or decline to take in its discretion. Any act committed to the Owner's discretion in this Agreement is specifically agreed to be committed to its *sole* and *unilateral* discretion. The Parties agree that disagreements about decisions by or actions of Owner under this Agreement on

Commented [A11]: Even with this sentence, should this entire section be struck? (or, at a minimum, tied to the SOC?)

Commented [A12]: The current language on schedule in 4.2 very much does modify risk and liabilities and it shouldn't.

Commented [A13]: This also changes risk, inconsistent with 5.4 in that the current version of CDP puts all risk on parties and not equally on owner. Such as this wording where Owner can pursue damages per prime agreement, but a participant cannot as it pertains to this incentive pool.

payments from the Incentive Profit Pool are subject to the disputes clauses of any Contract and, more generally, subject to litigation or arbitration.

5.6 This Agreement will be construed so that it does not create a partnership or joint venture between or among the Parties. No Party will conduct itself in any way to suggest that a partnership or joint venture exists.

5.7 This Agreement is governed by the laws of the State of Maryland without giving effect to its conflict of law principles.

Commented [A14]: Why Michigan?

5.8

5.9 The partial or complete invalidity of any provisions of this Agreement shall not affect the enforceability of any other provision.

5.10 The failure of any Party to insist, in one or more instances, on the performance of any obligation of this Agreement, or to exercise any of its rights, shall not be construed as a waiver of such obligation on subsequent occasions.

5.11 The CPD Team will perform its respective obligations with integrity, requiring at a minimum that:

- a. conflicts of interest will be avoided or disclosed promptly to the other CPD Team members; and
- b. no CPD Team member will pay nor receive any contingent fees or gratuities to or from any other CPD Team member or its agents, subcontractors, consultants, or others for whom they may be liable to secure preferential treatment.

5.12 This Agreement is a “Contract Document” under all Project Contracts. This is the entire agreement of the Parties on the terms addressed here. This Agreement may be modified only in a writing signed by the Parties.

IN WITNESS, the Parties execute this Agreement effective as of the date set forth above.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

By: _____

Name: _____

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By: _____

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