

MASTER SERVICES AGREEMENT
BETWEEN
REGENERON AND CONSTRUCTION MANAGER AT RISK

This **MASTER SERVICES AGREEMENT** (“Agreement” or “MSA”) dated January 27, 2021, is made by and between **REGENERON PHARMACEUTICALS, INC.** (“Regeneron”), a New York corporation, with an address of 777 Old Saw Mill River Road, Tarrytown, New York 10591, and Consigli Construction Company, Inc. (“Construction Manager”), a Corporation with an address of 199 West Road, Suite 100 Pleasant Valley, NY 12569_ (Regeneron and Construction Manager are sometimes referred to as “Parties” and/or “Party”).

ARTICLE 1 DEFINITIONS

1.1 Definitions. The following capitalized terms, as used in this MSA and the resulting Services Agreement, including all other Exhibits and Schedules, mean:

1.1.1 “Affiliate” means any entity that, directly or indirectly, controls or is controlled by or is under common control with Regeneron by” means of ownership of more than fifty (50) percent of the voting stock or similar interest in said entity.

1.1.2 “Allowance” is an amount included in the Construction Phase Contract Sum for trade work identified in a Construction SOW or an Early Work SOW that requires further scope definition by Design Professional(s) or Regeneron to be incorporated into the Project pursuant to Section 34.1.4.

1.1.3 “Applicable Laws” means, in respect of any Person, property, transaction or event, all laws, statutes, ordinances, regulations, municipal by-laws, treaties, judgments and decrees applicable to that Person, property, transaction or event, all applicable official directives, rules, consents, approvals, authorizations, guidelines, orders, codes of practice and policies of any governmental authority having authority over that Person, property, transaction or event and having the force of law, and all general principles of common law and equity.

1.1.4 “As-Builts” means revised or marked-up drawings, documents, computer files, 3D CAD and BIM models submitted by Construction Manager and/or one of its subcontractors upon completion of the Project in the electronic formats designated by Regeneron. As-Builts shall reflect all changes made in the Contract Documents, as well as the major trade subcontractor submittals and 3D models, during the construction process, and show the accurate dimensions, geometry, and location of all elements of the work completed under the contract. As-Builts shall conform to the requirements for “As-Built Red-lined Contract Documents” and “Trade As-Builts” as described in the Digital Deliverable Requirements.

1.1.5 “Business Days” means all calendar days, except weekends and official Federal or State holidays observed in the State where the Project is located.

1.1.6 “Changed Work” means work that is different from the original scope of Work set forth in the Contract Documents.

1.1.7 “Construction Documents” means the documents prepared and furnished by the Design Professional to be used for bidding and undertaking the construction work for the Project.

1.1.8 “Contingency” is an amount included in the Cost of Work and identified in a Construction SOW

or an Early Work SOW as such, for uses approved by Regeneron in accordance with Section 34.1.5.

1.1.9 “Contract Documents” means each SOW, and the related Requests for Proposals (RFP), Instructions to Offerors and/or Bidders, Supplementary Instructions to Offerors and/or Bidders, Proposal Forms, General Conditions, Supplementary Conditions, Construction Documents, Specifications, List of Drawings, Drawings, Addenda, Notice(s) to Proceed, Change Orders, Certificates of Completion, Letters of Award and all other items identified as Contract Documents in the Services Agreement.

1.1.10 “Contract Price” means the total of the Preconstruction Phase Fee, any Early Work Contract Sums and the Construction Phase Contract Sum.

1.1.11 “Cost of the Work” means, for each Project, the out-of-pocket expenses incurred by Construction Manager directly related to the performance of the Work, including all labor specifically relating to the Project at the wage rates established by the Construction Phase SOW or if applicable, the Early Work SOW (which rates shall exclude bonuses and discretionary payments), all Construction Manager owned equipment at the rates established by the Construction Phase SOW or if applicable, the Early Work SOW, all reimbursable expenses identified below, all vendor and Subcontractor expenses at the actual rates incurred and paid by Construction Manager as identified below.

(a) Cost of the Work includes:

(i) Labor Costs –

(A) Wages of construction workers directly employed by Construction Manager to perform the construction of the Work at the Project Site or, with Regeneron’s written approval, at off-site locations at the wage rates established by a SOW.

(B) Wages or salaries of Construction Manager’s supervisory and administrative personnel when stationed at the Project Site and performing Work on the Project with Regeneron’s approval at the wage rates established by a SOW.

(C) Wages or salaries of Construction Manager’s supervisory and administrative personnel when stationed off-site and performing Work on the Project, but only that portion directly attributable to the Work and provided with Regeneron’s approval at the wage rates established by a SOW.

All such wages and salaries shall be at customary and historical rates, and not increased for purposes of or relating to the Project.

(ii) Subcontractor Costs – Payments made by Construction Manager to Subcontractors retained in accordance with the requirements of this Agreement.

(iii) Equipment Rental Charges –

(A) Rental charges for the use of Construction Manager’s owned equipment at the Project Site at the rates established by a SOW, but such rental charges shall not include idle time or storage charges, and the quantities of such equipment on site shall not exceed that which is necessary to most economically and efficiently complete the Work.

(B) Payments made by Construction Manager for rental charges for the use of temporary facilities, machinery, equipment and hand tools not customarily owned by construction

workers that are provided by Construction Manager at the Project Site and the costs of transportation, installation and removal thereof.

- (iv) Costs of Materials and Equipment Incorporated into the Project – Payments made by Construction Manager, including transportation and storage at the Project Site, for materials and equipment incorporated, or to be incorporated, into the Project.
 - (v) Costs of removal of legally disposed debris from the Project Site.
 - (vi) Costs of materials and equipment stored off-site at a mutually acceptable location, if approved in advance by Regeneron.
 - (vii) That portion of bond premiums, if any, that can be directly attributed to the Project.
 - (viii) Fees and assessments for building permits and for other permits, licenses and inspections that Construction Manager is responsible for under the Contract Documents.
 - (ix) Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by Regeneron.
- (b) Cost of the Work shall not include:
- (i) Salaries and other compensation of Construction Manager’s personnel stationed at Construction Manager’s principal office or other offices, except as specifically provided in Section 1.1.11(a);
 - (ii) Expenses of Construction Manager’s principal office and offices other than the on-site office;
 - (iii) Overhead and general expenses, except for such items that are expressly included in Section 1.1.11(a);
 - (iv) Subcontractor Default Insurance;
 - (v) The Preconstruction Phase Fee;
 - (vi) The Agreed Markup and the costs that are stated as elements thereof in the applicable Preconstruction MSA (including but not limited to Construction Management Fee and Insurance); and
 - (vii) Any cost not specifically and expressly described in Section 1.1.11(a).

1.1.12 “Day” or “day” means a calendar day unless specifically stated otherwise.

1.1.13 “Defective Work” is any portion of the Work that is not in conformance with the Contract Documents.

1.1.14 “Design Professional” means each licensed professional architecture and/or engineering firm (including such firm’s consultants), retained by Regeneron to perform design services for the Project.

1.1.15 “Digital Deliverable Requirements” means the Digital Deliverable Requirements attached hereto as **MSA Exhibit I**, as amended from time to time.

1.1.16 “Event of Default” means

- (a) Construction Manager abandons the Project;
- (b) Construction Manager fails to perform the Work in a diligent, efficient, workmanlike, skillful, and careful manner, or in accordance with the Project Milestone Schedule or the provisions of this Agreement or a Services Agreement;
- (c) Construction Manager repudiates its obligations under this Agreement or a Services Agreement;
- (d) Construction Manager fails to use an adequate amount or quality of personnel or equipment to complete the Work as expeditiously as possible and in no event later than shown on the Construction Schedule;
- (e) Construction Manager fails to maintain required insurance;
- (f) Construction Manager fails to pay Subcontractors promptly or misapplies funds due Subcontractors pursuant to the Contract Documents;
- (g) Construction Manager has a materially adverse change in its financial condition;
- (h) Construction Manager is unable, for any reason, to complete the Work for the unpaid balance of the Contract Price;
- (i) Construction Manager demonstrates an inability or refusal to satisfactorily perform the Work in accordance with the Contract Documents;
- (j) Construction Manager fails to perform any other obligation under this Agreement or a Services Agreement; or
- (k) Construction Manager makes an assignment for the benefit of creditors, files a petition in bankruptcy, is adjudged insolvent or bankrupt, applies for or is appointed the appointment of a receiver of or trustee for Construction Manager or any substantial part of its property, commences any proceeding under any reorganization, arrangement, readjustment of debt, dissolution or liquidation law or there is commenced against Construction Manager any such proceeding that remains pending for a period of forty-five (45) days, or Construction Manager by any act indicates its acquiescence in any such proceeding or to the appointment of a receiver or trustee for Construction Manager or any substantial part of its property, or suffers any such receivership or trusteeship to continue undischarged for a period of forty-five (45) days.

1.1.17 “Facility” means property of Regeneron or Affiliates (owned, leased or otherwise) identified in the Construction Documents.

1.1.18 “Final Completion” means the point when the Work has been fully completed in accordance with the Contract Documents, including the completion or correction of all previously incomplete or incorrect items, resolution of all Punch List items to Regeneron’s satisfaction, and the submission of all closeout Submittals and documentation.

1.1.19 “Governmental Authorities” means any governmental, quasi-governmental, or regulatory authorities having jurisdiction over the Project.

1.1.20 “Material Supplier” means a Person retained by Construction Manager or a Subcontractor to provide material and/or equipment for the Project, including but not limited to

furniture/fixture/equipment vendors.

- 1.1.21 “Person” means any natural person, corporation, partnership, trust, estate or other entity, organization, or association.
- 1.1.22 “Project” means, in each case, the site(s), building(s), facility(ies), furniture/fixtures/equipment and other improvements designed by the Design Professional(s) as to which Construction Manager is to provide Preconstruction Phase Services, and if applicable, Construction Phase Services, under an applicable Services Agreement with Regeneron, and is more generally identified in the applicable SOW.
- 1.1.23 “Project Documents” means any and all drawings, Submittals, As-builts, RFIs, logs, reports, site safety plans, phasing plans and other documents in connection with the Project that are prepared by Construction Manager and its Subcontractors.
- 1.1.24 “Project Site” means the geographical area at the location of the Project where the Work is to be performed.
- 1.1.25 “Services” means the Preconstruction Phase Services and the Construction Phase Services, including the Work.
- 1.1.26 “Subcontractor” means a Person retained by Construction Manager as an independent contractor to provide the labor, materials, equipment and/or services necessary to complete a specific portion of the Work.
- 1.1.27 “Substantial Completion” of Construction Manager’s Work, occurs on the date when the Work is sufficiently complete in accordance with the Contract Documents so that Regeneron may occupy or utilize the Project, for the use for which it is intended.
- 1.1.28 “Work” means the construction, the supply of materials and equipment, services and administration necessary or incidental to fulfill Construction Manager’s obligations for the Project to the satisfaction of Regeneron in conformance with the Contract Documents and the Services Agreement. The Work may refer to the whole Project or only a part of the Project if designated work is also being performed by Regeneron or others engaged by Regeneron. Work shall not include Preconstruction Phase Services other than Early Work.

1.2 Additional Terms. The following additional terms have the meanings ascribed to them in the Sections designated below:

| Defined Term | MSA Section |
|---|--------------------|
| “Additional Preconstruction Phase Services” | 5.2.1(p) |
| “Agreed Markup” | 8.2.1 |
| “Agreement” | Preamble |
| “Applicable Services” | 9.2.1 |
| “Application for Payment” | 9.2.4 |
| “Certificate of Final Completion” | 9.2.10(a) |
| “Certificate of Substantial Completion” | 9.2.9(a) |
| “Change Order | 34.1.2 |
| “CO” | 9.2.9(b) |
| “Confidential Information” | 41.2 |
| “Construction Compensation Proposal” | 8.2.2 |
| “Construction Manager” | Preamble |

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|---------------------------------------|-------------|
| “Construction Phase” | 6.1.1 |
| “Construction Phase Contract Sum” | 8.2.6 |
| “Construction Phase Services” | 6.2 |
| “Construction Phase SOW” | 4.1 |
| “Construction Schedule” | 7.1.3 |
| “Early Work” | 5.2.1(o) |
| “Early Work Contract Sum” | 8.1.2 |
| “Early Work SOW” | 4.1 |
| “Final Payment” | 9.2.10(b) |
| “Hazardous Material” | 25.1 |
| “Incident” | 40.2 |
| “Indemnitee” | 39.1.1 |
| “Liquidated Damages” | 10.1.4(a) |
| “Losses” | 39.1.1 |
| “Milestone Events” | 10.1.1(b) |
| “MSA” | Preamble |
| “Notice to Proceed” | 6.1.1 |
| “Notices” | 44.1 |
| “Parties” and/or “Party” | Preamble |
| “Pencil Copy Application for Payment” | 9.2.1 |
| “Preconstruction Phase” | 5.1 |
| “Preconstruction Phase Fee” | 8.1.1 |
| “Preconstruction Phase Services” | 5.2.1 |
| “Preconstruction Phase SOW” | 4.1 |
| “Proceed Order” | 34.1.7 |
| “Project Milestone Schedule” | 10.1.1(b) |
| “Punch List” | 9.2.9(a) |
| “Recipient Personnel” | 40.1 |
| “Regeneron” | Preamble |
| “Scheduling Requirements” | 10.1.1(b) |
| “Schedule of Values” | 7.1.1 |
| “Schedule of Payments” | 7.1.2 |
| “Sensitive Personal Information” | 40.4 |
| “Services Agreement” | 4.1 |
| “Service Phase” | 8.1.1 |
| “SOW” | 4.1 |
| “Submittal Schedule” | 7.1.4 |
| “Submittals” | 27.1 |
| “TCO” | 9.2.9(b)(i) |
| “Vendor Code of Conduct” | 41.4 |

ARTICLE 2 RELATIONSHIP OF THE PARTIES

- 2.1 The term of this Agreement shall be for a period of three (3) years commencing on the date first written above.
- 2.2 This Agreement shall be applicable to all Work furnished by Construction Manager as requested by Regeneron during the term of this Agreement through completion or termination of all Work under all SOWs and Services Agreements initiated under this Agreement.

2.3 This Agreement may be renewed at Regeneron's sole discretion. Regeneron shall provide notice of its intent to renew this Agreement at least sixty (60) days prior to the expiration date. In the event that this Agreement is not renewed, the terms of this Agreement shall remain in full force and effect until completion or termination of all Work under all SOWs and Services Agreements initiated under this Agreement.

2.4 Regeneron's representative authorized to act on behalf of Regeneron during the term of this Agreement shall initially be:

*Benjamin Suzuki, Sr Dir Project Management
Regeneron Pharmaceuticals, Inc.
777 Old Saw Mill River Road
Tarrytown, New York 10591
Email: benjamin.suzuki@regeneron.com*

Regeneron may at its sole discretion replace and/or supplement its identified Regeneron's representative at any time by notice to Construction Manager.

2.5 Construction Manager's representative authorized to act on behalf of Construction Manager during the term of this Agreement shall initially be:

*Chad Danforth, Project Executive
Consigli Construction Company, Inc.
199 West Road, Suite 100
Pleasant Valley, New York 12569
Email: cdanforth@consigli.com*

Construction Manager may replace its designated representative only upon the written consent of Regeneron after notice.

ARTICLE 3 CONSTRUCTION MANAGER'S GENERAL RESPONSIBILITIES

3.1 Construction Manager shall provide all labor, materials and equipment necessary to complete the Services.

3.2 Construction Manager shall be responsible for the administration, management, supervision and coordination of the Services, including the means, methods, techniques, sequences, and procedures utilized, unless the Contract Documents give other specific instructions.

3.3 Construction Manager shall perform its work and services consistent with the professional skill and care ordinarily provided by professionals practicing in the same or similar locality under the same or similar circumstances and shall maintain all licenses required for the performance of its work and services.

3.4 Construction Manager shall perform the Services, or cause the Services to be performed, during normal working hours except as may be provided otherwise in the Contract Documents.

3.5 Construction Manager represents, warrants and acknowledges that: (a) it is a sophisticated business entity that possesses a high level of experience and expertise in the management, administration and construction of projects of this nature; and (b) Regeneron is relying on Construction Manager's representation herein that it possesses the requisite skill, knowledge, experience and ability to fully perform its work, services, deliverables and other obligations.

3.6 Construction Manager warrants that its work product, materials and services shall conform to all Applicable

Laws governing its services and all related work and materials. Nothing in this Agreement and/or any Services Agreement shall be construed to eliminate or diminish Construction Manager's responsibility for compliance of its work product, materials and services with all Applicable Laws, including but not limited to those relating to hazardous materials, life safety, restrictions on development of wetlands, and accessibility for the physically challenged, except that Construction Manager is not required to ascertain that the other improvements designed by the Design Professional(s) which Construction Manager is to construct and/or supply under an applicable Services Agreement comply with Applicable Laws and may rely on the Contract Documents for that purpose.

- 3.7 Construction Manager shall proceed in good faith and perform their obligations with integrity. Except with Regeneron's prior knowledge and written consent, Construction Manager shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise Construction Manager's professional judgment with respect to this Agreement and/or any subsequent SOWs or Services Agreements. Construction Manager warrants that it will avoid any conflict of interest and/or any appearance of a conflict of interest and that it has not and will not receive any funds from any third party to secure preferential treatment. Should a potential conflict of interest arise at any point during the term of this Agreement and/or any Services Agreement, Construction Manager shall notify Regeneron of such potential conflict in writing within five (5) Business Days, and not proceed with any third-party conduct causing the potential conflict until such time as Regeneron has waived such conflict in writing, terminated Construction Manager, and/or the Parties have otherwise resolved the potential conflict in a manner satisfactory to Regeneron and agreed to in writing.
- 3.8 Time is of the essence. Construction Manager shall perform its work and services expeditiously, with the understanding that time is of the essence, in conformance with this Agreement and all Services Agreements, and comply with all deadlines set forth by Regeneron in writing.
- 3.9 Construction Manager represents that it is an independent contractor and that in the performance of its obligations it shall act as an independent contractor.
- 3.10 Construction Manager shall comply with all building information modeling, digital data protocol, information management systems and reporting procedures established for the Project. Without limitation, Regeneron requires that Construction Manager furnish documents and data in electronic format or digital form in accordance with the Digital Deliverable Requirements.

ARTICLE 4 CONSTRUCTION MANAGER'S SCOPE OF WORK

- 4.1 The work and services shall be performed by Construction Manager in accordance with a Statement of Work in the form of **MSA Exhibit A.1** with respect to Preconstruction Phase Services ("**Preconstruction Phase SOW**"), which may be amended in the form of **MSA Exhibit A.2** with respect to Preconstruction Phase Services constituting Early Work ("**Early Work SOW**"), and which may be amended in the form of **MSA Exhibit A.3** with respect to all other Construction Phase Services ("**Construction Phase SOW**"), as applicable, each prepared by Regeneron and entered into by Regeneron and Construction Manager (collectively, and as amended, the "**SOW**"), which, together with this Agreement, shall form a specified "**Services Agreement**." Construction Manager shall perform all services and work set forth in the Services Agreement, including without limitation:
 - (a) the services and work set forth in (i) the applicable SOW and (ii) unless otherwise explicitly stated in the SOW, this Agreement;
 - (b) the services and work set forth in any proposal by Construction Manager to the extent that it is incorporated in the SOW, subject to the last sentence of this Section 4.1;

- (c) any scope of services and work required by Regeneron's request for proposal or other solicitation documents, unless otherwise explicitly excluded from the SOW;
- (d) the services and work set forth in the Regeneron Digital Deliverable Requirements.

In no event shall a proposal by Construction Manager be incorporated into an SOW other than with regard to the scope of services and work to be performed by Construction Manager; all other provisions of the proposal shall be deemed deleted and not incorporated therein including without limitation any terms and conditions seeking to modify Construction Manager's: (i) liability; (ii) insurance requirements; or (iii) indemnity obligations.

- 4.2 In each SOW, or by notice to Construction Manager, Regeneron shall identify its representative which shall be authorized to act on Regeneron's behalf with regard to the corresponding Services Agreement. Regeneron may at its sole discretion replace and/or supplement its identified Regeneron's representative at any time by notice to Construction Manager.
- 4.3 In each SOW, or by notice to Regeneron, Construction Manager shall designate, subject to Regeneron's prior written approval, its representative and project team members authorized to act on its behalf with regard to the corresponding Services Agreement. Construction Manager may replace its designated representative and project team members only upon written consent of Regeneron after notice to Regeneron.
- 4.4 In the event of a conflict between or among the terms and conditions of this Agreement, a Services Agreement and an SOW, the terms and conditions imposing the greatest obligation or strictest limitation upon Construction Manager shall govern.
- 4.5 If an SOW provides for multiple phases of construction during the Construction Phase, the provisions of the MSA concerning Substantial Completion, Final Completion and associated payments shall apply to each phase and the portion of the Services and the Project included within a phase as and to the extent provided in the SOW.

ARTICLE 5 PRECONSTRUCTION PHASE

- 5.1 Preconstruction Phase. "Preconstruction Phase" shall mean the period commencing on the date specified in a Preconstruction Phase SOW or an Early Work SOW executed pursuant to Section 4.1 and ending upon the earlier of (i) the completion of the Preconstruction Phase Services, and (ii) commencement of the Construction Phase pursuant to a Construction Phase SOW; provided that if Regeneron and Construction Manager agree, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases shall proceed concurrently, subject to the terms and conditions of the Contract Documents.
- 5.2 Preconstruction Phase Services.
 - 5.2.1 During the Preconstruction Phase, Construction Manager shall provide the services described below for the applicable Project ("Preconstruction Phase Services") on an ongoing basis in support of, and in conformance with, the time frames described in the Preconstruction Phase SOW (or in the case of Early Work, the Early Work SOW). Commencement of the Construction Phase shall not excuse Construction Manager from completion of the Preconstruction Phase Services, if such services have not been fully performed at commencement of the Construction Phase.
 - (a) Construction Manager's Project Schedule. Provide for Regeneron's review and acceptance, and periodically update, a Project schedule that coordinates and integrates with anticipated construction

schedules Construction Manager's Services, the Design Professional's services, and Regeneron's input. Such a schedule shall consider the site, project location, existing conditions, construction overtime and or noise and vibration mitigation required avoid impacting existing building occupants or tenants adjacent to or within a range of impact to the Project. Construction Manager shall coordinate and plan for shut downs, phasing, sequencing of work, and potential interruption of utilities or services and consider remedies or temporary systems to ensure operational continuity and supply of required services and infrastructure to all spaces and functions that may be impacted by the Project. In no way will a review or acceptance of regular update invalidate or otherwise change a the Project Milestone Schedule without written notice by Regeneron identifying the Milestone Event(s) and Construction Manager's disclosure of the full critical path impact of such change.

- (b) Budget Control and Cost Estimates. Provide to Regeneron, for its review, budget control recommendations and detailed construction cost estimates, based on drawings and specifications and other descriptive information prepared and submitted by the Design Professional for these purposes as required by Regeneron. Advise Regeneron and the Design Professional if it appears at any time that the construction costs may exceed Regeneron's construction budget for the Project and make recommendations for corrective action. Provide cost consultation services for the duration of this Agreement and prepare all cost estimates, including cost estimates for any and all early procurement of equipment and materials, systems and components contracts, and out-of-sequence construction work. Construction Manager shall account for site complexities, existing conditions, and propose any probing or investigation required to validate constructability, construction logistics, phasing or infrastructure or issues that affect the scope for the design of the Project (Early Work may include such probing and investigation). Overtime, shifts, productivity and costs for phasing required to minimize disruption, noise or vibratory disturbance to building occupants or research laboratory equipment should be considered in the costs validated in Construction Manager's cost estimates. Costs for a clean, secure, and compliant Project Site with dust, odor, and noise mitigation with minimal impact to adjacent spaces and its occupants shall be considered as part of the budgeting and planning in Construction Manager's cost estimating, logistics and means and methods of the work.
- (c) Construction Documents. Review all Construction Documents for coordination and constructability by consulting with Regeneron and the Design Professional regarding drawings, specifications and plans as they are being prepared, and recommend alternative solutions whenever design details may affect construction feasibility, cost or schedule (but in doing so, Construction Manager shall not be deemed to have assumed the Design Professional's responsibility for design of the Project).
- (d) Compliance Review. Review all drawings, specifications and plans and make suggestions to Regeneron and the Design Professional concerning Project compliance with all requirements of all federal, state and local laws, rules and regulations (but in doing so, Construction Manager shall not be deemed to have assumed the Design Professional's responsibility for design of the Project).
- (e) Separate Contracts. Advise on the sequencing of the Work to affect economy and permit phasing of procurement and construction. In making these recommendations, consider such factors as type and scope of Work, time of performance, availability of labor and materials, community relations, factory vs. on-site production costs, shipping costs and size limitations, building code restrictions and other governmental requirements, and other limiting or otherwise pertinent factors.
- (f) Method of Contractor Selection. Advise on the method to be used for selecting contractors and awarding contracts. If separate contracts are to be awarded, review the drawings and specifications and make recommendations to ensure that to the extent reasonably possible (1) the Work of the separate contractors is coordinated, (2) all requirements for the Project have been assigned to the appropriate contractors, (3) the likelihood of jurisdictional disputes has been minimized, and (4)

proper coordination has been provided for phased construction.

- (g) Systems. Provide consultation during preparation of requests for proposals for the procurement and installation of components of the construction and for procurement of long lead time equipment and materials. Issue requests for technical proposals to qualified sources, receive such proposals and assist Regeneron and the Design Professional in their evaluation.
- (h) Procurement. Identify, recommend for purchase, and with Regeneron's written authorization, expedite the procurement of equipment, material and supplies as agent for Regeneron which require long lead time for procurement or manufacture, all in accordance with the bidding requirements of this Agreement. At any time Regeneron, in its sole discretion, may directly order equipment or materials for the Project, and Construction Manager will waive any mark up or costs associated with such a direct purchase by Regeneron.
- (i) Bidding. Review the bidding documents with the Design Professional, including bid data and copies of plans, drawings, and specifications provided by the Design Professional, and coordinate and assemble the Construction Documents into bid packages. The Construction Manger shall be responsible to coordinate the bid process, bid leveling, scoping and de-scoping of trade contractor and supplier bids with the Design Professional and Regeneron prior to issuing bids. Construction Manager shall prepare and issue a proposed full bid leveling reconciliation report to Regeneron including a method of providing comprehensive analysis of all bids, exclusions, qualifications, allowances, limitations, or any other cost that will be impactful to the overall cost of the work and recommendations of award with justification for such awards.
- (j) Construction Quality Assurance. Prepare for Regeneron's approval a construction quality assurance plan which identifies activities, procedures and documentation to be utilized by Construction Manager to ensure construction of the highest quality. Such quality assurance plan shall be incorporated in cost estimates and in the final bid package(s) and recommended award by Construction Manager.
- (k) Conduct of Bidding. With the Design Professional's assistance, in accordance with the Contract Documents, Construction Manager shall receive sealed bids, verify that the scope of work is complete, prepare bid analyses, make recommendations to Regeneron, and receive approval of Regeneron, for award of contracts or rejection of bids. Construction Manager shall conduct bidding on construction and procurement contracts so as to endeavor to achieve maximum competition among qualified bidders in order to obtain the most reasonable price for acceptable Work. Prior to the solicitation of bids, Construction Manager shall provide to Regeneron, for its approval, a list of all firms to which bid documents are to be sent, and Regeneron reserves the right to disqualify or to add firms to be provided bid documents prior to the issuance of such bid documents. Regeneron shall be advised of the bid due dates and bid openings and other procedures to be used by Construction Manager relating to all such competitive bidding by qualified bidders, and Regeneron shall be afforded the opportunity to participate in all competitive bidding meetings. Where appropriate, Construction Manager shall schedule and conduct pre-bid and pre-award conferences where Regeneron is present. In addition, the form of all bidding documents and prospective contracts with contractors or suppliers shall be approved by Regeneron. Furthermore no contract shall be awarded without the prior written approval of Regeneron. At Regeneron's written request, Construction Manager shall provide all documentation, communications and any records issued or not issued in the bid process. At Regeneron's request Construction Manager shall arrange trade contractor bid evaluation meetings with Regeneron and the Design Professional to reconcile and provide further information on the scope, nature, exclusions and qualifications of their bids.

- (l) Scoping Sessions. Construction Manager shall provide one week's notification in writing to Regeneron for scoping session, pre-bid and pre-award conferences with prospective bidders. The final scope of a contract shall be determined at these meetings in conjunction with the Contract Documents. Written meeting notes detailing any scope changes shall be issued by Construction Manager and incorporated into the Contract Documents.
- (m) Coordination of Subcontractor Bid(s). Construction Manager is responsible to coordinate all Subcontractor bids and awards and account for any exclusions or qualifications in their bids in Construction Manager's final recommendation for award. Should Construction Manager discover any errors, omissions, or inconsistencies in the Contract Documents, Construction Manager shall promptly report them to Regeneron and Design Professional(s). Following receipt of written notice from Construction Manager of defects, Regeneron shall promptly inform Construction Manager what action, if any, Construction Manager shall take with regard to the defects.
- (n) BIM. Construction Manager shall (i) participate in BIM Project Execution Planning Meetings, (ii) Provide guidelines for development of the Design Professional's Building Information Model so that the BIMs are useable by Construction Manager for any of the BIM Uses identified for the project such as Existing Conditions Modeling, Clash Detection and Cost Estimation and (ii) give periodic reviews of the Design Professional BIM Model to confirm that it meets Construction Manager's requirements.
- (o) Early Work. Construction Manager shall perform early procurement of materials and supplies, early release of bid or proposal packages for site development and related activities, and any other advance Work related to critical components of the Project for which performance prior to the Construction Phase SOW will materially affect the critical path schedule of the Project ("Early Work") as and to the extent specified in one or more Early Work SOWs.
- (a) Other. Construction Manager shall perform all other undertakings contained in the Services Agreement to be performed during the Preconstruction Phase.
- (p) Additional. If requested by Regeneron, Construction Manager shall perform any additional services not otherwise required or reasonably inferable herein and which are not required to correct Construction Manager's errors or omissions required herein ("Additional Preconstruction Phase Services"). Construction Manager shall immediately inform Regeneron in writing when Construction Manager becomes aware of the need for Additional Preconstruction Phase Services. Prior to performing any Additional Preconstruction Phase Services, Regeneron and Construction Manager shall agree in writing to the scope, nature, requirements, and compensation for such Additional Preconstruction Phase Services. The failure of Construction Manager to obtain Regeneron's prior written consent before performing any Additional Preconstruction Phase Services shall preclude any claim by Construction Manager for compensation for such Additional Preconstruction Phase Services or otherwise.

ARTICLE 6 CONSTRUCTION PHASE

6.1.1 "Construction Phase" shall mean the period commencing on the later of (i) the date specified in a Construction Phase SOW, and (ii) the issuance by Regeneron of a notice to proceed to begin the designated or full Construction Phase Services ("Notice to Proceed"). Prior to issuance of the Construction Phase SOW and a Notice to Proceed, Construction Manager shall not perform any Construction Phase Services or incur any cost on account thereof.

6.2 Construction Phase Services. During the Construction Phase, Construction Manager shall provide all Work

necessary or incidental to complete the applicable Project on an ongoing basis in support of, and in conformance with, the time frames described in the Construction Phase SOW, and shall perform all other undertakings contained in the Services Agreement to be performed during the Construction Phase (“Construction Phase Services”).

ARTICLE 7 RELATED SUBMISSIONS RE EARLY WORK AND CONSTRUCTION PHASE

7.1 Within two (2) weeks following the execution and delivery of each Early Work SOW and Construction Phase SOW, as applicable, Construction Manager shall create for Regeneron’s approval:

7.1.1 on AIA form G703, an itemized breakdown of each component of the applicable Work to indicate quantities of materials, equipment, and items, and apportion the various parts of the Work and the various trades (“Schedule of Values”);

7.1.2 a Schedule of payments indicating the estimated monthly amounts it will requisition for the performance of the Work (“Schedule of Payments”); the Schedule of Payments must be coordinated with the Project Milestone Schedule and shall be periodically updated, as required by the progress of the Work;

7.1.3 a critical path schedule identifying the means and methods that Construction Manager will employ to meet the Milestone Events (“Construction Schedule”); and

7.1.4 a detailed listing of all Submittals, schedules, reports, diagrams, layouts, setting plans, cuts, explanations, catalogue references, samples, trade As-builts, and other data regarded by Regeneron as necessary, in the number required by Regeneron, for submission to the Design Professionals, if necessary, and the appropriate approval, correction, rejection, or disapproval by Regeneron, and a critical path schedule identifying the time and sequence in which Construction Manager shall prepare and deliver its Submittals so as not to delay the performance of the Work or the work of Regeneron and others (collectively, “Submittal Schedule”).

7.2 Construction Manager shall from time to time update the Schedule of Values, Schedule of Payments, Construction Schedule and Submittal Schedule so that they are accurate at all times during prior to and during the applicable Work.

ARTICLE 8 COMPENSATION

8.1 Preconstruction Phase Compensation.

8.1.1 Regeneron shall pay to Construction Manager for its proper, timely, and full completion of Preconstruction Phase Services (excluding Early Work) a fixed fee designated as the Preconstruction Phase Fee in each Preconstruction Phase SOW (the “Preconstruction Phase Fee”). The Preconstruction Phase Fee shall be allocated to each phase designated in the Preconstruction Phase SOW (“Service Phase”), and the amounts reflected for each Service Phase shall not be changed without Regeneron’s prior written approval in each instance.

8.1.2 The consideration for the Early Work shall be the Early Work Contract Sum designated in the Early Work SOW, subject to Change Orders (“Early Work Contract Sum”).

8.1.3 Regeneron shall compensate Construction Manager, and the Preconstruction Phase Fee shall be adjusted for Additional Preconstruction Phase Services, by one of more of the following methods Regeneron shall compensate Construction Manager, and the Preconstruction Phase Fee shall be adjusted

for Additional Preconstruction Phase Services, by one of more of the following methods, which Regeneron shall have the right to select:

- (a) By mutual agreement on a lump sum properly itemized and supported by sufficient substantiating data, such as labor breakdowns, hourly rates including benefits, material quantities, equipment rental charges, overhead costs and profit, so as to permit evaluation by Construction Manager and Regeneron.
- (b) By cost plus, i.e., the actual cost of labor, materials, and major equipment rentals, plus overhead and profit, determined and recorded as the Additional Preconstruction Phase Services progresses. Construction Manager shall keep and present an itemized accounting together with appropriate supporting data including certified time records, delivery receipts, and material invoices for all work directly related to the proposed change. The cost will be limited to the following: cost of materials including cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; workers' compensation insurance; bond premiums; rental cost of major equipment and machinery; and the additional costs of supervision and field office personnel directly attributable to the change.

8.1.4 To the extent that Construction Manager's expenses are separately reimbursed as part of the compensation for Additional Preconstruction Phase Services, Regeneron reserves the right to reject any request for payment of expenses, unless such expenses:

- (a) are at Construction Manager's direct actual cost (without mark-up);
- (b) are actually and reasonably incurred in the interests of the Project; and
- (c) comply with Regeneron's official reimbursable expenses policy, attached hereto as **MSA Exhibit J**.

8.2 Construction Phase Compensation.

8.2.1 In each Preconstruction Phase SOW, Construction Manager and Regeneron shall designate an Agreed Markup stated as a percentage of the Cost of the Work for the applicable Project ("Agreed Markup").

8.2.2 No less than thirty (30) days after competitive bidding for at least ninety-five percent (95%) of the Trade Work for the Project has been completed (unless otherwise specified in the MSA), Construction Manager shall provide Regeneron with a proposed Construction Phase Contract Sum for the Construction Phase Services for the Project ("Construction Compensation Proposal"). Except as specifically stated therein by Construction Manager, the Construction Compensation Proposal shall contain firm calculations of each of the elements called for in **MSA Exhibit A.3** and the Exhibits thereto, including Cost of Work, Agreed Markup and Construction Phase Contract Sum. Allowances and alternates shall not be included in the Construction Compensation Proposal without Regeneron's prior approval.

8.2.3 Construction Manager shall promptly meet with Regeneron and Design Professional to review the Construction Compensation Proposal.

8.2.4 If Regeneron determines at any time in its sole discretion that the Parties may fail to reach a timely agreement on a Construction Phase Contract Sum acceptable to Regeneron, Regeneron may, without waiving any rights it may have, terminate the applicable Services Agreement, and Construction

Manager shall not receive additional compensation beyond the Preconstruction Phase Fee under the Services Agreement and sums due under any Early Work SOW. Construction Manager shall have no claim against Regeneron for damages of any kind on account of any decision by Regeneron not to execute a Construction Phase SOW for the Project. At any time Regeneron may contract with one or more third parties for construction of the Project.

8.2.5 Upon agreement by Regeneron and Construction Manager on the Construction Compensation Proposal (with any agreed revisions), Regeneron and Construction Manager shall execute a Construction Phase SOW.

8.2.6 The consideration for the Construction Phase Services shall be the Construction Phase Contract Sum designated in the Construction Phase SOW, subject to Change Orders (“Construction Phase Contract Sum”).

8.3 Compensation Upon Termination. If the Services Agreement is terminated for any reason prior to full completion of the Services (including, without limitation, termination during or following performance of Early Work or other Work), the compensation payable to Construction Manager shall be limited to the Preconstruction Phase Contract Sum, the Construction Phase Contract Sum and the Early Work Contract Sum (as applicable) multiplied by the percentage of Preconstruction Phase Services, the Construction Phase Contract Services and the Early Work (as applicable) completed and accepted at the time of termination.

8.4 No Changes. Except as otherwise provided by Change Order, Preconstruction Phase Contract Sum, the Construction Phase Contract Sum and the Early Work Contract Sum (as applicable) shall not be subject to adjustment for any other reason, including, without limitation, schedule extensions or adjustments, Project delays, unanticipated costs, or unforeseen conditions, and any costs in excess of the Preconstruction Phase Contract Sum, the Construction Phase Contract Sum or the Early Work Contract Sum (as applicable) shall be paid by Construction Manager without reimbursement by Regeneron.

ARTICLE 9 PAYMENTS

9.1 Payment of Preconstruction Phase Compensation.

9.1.1 Based upon monthly invoices submitted by Construction Manager to Regeneron, which shall set forth in complete detail the Preconstruction Phase Services (other than Early Work) performed during the immediately preceding thirty (30) day period for which Construction Manager is seeking payment, and any other information and documentation that Regeneron may require, and Regeneron shall pay the portion of the Preconstruction Phase Fee allocated to each Service Phase for Preconstruction Phase Services (other than Early Work) satisfactorily performed on a percentage-of-completed basis for each Service Phase, by no later than thirty (30) days following Regeneron’s receipt of such invoice, provided the invoice is in a proper and approved form, and provided no mechanic’s, laborer’s, vendor’s, materialman’s or other liens shall remain of record in connection with the Project on account of the Services performed or any of the materials or equipment incorporated therein or purchased in connection therewith, and further provided that Construction Manager shall have furnished a completed Lien Waiver Tracking Form attached as **MSA Exhibit B**, affidavits, waivers of lien and releases in the forms attached hereto as **MSA Exhibit C**, as applicable, executed by Construction Manager and from all Subcontractors for the Work done and materials furnished through the date covered by the invoice and updated to the date of submission. Regeneron shall provide comments concerning any disputed invoice promptly after Regeneron’s receipt of said invoice and such documentation as is necessary and appropriate to satisfy the requirements of Regeneron, if any, or others with jurisdiction over the Project, and Construction Manager shall comply with all obligations under this Agreement. Construction Manager shall cooperate on a reasonable basis with, and assist Regeneron in obtaining approval for, disbursements of funds for

Construction Manager's invoices.

9.2 Payment of Early Work Compensation and Construction Phase Compensation.

9.2.1 Construction Manager shall submit to Regeneron on or before the twenty-first (21st) day of each calendar month a single draft pencil copy written payment application on AIA Forms G702 and G703 reviewed and approved by Regeneron's pre-designated Design Professional (collectively, a "Pencil Copy Application for Payment"), for Early Work and Construction Phase Services, as applicable (the "Applicable Services") performed by Construction Manager, and any Subcontractors, and are remaining unpaid through the end of the immediately prior calendar month.

9.2.2 Construction Manager's Pencil Copy Application for Payment shall be supported and accompanied by:

- (a) A completed Lien Waiver Tracking Form attached as **MSA Exhibit B**.
- (b) Construction Manager's Schedule of Values and Schedule of Payments provided pursuant to ARTICLE 7.
- (c) all substantiating data and records (including but limited to certified payroll, contracts, invoices, receipts, checks, proof of payment, etc.) backing-up the Pencil Copy Application for Payment, including items on account of properly authorized Changed Work, and any other substantiating data as required by the Services Agreement or requested by Regeneron.
- (d) An affidavit or affirmation by Construction Manager setting forth, for the period for which payment is requested, the following:
 - (i) The names and addresses of all Subcontractors and suppliers and the price and proportional amount of subcontract value of each Subcontract or purchase order included in such Pencil Copy Application for Payment.
 - (ii) The total cost of the Applicable Services performed by Subcontractors and by Construction Manager using its own forces (other than for general conditions) including all adjustments, the total amount paid by Regeneron to Construction Manager and the amount retained by Regeneron to the date of application, the amount of the current application and the balance due on the cost of the Work to be performed by Subcontractors after such payment is made, the Project number and the purchase order number provided by Regeneron.
 - (iii) The percentage of completion, as approved by Regeneron, on a trade-by-trade basis of the Applicable Services being performed by Subcontractors.
 - (iv) Satisfactory evidence including lien waivers that all Subcontractors, vendors, and laborers have been paid all amounts advanced by Regeneron for their accounts as called for pursuant to previous payment applications.
 - (v) Such other information as Regeneron may request to determine if the amount requested is due and owing.

9.2.3 Promptly after its receipt of the Pencil Copy Application for Payment and all required paperwork, Regeneron shall advise Construction Manager of: (a) any questions, comments, corrections, disputes and/or objections relating thereto; (b) any further data or information sought in relation thereto;

and (c) all undisputed and approved amounts contained in the Pencil Copy Application for Payment. The Parties shall promptly communicate and make good faith efforts to provide any additional information sought by Regeneron and/or to address any questions, comments, corrections, disputes and/or objections relating to the Pencil Copy Application for Payment.

9.2.4 Construction Manager shall promptly submit to Regeneron and Design Professional(s) a written application for payment of amounts that are or become undisputed and approved pursuant to Section 9.2.3 on AIA Forms G702 and G703, together with all substantiating data and records required at Section 9.2.2, updated to the date of submission (collectively, an “Application for Payment”):

9.2.5 Within thirty (30) days after Regeneron’s receipt of Construction Manager’s Application for Payment in accordance with Section 9.2.3, and provided no mechanic’s, laborer’s, vendor’s, materialman’s or other liens shall remain of record in connection with the Project on account of the Work performed or any of the materials or equipment incorporated therein or purchased in connection therewith, and further provided that Construction Manager shall have furnished affidavits, waivers of lien and releases in the forms attached hereto as **MSA Exhibit C**, as applicable, executed by Construction Manager and from all Subcontractors for the Work done and materials furnished through the date covered by the Application for Payment, and provided further that Regeneron shall have approved the Application for Payment in writing, Regeneron shall pay Construction Manager the amount approved by Regeneron, less a retainage equal to ten percent (10%) of the amount requested in such Application for Payment. In no event shall Regeneron be liable for interest, penalties, expenses or attorneys’ fees with respect to any amounts payable to Construction Manager under a Services Agreement.

9.2.6 Each Pencil Copy Application for Payment and each Application for Payment shall constitute a material representation by Construction Manager that: (i) the payment then requested has been incurred on account of the Work or is justly due to Subcontractors on account thereof; (ii) the materials, supplies, and equipment for which such Pencil Copy Application for Payment is being submitted have been incorporated in the Project or have been stored at the Project or at insured or bonded off-site storage locations which shall have been approved in writing by Regeneron; (iii) all the materials and equipment that have not been incorporated into the Project for which payment is being requested have been fully insured; (iv) the materials and equipment either incorporated into the Project or delivered but not yet made a part thereof, are not subject to liens or encumbrances of any third-parties; (v) no mechanic’s, laborer’s, vendor’s, materialman’s or other liens have been filed in connection with the Project on account of the Work or any of the materials, supplies, or equipment incorporated therein or purchased in connection therewith; and (vi) the Work that is the subject of such Pencil Copy Application for Payment has been performed in strict accordance with the Contract Documents.

9.2.7 Regeneron may adjust or reject a Pencil Copy Application for Payment or an Application for Payment or nullify a previously approved Pencil Copy Application for Payment or Application for Payment, in whole or in part, and withhold funds as may reasonably be necessary to protect Regeneron from loss or damage based upon the following:

- (a) Construction Manager’s repeated failure to perform the Work as required by the Contract Documents or the Services Agreements;
- (b) loss or damage arising out of or relating to this Agreement or a Services Agreement that is alleged or reasonably believed to be caused by the negligent acts or omissions of Construction Manager or others for whom Construction Manager may be responsible, and that is not agreed to be paid by the insurer providing builders risk or other property insurance covering the Project;

- (c) Construction Manager's failure to properly pay Subcontractors and Material Suppliers;
- (d) Defective Work not corrected in a timely fashion;
- (e) reasonable evidence of delay in performance of the Work such that the Work may not be completed by the dates of Substantial or Final Completion;
- (f) uninsured third-party claims involving Construction Manager or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until Construction Manager furnishes Regeneron with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established and acceptable to Regeneron;
- (g) failure of Construction Manager to provide Regeneron with a complete set of Project Documents (including As-Builts) for any portion of the Work which has been completed and accepted by Regeneron;
- (h) an Event of Default shall have occurred.

9.2.8 Unless otherwise provided in the Contract Documents, Regeneron will make payment only on account of equipment and materials purchased by Construction Manager for installation and incorporation into the Work when such equipment and materials have been installed; provided, however, when such materials and equipment are needed to maintain the sequence of the Work, Pencil Applications for Payment and Applications for Payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite including applicable insurance, storage, and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on a submission by Construction Manager of bills of sale and proof of required insurance, or such other documentation satisfactory to Regeneron to establish the proper valuation of the stored materials and equipment, Regeneron's title to such materials and equipment, and to otherwise protect Regeneron's interests therein, including transportation to the Project Site.

9.2.9 Substantial Completion and Related Payment.

- (a) Construction Manager shall immediately notify Regeneron and the Design Professionals when it considers Substantial Completion to have been achieved, and shall prepare and submit to Regeneron and the Design Professionals a comprehensive list of items to be completed or corrected and the timeframe for such completion or correction. Upon receipt of Construction Manager's proposed list, Regeneron and the Design Professionals will make an inspection to determine whether the Work has achieved Substantial Completion, and whether the timeframe for completion or correction is acceptable. If such inspection discloses any items other than minor incomplete or corrective work, whether or not such item is included on Construction Manager's proposed list, which is incomplete or not in accordance with the Contract Documents, Construction Manager shall, as a condition precedent to achieving Substantial Completion, correct or complete such items at its sole cost and expense without delay. Upon doing so, Construction Manager shall then submit a request for another inspection by Regeneron and the Design Professionals, to determine whether Substantial Completion has occurred. This process shall repeat itself until the date upon which Regeneron and the Design Professionals notify Construction Manager that they consider the Work to have achieved Substantial Completion. Construction Manager shall then without delay prepare a Certificate of Substantial Completion in the form of **MSA Exhibit D** ("Certificate of Substantial Completion") stating that such date is the date of Substantial Completion and listing all items that as of the date of Substantial Completion were still to be completed or corrected by Construction Manager (the "Punch

List”), which certificate shall be executed by Construction Manager and Regeneron. The work on the Punch List shall be performed by Construction Manager at its sole cost consistent with the Scheduling Requirements. Failure to include an item on the Punch List does not alter the responsibility of Construction Manager to complete all Work in accordance with the Services Agreement.

- (b) If the Certificate of Substantial Completion has been fully executed, but a certificate of occupancy (“CO”) has not then been obtained:
 - (i) Construction Manager shall without delay schedule inspections and make ready and available any documentation required by the applicable Governmental Authorities for issuance of CO or, if the CO cannot be obtained due to factors beyond Construction Manager’s control, a temporary Certificate of Occupancy (“TCO”).
 - (ii) If required by the applicable Governmental Authorities, Construction Manager and Regeneron shall provide such Governmental Authorities with the Certificate of Substantial Completion.
 - (iii) Construction Manager shall be responsible for completing any remedial work required by the applicable Governmental Authorities to obtain the CO, or if applicable, the TCO, without delay and at its sole cost if such remedial work was required by the Contract Documents. Any remedial work required by the applicable Governmental Authorities but not required by the Contract Documents, will be performed by Construction Manager via Change Order.
- (c) Within thirty (30) days after the full execution of the Certificate of Substantial Completion and issuance of the CO, or if applicable, the TCO, Construction Manager shall submit to Regeneron for its review, a Pencil Copy Application for Payment, together with the material called for by Section 9.2.2, for the Work performed by Construction Manager and any Subcontractors and is remaining unpaid in connection with the Project. Provided that the terms and conditions are satisfied, Regeneron shall pay to Construction Manager the amount due on account of such Work, less 200% of the amount as determined by Regeneron, if any, that Regeneron may require be retained for the performance of (x) Punch List work (which must be defect free and completed to the satisfaction of Regeneron so as to achieve Final Completion of the Work), and (y) the document deliveries required by Section 9.2.10(b)(i).
- (d) If the TCO has been obtained, but the CO has not then been obtained, and notwithstanding any payment to Construction Manager under Section 9.2.9(c), Construction Manager shall be responsible for completing any remedial work required by the applicable Governmental Authorities to obtain the CO, without delay and at its sole cost, if such remedial work was required by the Contract Documents. Any remedial work required by the applicable Governmental Authorities but not required by the Contract Documents, will be performed by Construction Manager via Change Order.

9.2.10 Final Completion and Final Payment.

- (a) Upon notification from Construction Manager that the Work is complete and ready for final inspection and acceptance, Regeneron and the Design Professionals shall promptly conduct an inspection to determine if the Project has been completed and is acceptable under the Contract Documents. Upon receipt of inspection results satisfactory to Regeneron, Construction Manager shall prepare a Certificate of Final Completion in the form of **MSA Exhibit E** (“Certificate of Final Completion”), which certificate shall be executed by Construction Manager.

- (b) Within twenty (20) days after the full execution of the Certificate of Final Completion, Construction Manager shall submit to Regeneron for its review, a Pencil Copy Application for Payment, together with the material called for by Section 9.2.2, for the Work that has been performed by Construction Manager and any Subcontractors and is remaining unpaid in connection with the Project (the “Final Payment”). Provided that the terms and conditions of Section 9.2 are satisfied, Regeneron shall pay to Construction Manager the amount due under Section 9.2 on account of such Work, provided that Construction Manager also delivers the following to Regeneron:
- (i) All (i) Project Documents, and (ii) all documents required under the Services Agreement, including those required by the Contract Documents, the Digital Deliverable Requirements and the “Project Turnover Checklist” referred to therein; in each case in the electronic and paper formats required by Regeneron;
 - (ii) A statement of any outstanding known and unreported accidents or injuries experienced by Construction Manager or its Subcontractors and/or Material Suppliers at the Project Site,
 - (iii) A certification from each and every Subcontractor that all the documents required by this Agreement, the SOW and the Services Agreement, have been delivered by such Subcontractor to Construction Manager and are complete and accurate;
 - (iv) Any evidence that Regeneron may require in order to demonstrate that all Subcontractors, suppliers, and laborers have fully discharged their respective obligations and have been paid or will be paid in full from the proceeds of the Final Payment;
 - (v) Construction Manager’s certification that all Punch List items have been completed;
 - (vi) If required by Regeneron, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Services Agreement, to the extent and in such form as may be designated by Regeneron; and
 - (vii) Any other information required by the Contract Documents.
- (c) Within fifteen (15) days of the making of the Final Payment, Construction Manager shall complete and submit to Regeneron a final list of Subcontractors and a disbursement record in a form acceptable to Regeneron, reflecting all disbursements made to all Subcontractors, and, if required by Regeneron, other data establishing payment or satisfaction of all such obligations, such as receipts, releases, and waivers of liens, claims, security interests or encumbrances, arising out of the Project, to the extent and in such form as may be designated by the Contract Documents.
- (d) Construction Manager’s claims not reserved in writing with the final Application for Payment shall be deemed waived upon the making of the Final Payment by Regeneron to Construction Manager.

9.3 Generally.

9.3.1 Regeneron may (i) disapprove, in whole or in part, an invoice, a Pencil Copy Application for Payment or an Application for Payment (ii) otherwise decide to withhold payment, in whole or in part, from Construction Manager, or (iii) nullify the whole or a part of a payment previously made because of subsequently discovered evidence or subsequent observations, in each case, to the extent necessary to protect Regeneron from loss related to the specific reason for the disapproval, withholding, or nullification, due on account of breach of a Services Agreement, liens filed against the Project, correction or re-execution of those portions of Defective Work or Work that has not been performed in accordance

with the Contract Documents, or an amount necessary to protect Regeneron against a claim made by any non-party to the Services Agreement.

- 9.3.2 If and when the conditions giving rise to the disapproval, withholding, or nullification described in Section 9.3.2 have been cured, payment shall be made of the applicable withheld amounts, subject to Regeneron's right to withhold payment as may be provided elsewhere in the Services Agreement.
- 9.3.3 Neither Regeneron's payments nor its partial or full use or occupancy of the Project constitutes acceptance of Work not complying with the Contract Documents.
- 9.3.4 The making of payments to Construction Manager shall not constitute a waiver of any claims by Regeneron arising from (a) unsettled liens, (b) Defective Work not discovered by Regeneron until after making such payment, (c) Construction Manager's failure to perform any Work in compliance with the requirements of the Services Agreement, (d) the terms of any warranties or guarantees required by the Services Agreement or provided at law or in equity, or (e) claims, demands, or damages that are discovered or which arise after payment, or which are covered by any indemnity set forth in the Services Agreement.
- 9.3.5 In no event shall Regeneron be liable for interest, penalties, expenses or attorneys' fees with respect to any amounts payable to Construction Manager under this Agreement.

ARTICLE 10 PROJECT MILESTONE SCHEDULE AND RELATED TERMS

10.1.1 Project Milestone Schedule.

- (a) Time is of the essence for the performance of the Work. Construction Manager acknowledges that Regeneron will incur costs and damages due to delays in the Project's Substantial Completion and Final Completion, including but not limited to expenses incurred due to the inability to access or occupy the Project or Project Site.
- (b) Construction Manager shall perform and cause its trade sub-contractors to perform and complete the Work in strict accordance with the dates shown on the Project Milestone Schedule stated in the SOW (the "Project Milestone Schedule"), including the scheduling requirements therein ("Scheduling Requirements") that calls for Construction Manager to achieve the certain milestone events by the dates set forth in the Project Milestone Schedule (collectively, "Milestone Events"). Construction Manager represents, as an inducement to Regeneron to enter into this Agreement and the Services Agreements, that it will fully complete all the Work within the Scheduling Requirements in each case.
- (c) If any element of the Work (including any Milestone Event) is not achieved by its corresponding date, or in Regeneron's judgment, that any element of the Work will not be achieved by its corresponding Milestone Event date, then, upon written notice from Regeneron, Construction Manager shall revise its means and methods of construction, including by increasing the amount of labor and equipment and by causing work to be performed at hours and on days, in addition to the normal working hours and normal working days, at Construction Manager's sole expense, in order to achieve such compliance with the Scheduling Requirements. If Construction Manager fails to take prompt and adequate corrective action to bring the Work back on schedule to the satisfaction of Regeneron, Regeneron reserves the right, on five (5) days' advance notice to Construction Manager, to perform such Work as Regeneron deems necessary and to back charge the cost thereof against payments due Construction Manager under the Services Agreement or Construction Manager shall immediately reimburse Regeneron, upon demand, for such costs.

- (d) Regeneron may determine the sequence in which the Work shall be performed, provided it does not unreasonably interfere with the Project Milestone Schedule. Regeneron may require Construction Manager to make reasonable changes in the sequence of performance at any time during the performance of the Work in order to facilitate the performance of work by Regeneron or others.

10.1.2 Delays and Extensions of Time. Should Construction Manager encounter in its performance of the Work concealed, unknown conditions below the surface of the ground differing materially from those ordinarily encountered and generally recognized as inherent in the character of the Work called for in the Services Agreement, or should concealed conditions in an existing structure vary materially from the conditions indicated by the Contract Documents, Construction Manager shall immediately upon discovery, and before such conditions are disturbed, notify Regeneron. If Regeneron ascertains that such conditions do materially differ from those ordinarily incorporated or inherent in the Work, or vary materially from the conditions indicated in the Contract Documents, and would cause an increase or decrease in the cost of the Work or the time required for the performance of the Services Agreement, then the Contract Documents shall be adjusted by a Change Order. If Construction Manager fails to so notify Regeneron, Construction Manager shall be deemed to have waived its claim for adjustment hereunder.

10.1.3 No Damages for Delay. Construction Manager acknowledges and agrees that its sole remedy for any delay in the commencement or progress of the Work by any cause not attributable to Construction Manager, even if attributable to Regeneron, Design Professional(s) or others, shall be an extension of time to complete performance of the Work, and Construction Manager shall not be entitled to any actual or alleged monetary delay damages. Notwithstanding the foregoing, if the extension of time exceeds 20% of the Project's scheduled duration, Construction Manager shall be entitled to its actual cost of labor, materials, and major equipment rentals, plus overhead and profit, determined and recorded as the work progresses in the period after such 20% threshold is exceeded.

10.1.4 Liquidated Damages.

- (a) Regeneron and Construction Manager recognize that the damages to Regeneron that would result from Construction Manager's failure to achieve completion of any of the applicable Milestone Events are uncertain and cannot be calculated exactly and have agreed that if Construction Manager fails to achieve any Milestone Event, Construction Manager shall pay to Regeneron, as liquidated damages and not as a penalty, the amounts designated liquidated damages in the SOW with respect to each Milestone Event (collectively, "Liquidated Damages"). Regeneron shall have the right to withhold from any sums due Construction Manager under the Services Agreement the amount of Liquidated Damages then due Regeneron, and apply the same towards payment of such Liquidated Damages. In the event of any termination of the Services Agreement prior to completion of the Project, Liquidated Damages shall apply notwithstanding such termination, provided and to the extent that Construction Manager's actions or inactions caused delay in achieving any Milestone Event.
- (b) The Parties further acknowledge that the amount of Liquidated Damages designated in the applicable Services Agreement represents fair and reasonable consideration under the circumstances existing as of the date of the Services Agreement and that such sum represents the Parties' best estimate as of the date of the Services Agreement of Regeneron's damages for delay in the event of Construction Manager's failure to achieve any Milestone Event.
- (c) The Parties acknowledge and agree that the Liquidated Damages provided for relate only to damages to Regeneron caused by a delay in achieving any Milestone Event, and such Liquidated Damages are not intended to, and shall not, limit Regeneron's recovery from Construction Manager under the

terms of this Agreement and any Services Agreement for any damages caused by or resulting from the performance of the Work by Construction Manager or any Subcontractors.

- (d) If Liquidated Damages are payable, Construction Manager may propose for Regeneron's optional approval, a recovery plan in lieu of some or all of the Liquidated Damages that revises Construction Manager's means and methods of construction, including by increasing the amount of labor and equipment and by causing work to be performed at hours and on days in addition to the normal working hours and normal working days, to meet the Project's occupancy dates and phasing requirements at no additional cost to Regeneron.

ARTICLE 11 STAFFING, SUPERVISION AND ADMINISTRATION

- 11.1 At all times during performance of the Services, Construction Manager shall provide qualified, competent and experienced supervision for the performance of the Services.
- 11.2 Construction Manager shall be responsible to Regeneron for acts and omissions of Persons performing segments of the Services for or on behalf of Construction Manager, including but not limited to Subcontractors and/or Material Suppliers directly or indirectly engaged by Construction Manager.
- 11.3 Construction Manager shall permit only trained and skilled Persons to perform the Services on the Project.

ARTICLE 12 DOCUMENT REVIEW

- 12.1 Prior to entering into each SOW, Construction Manager shall review the SOW and associated Contract Documents to identify any errors, omissions and/or constructability concerns that could potentially impact Construction Manager's ability to perform the Work in an expeditious and economical manner. Should Construction Manager discover any errors, omissions and/or constructability concerns in the Contract Documents, Construction Manager shall promptly report them to Regeneron and Design Professional(s). Following receipt of written notice from Construction Manager of any such concerns, Regeneron shall promptly inform Construction Manager what action, if any, Construction Manager shall take with regard thereto. A failure to promptly notify Regeneron of any such concerns shall constitute an acknowledgment by Construction Manager that no such material concerns exist and/or that the Contract Documents are acceptable for the proper execution of the Work.

ARTICLE 13 TEMPORARY FACILITIES

- 13.1 Construction Manager shall make recommendations regarding and shall provide temporary construction facilities, equipment, materials, and services for common use by Construction Manager and all Persons performing work or supplying materials on its behalf.

ARTICLE 14 PERMITTING

- 14.1 Construction Manager shall obtain and pay for all necessary permits, licenses, and renewals pertaining to the Work, except for permits and fees that are the responsibility of Regeneron pursuant to the Contract Documents. Construction Manager shall provide to Regeneron copies of all such notices, permits, licenses, and renewals.

ARTICLE 15 COOPERATION WITH OTHERS

- 15.1 Construction Manager acknowledges that Regeneron will be engaging Design Professionals and other

specialty contractors (including project managers) in connection with the Project. To the extent that the timely, complete and proper execution of the Services and the Services at the Project, requires cooperation and coordination among the various Design Professionals and specialty contractors engaged for the Project, Construction Manager shall use its best efforts to fully and timely cooperate and to coordinate its services with such other Design Professionals and specialty contractors. Construction Manager shall immediately notify Regeneron in writing at once of any difficulty in connection with any coordination, information, or decision that Construction Manager believes to be necessary. Construction Manager shall work with the Design Professionals and specialty contractors to assure that Construction Manager's Services is consistent with the services, design, work, and documents of the other Design Professionals and specialty contractors.

15.2 If Regeneron elects to perform any work or supply materials at the Project Site directly or indirectly via the engagement of others, Construction Manager shall coordinate its activities at the Project Site with all other forces and agree upon fair and reasonable schedules and operational procedures for Project Site activities. Construction Manager shall endeavor to promote harmony and cooperation among all Project participants. Construction Manager shall: (a) proceed with the Services in a manner that does not hinder, delay, or interfere with the work of Regeneron or others or cause the work of Regeneron or others to become defective, (b) afford Regeneron and others reasonable access for introduction and storage of their materials and equipment and performance of their activities, and (c) coordinate Construction Manager's Services with that of Regeneron and others.

15.3 Before proceeding with any portion of the Services affected by the construction or operations of Regeneron or others, Construction Manager shall give Regeneron prompt, written notification of any defects discovered in their work which will prevent the proper execution of the Services. Construction Manager's obligations in this Section 15.3 do not create any responsibility for the work of Regeneron or others, but are for the purpose of facilitating the Services. If Construction Manager does not notify Regeneron of known or discovered defects interfering with the performance of the Services, Construction Manager acknowledges that the work of Regeneron or others is not defective and is acceptable for the proper execution of the Services.

15.4 If coordination issues are discovered in the Contract Documents after the execution of an SOW, the documentation containing the greater scope shall govern regarding the Cost of Work. Such coordination issues shall be resolved through issuing an RFI.

ARTICLE 16 MEETINGS AND PERIODIC REPORTS

16.1 Construction Manager shall schedule, organize, and conduct meetings related to the Services at the Project, or such other location as Regeneron may direct, with Regeneron, the Design Professionals, and the applicable Subcontractors and separate contractors as often as necessary, but no less frequently than weekly or as otherwise requested by Regeneron. At each such meeting, Construction Manager shall provide Regeneron with (i) a two-week look-ahead schedule reflecting the portions of the Services to be performed in the upcoming one-week period, (ii) a log of all approved, pending, and potential Change Orders, (iii) a log of all submitted requests for information and the responses thereto, (iv) a log of all approved, pending, and outstanding Submittals. Construction Manager shall prepare minutes of each such meeting for Regeneron's review, and upon Regeneron's approval, promptly furnish the same to all Persons invited to attend such meeting, (v) updates to the Construction Schedule to reflect any element of the Services that will not, or is reasonably expected not to, be achieved by its corresponding Milestone Event date, and Construction Manager's recovery plan, including revisions to its means and methods, to meet the Milestone Event date, and (vi) such other matters as Regeneron may request. Such meetings and the information reported shall not reduce, or constitute a waiver of, Construction Manager's obligations to achieve the Milestone Events on time.

- 16.2 Construction Manager shall deliver daily to Regeneron written statements signed by Construction Manager's representatives at the Project Site showing:
- 16.2.1 Project Name, Address, Date of Report, Weather Conditions;
 - 16.2.2 Work logs showing the following for each subcontractor working on the site on the day of the report: Name of the subcontractor, summary description of work in progress, quantity of workers, total hours worked on that day as well as the total hours worked to date over the entire course of the Project;
 - 16.2.3 Work logs for Construction Manager's Self Performed Labor working on the site on the day of the report: description of work in progress, quantity of workers, total hours worked on that day as well as the total hours worked to date over the entire course of the Project;
 - 16.2.4 Work log photos for each trade;
 - 16.2.5 A section recording any site safety observations, accidents or other safety related incidents;
 - 16.2.6 A section recording any issues that might cause delays to the schedule;
 - 16.2.7 A section briefly outlining any other issues, notes or concerns, including unforeseen existing conditions encountered, if any; and
 - 16.2.8 A list of any equipment rented that is on-site

ARTICLE 17 RECORD MAINTENANCE AND COST REPORTING

- 17.1 Construction Manager shall keep full and detailed accounts as are necessary for: (a) proper financial management of its Services on the Project; and (b) supporting all charges assessed to Regeneron on the Project. Construction Manager shall maintain a complete set of all books and records prepared or used by Construction Manager with respect to the Project. Construction Manager's records supporting its performance and billings shall be current, complete, and accurate and maintained according to Generally Accepted Accounting Principles. All such books and records shall be preserved for a period of at least 6 years from the date of the Final Payment to Construction Manager. Construction Manager shall require its Subcontractors, Material Suppliers and consultants to comply with these record-keeping requirements.
- 17.2 Construction Manager shall keep full and accurate data and provide reports thereof to Regeneron as requested and as needed, including for any prospective funding agency or organization (such as NYSERDA), on forms required by Regeneron.

ARTICLE 18 MATERIALS FURNISHED BY REGENERON OR OTHERS

- 18.1 If the Work includes installation of materials or equipment furnished by Regeneron or others, it shall be the responsibility of Construction Manager to examine the items so provided and thereupon handle, store, and install the items, unless otherwise provided in the Contract Documents, with such skill and care as to provide a satisfactory and proper installation. Loss or damage due to acts or omissions of Construction Manager shall be the responsibility of Construction Manager and may be deducted from any amounts due or to become due Construction Manager. Any defects discovered in such materials or equipment shall be reported at once to Regeneron.

ARTICLE 19 TESTS, INSPECTIONS AND COMMISSIONING

- 19.1 Construction Manager shall coordinate with Regeneron to schedule all required tests, approvals, commissioning and inspections of the Work or portions thereof at appropriate times so as not to delay the progress of the Work or other work related to the Project. Construction Manager shall give proper notice to all required parties of such tests, inspections, commissioning and approvals/rejections and shall permit Regeneron and Design Professional(s) to observe and/or participate in all such tests, inspections and commissioning, and shall provide them with copies of all reports and results from such tests, inspections and commissioning. Except as provided elsewhere herein or in the Contract Documents, Regeneron shall bear all expenses associated with tests, inspections, and approvals required by the Contract Documents which, unless otherwise agreed to, shall be conducted by an independent testing laboratory or entity retained by Regeneron. Unless otherwise required by the Contract Documents, required certificates of testing, approval, or inspection shall be secured by Construction Manager and promptly delivered to the Design Professional(s) and Regeneron.
- 19.2 If the Design Professional(s), Regeneron and/or government authorities determine that tests, inspections, or approvals in addition to those required by the Contract Documents will be necessary, Construction Manager shall arrange for such tests, inspections and approvals, and give timely notice to the Design Professional(s), Regeneron and others who may observe the tests, inspections and approvals. Costs of the additional tests, inspections, or approvals are at Regeneron's expense except as provided in Section 19.3.
- 19.3 If the testing and inspections demonstrate that portions of the Work fail to comply with the Contract Documents, Construction Manager shall be responsible for costs of correcting the Work and retesting.

ARTICLE 20 WORKMANSHIP

- 20.1 Construction Manager shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and apply such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents in a good and workmanlike manner. All materials used in the Project shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work, and shall be new except such materials as may be expressly provided in the Contract Documents to be otherwise.

ARTICLE 21 WARRANTY

- 21.1 Construction Manager warrants and guarantees that all materials and equipment furnished under each Services Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. At Regeneron's request, Construction Manager shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. Construction Manager further warrants and guarantees that the Work shall be free from material defects.
- 21.2 Construction Manager's warranty shall commence on the date of Substantial Completion of the Work. Notwithstanding the foregoing, with respect to any portion of Work first performed after Substantial Completion, Construction Manager's warranty obligations shall be extended by the period of time between Substantial Completion and the actual completion of the later Work.
- 21.3 To the extent products, equipment, systems, or materials incorporated into the Project are purchased and supplied by Regeneron, they shall be warranted by Construction Manager solely as to installation and are otherwise covered exclusively by the warranty of the manufacturer.
- 21.4 Construction Manager shall obtain from its Subcontractors and Material Suppliers any special or extended warranties required by the Contract Documents. Construction Manager's liability for the

warranties included in this ARTICLE 21 shall be limited to the one-year correction period referred to in ARTICLE 22. After that period Construction Manager shall provide reasonable assistance to Regeneron in enforcing the obligations of Subcontractors or Material Suppliers for any special or extended warranties.

ARTICLE 22 CORRECTION OF WORK WITHIN ONE YEAR

- 22.1 If prior to Substantial Completion or within one year after the date of Substantial Completion of the Work any Defective Work is found, Regeneron shall promptly notify Construction Manager in writing. Unless Regeneron provides written acceptance of the condition, Construction Manager shall promptly correct the Defective Work at its own cost and time and bear the expense of the additional services and materials required for correction of any Defective Work.
- 22.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall be extended by the period of time between Substantial Completion and the actual performance of the later Work.
- 22.3 If Construction Manager fails to correct Defective Work immediately after written notice from Regeneron prior to the Final Payment, Regeneron may correct it in accordance with Regeneron's right to carry out the Work. In such case, Regeneron may deduct the cost of correcting the Defective Work from payments then or thereafter due Construction Manager. If payments then or thereafter due Construction Manager are not sufficient to cover such amounts, Construction Manager shall pay the difference to Regeneron.
- 22.4 If, after the one-year correction period, but before the applicable statute of limitation period has expired, Regeneron discovers any Work which Regeneron considers Defective Work, Regeneron shall, unless the Defective Work requires emergency correction, promptly notify Construction Manager and allow Construction Manager an opportunity to correct the Defective Work if Construction Manager elects to do so. If Construction Manager elects to correct the Defective Work it shall provide written notice of such intent within fourteen (14) days of its receipt of notice from Regeneron and shall complete the correction of Work within a mutually agreed timeframe. If Construction Manager does not elect to correct the Defective Work, Regeneron may have the Defective Work corrected by itself or others, and, if Regeneron intends to seek recovery of those costs from Construction Manager, Regeneron shall promptly provide Construction Manager with an itemization of the correction costs it incurs and Construction Manager shall promptly reimburse Regeneron the full amount of the correction costs incurred.
- 22.5 If Construction Manager's correction or removal of Defective Work causes damage to or destroys other completed or partially completed work or existing improvements, Construction Manager shall be responsible for the cost of correcting and replacing the destroyed or damaged property.
- 22.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of Construction Manager's other obligations under the Contract Documents.
- 22.7 Prior to the Final Payment, at Regeneron's option and with Construction Manager's agreement, Regeneron may elect to accept Defective Work rather than require its removal and correction. In such cases Construction Manager's compensation shall be equitably adjusted to account for payments made for the Defective Work and the impact of the Defective Work on the value of the Facility and/or Regeneron's operations thereat.

ARTICLE 23 CORRECTION OF COVERED WORK

- 23.1 On request of Regeneron, Work that has been covered without a requirement that it be inspected prior

to being covered may be uncovered for Regeneron's inspection. Regeneron shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents. If the uncovered Work proves to be defective, Construction Manager shall pay the costs of uncovering and replacement.

- 23.2 If contrary to specific requirements in the Contract Documents or contrary to a specific request from the Design Professional(s) and/or Regeneron, a portion of the Work is covered, Regeneron, by written request, may require Construction Manager to uncover the Work for Regeneron's observation. In this circumstance the Work shall be replaced at Construction Manager's expense with no adjustment to the dates of Substantial Completion or Final Completion.

ARTICLE 24 SAFETY OF PERSONS AND PROPERTY

- 24.1 Construction Manager shall have overall responsibility for initiating, maintaining and supervising all safety precautions and programs in the performance of the Services as well as compliance with applicable federal, state and local regulations. However, such obligation does not relieve Subcontractors and Material Suppliers of their responsibility for the safety of Persons or property in the performance of their work, nor for compliance with all Applicable Laws.
- 24.2 Construction Manager shall seek to avoid injury, loss, or damage to Persons or property by taking reasonable steps to protect: (a) its employees and other Persons at the Project Site; (b) materials and equipment stored at the Project Site and off the Project Site for use in the Services; and (c) property located at or near the Project Site.
- 24.3 Construction Manager will use diligent efforts to maintain work, materials, and equipment free from injury or damage from rain, wind, snow, storms, frost, or heat. If adverse weather makes it unreasonable to continue operations safely in spite of weather precautions, Construction Manager shall cease work and notify Regeneron.
- 24.4 Construction Manager will erect and maintain reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying owners and users of adjacent sites and utilities as necessary to complete the Services.
- 24.5 At least forty-eight (48) hours before Construction Manager's mobilization and commencement of work, Construction Manager will give written notice to all Persons who have an interest on or immediately adjacent to the Project Site. Such Persons include utility companies, adjacent property owners, or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads, or otherwise who may be affected by any Construction Manager's operation. Notice is given so they may remove any obstruction for which they are responsible, and so they can have a representative on the Project Site to see that their property is properly protected.
- 24.6 Construction Manager shall designate a safety representative in each SOW. Construction Manager's safety representative shall act as Construction Manager's authorized safety representative with a duty to prevent accidents. If no individual is identified by Construction Manager, the safety representative shall be Construction Manager's Superintendent. Construction Manager shall report promptly in writing all recordable accidents and injuries occurring at the Project Site. When Construction Manager is required to file an accident report with a public authority, Construction Manager shall furnish a copy of the report to Regeneron.
- 24.7 Construction Manager's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction at the location of the Project. Additionally, in order to be used

onsite, Construction Manager's program requirements must be OSHA compliant and as stringent as Regeneron's program requirements. Copies of EHS programs shall be requested through the designated Regeneron representative. Construction Manager also agrees to train its employees in all proper procedures required by these programs and retain records of such training which must be made available to Regeneron upon request.

- 24.8 Construction Manager is fully responsible for the safety and health of all Persons engaged by Construction Manager and acknowledges that Regeneron with respect to such Persons, shall not be construed as, nor be held liable for, any obligation as an employer within the meaning of the OSHA. Should Construction Manager observe an unsafe condition on the premises relative to the work hereunder, or if any of Construction Manager's employees working on the premises files a charge of non-compliance with the Act, Construction Manager shall notify Regeneron promptly upon receiving notice of such charge.
- 24.9 Construction Manager must immediately inform Regeneron of any injuries, incidents and near misses at the Project Site and provide a detailed, written report of the incident.
- 24.10 In an emergency affecting the safety of Persons or property, including the environment, Construction Manager shall act promptly to prevent threatened damage, injury, or loss.
- 24.11 The Contract Price shall include costs and expenses incurred and/or necessary to minimize disruptions of noise, vibration, dust, odors or other incursions from the Services on existing occupants. Construction Manager shall identify such disruptions, notify Regeneron thereof, and perform the Services minimizing such disruptions without change to the Scheduling Requirements, by revising its means and methods of construction, including by increasing the amount of labor and equipment and by causing work to be performed at hours and on days in addition to the normal working hours and normal working days.

ARTICLE 25 HAZARDOUS MATERIALS

- 25.1 A "Hazardous Material" is any substance or material identified now or in the future as hazardous under any Applicable Laws or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal, or clean-up. Construction Manager shall not be obligated to commence or continue work until any Hazardous Material discovered at the Project Site has been removed, rendered or determined to be harmless by Regeneron and, if deemed necessary by Regeneron, as certified by an independent testing laboratory, and approved by the appropriate governmental agency.
- 25.2 If after commencing the Services, Hazardous Material is discovered at the Project Site, Construction Manager shall be entitled to immediately stop Services in the affected area. Construction Manager shall promptly report the condition to Regeneron and if required, the governmental agency with jurisdiction.
- 25.3 Construction Manager shall not be required to perform any Services relating to or in the area of Hazardous Material without written mutual agreement of Regeneron.
- 25.4 If deemed necessary by Regeneron, Regeneron shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether the material requires corrective measures or remedial action. Such measures shall be the sole responsibility of Regeneron, and shall be performed in a manner minimizing any adverse effect upon the Services. Construction Manager shall resume Services in the area affected by any Hazardous Material only after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction.
- 25.5 If Construction Manager is delayed due to the presence or remediation of Hazardous Material,

Construction Manager shall be entitled to an equitable adjustment of the dates of Substantial Completion and Final Completion.

ARTICLE 26 MATERIALS BROUGHT TO THE WORKSITE

- 26.1 Safety Data Sheets (SDSs) as required by Applicable Laws and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by Construction Manager, Subcontractors, Regeneron or others, shall be maintained at the Project Site by Construction Manager and made available to the Design Professional, Regeneron, Subcontractors, and others.
- 26.2 Construction Manager shall be responsible for the proper delivery, handling, application, storage, removal, and disposal of all materials and substances, including but not limited to Hazardous Material, brought to the Project Site in the performance of the Work.

ARTICLE 27 SUBMITTALS

- 27.1 All shop drawings, samples, product data, and similar submittals required by the Contract Documents that are to illustrate some portion of the Work (“Submittals”) shall be submitted to Regeneron and Design Professional for review and approval prior to proceeding with that portion of the Work to which such Submittals pertain. Submittals shall be submitted in electronic form as required and specified in the Contract Documents. Construction Manager, by submitting Submittals, represents that it has determined and verified all materials, field measurements, and field conditions related thereto, and that Construction Manager has checked and coordinated the information contained within such Submittals with the requirements of the Work and the Contract Documents. Construction Manager shall stamp all submittals and include a submittal log number in the form required by Regeneron. Construction Manager’s Submittals shall identify in writing for each submittal all requested changes, deviations, or substitutions from the requirements of the Contract Documents.
- 27.2 The review and approval of any Construction Manager Submittals shall not be deemed to authorize changes, deviations, or substitutions from the requirements of the Contract Documents unless express written approval is obtained from Regeneron specifically authorizing such deviation, substitution, or change.
- 27.3 Construction Manager shall perform all Work in accordance with approved Submittals. Approval of shop drawings is not an authorization to perform Changed Work, unless the change procedures specified in ARTICLE 34 are followed. Approval does not relieve Construction Manager from responsibility for Defective Work resulting from errors or omissions on the approved shop drawings.
- 27.4 Record copies of the following, incorporating field changes and selections made during construction, shall be maintained at the Project Site and available to the Design Professional(s), Regeneron upon request: drawings, specifications, addenda and other modifications, and required Submittals including product data, samples, and shop drawings.
- 27.5 No substitutions shall be made in the Work unless permitted in the Contract Documents and then only after receipt of all approvals required under the Contract Documents for substitutions. All such substitutions shall be promptly memorialized in writing following approval by Regeneron.

ARTICLE 28 EXISTING CONDITIONS

- 28.1 By executing each SOW, Construction Manager shall be deemed to represent and agree that it has visited, or has had the opportunity to visit the Project Site to visually inspect the general and local conditions which could affect the Services.

28.2 If existing conditions (subsurface or otherwise) in or about the Project encountered at the Project Site are materially different from those indicated in the Contract Documents, Construction Manager shall stop affected Services after the condition is first observed and give prompt written notice of the condition to the Design Professional(s), Regeneron. Upon investigation, Regeneron shall direct Construction Manager in writing how to proceed in addressing the alleged conditions.

ARTICLE 29 TAXES

29.1 Except in the event of an exemption in favor of Regeneron, Construction Manager shall pay all applicable taxes for the Services provided by Construction Manager.

ARTICLE 30 CUTTING, FITTING, AND PATCHING

30.1 Construction Manager shall perform cutting, fitting, and patching necessary to coordinate the various parts of the Work and to prepare its Work for the work of Regeneron or others.

30.2 Cutting, patching, or altering the work of Regeneron or others shall only be done with the prior written approval of Regeneron. Such approval shall not be unreasonably withheld.

ARTICLE 31 CLEANING UP

31.1 Construction Manager shall regularly remove debris and waste materials at the Project Site resulting from the Work. Prior to discontinuing Work in an area, Construction Manager shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. Construction Manager shall minimize and confine dust and debris resulting from construction activities, including in the transport of debris and materials to and from the Project Site. Onsite dumpsters shall be used and located in coordination with Regeneron.

ARTICLE 32 ACCESS TO WORK

32.1 Construction Manager shall facilitate the access of Regeneron, the Design Professional(s) and others to Work in progress.

ARTICLE 33 SUBCONTRACTORS AND MATERIAL SUPPLIERS

33.1 The Services not performed by Construction Manager with its own forces shall be performed by Subcontractors and/or Material Suppliers retained by Construction Manager. All Subcontractors and Material Suppliers working onsite must be vetted and accepted by a Service Construction Manager Management System, such as ISN or such other system designated by Regeneron, prior to entering the Project Site.

33.2 Promptly after the execution of each SOW and from time to time thereafter, or as otherwise directed by Regeneron, Construction Manager shall provide the Design Professional(s) and Regeneron, with a written current list of the proposed Subcontractors and significant Material Suppliers it seeks to use for a portion of the Services, and identify the portion of the Services sought to be allocated to that Person. Regeneron may also designate specific Persons from whom Construction Manager shall obtain bids and/or hire.

33.3 If Regeneron has an objection to any proposed Subcontractor or Material Supplier, Regeneron shall notify Construction Manager in writing. A failure to promptly object shall constitute approval, which approval may be withdrawn at any time. If Regeneron has objected, Construction Manager shall not contract with the proposed Subcontractor or Material Supplier, and Construction Manager shall propose another

Subcontractor or Material Supplier for consideration.

- 33.4 All Subcontractors and Material Suppliers shall have and all maintain all licenses required for the performance of its work and services.
- 33.5 Construction Manager agrees to bind all of its Subcontractors and Material Suppliers (and require every Subcontractor to so bind its subcontractors and material suppliers) to all the provisions of Construction Manager's Services Agreement with Regeneron, and the Contract Documents as they apply to the Subcontractor's or Material Supplier's portions of the Services. Regeneron shall enjoy the same benefits and rights as to Construction Manager's Subcontractors and Material Suppliers as Construction Manager enjoys with respect thereto. Construction Manager shall enter written contracts with its Subcontractors and Material Suppliers, subject to the prior consent of Regeneron required in the Services Agreement, that impose upon such Persons the same duties and obligations to Regeneron as Construction Manager has to Regeneron. Should Regeneron terminate the Services Agreement, Construction Manager shall, upon Regeneron's request and at Regeneron's discretion, obtain assignment of the Subcontractor and/or Material Supplier agreement(s) with Construction Manager. That assignment does not change the fact that Regeneron has no contractual obligation to pay such Persons any amounts whatsoever on this Project, except prospective fees expressly agreed to by Regeneron after Regeneron's acceptance of assignment of the Subcontractor's and/or Material Supplier's agreement(s). As a condition precedent to Regeneron's payment of any of Construction Manager's Applications for Payment, Construction Manager shall supply Regeneron with copies of Construction Manager's agreements with all of its Subcontractors and Material Suppliers.

ARTICLE 34 CHANGES IN THE WORK

34.1 Changes.

- 34.1.1 Regeneron may order changes in the Services consisting of additions, deletions or other revisions, and the Contract Price and/or the Project Milestone Schedule may be adjusted accordingly. All such changes in the Services shall be authorized by a Change Order, and shall be performed under the applicable conditions of the Contract Documents.
- 34.1.2 A "Change Order" is a written order to Construction Manager in the form of **MSA Exhibit F** signed by Regeneron, issued after execution of the Services Agreement, authorizing a change in the Services or an adjustment in the Contract Price or the Project Milestone Schedule and fully describing or enumerating the Changed Work to be performed, or the Services to be omitted, as well as any change in Contract Price or Project Milestone Schedule.
- 34.1.3 The Contract Price and the Project Milestone Schedule may be changed only by a Change Order. A Change Order signed by Construction Manager indicates Construction Manager's agreement therewith, including the adjustment in the Contract Price or the Project Milestone Schedule and any nonadjustment in the Contract Price or the Project Milestone Schedule.
- 34.1.4 Use of any Allowance requires Regeneron's prior written approval; at no time shall Construction Manager assume the use or allocation of Allowances without such approval. Without limitation, Regeneron may at its option (i) direct that the amount of the Allowance or portions thereof be applied to any Cost of Work in the Project or to other Allowances or to Contingencies (whether or not associated with the trade work identified in the SOW for such Allowance), (ii) issue a credit Change Order in the amount of the Allowance or any portion thereof plus the Agreed Markup thereof, or (iii) direct that the amount the Allowance or any portion thereof be held pending further instructions from Regeneron.
- 34.1.5 Use of any Contingency requires Regeneron's prior written approval; at no time shall

Construction Manager assume the use or allocation of Contingencies without such approval. Without limitation, Regeneron may at its option (i) direct that the amount of the Contingency or portions thereof be applied to any Cost of Work in the Project or to other Contingencies or to Allowances (whether or not associated with the trade work identified in the SOW for such Contingency), (ii) issue a credit Change Order in the amount of the Contingency or any portion thereof plus the Agreed Markup thereof, or (iii) direct that the amount the Contingency or any portion thereof be held pending further instructions from Regeneron. All uses of Contingencies shall be recorded, logged, and tracked in a log managed by Construction Manager for inclusion in Construction Manager's monthly report and review in weekly project meetings.

34.1.6 No instructions, either written or verbal, shall be construed as an order for a change in the Contract Price or the Project Milestone Schedule unless they are in the form of a fully executed Change Order.

34.1.7 As an exception to Section 34.1.6, in situations of urgency (distinguished from emergency) wherein the immediate execution of changes is considered expedient and in the best interest of Regeneron, Regeneron may require Construction Manager to execute such changes by issuance of a written order to proceed (a "Proceed Order"). Such Proceed Order will fully describe or enumerate the work to be performed or deleted and specify, if applicable, which of the three methods delineated in **MSA Exhibit G** for the cost or credit resulting from such work shall be based. Upon the receipt of a Proceed Order, Construction Manager shall immediately proceed with the work required thereby, under protest, and the Parties shall reserve all rights in respect of the cost or credit resulting from such work. Subsequent to the issuance of a Proceed Order, Construction Manager shall prepare and submit to Regeneron and the Design Professionals a detailed Change Order proposal for determining the cost or credit resulting from such work. However, it is expressly understood that the preparation and submission of a proposal and subsequent issuance of a formal Change Order shall not be conditions precedent to the performance of the work required by a Proceed Order.

34.1.8 Regeneron shall have authority to make minor changes in the Services which are consistent with the intent of the Contract Documents and do not involve a change in Contract Price or Project Milestone Schedule. Such changes shall be effected by detailed written supplemental instructions prepared by Regeneron. Construction Manager shall implement such written orders promptly.

34.1.9 Changes to the Services or additional work required by an emergency endangering life or property shall be performed in accordance with Section 24.10, and the Parties shall reserve all rights in respect of the cost or credit resulting from such work.

34.2 Certain Claims and Disputes.

34.2.1 Procedures.

- (a) If Construction Manager considers any work demanded of it to be outside the requirements of the Contract Documents or to constitute additional or Changed Work which has not been duly authorized or recognized as Changed Work, or if Construction Manager considers any directive, instruction, ruling or decision of Regeneron or the Design Professionals to be incorrect or contrary to the intent of the Services Agreement, or if Construction Manager disputes any other matter relating to the execution and progress of the Services, or if Construction Manager disputes the amount of the adjustment of the Contract Price or Project Milestone Schedule for Changed Work, Construction Manager shall submit such claims in writing to Regeneron. All such claims shall state clearly and in detail Construction Manager's objections and reasons therefor and shall be submitted within seven (7) days of the occurrence of the event which led to the claim or protest. The claim shall be given

by Construction Manager before proceeding to execute the disputed or claimed Changed Work, except pursuant to a Proceed Order, or in an emergency endangering life or property in which case Construction Manager shall proceed in accordance with Section 24.10.

- (b) Upon written acknowledgment by Regeneron that Construction Manager's claim is valid, and upon agreement as to the changes, if any, to the Contract Price or Project Milestone Schedule for such work, a Change Order will be issued in accordance with Section 34.1.
- (c) If the Parties cannot resolve the claim, Regeneron may issue a Proceed Order with respect to the work that is the subject matter of the claim. Upon the receipt of the Proceed Order, Construction Manager shall immediately proceed with the work required thereby, under protest, without causing a delay pending resolution of the claim, and the Parties shall reserve all rights in respect of the claim.
- (d) No claim for an increase in the Contract Price shall be made on account of any increase in wage scales, material prices, taxes, insurances, cost indexes, or any other rates affecting the construction industry, this Agreement or a Services Agreement.
- (e) While Construction Manager is performing allegedly Changed Work disputed by the Parties or complying under protest with a Proceed Order, Construction Manager shall submit the materials required under **MSA Exhibit G**, Subparagraph 4.1.
- (f) Construction Manager's failure to comply strictly with these requirements shall constitute a waiver of any claim in respect of Changed Work or allegedly Changed Work, for extra compensation, extension of time, damages, or otherwise. Oral appeals or oral protests, no matter to whom made, shall be of no force or effect whatsoever.

ARTICLE 35 RESPONSIBILITY FOR LIENS

- 35.1 Construction Manager shall, within ten (10) days after filing, cause the removal of any liens filed against the Facility, Project and/or Project Site by any Person performing labor or services or supplying materials in connection with the Services. If Construction Manager fails to take such action on a lien, Regeneron may cause the lien to be removed at Construction Manager's expense, including bond costs and reasonable attorneys' fees, and charge the full amount to Construction Manager and/or deduct the full amount thereof from funds owed then or later to Construction Manager.
- 35.2 In no event shall the cost of removing liens, including bond costs and attorneys' fees, if any, be charged directly or indirectly to Regeneron.

ARTICLE 36 AUDIT RIGHTS

- 36.1 Regeneron and/or a third party authorized representative selected by Regeneron shall have (as many times and as often as it desires) access to, the right to audit and the right to copy pertinent parts of Construction Manager's books and records. Such records shall include but not be limited to accounting records (hard copy, as well as computer readable data); contracts; payroll records; subcontract agreements; vendor agreements; purchase orders; leases; original estimates; equipment logs; estimating work sheets; correspondence; receipts; memoranda; and any other supporting evidence deemed necessary to substantiate charges under or compliance with this Agreement and/or any Services Agreement. Construction Manager shall require its Subcontractors, Material Suppliers and consultants to comply with these auditing requirements.

ARTICLE 37 OWNERSHIP AND USE OF DOCUMENTS

37.1 Construction Manager hereby assigns to Regeneron, without reservation, all copyrights in all Project-related documents, models, photographs, and other expression created and/or possessed by Construction Manager, its third-party consultants and subcontractors. The Project-related documents (and all drafts and ancillary documents) are instruments of service and become property of Regeneron, and may be held by Regeneron at its sole discretion. All title to, ownership of, and copyright privileges in the applicable Project Documents (and all drafts and ancillary documents) will be vested in Regeneron. Regeneron shall own and possess any copyright or trademark embodied in the physical Project. Regeneron's obligation to pay Construction Manager is expressly conditioned upon Construction Manager obtaining a valid written comprehensive assignment of copyrights from its third-party consultants and subcontractors in terms identical to those that obligate Construction Manager to Regeneron as expressed in this Section, which copyrights Construction Manager, in turn, hereby assigns to Regeneron. Regeneron, in return, hereby grants Construction Manager and its consultants and subcontractors a revocable, nonexclusive license to reproduce the documents solely for purposes relating directly to Construction Manager's performance of its obligations under this Agreement and for Construction Manager's archival records, provided that Construction Manager's archive system must comply with all terms of this Agreement concerning propriety and confidentiality, and shall be subject to inspection and auditing by Regeneron at any time to verify compliance. This nonexclusive license shall terminate automatically upon the occurrence of either a breach of this Agreement by Construction Manager or the accused commission by Construction Manager of a tort or a crime affecting Regeneron or the applicable Project or upon termination of this Agreement. This nonexclusive license is granted to Construction Manager alone and shall not be assigned by Construction Manager to any other Person, except that the non-exclusive license granted in this Agreement to Construction Manager for purposes of Construction Manager's performance hereunder may be sub-licensed, upon Regeneron's prior written consent, to Construction Manager's consultants and subcontractors with the same limitations as set forth herein. Subject to the foregoing, this nonexclusive license shall terminate automatically upon Construction Manager's unauthorized assignment of this nonexclusive license to another or its attempt to do so.

ARTICLE 38 DISPUTES

38.1 Negotiation. The Parties will promptly attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement or a Services Agreement by negotiation through good faith discussions between Party representatives, who shall have the necessary authority to resolve the dispute.

38.2 Mediation. Within 60 days, but no earlier than 30 days, following the earlier of (1) receipt of notice by the other Party from the American Arbitration Association (AAA) of the disputing Party's demand for arbitration or (2) receipt by the other Party of the disputing Party's notice to litigate, or summons and complaint, the Parties shall submit the matter to non-binding mediation administered by the AAA under its Construction Industry Mediation Procedures, unless waived by mutual stipulation of both Parties.

38.3 Arbitration or Litigation. Disputes arising from or relating to this Agreement or a Services Agreement between Construction Manager and Regeneron which cannot be settled through negotiation or mediation shall be subject to arbitration or litigation as follows:

38.3.1 If the amount of the dispute between the Parties is under **\$250,000** and involves no other necessary parties, Regeneron and Construction Manager must arbitrate their dispute and the arbitration is to be governed by the Construction Industry Dispute Resolution Procedures of the American Arbitration Association (AAA) and such arbitration must take place in the county in which the applicable Project was to be constructed.

38.3.2 If the amount in dispute is over \$250,000, or there are other necessary parties, Regeneron and Construction Manager must litigate the matter in State or Federal Court within the County or District in

which the applicable Project was to be constructed.

- 38.3.3 Construction Manager hereby waives the right to elect the method of dispute resolution and agrees that this waiver is supported by sufficient and appropriate consideration. Construction Manager also agrees to prepare or modify all Project-related documents used or prepared by Construction Manager, including, but not limited to, agreements between Construction Manager and any third-party consultants, Subcontractors and/or Material Suppliers, to conform with this Section by reflecting this waiver, and by requiring similar waivers by such third-parties.
- 38.4 Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court.
- 38.5 Any award entered in an arbitration proceeding shall be final and binding upon the Parties and judgment may be entered in any court having jurisdiction.
- 38.6 The Parties agree that all parties necessary to resolve a claim or dispute shall be parties in the same action or arbitration, and if such joinder cannot occur via arbitration the dispute shall be litigated in the county in which the applicable Project was to be constructed regardless of the dollar amount of the dispute.
- 38.7 Construction Manager waives all objections to joinder of Construction Manager as a party to any Project-related mediation, arbitration, or litigation in which Regeneron is joined or is otherwise positioned as a party or in which Construction Manager's conduct or its performance of services is in any way relevant to the subject of a dispute. Construction Manager also agrees to prepare or modify all Project-related documents used or prepared by Construction Manager, including, but not limited to, agreements between Construction Manager and any third-party consultants, subcontractors and/or suppliers to conform with this Section by reflecting this waiver, and by requiring similar waivers by such third-parties.
- 38.8 Regeneron may offset against any payments to Construction Manager the amount of Regeneron's own affirmative claims against Construction Manager provided such claims are based upon alleged breaches of this Agreement, any Services Agreement or alleged failure to conform to the required professional standard of care.

ARTICLE 39 INDEMNIFICATION AND INSURANCE

39.1 Indemnification.

- 39.1.1 To the fullest extent permitted by law, Construction Manager shall indemnify, defend, and hold harmless Regeneron and its Affiliates, and its and their respective officers, directors, employees, subsidiaries, affiliates, members, principals, agents, and representatives (collectively, "Indemnatee"), from and against all liability, demands, allegations (whether valid or invalid), claims, costs, damages, fines, judgments, injury including death, settlements, and expenses (including without limitation defense costs and fees of attorneys, consultants, and experts) incurred by Indemnatee ("Losses"), arising out of or resulting from, or claimed to have arisen or resulted from, directly or indirectly, in whole or in part: (i) Construction Manager's performance of the Services or the Services performed by any of its Subcontractors; (ii) the failure of Construction Manager or its Subcontractors to perform their obligations in accordance with this Agreement, the Services Agreements or Applicable Laws; (iii) the inaccuracy or breach of any representation, provision, or warranty in this Agreement or the Services Agreements by Construction Manager or its Subcontractors; or (iv) any negligence or intentional misconduct of Construction Manager or its Subcontractors, anyone directly or indirectly employed by Construction Manager or a Subcontractors, or anyone for whose acts Construction Manager or a Subcontractors may be liable.

39.1.2 The indemnification obligations under this ARTICLE 39 shall not be limited by any assertion or finding that (1) the Person indemnified is liable by reason of non-delegable duty, or (2) the Losses were caused in part by the negligence of, breach of contract by, or violation of law by Indemnatee. The obligation to defend shall arise regardless of any claim or assertion that Indemnatee caused or contributed to the Losses.

39.1.3 Construction Manager shall indemnify, defend, and save harmless Indemnatee from and against all loss, cost, expense, royalties, claims for damages or liability, in law or in equity, including, without limitation, attorneys' fees, court costs, and other litigation expenses that may at any time arise or be set up for any infringement (or alleged infringement) of any patent, copyright, trade secret, trade name, trademark or any other proprietary right of any Person in consequence of the use on the applicable Project by Indemnatee of the design or construction documents (including any method, process, product, concept specified or depicted) supplied by Construction Manager, its officers, agents, employees, subcontractors, consultants, or any Person for whom Construction Manager is responsible, in the performance of this Agreement and/or any Services Agreement.

39.1.4 Nothing in this Agreement and/or any Services Agreement, including the provisions of this ARTICLE 39, shall constitute a waiver or limitation of any rights which Indemnatee may have under applicable law, including without limitation, the right to implied indemnity. All rights and remedies of Regeneron shall be cumulative.

39.2 Insurance Required to Be Maintained by Construction Manager.

39.2.1 Commencing on the date of this Agreement and ending three years after the later of the expiration or earlier termination of this Agreement and the completion and the Final Payment for Services under the final outstanding SOW, Construction Manager will provide and maintain at Construction Manager's own expense the minimum levels of insurance stated in **MSA Exhibit H**. Additional insurance may be stated in each SOW. No adjustment shall be made to the Contract Price on account of insurance costs unless Regeneron approves. As used in this Section 39.2, the term Construction Manager shall include Subcontractors and Sub-Subcontractors of every tier. Construction Manager shall furnish Certificates of Insurance evidencing and reflecting the effective date of coverage as outlined below. In no event shall Services be performed until the required evidence of Insurance is provided and is approved by Regeneron. If found to be non-compliant, Regeneron may purchase the required insurance coverage(s) and the cost will be borne by Construction Manager through direct payment/reimbursement to Regeneron or Regeneron may withhold payment to Construction Manager from amounts owed.

39.2.2 All insurance shall be procured from insurers permitted to do business in the State of New York, and if different, the states in which applicable Projects take place, and having an A.M. Best Rating of at least "A-, Class VIII".

39.2.3 Construction Manager shall not have a Self Insured Retention (SIR) on any policy greater than [REDACTED], which is the responsibility of Construction Manager. If Construction Manager's policy(ies) has a Self Insured Retention exceeding this amount, approval must be received from Regeneron prior to starting any Services. In the event any policy includes an SIR, Construction Manager is solely responsible for payment within the SIR of their policy(ies) and the Additional Insured requirements specified herein shall be provided within the SIR amount(s).

39.2.4 All insurance required herein, with the exception of the Professional Liability Insurance, shall be written on an "occurrence" basis. Claims-Made coverage must include:

- (a) The retroactive date must be on or prior to date of this Agreement; and
- (b) Construction Manager must purchase “tail coverage/an extended reporting period” or maintain coverage for a period of three years after the later of the expiration or earlier termination of this Agreement and the completion and the Final Payment for Services under the final outstanding SOW.

39.2.5 Construction Manager’s insurance carrier(s) shall agree to provide at least thirty (30) days prior notice to Regeneron in the event coverage is canceled or non-renewed. In the event of cancellation or non-renewal of coverage(s), it is Construction Manager’s responsibility to replace coverage to comply with the applicable insurance requirements so there is no lapse of coverage for any time period.

In the event the insurance carriers will not issue or endorse their policy(s) to comply with the above it is the responsibility of Construction Manager to report any notice of cancellation or non-renewal at least thirty (30) days prior to the effective date of this notice.

39.2.6 Construction Manager shall provide Regeneron with Certificates of Insurance, evidencing the insurance coverages stated in **MSA Exhibit H**, ten days prior to the start of Services and thereafter upon renewal or replacement of each coverage. Construction Manager shall not begin any Services until Regeneron has reviewed and approved the Certificate of Insurance. The required insurance shall not contain any exclusions or endorsements, which are not acceptable to Regeneron.

Failure of Regeneron to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Regeneron to identify a deficiency from evidence that is provided shall not be construed as a waiver of Construction Manager’s obligation to maintain such insurance.

With respect to insurance maintained after the expiration or earlier termination of this Agreement or the completion and the Final Payment for Services under the final outstanding SOW, in compliance with a requirement stated herein, an additional certificate(s) evidencing such coverage shall be provided to Regeneron with final application for payment and thereafter upon renewal or replacement of such insurance until the expiration of the time period for which such insurance must be maintained.

39.2.7 Regeneron (including Regeneron’s Affiliates) shall be added as Additional Insureds on all liability policies (except Workers’ Compensation and Professional Liability Policy, where applicable), for ongoing operations and completed operations (using ISO Endorsements CG 2010 and CG 2037, or their equivalents) on a primary noncontributory basis. Coverage to include ongoing and completed operations. Each of the Additional Insured’s respective directors, officers, partners, members, employees, agents and representatives shall also be afforded coverage as an Additional Insured. Coverage should be provided for a period of three years after the later of the expiration or earlier termination of this Agreement and the completion and the Final Payment for Services under the final outstanding SOW.

If Construction Manager is operating in a state that has implemented the “Anti-Indemnity” Additional Insured Endorsements, Construction Manager is required to provide the state specific additional insured endorsements for ongoing and completed operations. These states include but are not limited to: Montana, New Mexico, Oregon, Colorado, Kansas, California, Louisiana, and Texas.

Regeneron reserves the right to require Construction Manager to name other Persons as additional insureds as required by Regeneron.

There shall be no “Insured versus Insured Exclusion” on any policies (other than “Named Insured versus Named Insured”); all policies will provide for “cross liability coverage” as per standard ISO policy

forms.

39.2.8 Waiver of Rights of Subrogation: Construction Manager shall waive all rights of recovery against Regeneron/Client, Regeneron and all the additional insureds for loss or damage covered by any of the insurance maintained by Construction Manager.

39.2.9 The amount of insurance provided in the required insurance coverages, shall not be construed to be a limitation of the liability on the part of Construction Manager.

39.2.10 The carrying of insurance described shall in no way be interpreted as relieving Construction Manager of any responsibility or liability under the contract.

39.2.11 Any type of insurance or any increase in limits of liability not described above which Construction Manager requires for its own protection or on account of statute shall be its own expense.

39.2.12 Construction Manager shall promptly notify Regeneron and the appropriate insurance company(ies) in writing of any accident(s) as well as any claim, suit or process received by Construction Manager arising in the course of operations under the contract. Construction Manager shall forward such documents received to his insurance company(ies), as soon as practicable, or as required by their insurance policy(ies).

39.2.13 In no event shall the cost of Subcontractor Default Insurance, if any, be charged directly or indirectly to Regeneron.

ARTICLE 40 INFORMATION SECURITY

40.1 **Obligations.** Construction Manager acknowledges that Regeneron has relied on Construction Manager's responses to Regeneron's information security Standardized Information Gathering Questionnaire in entering into this Agreement and the Services Agreements. Construction Manager and the Persons authorized to receive Confidential Information under Section 41.2 ("Recipient Personnel") may access, collect, use, store and share Confidential Information solely in accordance with the Agreement and any written instructions given from time to time by Regeneron, and at all times in compliance with Applicable Laws. In accordance with terms of this Agreement, Construction Manager shall implement and maintain administrative, technical, and physical practices regarding security, privacy and backup, that are consistent with leading industry standards and practices, and to protect against known risks and vulnerabilities. Such protection shall include, but not be limited to: (i) personnel training and controls, such as communication of all applicable information security policies, background checks (as permitted by Applicable Laws), user authentication, security awareness training, and disciplinary processes; (ii) controls designed to ensure the physical safety and security of Construction Manager's facilities, including, without limitation, records of access, available for review by Regeneron; (iii) controls designed to ensure Construction Manager's security posture is maintained over time, such as patch management, backups, and incident management; (iv) controls designed to prevent intrusion or unauthorized access to Construction Manager's systems and Confidential Information, including virus protection software, firewalls, intrusion prevention technologies and other measures designed to ensure appropriate levels of access are restricted to authorized Recipient Personnel; (v) encryption of Confidential Information while in transport on public networks, or on Construction Manager's network, consistent with industry standards; (vi) a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational controls for ensuring the security of the processing; (vii) maintenance of credential security, including keeping user logins and passwords confidential, not sharing passwords with other Persons, utilizing complex passwords and changing those passwords periodically, and notifying Regeneron immediately of any unauthorized use of any password or account or any other known or suspected breach of security; and (viii) Construction Manager's performance

of vulnerability scans on all systems at least quarterly, such scan criteria to include currency on system patching and conformance with standard, secure baseline configurations, and scan criteria for internet facing systems (e.g. web sites) to include known vulnerabilities and the Open Web Application Security Project (OWASP) top ten critical security risks. Construction Manager shall remediate all urgent, critical and high vulnerabilities and provide to Regeneron, upon request, reports of these mitigation plans and timelines. Regeneron reserves the right to perform non-invasive, external security scans of these systems on a periodic basis. To the extent any specific additional security measures are set forth in an SOW or required under this Agreement, Construction Manager shall implement such measures as part of the Services. Every three years, upon Regeneron's written request, Construction Manager shall accurately complete and provide to Regeneron, the Standardized Information Gathering Questionnaire describing Construction Manager's computer systems and networks that process Regeneron's Confidential Information.

40.2 Security Incident. In the event there is any breach of the obligations of this ARTICLE 40 or of Section 41.2, or of Construction Manager's security or related procedures that could impact the confidentiality, integrity, or availability of any Confidential Information or any other use of Confidential Information not expressly permitted by the Agreement (an "Incident"), Construction Manager shall notify Regeneron promptly with full details at dataprotection@regeneron.com, shall investigate and take all reasonable steps to mitigate any potential damages and remediate the cause of the Incident, and keep Regeneron informed in detail of the status of such Incident and related remedies.

40.3 No International Data Transfers. Construction Manager shall not access or transfer Confidential Information outside of the United States without written permission of Regeneron.

40.4 No Sensitive Personal Information. The Parties acknowledge and agree that Regeneron shall not provide Construction Manager with access to, and Construction Manager shall not create, receive, maintain, transmit or access any, (i) information that has been identified by Regeneron as highly confidential; (ii) Sensitive Personal Information or (iii) Personal Information (as defined by applicable data protection laws), from individuals outside of the United States. "Sensitive Personal Information" means all Personal Information that is protected by applicable data protection laws or treated as Sensitive Personal Information under applicable data protection laws. Sensitive Personal Information shall include, but is not limited to, genetic, biometric, and health information, precise location information, financial or credit/debit card account information, social security number or other national identifier, driver's license information, race/ethnicity, nationality, sexual orientation, political opinions, labor/trade union membership, religious or philosophical beliefs.

ARTICLE 41 STATUTORY AND OTHER REQUIREMENTS

41.1 Anti-Discrimination. In connection with the performance of Construction Manager pursuant to this Agreement and the Services Agreements, Construction Manager shall provide equal treatment to, and not willfully discriminate against or allow harassment of, any employee or applicant for employment on the basis of: race; color; religion; ancestry; national origin; sex; age; sexual orientation; physical or mental disability; veteran's status; medical condition; marital status; gender identity; pregnancy; citizenship; or service in the uniformed services. Construction Manager will also take affirmative action to ensure that any such employee or applicant for employment is not discriminated against on any of the bases identified above. This equal treatment shall apply, but shall not be limited to, the following: upgrade, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Construction Manager also agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Construction Manager will, in all solicitations or advertisements for employees placed by or on behalf of Construction Manager, state that qualified applicants will receive consideration for employment without regard to: race; color; religion; sex; age; ancestry; national origin;

sexual orientation; physical or mental disability; veteran's status; medical condition; genetic information; marital status; gender identity; pregnancy; citizenship or service in the uniformed services. For purposes of this provision: (1) "Pregnancy" includes pregnancy, childbirth, and medical conditions related to pregnancy and childbirth; and (2) "Service in the uniformed services" includes membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services.

41.2 Confidentiality. Construction Manager shall consider all Project-specific information, except Project name and location, to be confidential and proprietary to Regeneron ("Confidential Information"). All SOWs, Services Agreements, designs, drawings, instruments of service, specifications, models, computer models, and other products of Construction Manager's services shall be deemed to be Confidential Information. No Confidential Information shall be disclosed to others by Construction Manager except to (1) Construction Manager's third-party subcontractors, suppliers, consultants and employees as necessary to perform their portion of Construction Manager's services; (2) those who have an official need to know the content of the information in order to perform services or construction solely and exclusively for the applicable Project; (3) building and government officials who need to know the content of the information in order to approve construction, to administer laws, codes, and regulations, or to perform their duties as to the applicable Project; and (4) third-party consultants and subcontractors whose contracts include similar restrictions on the use of information as needed to preserve for Regeneron the confidentiality of proprietary or Project-related information.

41.3 Anti-Bribery & Anti-Corruption. Regeneron, its representatives, and agents are bound by all applicable anti-corruption and anti-bribery laws and regulations, including but not limited to, the United States Foreign Corrupt Practices Act (FCPA) and United Kingdom Bribery Act. Construction Manager represents, warrants and covenants that Construction Manager shall not cause Regeneron or its representatives or agents to be in breach of their responsibilities through any act of Construction Manager. In performing the Services, Construction Manager (i) agrees that Construction Manager has not and shall not, directly or indirectly, offer to make, promise, authorize or accept any payment or anything of value, including bribes, gifts and/or donations to or from any public official, regulatory authorities or anyone else for the purpose of influencing, inducing or rewarding any act, omission or decision in order to secure an improper advantage, including to obtain or retain business, and (ii) shall comply with all applicable anti-corruption and anti-bribery laws and regulations. Construction Manager shall notify Regeneron or its representatives or agents immediately upon becoming aware of any breach under this Section.

41.4 Vendor Code of Conduct. Regeneron has a Vendor Code of Conduct ("Vendor Code of Conduct") and expects everyone with whom it has commercial dealings to meet such standards. Construction Manager hereby acknowledges that it has read Regeneron's Vendor Code of Conduct, which is available at https://www.regeneron.com/sites/default/files/Vendor_Code_-_May_2017_Version_1.1.pdf, and shall act at all times consistently with the terms thereof. Regeneron shall have the right, in its sole and absolute discretion, to immediately terminate this Agreement or one or more Services Agreements for cause in the event of a material violation of the Vendor Code of Conduct by Construction Manager.

ARTICLE 42 LIMITATION OF LIABILITY

42.1 Other than as expressly stated herein and except to the extent arising from or as it relates to (a) bodily injury or death, (b) a Party's gross negligence, intentional or willful misconduct, or fraudulent act or omission, (c) Construction Manager's indemnification obligations hereunder arising from third party claims, (d) a breach of a Party's confidentiality or information security obligations hereunder, or (e) any infringement or misappropriation of any intellectual property, materials, deliverables or confidential information owned or controlled by Regeneron, under no circumstances shall either Party be liable to the other Party for any indirect or consequential damages to the extent arising under this Agreement.

ARTICLE 43 EXTENT OF AGREEMENT

43.1 This Agreement, including:

| | |
|------------------------|--|
| MSA Exhibit A.1 | [Form of] Preconstruction Phase SOW |
| MSA Exhibit A.2 | [Form of] Early Work SOW |
| MSA Exhibit A.3 | [Form of] Construction Phase SOW |
| MSA Exhibit B | Lien Waiver Tracking Form |
| MSA Exhibit C | [Forms of] Waiver of Lien and Release |
| MSA Exhibit D | [Form of] Certificate of Substantial Completion |
| MSA Exhibit E | [Form of] Certificate of Final Completion |
| MSA Exhibit F | [Form of] Change Order |
| MSA Exhibit G | Calculation of Costs and Credits Resulting from Changed Work |
| MSA Exhibit H | Minimum Levels of Insurance |
| MSA Exhibit I | Digital Deliverable Requirements |
| MSA Exhibit J | Reimbursable Expense Policy |

together with the Services Agreements, represents the entire agreement between Regeneron and Construction Manager and supersedes all prior negotiations, representations and/or agreements whether oral or written.

43.2 This Agreement and all resulting Services Agreements may be amended only by written instrument signed by Regeneron and Construction Manager.

ARTICLE 44 NOTICES

44.1 All notices, requests, demands, claims, consents and other communications required or permitted to be given by one Party to the other (“Notices”) shall be in writing and shall be sent by: (a) a recognized overnight mail service such as Fed-Ex or United Parcel Service, with postage fully prepaid; (b) hand-delivery; or (c) e-mail with an additional copy sent via methods (a) or (b) above.

44.2 Notices solely with respect to this MSA shall be addressed to to the representative of the Party specified in the MSA from time to time pursuant to ARTICLE 2.

44.3 All other Notices, including those with respect to an SOW, a Project or a Services Agreement, shall be addressed to the representative of the Party specified from time to time in the SOW pursuant to ARTICLE 4.

44.4 Either Party may change its addresses for the purpose of receiving notices under this Agreement by written notice to the other Party.

44.5 All such Notices shall be deemed effective upon receipt.

ARTICLE 45 SUCCESSORS AND ASSIGNS

45.1 This Agreement and the Services Agreements shall be binding upon Regeneron and Construction Manager and their respective successors and assigns. Without limitation, any Services Agreement may be assigned by Regeneron to any Affiliate of Regeneron upon notice to Construction Manager. Neither the performance of this Agreement, the performance of any Services Agreement, nor any part thereof, nor any monies due or to become due, may be assigned by Construction Manager without the prior written consent and approval of Regeneron.

ARTICLE 46 TERMINATION

- 46.1 If an Event of Default occurs and is continuing, Regeneron may terminate all or part of this Agreement and/or any Services Agreement for cause. Such termination shall be effective upon 10 days notice (or more, if authorized in writing by Regeneron). Such termination shall be in addition to, and not in limitation of, any other right of Regeneron pursuant to this Agreement and the Services Agreements, at law, and in equity. If a termination for cause does occur, Regeneron will have the right, in addition to all other rights and remedies, to withhold monies otherwise payable to Construction Manager until the applicable Project is completed. If Regeneron incurs additional costs, expenses, or other damages due to the Event of Default, these costs, expenses, or other damages shall be deducted from the amounts withheld. Should the amounts withheld exceed the amounts deducted, the balance will be paid to Construction Manager upon completion of the applicable Project. If the costs, expenses, or other damages incurred by Regeneron exceed the amounts withheld, Construction Manager shall be liable to Regeneron for the difference. In the event that Regeneron is determined by a Court and/or arbitrator, pursuant to the dispute resolution terms of this Agreement, to have wrongfully terminated Construction Manager for cause, the Parties shall treat the termination as a termination for convenience under Section 46.2.
- 46.2 Regeneron may terminate this Agreement and/or any Services Agreement for convenience at any time upon written notice to Construction Manager, in which case Regeneron will pay Construction Manager only the apportioned Contract Price of the Services performed up to and including the effective date of termination, subject to Regeneron's right to withhold payments to the extent provided in the Services Agreement. No other compensation will be payable, including payment for anticipated profit on unperformed services.

ARTICLE 47 MISCELLANEOUS PROVISIONS

- 47.1 This Agreement together with each agreed-upon Services Agreement, represents the entire and integrated agreement between Regeneron and Construction Manager and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement and such Services Agreements may be amended only by a written instrument signed by both Regeneron and Construction Manager.
- 47.2 The provisions of this Agreement and/or any Services Agreements, which by their nature survive expiration or termination of this Agreement and/or any Services Agreement or final completion of applicable Services, including but not limited to any and all warranties, defense and indemnification obligations, insurance obligations, payment obligations, and Regeneron's right to audit Construction Manager's and Construction Manager's subcontractors' and consultants' books and records, dispute resolution, propriety and confidentiality, and document ownership, shall remain in full force and effect after any expiration or termination of this Agreement and/or any Services Agreement and/or final completion of applicable Services.
- 47.3 This Agreement and each Services Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement. The counterparts of this Agreement and each Services Agreement may be executed via a Regeneron approved digital signature process and shall have the same force and effect as the use of a manual signature. Regeneron reserves the right to reject any digital signature that cannot be positively verified by Regeneron's system as an authentic digital signature.
- 47.4 This Agreement and each Services Agreement shall be governed by, and construed in accordance with, the laws of the State of New York. Subject only to the terms of ARTICLE 38 of this Agreement, all disputes relating to or arising out of this Agreement and each Services Agreement shall be litigated in a state or federal court of competent jurisdiction within the county or district in which the Project was to be constructed, which

such state or federal court shall be the exclusive venue for all such disputes, unless otherwise subject to mediation or arbitration. The Parties waive objections to venue and personal jurisdiction to that forum. Construction Manager shall incorporate this forum selection clause into all agreements with third-parties, Persons (of any tier) providing Project-related services who, as Project participants, are in direct or indirect privity with Construction Manager. All such third-parties shall be deemed to be bound to this forum selection clause, which clause is supported by separate consideration of \$100.00 paid by Regeneron (or, in the case of third-parties, Construction Manager), which separate consideration shall be deemed to be paid from among first fee dollars paid to Construction Manager (or to such third-parties paid by Construction Manager or others, as the case may be). This Agreement and each Services Agreement shall be deemed to be made and performed in the State of New York.

- 47.5 Regeneron and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement and each Services Agreement. Construction Manager may not assign its interests or obligations under this Agreement and/or any Services Agreement without the written consent of Regeneron, which consent may be withheld by Regeneron for any reason. Regeneron reserves the right, upon notice to Construction Manager, to assign this Agreement and/or any Services Agreement to an Affiliate of Regeneron or to an institutional lender providing financing for the applicable Project or to other Persons who are ready and capable of performing Regeneron's obligations under the agreements.
- 47.6 If Regeneron requests Construction Manager to execute certificates, Construction Manager shall execute all such certificates that are consistent with this Agreement and/or any Services Agreement. If Regeneron requests Construction Manager to execute consents, Construction Manager shall execute all such consents that are consistent with this Agreement and/or any Services Agreement. Construction Manager shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement and/or any Services Agreement.
- 47.7 Nothing contained in this Agreement and/or any Services Agreement shall create a contractual relationship with or a cause of action in favor of a third party against Regeneron or Construction Manager.
- 47.8 This is a fully negotiated Agreement, and the Parties to it are represented by legal counsel. Accordingly, any ambiguity in the language of this Agreement or the Services Agreements shall not be construed against either Party on grounds that it was the drafter of the Agreement.
- 47.9 Any provision of this Agreement and/or any Services Agreement, either partially or completely, which is held by a Court of competent jurisdiction to be invalid, illegal or unenforceable will be ineffective to the extent of such invalidity, illegality, or unenforceability, without affecting in any way the remaining provisions thereof or rendering that or any other provision of this Agreement and/or any Services Agreement invalid, illegal or unenforceable.
- 47.10 The failure of either Party to enforce, in one or more instances, any of the terms, covenants, or conditions of this Agreement and/or any Services Agreement, or to exercise any of its rights, shall not be construed as a waiver of such term, provision, condition or right with respect to further performance.
- 47.11 Headings in this Agreement and/or any Services Agreement are for reference purposes only and shall not be deemed to have any substantive effect.
- 47.12 No remedy of Regeneron conferred by any of the specific provisions of this Agreement are intended to be exclusive of any other remedy, each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity or by statute or otherwise, and the election by a Party of one or more remedies shall not constitute a waiver of the Party's right to pursue any other viable remedies.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

REGENERON PHARMACEUTICALS, INC.

By: George Poth
Title: VP, Real Estate & Facilities Management
Date: Jan 27, 2021

CONSIGLI CONSTRUCTION COMPANY, INC.

By: Tim Barry
Title: Director of Operations
Date: Jan 27, 2021

MASTER SERVICES AGREEMENT
BETWEEN
REGENERON AND CONSTRUCTION MANAGER AT RISK

MSA EXHIBIT A.1

[FORM OF] PRECONSTRUCTION PHASE STATEMENT OF WORK

[Parties to populate with agreed terms]

This **PRECONSTRUCTION PHASE STATEMENT OF WORK** (“Preconstruction Phase SOW”) is provided by the undersigned Regeneron to the undersigned Construction Manager (“Construction Manager”) pursuant to a Master Services Agreement between the Parties dated _____, 20__ concerning the Project(s) specified herein (the “MSA”). All capitalized terms not expressly defined herein, shall have the meanings provided for under the MSA. Upon execution of this Preconstruction Phase SOW by both Parties, this Preconstruction Phase SOW combined with the MSA shall collectively form a Services Agreement as referenced in the MSA.

1. Project Summary

Below is a brief summary of the Project and scope of services for this SOW. See sections 7 and 9 below for more detailed information.

2. Preconstruction Phase Fee

Fee (Lump Sum Total)*: \$ _____

*includes all expenses

Preconstruction Phase Fee by Phase:

| Phase | Fee | Expenses | Total by Phase | Percent of Total Fee |
|--|------------|-----------------|-----------------------|-----------------------------|
| Feasibility Study | \$ | \$ | \$ | |
| Pre-Design | \$ | \$ | \$ | |
| Schematic Design | \$ | \$ | \$ | |
| Design Development | \$ | \$ | \$ | |
| Construction Documents | \$ | \$ | \$ | |
| Bidding/ Negotiation * | \$ | \$ | \$ | |
| Total Preconstruction Phase Fee | \$ | \$ | \$ | 100% |

* Bidding / Negotiation Fees and Expenses include Construction Phase Bidding & Negotiation as well as Bidding and Negotiation for any Early Work.

3. Agreed Markup

The Agreed Markup for the Early Work SOW, the Construction Phase SOW and Change Orders shall be determined according to the total Agreed Markup fixed percentage in the table below.

| Markup Category | Fixed percentage |
|-----------------------------|-------------------------|
| Construction Management Fee | |
| Insurance | |
| Total Agreed Markup | |

4. Hourly Rates

The Construction Manager labor rates set forth herein shall represent the negotiated hourly rates for the term of the Preconstruction Phase of the Services Agreement, subject to the compensation terms set forth in the Services Agreement. Add or modify lines as required.

| | Total Hourly Rate | | |
|-------------------------|---------------------------------|----------------------------|--------------|
| | Direct Personnel Expense | Overhead and Profit | Total |
| Project Executive | \$ | \$ | \$ |
| Project Manager | \$ | \$ | \$ |
| Preconstruction Manager | \$ | \$ | \$ |
| Project Superintendent | \$ | \$ | \$ |
| MEP Superintendent | \$ | \$ | \$ |
| LEED Compliance | \$ | \$ | \$ |
| Site Safety Officer | \$ | \$ | \$ |
| BIM Coordinator | \$ | \$ | \$ |

5. General Conditions Unit Costs

General Conditions Costs for the Early Work SOW, the Construction Phase SOW and Change Orders (if applicable) shall be determined according to the unit costs established in A.1 SOW Exhibit A. Exhibits documenting the actual General Conditions Costs shall be included with the Early Work SOW and the Construction Phase SOW as well as the Change Orders (if applicable). General Conditions shall be included in the Cost of Work.

6. Construction Manager’s Self Performed Labor Rates

The rates set forth herein shall represent the negotiated hourly rates for the term of the Services Agreement, subject to the compensation terms set forth in the Services Agreement.

In the spaces below, list the categories of employees which may be utilized in the performance of a Change Order. Some examples are “Painter”, “Carpenter”, “Helper”, “Master Electrician” etc. Next to each category enter the fully loaded hourly rate for both regular and premium time. If more spaces are required to list labor categories, this sheet may be duplicated. Rates shall not exceed union hall labor rates, unless the rates that exceed union hall labor rates are specifically identified to and approved by Regeneron.

| Position | Hourly Rate Regular Time | Hourly Rate Premium Time |
|----------|--------------------------|--------------------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

7. Project

7.1. Project Site

Address:

Regeneron Building Number(s):

Floor(s):

Existing Room Number(s):

7.2. Project Description

7.3. Program

7.4. Sustainability Objectives and Incentive Filings

The following are sustainability objectives and incentive filings identified for the Project. The Construction Manager shall provide any documentation required to support filings for these incentives and objectives.

- LEED level: _____
- Energy Star
- NYSERDA
- Utility Incentive(s): _____
- Other: _____

7.5. List of Drawings, Specifications and other relevant information

The list of any current drawings, specifications and other relevant documents, with issue descriptions and dates of issue, is as shown in A.1 SOW Exhibit C.

7.6. BIM and Digital Deliverable Requirements

- BIM is not a Regeneration requirement on this project. However, if the Construction Manager and/or the Trade Subcontractor(s) elect to use BIM, the native files used by the Construction Manager and the Trade Subcontractor(s) are considered deliverables for the project and are subject to the provisions in the Digital Deliverable Requirements (A.1 SOW Exhibit D) for projects where BIM is not required.
- A Collaborative BIM Process is required on this project. The provisions for BIM as outlined in the Digital Deliverable Requirements (A.1 SOW Exhibit D) and the BIM Project Execution Plan (A.1 SOW Exhibit E) apply.

8. **Milestone Event Dates** (Design deliverable deadlines)

| <u>Phase</u> | <u>Start</u> | <u>End</u> | <u>Estimator, Construction Manager & Owner Review Completion</u> | <u>Duration</u> |
|--|--------------|------------|--|-----------------|
| Feasibility Study | | | | |
| Pre-design/BOD | | | | |
| Schematic Design | | | | |
| 50% Design Development | | | | |
| 100% Design Development | | | | |
| 50% Construction Documents | | | | |
| 100% Construction Documents Bid Package | | | | |

9. **Preconstruction Phase Services**

The Preconstruction Phase Services are as specified below, or as stated, without change, in the MSA.

10. Project Participants.

The following Persons are designated by the Parties to hold certain representative positions under the MSA:

| | | |
|-----------|---|---|
| 1) | <u>Initial Construction Manager Representatives:</u> | |
| a) | Construction Manager’s representative authorized to act on behalf of Construction Manager respecting this SOW (MSA Article 4) | <u>[Name], [Title]</u> _____ _____ _____ <i>Email:</i> |
| b) | Construction Manager’s Safety Representative: | |
| 2) | <u>Initial Regeneron Representatives:</u> | |
| | Regeneron’s representative authorized to act on behalf of Regeneron respecting this SOW (MSA Article 4): | <u>[Name], [Title]</u> <i>Regeneron Pharmaceuticals, Inc.</i> <i>777 Old Saw Mill River Road</i> <i>Tarrytown, New York 10591</i> <i>Email:</i> |
| 3) | <u>Design Professional:</u> | |
| 4) | <u>Design Professional:</u> | |
| 5) | <u>Other:</u> | |

The following are Key Personnel:

| <u>Function*</u> | <u>Name</u> | <u>E-mail</u> | <u>Cell Phone</u> |
|--------------------------------|--------------------|----------------------|--------------------------|
| Project Executive | | | |
| Project Manager | | | |
| Preconstruction Manager | | | |
| Project Superintendent | | | |
| MEP Superintendent | | | |
| LEED Compliance | | | |
| Site Safety Officer | | | |
| BIM Coordinator | | | |

*Modify as necessary

11. **Additional Insurance Requirements.** In addition to the minimum insurance coverages stated in the MSA, Construction Manager shall obtain, keep in force, and maintain additional insurance in the following quantities and types at Regeneron’s expense:

| |
|--|
| |
|--|

Refer to A.1 SOW Exhibit B for detailed information regarding additional insurance requirements.

12. **Business Continuity Plans / Disaster Recovery**

- The Construction Manager has policies for Business Continuity Plans and Disaster Recovery that have been reviewed by Regeneron
- The Construction Manager does not have policies for Business Continuity Plans and Disaster Recovery

13. **Exhibits**

The following Exhibits are incorporated into this SOW:

| | |
|-------------------|--|
| A.1 SOW Exhibit A | General Conditions Unit Costs |
| A.1 SOW Exhibit B | Additional Insurance Requirements |
| A.1 SOW Exhibit C | List of Drawings, Specifications and Relevant Documentation |
| A.1 SOW Exhibit D | Digital Deliverable Requirements |
| A.1 SOW Exhibit E | BIM Project Execution Plan (for collaborative BIM projects only) |

14. **Other.** _____.

15. **Other.** _____.

IN WITNESS WHEREOF, Regeneron and the Construction Manager hereby execute this Preconstruction Phase SOW in accordance with MSA, thereby establishing a Services Agreement thereunder.

CONSTRUCTION MANAGER:

**REGENERON PHARMACEUTICALS,
INC.**

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

MASTER SERVICES AGREEMENT
BETWEEN
REGENERON AND CONSTRUCTION MANAGER AT RISK

MSA EXHIBIT A.2

[FORM OF] EARLY WORK STATEMENT OF WORK

[Parties to populate with agreed terms]

This **EARLY WORK STATEMENT OF WORK** (“Early Work SOW”) is provided by the undersigned Regeneron to the undersigned Construction Manager (“Construction Manager”) pursuant to a Master Services Agreement between the Parties dated _____, 20__ concerning the Project(s) specified herein (as amended hereby, the “MSA”). All capitalized terms not expressly defined herein, shall have the meanings provided for under the MSA. Upon execution of this Early Work SOW by both Parties, this Early Work SOW amends the Services Agreement established pursuant to *[list prior SOWs]* as referenced in the MSA.

1. Project.

1.1. Project Site

Address:

Regeneron Building Number(s):

Floor(s):

Existing Room Number(s):

1.2. Project Description

1.3. List of Contract Documents

The list of Contract Documents for the Early Work including all sheets in the drawing set, specifications, and addenda, with issue descriptions and dates of issue, is as shown in A.2 SOW Exhibit G.

2. Early Work

The Early Work is as specified below, or as stated, without change, in the MSA.

3. Early Work Contract Sum. The parties agree that the Early Work Contract Sum for the Project is \$ _____, consisting of:

| | |
|---|----|
| Cost of the Work | |
| Trade Costs | \$ |
| Permits | \$ |
| General Conditions | \$ |
| Total Cost of Work | \$ |
| Agreed Markup (from the Preconstruction Phase SOW) | |
| Construction Manager's Fee (%) | \$ |
| Insurance (%) | \$ |
| Total Agreed Markup (%) | \$ |
| Early Work Contract Sum | |
| Early Work Contract Sum = Cost of Work + Agreed Markup | \$ |

4. Basis of Early Work Contract Sum. The Early Work Contract Sum is based on the Early Work Contract Sum Supporting Documents attached as A.2 SOW Exhibits A & H-P (___ pages). Exhibits include the Early Work SOW cost summary, the schedule of values apportioning the work and services with supporting documentation, a schedule of applicable alternate prices, a schedule of applicable unit prices, a statement of the work to be self-performed by the Construction Manager, a list of the proposed Subcontractors and Material Suppliers, a schedule of the General Conditions costs using the unit costs established in the Preconstruction Phase SOW, allowances, assumptions, exclusions, and alternates designated therein.
5. Project Milestone Schedule: Milestone Events.

| | <u><i>Milestone Event</i></u> | <u><i>Completion Date</i></u> |
|----|---|-------------------------------|
| a) | <i>[Subcontractors' Bid Packages]</i> | <i>[_____, 20__]</i> |
| b) | <i>[Early Work Construction Commencement]</i> | <i>[_____, 20__]</i> |
| c) | <i>[Early Work Completion]</i> | <i>[_____, 20__]</i> |
| d) | <i>[Other]</i> | <i>[_____, 20__]</i> |
| e) | <i>[Other]</i> | <i>[_____, 20__]</i> |

6. Project Participants. The following Persons are designated by the Parties to hold certain representative positions under the MSA:

| | | |
|-----------|---|---|
| 1) | <u>Construction Manager Representatives:</u> | |
| a) | Construction Manager’s representative authorized to act on behalf of Construction Manager respecting this SOW (MSA Article 4) | <u>[Name], [Title]</u> _____ _____ _____ <i>Email:</i> |
| b) | Construction Manager’s Safety Representative: | |
| 2) | <u>Regeneron Representatives:</u> | |
| | Regeneron’s representative authorized to act on behalf of Regeneron respecting this SOW (MSA Article 4): | <u>[Name], [Title]</u> <i>Regeneron Pharmaceuticals, Inc.</i> <i>777 Old Saw Mill River Road</i> <i>Tarrytown, New York 10591</i> <i>Email:</i> |
| 3) | <u>Design Professional:</u> | |
| 4) | <u>Design Professional:</u> | |
| 5) | <u>Other:</u> | |

7. Staffing Plan

The Staffing Plan showing all Construction Manager staff hours listed by month for the duration of the Early Work shall be as per A.2 SOW Exhibit F.

8. Subcontractors

The following Exhibits pertain to the Subcontractors retained by the Construction Manager: the list of Subcontractors and Material Suppliers (A.2 SOW Exhibit P); the Subcontractor Procurement Plan (A.2 SOW Exhibit Q); the Sample Subcontract (A.2 SOW Exhibit R); and the Sample Subcontractor Award Recommendations (A.2 SOW Exhibit S).

9. Additional Insurance Requirements. In addition to the minimum insurance coverages stated in the MSA, Construction Manager shall obtain, keep in force, and maintain additional insurance in the following quantities and types at Regeneron’s expense:

Refer to A.2 SOW Exhibit B for detailed information regarding additional insurance requirements.

10. Project Turnover, Digital Deliverable and BIM Requirements

Requirements for Project Turnover Documents shall be as outlined in the Contract Documents and A.2 SOW Exhibit C – Project Turnover Checklist.

Digital Deliverables shall follow the requirements as outlined in Section 7.6 (BIM and Digital Deliverable Requirements) in the Preconstruction Phase SOW.

For projects where BIM is identified as a Regeneration requirement, A.2 SOW Exhibit U (the BIM Project Execution Plan as amended during the Design phase) and the Contract Documents shall define the requirements for BIM during the Early Work.

11. Form of Reporting

The Form of Reporting to be used by the Construction Manager is included in A.2 SOW Exhibit T.

12. Project Logistics Plan

The Project Logistics Plan shall be as per A.2 SOW Exhibit D.

13. Site Safety Plan

The Site Safety Plan shall be as per A.2 SOW Exhibit E.

14. Exhibits

The following Exhibits are incorporated into this SOW:

| | |
|-------------------|--|
| A.2 SOW Exhibit A | Early Work SOW Cost Summary |
| A.2 SOW Exhibit B | Project Additional Insurance Requirements |
| A.2 SOW Exhibit C | Project Turnover Matrix |
| A.2 SOW Exhibit D | Project Logistics Plan |
| A.2 SOW Exhibit E | Site Safety Plan |
| A.2 SOW Exhibit F | Staffing Plan |
| A.2 SOW Exhibit G | List of Contract Documents |
| A.2 SOW Exhibit H | Schedule of Values |
| A.2 SOW Exhibit I | Schedule of Alternate Prices |
| A.2 SOW Exhibit J | Schedule of Unit Prices |
| A.2 SOW Exhibit K | Statement of Work to be Self-performed by the Construction Manager |
| A.2 SOW Exhibit L | Schedule of General Conditions Costs |
| A.2 SOW Exhibit M | Allowances |
| A.2 SOW Exhibit N | Alternates |
| A.2 SOW Exhibit O | Exclusions and Assumptions |
| A.2 SOW Exhibit P | List of Subcontractors and Material Suppliers |
| A.2 SOW Exhibit Q | Subcontractor Procurement Plan |
| A.2 SOW Exhibit R | Sample Subcontract |
| A.2 SOW Exhibit S | Sample Subcontractor Award Recommendations |
| A.2 SOW Exhibit T | Form of Reporting |
| A.2 SOW Exhibit U | BIM Project Execution Plan (for collaborative BIM projects only) |

15. Other. _____.

16. Other. _____.

IN WITNESS WHEREOF, Regeneron and the Construction Manager hereby execute this Early Work SOW in accordance with MSA, thereby amending the Services Agreement established pursuant to [*list prior SOWs*] as referenced in the MSA.

CONSTRUCTION MANAGER:

**REGENERON PHARMACEUTICALS,
INC.**

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

A.2 SOW EXHIBIT A

EARLY WORK SOW COST SUMMARY

| PROJECT INFORMATION | |
|----------------------|--|
| Project Name: | |
| Project Address: | |
| Vendor Company Name: | |

| COST | Base Bid Cost of Work | | | | |
|------------------------------------|-----------------------|-------------------------------------|-----------|-----------|-------|
| | No. | Item | Lump Sum | Allowance | Total |
| | 1 | Base Bid Trade Cost | \$ | \$ | \$ |
| | 2 | Permit Fees | \$ | \$ | \$ |
| | 3 | Base Bid General Conditions | \$ | \$ | \$ |
| | 4 | Contingency (2% Max of Trade Costs) | \$ | \$ | \$ |
| Base Bid Total Cost of Work | | \$ | \$ | \$ | |

| PLUS | Base Bid Agreed Markup | | | | |
|--|------------------------|--------------------|-----------|-----------|-------|
| | No. | Item | Lump Sum | Allowance | Total |
| | 5 | Fee (____%) | \$ | \$ | \$ |
| | 6 | Insurance (____%) | \$ | \$ | \$ |
| Base Bid Total Agreed Markup (____%) | | \$ | \$ | \$ | |

| ALTER-NATES | Approved Alternates (See Alternates Exhibit for Cost Breakdown)* | | | | |
|----------------------------------|--|-------------|-----------|-----------|-------|
| | | Item | Lump Sum | Allowance | Total |
| | | Alternate 1 | \$ | \$ | \$ |
| | | Alternate 2 | \$ | \$ | \$ |
| | | Alternate 3 | \$ | \$ | \$ |
| Total Approved Alternates | | \$ | \$ | \$ | |

| COST PLUS TOTAL | Early Work Contract Sum | | | | |
|--------------------------------------|-------------------------|------------------------------|-----------|-----------|-------|
| | No. | Item | Lump Sum | Allowance | Total |
| | 7 | Base Bid Total Cost of Work | \$ | \$ | \$ |
| | 8 | Base Bid Total Agreed Markup | \$ | \$ | \$ |
| | 9 | Total Approved Alternates | \$ | \$ | \$ |
| Total Early Work Contract Sum | | \$ | \$ | \$ | |

* Alternates are options for scopes of work which are defined in the Construction Documents for bidding and negotiation. On execution of the Early Work SOW, Regeneron may elect to approve some or all of these Alternates (“Approved Alternates”). Approved Alternates shall be executed with no further directives, approvals or Change Orders from Regeneron unless they include an Allowance. Alternate costs include General Conditions costs and the Agreed Markup. Detailed scope and cost breakdowns for Alternates are included in A.2 SOW Exhibit N.

EARLY WORK SOW COST SUMMARY (BASE BID TRADE COSTS)

Note: Organize trade costs by Masterformat CSI 48 divisions. Add rows as required.

| BASE BID TRADE COST BREAKDOWN | | | | | |
|---|---|-----|-----------|---------------|-----------|
| Company | Description of Item | Qty | Unit Cost | Lump Sum Cost | Allowance |
| 01 – General Requirements (Temporary Facilities and Controls Only, see below for Construction Manager Costs) | | | | | |
| | | | | | |
| | | | | | |
| | 01 – GENERAL REQUIREMENTS TOTAL | | | | |
| 02 – Existing Conditions | | | | | |
| | | | | | |
| | | | | | |
| | 02 – EXISTING CONDITIONS TOTAL | | | | |
| 03 – Concrete | | | | | |
| | | | | | |
| | | | | | |
| | 03 – CONCRETE TOTAL | | | | |
| 04 – Masonry | | | | | |
| | | | | | |
| | | | | | |
| | 04 – MASONRY TOTAL | | | | |
| 05 – Metals | | | | | |
| | | | | | |
| | | | | | |
| | 05 – METALS TOTAL | | | | |
| 06 – Wood, Plastics and Composites | | | | | |
| | | | | | |
| | | | | | |
| | 06 – WOOD, PLASTICS AND COMPOSITES TOTAL | | | | |
| 07 – Thermal and Moisture Protection | | | | | |
| | | | | | |
| | | | | | |
| | 07 – THERMAL AND MOISTURE PROTECTION TOTAL | | | | |
| 08 – Openings | | | | | |
| | | | | | |
| | | | | | |
| | 08 – OPENINGS TOTAL | | | | |
| 09 – Finishes | | | | | |
| | | | | | |
| | | | | | |

| BASE BID TRADE COST BREAKDOWN | | | | | |
|-------------------------------|---------------------------------|-----|-----------|---------------|-----------|
| Company | Description of Item | Qty | Unit Cost | Lump Sum Cost | Allowance |
| | 09 – FINISHES TOTAL | | | | |
| 10 – Specialties | | | | | |
| | | | | | |
| | | | | | |
| | 10 – SPECIALTIES TOTAL | | | | |
| 11 – Equipment | | | | | |
| | | | | | |
| | | | | | |
| | 11 – EQUIPMENT TOTAL | | | | |
| 12 – Furnishings | | | | | |
| | | | | | |
| | | | | | |
| | 12 – FURNISHINGS TOTAL | | | | |
| 13 – Special Construction | | | | | |
| | | | | | |
| | | | | | |
| | 13 – SPECIAL CONSTRUCTION TOTAL | | | | |
| 14 – Conveying Equipment | | | | | |
| | | | | | |
| | | | | | |
| | 14 – CONVEYING EQUIPMENT TOTAL | | | | |
| 21 – Fire Suppression | | | | | |
| | | | | | |
| | | | | | |
| | 21 – FIRE SUPPRESSION TOTAL | | | | |

| BASE BID TRADE COST BREAKDOWN | | | | | |
|-------------------------------------|---|-----|-----------|---------------|-----------|
| Company | Description of Item | Qty | Unit Cost | Lump Sum Cost | Allowance |
| 22 – Plumbing | | | | | |
| | | | | | |
| | | | | | |
| | 22 – PLUMBING TOTAL | | | | |
| 23 – HVAC | | | | | |
| | | | | | |
| | | | | | |
| | 23 – HVAC TOTAL | | | | |
| 25 – Integrated Automation | | | | | |
| | | | | | |
| | | | | | |
| | 25 – INTEGRATED AUTOMATION TOTAL | | | | |
| 26 – Electrical | | | | | |
| | | | | | |
| | | | | | |
| | 26 – ELECTRICAL TOTAL | | | | |
| 27 – Communications | | | | | |
| | | | | | |
| | | | | | |
| | 27 – COMMUNICATIONS TOTAL | | | | |
| 28 – Electronic Safety and Security | | | | | |
| | | | | | |
| | | | | | |
| | 28 – ELECTRONIC SAFETY AND SECURITY TOTAL | | | | |
| 31 – Earthwork | | | | | |
| | | | | | |
| | | | | | |
| | 31 – EARTHWORK TOTAL | | | | |
| 32 – Exterior Improvements | | | | | |
| | | | | | |
| | | | | | |
| | 32 – EXTERIOR IMPROVEMENTS TOTAL | | | | |

| BASE BID TRADE COST BREAKDOWN | | | | | |
|----------------------------------|--|-----|-----------|---------------|-----------|
| Company | Description of Item | Qty | Unit Cost | Lump Sum Cost | Allowance |
| 33 – Utilities | | | | | |
| | | | | | |
| | | | | | |
| | 33 – UTILITIES TOTAL | | | | |
| 48 – Electrical Power Generation | | | | | |
| | | | | | |
| | | | | | |
| | 48 – ELECTRICAL POWER GENERATION TOTAL | | | | |
| BASE BID TRADE COSTS SUBTOTAL | | | | | |
| | BASE BID TRADE COSTS SUBTOTAL | | | | |

EARLY WORK SOW COST SUMMARY (SUBCONTRACTOR'S LABOR RATES)

| SUBCONTRACTOR'S LABOR RATES | | |
|--|--------------------------|--------------------------|
| <p>The rates set forth herein shall represent the negotiated hourly rates for the term of the Services Agreement, subject to the compensation terms set forth in the Services Agreement.</p> <p>In the spaces below, list the categories of employees which may be utilized in the performance of a Change Order. Some examples are "Painter", "Carpenter", "Helper", "Master Electrician" etc. Next to each category enter the fully loaded hourly rate for both regular and premium time. If more spaces are required to list labor categories, this sheet may be duplicated. Rates shall not exceed union hall labor rates, unless the rates that exceed union hall labor rates are specifically identified to and approved by Regeneron.</p> | | |
| Position | Hourly Rate Regular Time | Hourly Rate Premium Time |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

MASTER SERVICES AGREEMENT
BETWEEN
REGENERON AND CONSTRUCTION MANAGER AT RISK

MSA EXHIBIT A.3

[FORM OF] CONSTRUCTION PHASE STATEMENT OF WORK

[Parties to populate with agreed terms]

This **CONSTRUCTION PHASE STATEMENT OF WORK** (“Construction Phase SOW”) is provided by the undersigned Regeneron to the undersigned Construction Manager (“Construction Manager”) pursuant to a Master Services Agreement between the Parties dated _____, 20__ concerning the Project(s) specified herein, as amended (as amended hereby “MSA”). All capitalized terms not expressly defined herein, shall have the meanings provided for under the MSA. Upon execution of this Construction Phase SOW by both Parties, this Construction Phase SOW amends the Services Agreement established pursuant to [*list prior SOWs*] as referenced in the MSA.

1. Project.

1.1. Project Site

Address:

Regeneron Building Number(s):

Floor(s):

Existing Room Number(s):

1.2. Project Description

1.3. List of Contract Documents

The list of Contract Documents for the Construction Phase work including all sheets in the drawing set, specifications, and addenda, with issue descriptions and dates of issue, is as shown in A.3 SOW Exhibit G.

2. Construction Phase Services.

The Construction Phase Services are as specified below, or as stated, without change, in the MSA.

| |
|--|
| |
|--|

3. Construction Phase Contract Sum. The parties agree that the Construction Phase Contract Sum for the Project is \$_____, consisting of:

| | |
|---|-----------|
| Cost of the Work | |
| Trade Costs | \$ |
| Permits | \$ |
| General Conditions | \$ |
| Total Cost of Work | \$ |
| Agreed Markup (from the Preconstruction Phase SOW) | |
| Construction Manager's Fee (%) | \$ |
| Insurance (%) | \$ |
| Total Agreed Markup (%) | \$ |
| Construction Phase Contract Sum | |
| Construction Phase Contract Sum = Cost of Work + Agreed Markup | \$ |

4. Basis of Construction Phase Contract Sum. The Construction Phase Contract Sum is based on the Construction Phase Contract Sum Supporting Documents attached as A.3 SOW Exhibits A & H-P (____ pages). Exhibits include the Construction Phase SOW Cost Summary, the schedule of values apportioning the work and services with supporting documentation, a schedule of applicable alternate prices, a schedule of applicable unit prices, a statement of the work to be self-performed by the Construction Manager, a list of the proposed Subcontractors and Material Suppliers, a schedule of the General Conditions costs using the unit costs established in the Preconstruction Phase SOW, allowances, assumptions, exclusions, and alternates designated therein.
5. Project Milestone Schedule; Milestone Events; Liquidated Damages.

| | <u><i>Milestone Event</i></u> | <u><i>Completion Date</i></u> |
|----|---------------------------------------|-------------------------------|
| a) | <i>[Subcontractors' Bid Packages]</i> | <i>[_____, 20__]</i> |
| b) | <i>[Construction Commencement]</i> | <i>[_____, 20__]</i> |
| c) | <i>[Substantial Completion]</i> | <i>[_____, 20__]</i> |
| d) | <i>[Certificate of Occupancy]</i> | <i>[_____, 20__]</i> |
| e) | <i>[Final Completion]</i> | <i>[_____, 20__]</i> |
| f) | <i>[Other]</i> | <i>[_____, 20__]</i> |
| g) | <i>[Other]</i> | <i>[_____, 20__]</i> |

If Construction Manager is unable to reach the _____ Milestone Event above, Regeneron shall be entitled to **Liquidated Damages of \$0000.00 per day** in accordance with the referenced MSA.

6. Project Participants. The following Persons are designated by the Parties to hold certain representative positions under the MSA:

| | | |
|-----------|---|--|
| 1) | <u>Construction Manager Representatives:</u> | |
| a) | Construction Manager’s representative authorized to act on behalf of Construction Manager respecting this SOW (MSA Article 4) | <u>[Name], [Title]</u> _____ _____ _____ Email: _____ |
| b) | Construction Manager’s Safety Representative: | |
| 2) | <u>Regeneron Representatives:</u> | |
| | Regeneron’s representative authorized to act on behalf of Regeneron respecting this SOW (MSA Article 4): | <u>[Name], [Title]</u> <i>Regeneron Pharmaceuticals, Inc.</i> <i>777 Old Saw Mill River Road</i> <i>Tarrytown, New York 10591</i> Email: _____ |
| 3) | <u>Design Professional:</u> | |
| 4) | <u>Design Professional:</u> | |
| 5) | <u>Other:</u> | |

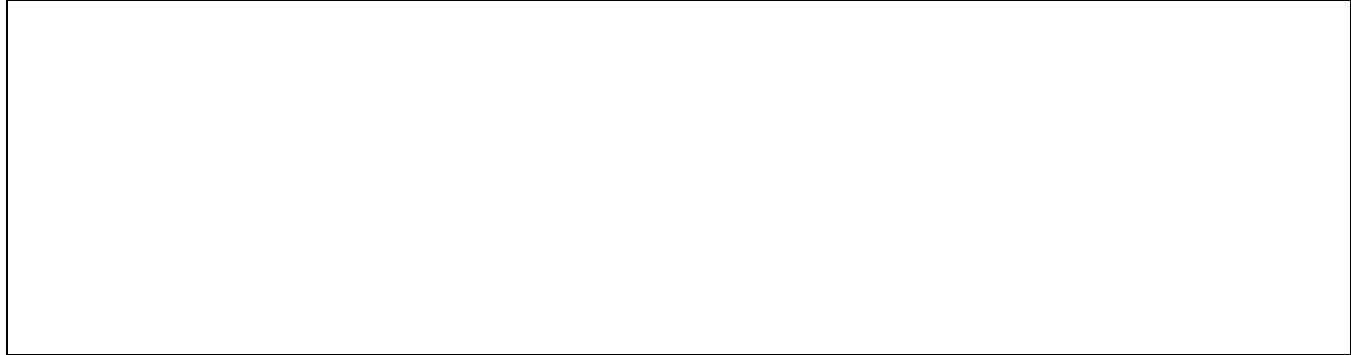
7. Staffing Plan

The Staffing Plan showing all Construction Manager staff hours listed by month for the duration of the Construction Phase shall be as per A.3 SOW Exhibit F.

8. Subcontractors

The following Exhibits pertain to the Subcontractors retained by the Construction Manager: the list of Subcontractors and Material Suppliers (A.3 SOW Exhibit P); the Subcontractor Procurement Plan (A.3 SOW Exhibit Q); the Sample Subcontract (A.3 SOW Exhibit R); and the Sample Subcontractor Award Recommendations (A.3 SOW Exhibit S).

9. Additional Insurance Requirements. In addition to the minimum insurance coverages stated in the MSA, Construction Manager shall obtain, keep in force, and maintain additional insurance in the following quantities and types at Regeneron’s expense:



Refer to A.3 SOW Exhibit B for detailed information regarding additional insurance requirements.

10. Project Turnover, Digital Deliverable and BIM Requirements

Requirements for Project Turnover Documents shall be as outlined in the Contract Documents and A.3 SOW Exhibit C – Project Turnover Checklist.

Digital Deliverables shall follow the requirements as outlined in Section 7.6 (BIM and Digital Deliverable Requirements) in the Preconstruction Phase SOW.

For projects where BIM is identified as a Regeneration requirement, A.3 SOW Exhibit U (the BIM Project Execution Plan as amended during the Design phase) and the Contract Documents shall define the requirements for BIM during the Construction Phase.

11. Form of Reporting

The Form of Reporting to be used by the Construction Manager is included in A.3 SOW Exhibit T.

12. Project Logistics Plan

The Project Logistics Plan shall be as per A.3 SOW Exhibit D.

13. Site Safety Plan

The Site Safety Plan shall be as per A.3 SOW Exhibit E.

14. Exhibits

The following Exhibits are incorporated into this SOW:

| | |
|-------------------|--|
| A.3 SOW Exhibit A | Construction Phase SOW Cost Summary |
| A.3 SOW Exhibit B | Project Additional Insurance Requirements |
| A.3 SOW Exhibit C | Project Turnover Matrix |
| A.3 SOW Exhibit D | Project Logistics Plan |
| A.3 SOW Exhibit E | Site Safety Plan |
| A.3 SOW Exhibit F | Staffing Plan |
| A.3 SOW Exhibit G | List of Contract Documents |
| A.3 SOW Exhibit H | Schedule of Values |
| A.3 SOW Exhibit I | Schedule of Alternate Prices |
| A.3 SOW Exhibit J | Schedule of Unit Prices |
| A.3 SOW Exhibit K | Statement of Work to be Self-performed by the Construction Manager |
| A.3 SOW Exhibit L | Schedule of General Conditions Costs |
| A.3 SOW Exhibit M | Allowances |
| A.3 SOW Exhibit N | Alternates |
| A.3 SOW Exhibit O | Exclusions and Assumptions |
| A.3 SOW Exhibit P | List of Subcontractors and Material Suppliers |
| A.3 SOW Exhibit Q | Subcontractor Procurement Plan |
| A.3 SOW Exhibit R | Sample Subcontract |
| A.3 SOW Exhibit S | Sample Subcontractor Award Recommendations |
| A.3 SOW Exhibit T | Form of Reporting |
| A.3 SOW Exhibit U | BIM Project Execution Plan (for collaborative BIM projects only) |

15. Other. _____.

16. Other. _____.

IN WITNESS WHEREOF, Regeneron and the Construction Manager hereby execute this Construction Phase SOW in accordance with MSA, Regeneron and the Construction Manager hereby execute this Early Work SOW in accordance with MSA, thereby amending the Services Agreement established pursuant to [*list prior SOWs*] as referenced in the MSA.

CONSTRUCTION MANAGER:

**REGENERON PHARMACEUTICALS,
INC.**

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

A.3 SOW EXHIBIT A

CONSTRUCTION PHASE SOW COST SUMMARY

| PROJECT INFORMATION | |
|----------------------|--|
| Project Name: | |
| Project Address: | |
| Vendor Company Name: | |

| COST | Base Bid Cost of Work | | | | |
|------------------------------------|-----------------------|-------------------------------------|-----------|-----------|-------|
| | No. | Item | Lump Sum | Allowance | Total |
| | 1 | Base Bid Trade Cost | \$ | \$ | \$ |
| | 2 | Permit Fees | \$ | \$ | \$ |
| | 3 | Base Bid General Conditions | \$ | \$ | \$ |
| | 4 | Contingency (2% Max of Trade Costs) | \$ | \$ | \$ |
| Base Bid Total Cost of Work | | \$ | \$ | \$ | |

| PLUS | Base Bid Agreed Markup | | | | |
|--|------------------------|--------------------|-----------|-----------|-------|
| | No. | Item | Lump Sum | Allowance | Total |
| | 5 | Fee (____%) | \$ | \$ | \$ |
| | 6 | Insurance (____%) | \$ | \$ | \$ |
| Base Bid Total Agreed Markup (____%) | | \$ | \$ | \$ | |

| ALTER-NATES | Approved Alternates (See Alternates Exhibit for Cost Breakdown)* | | | | |
|----------------------------------|--|-------------|-----------|-----------|-------|
| | | Item | Lump Sum | Allowance | Total |
| | | Alternate 1 | \$ | \$ | \$ |
| | | Alternate 2 | \$ | \$ | \$ |
| | | Alternate 3 | \$ | \$ | \$ |
| Total Approved Alternates | | \$ | \$ | \$ | |

| COST PLUS TOTAL | Early Work Contract Sum | | | | |
|--|-------------------------|------------------------------|-----------|-----------|-------|
| | No. | Item | Lump Sum | Allowance | Total |
| | 7 | Base Bid Total Cost of Work | \$ | \$ | \$ |
| | 8 | Base Bid Total Agreed Markup | \$ | \$ | \$ |
| | 9 | Total Approved Alternates | \$ | \$ | \$ |
| Total Construction Phase Contract Sum | | \$ | \$ | \$ | |

* Alternates are options for scopes of work which are defined in the Construction Documents for bidding and negotiation. On execution of the Construction Phase SOW Regeneron may elect to approve some or all of these Alternates ("Approved Alternates"). Approved Alternates shall be executed with no further directives, approvals or Change Orders from Regeneron unless they include an Allowance. Alternate costs include General Conditions costs and the Agreed Markup. Detailed scope and cost breakdowns for Alternates are included in A.3 SOW Exhibit N.

CONSTRUCTION PHASE SOW COST SUMMARY (BASE BID TRADE COSTS)

Note: Organize trade costs by Masterformat CSI 48 divisions. Add rows as required.

| BASE BID TRADE COST BREAKDOWN | | | | | |
|---|---|-----|-----------|---------------|-----------|
| Company | Description of Item | Qty | Unit Cost | Lump Sum Cost | Allowance |
| 01 – General Requirements (Temporary Facilities and Controls Only, see below for Construction Manager Costs) | | | | | |
| | | | | | |
| | | | | | |
| | 01 – GENERAL REQUIREMENTS TOTAL | | | | |
| 02 – Existing Conditions | | | | | |
| | | | | | |
| | | | | | |
| | 02 – EXISTING CONDITIONS TOTAL | | | | |
| 03 – Concrete | | | | | |
| | | | | | |
| | | | | | |
| | 03 – CONCRETE TOTAL | | | | |
| 04 – Masonry | | | | | |
| | | | | | |
| | | | | | |
| | 04 – MASONRY TOTAL | | | | |
| 05 – Metals | | | | | |
| | | | | | |
| | | | | | |
| | 05 – METALS TOTAL | | | | |
| 06 – Wood, Plastics and Composites | | | | | |
| | | | | | |
| | | | | | |
| | 06 – WOOD, PLASTICS AND COMPOSITES TOTAL | | | | |
| 07 – Thermal and Moisture Protection | | | | | |
| | | | | | |
| | | | | | |
| | 07 – THERMAL AND MOISTURE PROTECTION TOTAL | | | | |
| 08 – Openings | | | | | |
| | | | | | |
| | | | | | |
| | 08 – OPENINGS TOTAL | | | | |
| 09 – Finishes | | | | | |
| | | | | | |
| | | | | | |

| BASE BID TRADE COST BREAKDOWN | | | | | |
|-------------------------------|---------------------------------|-----|-----------|---------------|-----------|
| Company | Description of Item | Qty | Unit Cost | Lump Sum Cost | Allowance |
| | 09 – FINISHES TOTAL | | | | |
| 10 – Specialties | | | | | |
| | | | | | |
| | | | | | |
| | 10 – SPECIALTIES TOTAL | | | | |
| 11 – Equipment | | | | | |
| | | | | | |
| | | | | | |
| | 11 – EQUIPMENT TOTAL | | | | |
| 12 – Furnishings | | | | | |
| | | | | | |
| | | | | | |
| | 12 – FURNISHINGS TOTAL | | | | |
| 13 – Special Construction | | | | | |
| | | | | | |
| | | | | | |
| | 13 – SPECIAL CONSTRUCTION TOTAL | | | | |
| 14 – Conveying Equipment | | | | | |
| | | | | | |
| | | | | | |
| | 14 – CONVEYING EQUIPMENT TOTAL | | | | |
| 21 – Fire Suppression | | | | | |
| | | | | | |
| | | | | | |
| | 21 – FIRE SUPPRESSION TOTAL | | | | |

| BASE BID TRADE COST BREAKDOWN | | | | | |
|-------------------------------------|---|-----|-----------|---------------|-----------|
| Company | Description of Item | Qty | Unit Cost | Lump Sum Cost | Allowance |
| 22 – Plumbing | | | | | |
| | | | | | |
| | | | | | |
| | 22 – PLUMBING TOTAL | | | | |
| 23 – HVAC | | | | | |
| | | | | | |
| | | | | | |
| | 23 – HVAC TOTAL | | | | |
| 25 – Integrated Automation | | | | | |
| | | | | | |
| | | | | | |
| | 25 – INTEGRATED AUTOMATION TOTAL | | | | |
| 26 – Electrical | | | | | |
| | | | | | |
| | | | | | |
| | 26 – ELECTRICAL TOTAL | | | | |
| 27 – Communications | | | | | |
| | | | | | |
| | | | | | |
| | 27 – COMMUNICATIONS TOTAL | | | | |
| 28 – Electronic Safety and Security | | | | | |
| | | | | | |
| | | | | | |
| | 28 – ELECTRONIC SAFETY AND SECURITY TOTAL | | | | |
| 31 – Earthwork | | | | | |
| | | | | | |
| | | | | | |
| | 31 – EARTHWORK TOTAL | | | | |
| 32 – Exterior Improvements | | | | | |
| | | | | | |
| | | | | | |
| | 32 – EXTERIOR IMPROVEMENTS TOTAL | | | | |

| BASE BID TRADE COST BREAKDOWN | | | | | |
|----------------------------------|--|-----|-----------|---------------|-----------|
| Company | Description of Item | Qty | Unit Cost | Lump Sum Cost | Allowance |
| 33 – Utilities | | | | | |
| | | | | | |
| | | | | | |
| | 33 – UTILITIES TOTAL | | | | |
| 48 – Electrical Power Generation | | | | | |
| | | | | | |
| | | | | | |
| | 48 – ELECTRICAL POWER GENERATION TOTAL | | | | |
| BASE BID TRADE COSTS SUBTOTAL | | | | | |
| | BASE BID TRADE COSTS SUBTOTAL | | | | |

CONSTRUCTION PHASE SOW COST SUMMARY (SUBCONTRACTOR'S LABOR RATES)

SUBCONTRACTOR'S LABOR RATES

The rates set forth herein shall represent the negotiated hourly rates for the term of the Services Agreement, subject to the compensation terms set forth in the Services Agreement.

In the spaces below, list the categories of employees which may be utilized in the performance of a Change Order. Some examples are "Painter", "Carpenter", "Helper", "Master Electrician" etc. Next to each category enter the fully loaded hourly rate for both regular and premium time. If more spaces are required to list labor categories, this sheet may be duplicated. Rates shall not exceed union hall labor rates, unless the rates that exceed union hall labor rates are specifically identified to and approved by Regeneron.

| Position | Hourly Rate Regular Time | Hourly Rate Premium Time |
|----------|--------------------------|--------------------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

MASTER SERVICES AGREEMENT
BETWEEN
REGENERON AND CONSTRUCTION MANAGER AT RISK

MSA EXHIBIT B

LIEN WAIVER TRACKING FORM

[attached]

MASTER SERVICES AGREEMENT
BETWEEN
REGENERON AND CONSTRUCTION MANAGER AT RISK

MSA EXHIBIT C

FORMS OF WAIVER OF LIEN AND RELEASE

C.1

CONSTRUCTION MANAGER’S PARTIAL/INCREMENTAL WAIVER AND RELEASE OF LIENS
 (To be provided by Construction Manager at the time of Progress Payment)

| | | |
|-----------------------|----------------------------|----------|
| Construction Manager: | Date: | |
| Trade: | Period Ending: | _____ |
| Project: | Contract Price: | _____ \$ |
| Regeneron: | Net Extras & Deductions: | _____ \$ |
| Project Site: | Adjusted Contract Price: | _____ \$ |
| | Amount Paid to Date: | _____ \$ |
| | Amount of Current Payment: | _____ \$ |
| | | _____ |

STATE OF _____)
) ss.
 COUNTY OF _____)

THE UNDERSIGNED, as authorized representative of Construction Manager (1) acknowledges receipt of the sum set forth above as “Amount Paid to Date” as all payments received to date, (2) to the extent of such payments, and the amount of the sum set forth above as the “Amount of Current Payment,” waives and releases any claim which it may now or hereafter have upon the land and improvements described above (if the Amount of Current Payment has not been received by Construction Manager as of the date of this waiver of lien and release, then conditioned solely upon receipt of such payment), (3) certifies that the “Amount Paid to Date” plus the “Amount of Current Payment” represents the current amount due in accordance with Construction Manager’s agreement (“Contract”) for work completed, and (4) warrants that it has not and will not assign any claims for payment or right to perfect a lien against such land and improvements and warrants that it has the right to execute this waiver of lien and release. Construction Manager represents that the adjusted Contract Price set forth above is inclusive of all additional work performed or additional costs incurred (exclusive of Change Order Proposals) under the Contract that have been approved in accordance with the terms of the Contract as of the date of this waiver of lien and release.

Construction Manager agrees to defend, indemnify and hold harmless Regeneron and the respective agents, officers, trustees, directors, employees, subsidiaries, affiliates, servants, related entities, members, principals, and representatives of Regeneron (collectively and individually referred to as the “Releasees”), against and from

any and all disputes, claims, losses, liabilities, damages, costs and expenses (including attorneys' fees) with respect to any (i) work performed, or which should have been performed, in construction of the Project through the date of this waiver of lien and release, (ii) rights waived or released herein, and (iii) misrepresentation or breach of any certification, affirmation or warranty made by Construction Manager in this waiver of lien and release. Upon the request of Regeneron or any Releasee, or its sureties, or guarantors, Construction Manager will undertake to defend such action of action, claim or lien filing at its sole cost and expense.

Construction Manager hereby represents and warrants that it has applied and will apply all monies received by it for work, labor, services, materials, supplies and equipment furnished for the Project in strict accordance with the trust provisions of the lien law of the state where the Project is located and has paid for all work, labor, services, materials, supplies, and equipment furnished for the period starting from the beginning of the Project through and including the date hereof, has paid all of its subcontractors, vendors, suppliers, materialmen, and laborers for work performed from the beginning of the Project through and including the date hereof, and has paid all withholding and other payroll taxes and benefits required to be paid in connection therewith, and none of such workmen and materialmen has any claim or demand or right of lien against the land and improvements described above.

Construction Manager hereby waives and releases all actions, debts, claims, and demands against the Releasees on account of all work, labor, services, materials, supplies, and equipment furnished by Construction Manager at or to the Project through and including the date hereof.

Construction Manager acknowledges that the foregoing statements are made for the purpose of inducing Regeneron to make final payment under the terms of the Contract and that the Releasees are relying upon the truth of the statements contained herein.

CONSTRUCTION MANAGER AGREES THAT THIS WAIVER OF LIEN AND RELEASE SHALL BE EFFECTIVE AS OF THE DATE CONSTRUCTION MANAGER RECEIVES PAYMENT FOR THE ABOVE-REFERENCED AMOUNT. CONSTRUCTION MANAGER FURTHER UNDERSTANDS AND AGREES THAT THIS WAIVER OF LIEN AND RELEASE IS NEITHER A RECEIPT FOR PAYMENT NOR A CONDITION PRECEDENT TO PAYMENT, BUT A KNOWING AND WILLFUL ACKNOWLEDGEMENT THAT CONSTRUCTION MANAGER HAS BEEN FULLY PAID FOR ALL WORK, LABOR AND MATERIALS OR EQUIPMENT PROVIDED BY CONSTRUCTION MANAGER, ITS SUB-CONTRACTORS AND SUPPLIERS THROUGH THE ABOVE-REFERENCED DATE IN ACCORDANCE WITH TERMS OF THIS WAIVER OF LIEN AND RELEASE.

IN WITNESS WHEREOF, Construction Manager has caused this instrument to be executed as of the ___ day of _____, 201__.

Construction Manager Name:

By: _____

Name: _____

Its: _____

Sworn to before me this
___ day of ___ 20__

Notary Public

behalf of any laborer, subcontractors, materialman, vendor, supplier, agent or employee of Construction Manager.

4. If any claims, liens, assessments or penalties are made or imposed against the Releasees or the Project in connection with work performed or materials, supplies or equipment used or installed by Construction Manager, or any employee, subcontractor or supplier of Construction Manager, or anyone directly or indirectly employed or engaged by any of the foregoing, with respect to the Project, or with respect to any obligation assumed under the Contract by Construction Manager, Construction Manager hereby agrees to satisfy and discharge such claim, lien, assessment or penalty and indemnify, to the fullest extent permitted by law, the Releasees, hold the Releasees harmless and defend the Releasees, at Construction Manager's sole cost and expense, from and against such claim, lien, assessment or penalty and all costs and expenses related thereto, including but not limited to, the cost of discharging any liens and all legal fees and disbursements.
5. Construction Manager acknowledges that this Final Lien Waiver and Release is freely and voluntarily given by Construction Manager without duress or coercion after Construction Manager has either consulted with legal counsel or has been given the opportunity to do so, and Construction Manager has carefully and completely read all of the terms and provisions of this Final Waiver of Lien and Release and has agreed to be bound thereby.
6. Construction Manager acknowledges that this Final Waiver of Lien and Release shall inure to the benefit of the Releasees, their respective sureties, if any, the construction lender for the Project, if any, and all of their successors and assigns and shall be binding upon Construction Manager and its successors and assigns.
7. Construction Manager acknowledges that it shall provide any and all additional sign-offs as may be required by Regeneron in connection with the Project.
8. Construction Manager acknowledges that the foregoing statements are made for the purpose of inducing Regeneron to make final payment under the terms of the Contract and that the Releasees are relying upon the truth of the statements contained herein.

THE UNDERSIGNED UNDERSTANDS AND AGREES THAT THIS FINAL LIEN WAIVER SHALL BE EFFECTIVE AS OF THE DATE THE UNDERSIGNED RECEIVES THE ABOVE FINAL PAYMENT. THE UNDERSIGNED FURTHER UNDERSTANDS AND AGREES THAT THIS LIEN WAIVER IS NEITHER A RECEIPT FOR PAYMENT NOR A CONDITION PRECEDENT TO PAYMENT BUT A KNOWING AND WILLFUL ACKNOWLEDGEMENT THAT OWNER HAS MADE FULL AND FINAL PAYMENT FOR ALL THE WORK SUPPLIED, FURNISHED, OR PERFORMED, AND/OR MATERIALS OR EQUIPMENT PROVIDED TO THE DATE HEREOF.

IN WITNESS WHEREOF, Construction Manager has caused this instrument to be executed as of the ___ day of _____, 201__.

Construction Manager Name:

By: _____

Name: _____

Its: _____

Sworn to before me this
___ day of ___ 20__

Notary Public

work, labor, services, materials, supplies and equipment furnished for the Project in strict accordance with the trust provisions of the lien law of the state where the Project is located and has paid for all work, labor, services, materials, supplies, and equipment furnished for the period starting from the beginning of the Project through and including the date hereof, has paid all of its subcontractors, vendors, suppliers, materialmen, and laborers for work performed from the beginning of the Project through and including the date hereof, and has paid all withholding and other payroll taxes and benefits required to be paid in connection therewith, and none of such workmen and materialmen has any claim or demand or right of lien against the land and improvements described above.

Subcontractor hereby waives and releases all actions, debts, claims, and demands against the Releasees on account of all work, labor, services, materials, supplies, and equipment furnished by the Subcontractor at or to the Project through and including the date hereof.

Subcontractor acknowledges that the foregoing statements are made for the purpose of inducing Regeneron to make payment to Construction Manager, and Construction Manager to make payment under the terms of the Subcontract, and that the Releasees are relying upon the truth of the statements contained herein.

SUBCONTRACTOR AGREES THAT THIS WAIVER OF LIEN AND RELEASE SHALL BE EFFECTIVE AS OF THE DATE SUBCONTRACTOR RECEIVES PAYMENT FOR THE ABOVE-REFERENCED AMOUNT. SUBCONTRACTOR FURTHER UNDERSTANDS AND AGREES THAT THIS WAIVER OF LIEN AND RELEASE IS NEITHER A RECEIPT FOR PAYMENT NOR A CONDITION PRECEDENT TO PAYMENT, BUT A KNOWING AND WILLFUL ACKNOWLEDGEMENT THAT SUBCONTRACTOR HAS BEEN FULLY PAID FOR ALL WORK, LABOR AND MATERIALS OR EQUIPMENT PROVIDED BY SUBCONTRACTOR, ITS SUB-SUB-CONTRACTORS AND SUPPLIERS THROUGH THE ABOVE-REFERENCED DATE IN ACCORDANCE WITH TERMS OF THIS WAIVER OF LIEN AND RELEASE.

IN WITNESS WHEREOF, the Subcontractor has caused this instrument to be executed as of the ___ day of _____, 201__.

Subcontractor Name:

By: _____

Name: _____

Its: _____

Sworn to before me this
___ day of ___ 20__

Notary Public

C.4

SUBCONTRACTOR’S FINAL AFFIDAVIT AND RELEASE OF CLAIMS

(To be provided by Subcontractor at the time of Final Payment)

PROJECT NAME AND PREMISES ADDRESS: _____ (“Project”):
OWNER NAME: _____ (“Regeneron”)
OWNER ADDRESS: _____
CONSTRUCTION MANAGER NAME: _____ (“Construction Manager”)
CONSTRUCTION MANAGER ADDRESS: _____
SUBCONTRACTOR NAME: _____ (“Subcontractor”)
SUBCONTRACTOR ADDRESS: _____
FINAL PAYMENT AMOUNT: \$ _____

STATE OF _____)
) ss.
COUNTY OF _____)

IN CONSIDERATION OF the above-referenced Final Payment Amount, paid by or on behalf of Construction Manager and Regeneron, to the undersigned Subcontractor (the “Subcontractor”), with a principal place of business at the address listed above, as full and final payment for all work and services required of and performed by, and all materials, supplies and equipment furnished by the Subcontractor on the Project including, without limitation, all work performed or materials, supplies and equipment furnished under that subcontract by and between Construction Manager and the Subcontractor for the work generally described therein, together with all additions, supplements, change orders and other modifications thereto (the “Subcontract”), and all other work performed by or materials, supplies and equipment furnished by the Subcontractor on the aforesaid Project, the Subcontractor declares under penalties of perjury that:

1. The Subcontractor, on its behalf and on behalf of all of its laborers, sub-subcontractors, materialmen, vendors, suppliers, agents or anyone directly or indirectly employed by it, hereby fully and forever releases, acquits and discharges Regeneron, its parents, subsidiaries and affiliates, and its and their respective representatives, partners, members, shareholders, officers, directors, agents, consultants and employees (collectively and individually referred to as the “Releasees”), from all manner of action and causes of action, suits, choses in action, contracts, covenants, claims, bonds, bills, debts, dues, sums of money, rentals, commissions, compensation for purported personal services rendered, liens of any type, any rights to file any lien or notice of lien, builder’s trust fund claims, judgments, executions, damages, losses, claims, liabilities, demands and rights whatsoever, at law or in equity, now existing or which may hereafter accrue in favor of the Subcontractor in connection with any and all claims arising out of the Subcontract and Project, and all field claims, field orders, change orders, reference number changes and credits, back charges, credits, revision orders, bulletin, hoist charges, subcontract amendments thereto and all other work however described with regard to the Project and work to be performed in relation thereto.
2. The Subcontractor certifies, warrants, and represents that: (a) it has paid in full and in accordance with all applicable contract obligations, labor or union agreements, laws and regulations, for all labor and services performed and materials, supplies, tools and equipment furnished in connection with the work under said Subcontract, all Social Security withholding, Unemployment Insurance, Sales, Use and other taxes applicable thereto and for all premiums for insurance carried with respect thereto; and (b) it owes no one for any labor, services, tools, equipment, materials, supplies, taxes, insurance premiums or any other items of cost and expense arising out of or relating to the work under the Subcontract.

3. The Subcontractor covenants and agrees to defend, indemnify, and hold harmless Releasees from and against any and all disputes, claims, losses, damages, costs and expenses (including reasonable attorneys' fees) caused by any lien filed against the Project or monies due under the above described Project by or on behalf of any laborer, sub-subcontractors, materialman, vendor, supplier, agent or employee of the Subcontractor.
4. If any claims, liens, assessments or penalties are made or imposed against the Releasees or the Project in connection with work performed or materials, supplies or equipment used or installed by the Subcontractor, or any employee, sub-subcontractor or supplier of the Subcontractor, or anyone directly or indirectly employed or engaged by any of the foregoing, with respect to the Project, or with respect to any obligation assumed under the Subcontract by the Subcontractor, the Subcontractor hereby agrees to satisfy and discharge such claim, lien, assessment or penalty and indemnify, to the fullest extent permitted by law, the Releasees, hold the Releasees harmless and defend the Releasees, at the Subcontractor's sole cost and expense, from and against such claim, lien, assessment or penalty and all costs and expenses related thereto, including but not limited to, the cost of discharging any liens and all legal fees and disbursements.
5. The Subcontractor acknowledges that this Final Lien Waiver and Release is freely and voluntarily given by the Subcontractor without duress or coercion after the Subcontractor has either consulted with legal counsel or has been given the opportunity to do so, and the Subcontractor has carefully and completely read all of the terms and provisions of this Final Waiver of Lien and Release and has agreed to be bound thereby.
6. The Subcontractor acknowledges that this Final Waiver of Lien and Release shall inure to the benefit of the Releasees, their respective sureties, if any, the construction lender for the Project, if any, and all of their successors and assigns and shall be binding upon the Subcontractor and its successors and assigns.
7. The Subcontractor acknowledges that it shall provide any and all additional sign-offs as may be required by Regeneron in connection with the Project.
8. The Subcontractor acknowledges that the foregoing statements are made for the purpose of inducing Regeneron to make payment to Construction Manager, and Construction Manager to make final payment under the terms of the Subcontract, and that the Releasees are relying upon the truth of the statements contained herein.

THE UNDERSIGNED UNDERSTANDS AND AGREES THAT THIS FINAL LIEN WAIVER SHALL BE EFFECTIVE AS OF THE DATE THE UNDERSIGNED RECEIVES THE ABOVE FINAL PAYMENT. THE UNDERSIGNED FURTHER UNDERSTANDS AND AGREES THAT THIS LIEN WAIVER IS NEITHER A RECEIPT FOR PAYMENT NOR A CONDITION PRECEDENT TO PAYMENT BUT A KNOWING AND WILLFUL ACKNOWLEDGEMENT THAT CONSTRUCTION MANAGER AND OWNER HAVE MADE FULL AND FINAL PAYMENT FOR ALL THE WORK SUPPLIED, FURNISHED, OR PERFORMED, AND/OR MATERIALS OR EQUIPMENT PROVIDED TO THE DATE HEREOF.

IN WITNESS WHEREOF, the Subcontractor has caused this instrument to be executed as of the ___ day of ___, 201__.

Subcontractor Name:

Sworn to before me this ___ day of
20__

By: _____
Name: _____
Its: _____

Notary Public

MASTER SERVICES AGREEMENT
BETWEEN
REGENERON AND CONSTRUCTION MANAGER AT RISK

MSA EXHIBIT D

[FORM OF] CERTIFICATE OF SUBSTANTIAL COMPLETION
(to be prepared by Construction Manager)

PROJECT NAME AND PREMISES ADDRESS: _____ (“Project”)
 OWNER NAME: _____ (“Regeneron”)
 OWNER ADDRESS: _____
 CONSTRUCTION MANAGER NAME: _____ (“Construction Manager”)
 CONSTRUCTION MANAGER ADDRESS: _____
 CERTIFICATE PREPARED BY: _____ (“Design Professional”)
 DESIGN PROFESSIONAL NAME: _____
 DESIGN PROFESSIONAL ADDRESS: _____

This Certificate of Substantial Completion is made pursuant to the Master Services Agreement dated ____, 20__ by and between Regeneron and Construction Manager, and the Statement of Work dated ____, 20__, as amended ____ and ____ by and between Regeneron and Construction Manager. Terms not otherwise defined herein have the meaning assigned to them in such Master Services Agreement and Statement of Work.

1. Substantial Completion of the Work has occurred.
2. The date of Substantial Completion is: ____, 20__.
3. The Punch List items are: _____.

Agreed:

Construction Manager: (Signature) _____ Date: _____
(Print Name) _____

Regeneron: (Signature) _____ Date: _____
(Print Name) _____

Acknowledged (not required for validity):

Design Professional: (Signature) _____ Date: _____
(Print Name) _____

Design Professional: (Signature) _____ Date: _____
(Print Name) _____

MASTER SERVICES AGREEMENT
BETWEEN
REGENERON AND CONSTRUCTION MANAGER AT RISK

MSA EXHIBIT E

[FORM OF] CERTIFICATE OF FINAL COMPLETION
(to be prepared by Construction Manager)

PROJECT NAME AND PREMISES ADDRESS: _____ (“Project”)
OWNER NAME: _____ (“Regeneron”)
OWNER ADDRESS: _____
CONSTRUCTION MANAGER NAME: _____ (“Construction Manager”)
CONSTRUCTION MANAGER ADDRESS: _____
CERTIFICATE PREPARED BY: _____
DESIGN PROFESSIONAL NAME: _____ (“Design Professional”)
DESIGN PROFESSIONAL ADDRESS: _____

This Certificate of Final Completion is made pursuant to the Master Services Agreement dated _____, 20__ by and between Regeneron and Construction Manager, and the the Statement of Work dated _____, 20__, as amended _____ and _____ by and between Regeneron and Construction Manager. Terms not otherwise defined herein have the meaning assigned to them in such Master Services Agreement and Statement of Work.

1. Final Completion of the Work has occurred.
2. The date of Final Completion is: _____, 20__.

Construction Manager Name:

By: _____
Name: _____
Date: _____

MASTER SERVICES AGREEMENT
BETWEEN
REGENERON AND CONSTRUCTION MANAGER AT RISK

MSA EXHIBIT F
[FORM OF] CHANGE ORDER

| | | | |
|---|---|--|---|
| PROJECT INFORMATION | | | |
| Project Name: | | | |
| Project Address: | | | |
| Owner Name: | | | |
| Regeneron Project Manager: | | | |
| Construction Manager Company Name: | | | |
| Construction Manager MSA #: | | Construction Manager SOW #: | |
| Design Professional Firm Name: | | | |
| CHANGE ORDER | | | |
| Change Order Number: | | Change Order Date: | |
| Detailed Description of the Change (enter in the box below. Attach additional pages as required.) | | | |
| | | | |
| Reason for Change: | Field Conditions <input type="checkbox"/> | Change in Scope <input type="checkbox"/> | Errors and Omissions <input type="checkbox"/> |
| Bulletin Attached <input type="checkbox"/> | Construction Manager Backup Attached <input type="checkbox"/> | | Other <input type="checkbox"/> |
| Basis of Change Order: | Lump Sum <input type="checkbox"/> | Cost Plus (Time and Material) <input type="checkbox"/> | Unit Cost <input type="checkbox"/> |
| Original Contract Price: | | | \$ |
| Net Change Authorized in Previous Change Orders: | | | \$ |
| Contract Sum Prior to This Change Order: | | | \$ |
| The Contract Price will be <input type="checkbox"/> Increased / <input type="checkbox"/> Decreased / <input type="checkbox"/> Unchanged / by this Change Order: | | | \$ |
| New Contract Price Including This Change Order: | | | \$ |
| The Contract Time will be <input type="checkbox"/> Increased / <input type="checkbox"/> Decreased / <input type="checkbox"/> Unchanged / by this Change Order: | | | _____ Days |
| Other: | | | |
| NOT VALID UNLESS SIGNED BY THE CONSTRUCTION MANAGER AND OWNER | | | |
| <u>Agreed:</u> | | | |
| CONSTRUCTION MANAGER | | REGENERON PHARMACEUTICALS, INC. | |

| | |
|--|--|
| By: _____ Title: _____ Date: _____ | By: _____ Title: _____ Date: _____ |
| <u>Acknowledged (not required for validity)</u> | |
| DESIGN PROFESSIONAL By: _____ Title: _____ Date: _____ | DESIGN PROFESSIONAL By: _____ Title: _____ Date: _____ |

MASTER SERVICES AGREEMENT
BETWEEN
REGENERON AND CONSTRUCTION MANAGER AT RISK

MSA EXHIBIT G

CALCULATION OF COSTS AND CREDITS RESULTING FROM CHANGED WORK

1. **Cost or Credit Determination.** The cost or credit resulting from a change in the Work shall be determined by one of more of the following methods, which Regeneron shall have the right to select at its sole discretion:
 - 1.1. By applying unit prices as stated in the Contract Documents, or if no applicable unit prices are stated, then as agreed upon.
 - 1.2. By mutual agreement on a lump sum properly itemized and supported by sufficient substantiating data, such as labor breakdowns, hourly rates including benefits, material quantities, equipment rental charges, overhead costs and profit, so as to permit evaluation by the Design Professionals and Regeneron.
 - 1.3. By cost plus, i.e., the actual cost of labor, materials, and major equipment rentals, plus overhead and profit, determined and recorded as the work progresses. Construction Manager shall keep and present an itemized accounting together with appropriate supporting data including certified time records, delivery receipts, and material invoices for all work directly related to the proposed change. Unless otherwise provided in the Contract Documents, cost will be limited to the following: cost of materials including cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; workers' compensation insurance; bond premiums; rental cost of major equipment and machinery; and the additional costs of supervision and field office personnel directly attributable to the change.
2. **Unit Price Change Order Proposals.**
 - 2.1. Within seven (7) days after receipt of Regeneron's written request for a Unit Price proposal, Construction Manager will submit a written Unit Price proposal itemizing the quantities of each item of work for which there is an applicable unit price either in the Contract Documents or otherwise agreed upon. The quantities must be itemized in relation to each specific Drawing. Construction Manager may request, and Regeneron may grant, an extension of the seven-day period for valid reasons.
 - 2.2. Unit prices will be the same for added quantities and deducted quantities.
 - 2.3. Unit prices will be applied to net differences of quantities of the same item. Unit prices will be considered to cover all direct or indirect costs of furnishing and installing the item, including labor, materials, equipment, overhead, profit, and any other markups.
 - 2.4. Unit prices stated in the Contract Documents are not required to be used for pricing a Change Order. They may be used or not used, at the option of Regeneron.
3. **Lump Sum Change Order Proposals.**
 - 3.1. **Itemization.** Regeneron may choose the option to request a lump sum proposal. In such a case, Construction Manager will submit a properly itemized Lump Sum Change Order Proposal covering the Changed Work and/or Work to be omitted within seven (7) days of Regeneron's request, unless Regeneron extends such period of time due to the circumstances involved. This proposal will be

itemized for the various components of work and segregated by labor, material, and equipment in a detailed format satisfactory to Regeneron. Regeneron will require itemized Change Orders on all Change Order proposals from Construction Manager, whether the work will be performed by Construction Manager, Subcontractors, or Sub-subcontractors. Details to be submitted will include line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hours pricing information and extensions (by line item or by drawing as applicable).

- 3.2. Labor. Estimated labor costs to be included for self-performed work shall be based on the actual cost per hour paid by Construction Manager for those workers or crews of workers who Construction Manager reasonably anticipates will perform the Change Order work. Estimated labor hours shall include hours only for those workers and working foremen directly involved in performing the changed work. Supervision above the level of working foremen (such as general foremen, superintendent, project manager, etc.) is considered to be included in the Markup Percentage Fee referred to in Paragraphs 3.6 and 3.7 below.
- 3.3. Labor Burden. Labor burden allowable in Change Orders shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA) which costs will properly reflect the federal and state payroll tax wage limitations establishing the annual maximum wages subject to payroll taxes, net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to employer for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc. Construction Manager shall reduce its standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the federal and state payroll tax wage limitations establishing the annual maximum wages subject to payroll taxes. (An estimated percentage for labor burden may be used for pricing change orders. However, the percentage used for labor burden to price change orders may be examined and audited at the conclusion of the Project and an adjustment to the approved change orders will be processed if it is determined that the actual labor burden percentage should have been more or less than the estimated percentage used).
- 3.4. Materials. Estimated material Change Order costs shall reflect Construction Manager's reasonably anticipated net actual cost for the purchase of the material needed for the Change Order work. Estimated material costs shall reflect cost reductions available to Construction Manager due to "non-Cash" discounts, trade discounts, free material credits, and/or volume rebates.
- 3.5. Equipment. Allowable Change Order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the Change Order work (defined as tools and equipment with an individual purchase cost of more than \$500). For contractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing change order proposals shall be 75% of the monthly rate listed in the most current publication of The AED Green Book applicable to the Work Site divided by 173 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the change order work. Further, for contractor owned equipment, the aggregate equipment rent charges for any single piece of equipment used in any change order work shall be limited to 50% of the fair market value of the piece of equipment when the first change order is priced involving usage of the piece of equipment. Fuel necessary to operate the equipment will be considered as a separate direct cost associated with the change order work.
- 3.6. Maximum Markup Percentage Allowable on Self-Performed Work. With respect to pricing Change Orders, the maximum Markup Percentage Fee to be paid to any contractor (regardless of tier) on self-performed work shall be a single markup percentage not-to-exceed the following sliding scale of percentages of the net direct cost of (1) labor and allowable labor burden applicable to the changed or

Changed Work; (2) material and installed equipment incorporated into the Changed Work; and (3) rented major equipment and related fuel costs necessary to complete the change in the Work. The following sliding scale will apply to the pricing of the self-performing work portion of each Change Order proposal request.

3.6.1. [REDACTED] on the first [REDACTED] of the Change Order direct cost of self-performed work.

3.6.2. [REDACTED] on the portion of the Change Order direct cost of self-performed work between [REDACTED] and [REDACTED] and,

3.6.3. [REDACTED] on the portion of the Change Order direct cost of self-performed work greater than [REDACTED].

3.7. Maximum Markup Percentages Allowable on Work Performed by Lower Tier Construction Managers.

3.7.1. With respect to pricing the portion of Change Order proposals involving work to be performed by Subcontractors and Sub-subcontractors, the maximum Markup Percentage Fee allowable to Construction Manager supervising the lower tier contractors' work shall not exceed five percent (5%) of the net of all approved Change Order work performed by all Subcontractors and Sub-subcontractors combined for any particular Change Order proposal.

3.7.2. With respect to pricing the portion of Change Order proposals involving work to be performed by Subcontractors and Sub-subcontractors, the maximum Markup Percentage Fee allowable to the Subcontractors and Sub-subcontractors shall not exceed ten percent (10%) of the net of all approved Change Order work performed by all Subcontractors and Sub-subcontractors combined for any particular Change Order proposal.

3.8. Other Provisions Applicable to Markup Percentage Fees.

3.8.1. Allocation. The markup shall be considered to be allocated 2/3 to cover applicable overhead costs directly attributable to the field overhead costs related to processing and supervising the Change Order work, and the remaining 1/3 to cover home office overhead costs and profit.

3.8.2. Direct and Indirect Costs Covered by Markup Percentages. As a further clarification, the agreed upon Markup Percentage Fee is intended to cover Construction Manager's, Subcontractor's and Sub-subcontractor's profit and all indirect costs associated with the Change Order work.

3.8.3. Covered Items. The items intended to be covered by the Markup Percentage Fee are: home office expenses, branch office and field office overhead expense of any kind; project management; superintendents, general foremen; estimating, engineering; coordinating; handling; expediting; purchasing; detailing; legal; accounting, data processing or other administrative expenses; shop drawings; permits; general liability insurance, auto insurance and umbrella insurance; bond costs; pick-up truck costs; and warranty expense costs. The cost for the use of small tools is also to be considered covered by the Markup Percentage Fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual purchase cost of less than \$500.

3.8.4. Deduct Change Orders and Net Deduct Changes. The application of the Markup Percentage Fee will apply to both additive and deductive Change Orders. In the case of a deductive Change Order, the credit will be computed by applying the percentages referred to in Paragraphs 3.6 and 3.7 so that a deductive Change Order would be computed in the same manner as an additive Change Order. In those instances where a change involves both additive and deductive work, the additions and deductions will be netted and the markup percentage adjustments will be applied to the net

amount.

3.8.5. Contingency. In no event will any lump sum or percentage amounts for “contingency” be allowed to be added as a separate line item in Change Order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated performing the work. Unknowns attributable to material scrap and waste will be estimated as part of material costs.

3.9. Untimely or Unsatisfactory Lump Sum Proposals. If Construction Manager’s proposal is not submitted in a timely manner or is unacceptable to Regeneron, Regeneron may issue a Proceed Order. Upon receipt of the Proceed Order, Construction Manager shall immediately undertake the execution of the modifications required. Work performed under a Proceed Order occasioned by receipt of an unacceptable Lump Sum proposal shall be paid on a Cost Plus basis, determined as set forth in Paragraph 4 hereof.

4. Cost Plus Change Order Proposals.

4.1. Cost Plus Change Order Proposals. Regeneron may elect to have any Changed Work performed on a cost plus markup percentage fee basis. Upon written notice to proceed, Construction Manager shall perform such authorized work at actual cost for direct labor (working foremen, journeymen, apprentices, helpers, etc.), actual cost of labor burden, actual cost of material used to perform the Changed Work, and actual rental cost of major equipment (without any charge for administration, clerical expense, general supervision or superintendent of any nature whatsoever, including general foremen, or the cost or rental of small tools, minor equipment, or plant), plus the approved Markup Percentage Fee. The intent of this clause is to make chargeable costs under this method of pricing Change Orders the same as those allowable when pricing Lump Sum Change Proposals as outlined in Paragraph 3 above. Regeneron and Construction Manager may agree in advance in writing on a maximum price for this work in which case Regeneron shall not be liable for any charges in excess of the maximum. Daily time sheets with names of all Construction Manager’s Subcontractors’, and Sub-subcontractors’ employees working on the Project will be required to be submitted to Regeneron for both labor and equipment used by Construction Manager for time periods during which Changed Work is performed on a cost plus fee basis. The time sheets will break down the paid hours worked by the specified employees showing both base Contract Work as well as Changed Work performed by each employee. Thus, while Construction Manager is performing work on a cost plus basis, Construction Manager shall deliver daily to Regeneron three copies of written statements signed by Construction Manager’s representatives at the Project Site showing:

4.1.1. The name and number of each worker employed on the Project Site, the number of hours employed by each worker on Contract Work, the character of the Work each is doing, the number of hours employed by each worker on Changed Work, and the character of the Changed Work each is doing;

4.1.2. The nature, quantity, and cost of any materials and major equipment furnished or used in connection with the performance of Contract Work, and from whom the materials were purchased or the equipment rented; and the nature, quantity, and cost of any materials and major equipment furnished or used in connection with the performance of the Changed Work, and from whom the materials were purchased or the equipment rented.

Failure to comply strictly with these requirements for the performance of work on a cost plus basis shall constitute a waiver of extra compensation on account of the performance of such work.

4.2. Audit. Regeneron and/or a third party authorized representative selected by Regeneron will have the right to examine Construction Manager’s records during the period ending three years after Final

Payment is made on the Services Agreement, to verify the accuracy and appropriateness of the pricing data used to price all Change Order proposals and/or claims. If Regeneron determines the cost and pricing data submitted (whether approved or not) was inaccurate, incomplete, not current, or not in reasonable compliance with the terms of the Services Agreement regarding the pricing of Change Orders, an appropriate contract price adjustment will be made.

5. Requirements for Detailed Change Order Pricing Information. Construction Manager agrees to provide and require all Subcontractors to provide an itemized breakdown of allowable labor and labor burden cost information as outlined in Paragraphs 1-4 hereof. This information will be used to evaluate the potential cost of labor and labor burden related to Change Order work. It is intended that this information represent an accurate estimate of Construction Manager's actual labor and labor burden cost components. At the time Change Orders are priced, the submitted labor and labor burden cost data and related labor rates may be used with Regeneron's concurrence to price the Change Order work. Even if Change Orders are approved using agreed upon labor rates, the accuracy of the labor and labor burden cost components used to price Change Orders will be subject to later audit. Approved change order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate. In order to facilitate checking of quotations for extras or credits, all proposals shall be accompanied by a complete itemization of costs including labor, materials, equipment and Subcontractors and associated mark ups. In no case will a change be approved without such itemization.

MASTER SERVICES AGREEMENT
BETWEEN
REGENERON AND CONSTRUCTION MANAGER AT RISK

MSA EXHIBIT H

MINIMUM LEVELS OF INSURANCE

A. REQUIRED COVERAGES BY CONSTRUCTION MANAGER - the following may be provided through a combination of primary and excess policies in order to meet the minimum limits set forth below:

1) Workers' Compensation and Employer's Liability:

Provided in the State in which the work is to be performed and elsewhere as may be required and shall include:

a) Workers' Compensation Coverage: Statutory Requirements

b) Employers Liability Limits not less than:

| | |
|----------------------------|---------------------------|
| Bodily Injury by Accident: | \$1,000,000 Each Accident |
| Bodily Injury by Disease: | \$1,000,000 Each Employee |
| Bodily Injury by Disease: | \$1,000,000 Policy Limit |

c) Includes coverage for sole proprietors, partners, members or officers who will be performing the work.

d) Where applicable, if Construction Manager is lending or leasing its employees to Regeneron for the work under this contract (e.g. crane rental with operator), it is Construction Manager's responsibility to provide the Workers Compensation and Employer's Liability coverage and to have their policy endorsed with the proper Alternate Employer Endorsement in favor of Regeneron.

2) Commercial General Liability:

Provided on ISO form CG 00 01 04 13 or an equivalent form including Premises - Operations, Independent Contractors, Products/Completed Operations, Broad Form Property Damage, Contractual Liability, and Personal Injury and Advertising Injury.

a) Occurrence Form with the following limits:

| | |
|--|-------------|
| General Aggregate: | \$2,000,000 |
| Products/Completed Operations Aggregate: | \$2,000,000 |
| Each Occurrence: | \$1,000,000 |
| Personal and Advertising Injury: | \$1,000,000 |

b) Products/Completed Operations Coverage must be maintained for a period of at least three (3) years three years after the later of the expiration or earlier termination of this Agreement and the completion and the Final Payment for Work under the final outstanding SOW (including coverage for the Additional Insureds as set forth in these Insurance Requirements).

c) The General Aggregate Limit must apply on a Per Project basis.

- d) Coverage for “Resulting Damage”.
- e) No amendment restricting the definition of an “Insured Contract”.

3) Automobile Liability:

- a) Coverage to include All Owned, Hired and Non-Owned Vehicles (or “Any Auto”), if you do not have any Owned Vehicles you are still required to maintain coverage for Hired and Non-Owned Vehicles as either a stand alone policy or endorsed onto the Commercial General Liability policy above
- b) Per Accident Combined Single Limit \$1,000,000
- c) For Construction Manager(s) involved in the transportation of hazardous material, include the following endorsements: MCS-90 and ISO-9948.

4) Commercial Umbrella Liability:

- a) Policy(ies) to apply on a Following Form Basis of the following:

- (1) Commercial General Liability,
- (2) Automobile Liability, and
- (3) Employers Liability Coverage.

- b) Minimum Limits of Liability

Occurrence Limit: \$25,000,000
Aggregate Limit
(where applicable): \$25,000,000

5) Pollution Liability Insurance:

(IF DESIGNATED BY CONSTRUCTION MANAGER’S SCOPE OF WORK)

- a) Covering losses caused by pollution incidents that arise from the operations of Construction Manager and/or their subcontractors of any tier.

- b) Minimum Limits of Liability:

Occurrence Limit: \$2,000,000
Aggregate Limit: \$2,000,000

- c) Insurance to be maintained for the duration of the work and for a period of three (3) years after the later of the expiration or earlier termination of this Agreement and the completion and the Final Payment for Work under the final outstanding SOW.
- d) No Exclusions for Silica, Asbestos or Lead.
- e) Include Mold Coverage for full policy limit of liability.
- f) Shall include coverage for all pollutants as defined under the Resource Conservation and Recovery

Act, as amended, 42 U.S.C. Section 6901 et. seq. (“RCRA”) or any related state or city environmental statute or the removal of any petroleum contaminated material at the Project.

- g) All owned and/or 3rd Party disposal facilities must be licensed and maintain pollution liability insurance of not less than \$2,000,000, if applicable.

6) Professional Liability Insurance:

- a) Minimum Limits of Liability:

| | |
|------------------|-------------|
| Per Claim Limit: | \$2,000,000 |
| Aggregate Limit: | \$2,000,000 |

- b) The Definition of “Covered Services” shall include the services required in the scope of this contract.

- c) Coverage shall be extended to cover “Green Building”, if applicable.

7) Aircraft Liability and/or Unmanned Aircraft Systems (UAS, aka Drones):
(IF DESIGNATED BY CONSTRUCTION MANAGER’S SCOPE OF WORK)

- a) Provide coverage for bodily injury, property damage, personal and advertising injury arising out of any owned, leased, hired, or borrowed aircraft or UAS; and

- b) Minimum Limits of Liability:

\$5,000,000 Per Occurrence

\$5,000,000 Aggregate

NOTE: If UAS are covered by the General Liability policy instead of an Aviation Policy, coverage must be provided by CG 24 50 (or its equivalent) for “any aircraft used in the Insured’s operations” for “any operations or projects of the Insured”.

8) Crime Insurance:
(IF DESIGNATED BY CONSTRUCTION MANAGER’S SCOPE OF WORK)

- a) Include the Employee Theft and Theft, Disappearance and Destruction coverage parts.

- b) The Employee Theft Coverage part shall include the Clients’ Property Endorsement (ISO Form CR 04 01, or its equivalent).

- c) Minimum Limits of Liability:

Per Claim: \$1,000,000

9) Owned, Leased, Rented or Borrowed Equipment:
(IF DESIGNATED BY CONSTRUCTION MANAGER’S SCOPE OF WORK)

Construction Manager shall maintain Property Coverage for:

- a) their owned, leased, rented or borrowed equipment, tools, trailers, etc.; and

b) include a Waiver of Subrogation in favor of all Additional Insureds.

B. Builder's Risk. Unless the SOW provides otherwise, Regeneron will place a Builder's Risk policy to protect its interest and the interests of Construction Manager for the work to be completed, and in no event shall the cost of Builder's Risk insurance be charged directly or indirectly to Regeneron by Construction Manager. The following are the requirements to be provided under the policy that Regeneron elects to place:

- a) Full Replacement Cost Coverage
- b) All Risk Coverage
- c) Business Income and Extra Expense
- d) Soft Costs
- e) Agreed Amount/No Coinsurance
- f) Boiler & Machinery Coverage
- g) Terrorism Coverage
- h) Property at unnamed locations / off premises
- i) Debris Removal/Demolition Costs
- j) Pollutant Clean-up and Removal
- k) Ordinance or Law
- l) Fire Department Surcharge and Fire Department Equipment Discharge
- m) Outdoor Property and landscaping (subject to policy provisions)
- n) GREEN Coverage, if appropriate
- o) loss payable clause as deemed appropriate
- p) Permission to occupy 50% of square footage, contemplated under the Project, for a time period of 90 days

The Builder's Risk Policy will include the following as NAMED INSUREDS: Regeneron, Construction Manager, Subcontractor, Sub-Subcontractors and all other parties where required by written contract.

A Waiver of Subrogation will be provided in favor of the following even if their negligence causes the loss and regardless of the extent of their insurable interest in the covered property: Regeneron, Construction Manager, Subcontractor, Sub-Subcontractors and all other parties where required by written contract.

MASTER SERVICES AGREEMENT
BETWEEN
REGENERON AND CONSTRUCTION MANAGER AT RISK

MSA EXHIBIT I
REGENERON DIGITAL DELIVERY REQUIREMENTS

[To be provided separately by Regeneron.]

MASTER SERVICES AGREEMENT
BETWEEN
REGENERON AND DESIGN PROFESSIONAL
(LUMP SUM)

MSA EXHIBIT J

REGENERON'S REIMBURSABLE EXPENSES POLICY

[To be provided separately by Regeneron.]


Construction Management Agreement - Consigli


Final Audit Report


2021-01-28


| | |
|-----------------|---|
| Created: | 2021-01-26 |
| By: | Teresa McCullough (teresa.mccullough@regeneron.com) |
| Status: | Signed |
| Transaction ID: | CBJCHBCAABAAPGUF9tXa8KbMz9PKE3izmVlj9NXmqQF |


"Construction Management Agreement - Consigli" History

 Document created by Teresa McCullough (teresa.mccullough@regeneron.com)
2021-01-26 - 3:39:25 PM GMT- IP address: 165.225.39.123


 Document emailed to George Poth (george.poth@regeneron.com) for signature
2021-01-26 - 3:41:44 PM GMT


 Email viewed by George Poth (george.poth@regeneron.com)
2021-01-26 - 4:06:43 PM GMT- IP address: 32.212.194.230

 Document e-signed by George Poth (george.poth@regeneron.com)
Signature Date: 2021-01-27 - 3:35:46 PM GMT - Time Source: server- IP address: 24.38.10.54

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2021-01-28 - 0:11:09 AM GMT- IP address: 104.143.198.51

 Document e-signed by Tim Barry (tbarry@consigli.com)
Signature Date: 2021-01-28 - 0:16:48 AM GMT - Time Source: server- IP address: 134.6.72.162

 Agreement completed.
2021-01-28 - 0:16:48 AM GMT