

## CONSTRUCTION MANAGEMENT AND CONSTRUCTION AGREEMENT

This Construction Management and Construction Agreement ("Agreement") is dated January 7, 2015 is hereby entered into between **COR Aspen Park Boulevard Company II, LLC**, a limited liability company, organized and existing under the laws of the State of New York, with an office at 540 Towne Drive, Fayetteville, New York 13066 ("COR"), and **Fort Schuyler Management Corporation**, a not-for-profit corporation organized and existing under the laws of the State of New York, with an office at 257 Fuller Road, Albany, New York 12203 ("FSMC").

FSMC issued to COR Development Company, LLC ("COR Development"), an affiliate of COR, a Notice to Proceed ("Notice to Proceed") dated as of May 15, 2014 authorizing COR Development to perform certain services in connection with the Project (as defined below), with a not to exceed expenditure of \$1,380,000.

FSMC entered into a Ground Lease with COR effective as of December 2014 for FSMC to lease from COR approximately 7.6 acres of land ("Land") located at 24 Aspen Park Boulevard in East Syracuse, New York, subject to the timely completion of the building and supporting site improvements included within the Project that will be located upon the Land.

COR shall design and construct on FSMC's behalf a building of approximately 52,000 square feet and supporting site improvements, that will be located on the Land and that are more particularly described in the building plans and the site plans in Exhibit A attached hereto. The building plans and the site plans in Exhibit A are collectively referred to herein as the "Plans" and the design and construction of the building and supporting site improvements are collectively referred to herein as the "Project".

FSMC anticipates receiving a grant in the amount of \$15 million from the Dormitory Authority of the State University of New York ("Funding Entity") and using a portion of this grant to fund FSMC's cost for the Project.

**1. STANDARD OF CARE AND RELATIONSHIP OF THE PARTIES:** COR shall exercise COR's best skill and judgment in furthering the interests of FSMC; to furnish efficient design and construction, construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the work for the Project in an expeditious and economical manner consistent with FSMC's interests. The Project shall be completed by COR based on the Plans and in accordance with the requirements set forth in the Exhibit B attached hereto. COR shall have the responsibility to ensure that the Plans are in accordance with applicable laws, statutes, ordinances, and building codes. COR shall retain an architect and engineer to provide design and engineering services, duties and responsibilities for the Project. FSMC shall furnish or approve, in a timely manner, information required by COR and to make payments to COR in accordance with the requirements of this Agreement.

### **2. COR'S RESPONSIBILITIES:**

**A. CONSTRUCTION PHASE:** COR and FSMC shall jointly schedule and participate in regular conference calls/meetings regarding the completion of the Project, in accordance with the schedule attached hereinto as Exhibit C. COR shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion and factors related to construction cost including estimates of alternative designs or materials, to the extent practical and readily available.

**B. PROJECT SCHEDULE:** The Project schedule may be periodically updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of estimates, if applicable, preparations and processing of shop drawings and samples, delivery of materials or equipment requiring long lead-time procurements, that may affect the projected building turnover date. If Project schedule updates indicate that previous schedules may not be met, COR shall make recommendations to FSMC to expedite the schedule, if desired by FSMC.

**C. ADMINISTRATION:** Those portions of the Project that COR does not customarily perform with COR's own personnel shall be performed under subcontracts or by other written agreements with COR. By subcontract or other written agreements, COR shall require each subcontractor, to the extent of the work to be performed by the subcontractor for the Project, to be bound to COR by the terms of this Agreement and to assume toward COR all the obligations and responsibilities which COR, by this Agreement, assumes toward FSMC. COR, after the date of this Agreement, shall obtain bids from subcontractors and suppliers of materials or equipment in accordance with a bid process to be mutually agreed to by COR and FSMC. COR will be responsible for analyzing and then reviewing all bids with FSMC, after which a recommendation will be made by COR for approval by FSMC. FSMC will then determine, with advice from COR, which bids will be accepted. COR will construct the Project, coordinate all work for the Project, and be responsible for delivery of the Project on schedule and in accordance with the Plans. COR will sign and hold the subcontracts with subcontractors and suppliers and be responsible to FSMC for the resultant work required to complete the Project. COR, as soon as practicable and after the date of this Agreement, before entering into a contractual relationship with any persons or entities for a principal portion of the work for the Project, or for materials or equipment fabricated to a special design, or for an aggregate amount of \$25,000, or more, shall furnish to FSMC in writing for review by FSMC, the names of such persons or entities proposed. FSMC will promptly reply to COR so as to avoid delay in the Project schedule stating whether or not FSMC, after due investigation, has any reasonable objection to any such proposed person or entity. COR shall not contract with any proposed person or entity to which FSMC has made reasonable objection. COR shall make no substitution for any previously selected and/or approved person or entity without the prior approval of FSMC, which shall not be unreasonably withheld.

**3. FSMC'S RESPONSIBILITIES:** FSMC has provided, or will provide to COR, all information necessary to complete the Project in a manner that is consistent with FSMC's requirements, including a program which sets forth objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems and site requirements, which shall be reflected on the Plans.

**A. TESTS, SURVEYS AND REPORTS:** COR agrees to prepare the following, to the extent that COR determines such information to be necessary, in conjunction with the completion of the Project:

(i) Reports, surveys, drawings and tests concerning the conditions of the site;

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(ii) Surveys showing, as applicable, grades and lines of streets, pavements and adjoining property and structures; boundaries and contours of the site; locations and dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths;

(iii) Services of a geotechnical engineer which may include, but are not limited by, test borings, test pits, determination of soil bearing values, percolation tests, evaluation of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations;

(iv) Tests for hazardous materials and other laboratory and environmental tests, inspections and reports which are required by law; and

(v) Services of such other consultants that may be necessary in order to complete the Project.

Except to the extent COR knows, or in the exercise of reasonable care and diligence should know, of any inaccuracy, COR shall be entitled to rely upon the accuracy of any such tests, reports and surveys, which shall be contracted for by COR under separate agreements with such consultants. In addition, to the extent that during construction additional information is required as a result of any change in the Project requested by FSMC, COR shall advise FSMC of the need for such additional information and, subject to the prior written consent of FSMC, FSMC shall be separately billed for the cost of obtaining such information.

**B. FSMC'S DESIGNATED REPRESENTATIVE:** FSMC hereby designates Thomas O'Brien and Christopher Walsh as its representatives. The representatives shall render such decisions promptly and furnish information expeditiously, so as to avoid any unreasonable delay in the completion of the Project.

**C. FUNDING ENTITY REQUIREMENTS:** FSMC shall determine and advise COR of any special requirements relating specifically to the Project that are not otherwise set forth in the Exhibit B attached hereto, as a result of FSMC's intended use of grant funds from the Funding Entity for the cost of the building and site improvements to be constructed. To the extent the Funding Entity requires in its grant to FSMC terms and conditions that are not otherwise set forth in Exhibit B, FSMC and COR will cooperate with one another to amend this Agreement to reflect the required terms and conditions, in a manner that is mutually acceptable to the parties.

**4. DUE DILIGENCE:** COR represents and warrants that it has visited the Project site and is familiar with existing conditions, and municipal requirements and will exercise due diligence in the construction of the Project in accordance with the Plans.

**5. COMPLETION:** COR acknowledges and agrees to complete the Project in accordance with the Project schedule which is attached hereto as Exhibit C.

**6. COMPENSATION:** FSMC shall pay COR the actual cost of constructing the Project on an open-book basis ("Cost of Work"), plus eight (8%) percent of the Cost of Work ("Fixed Construction Services Fee"), and a development fee of six (6%) of the Cost of Work ("Development Fee"). The cost of the Project and the maximum cost to FSMC for the Project shall not exceed \$10,660,000 ("GMP"), including all amounts paid by FSMC under the Notice to Proceed issued in conjunction with the completion of the Project, the Cost of Work, the Fixed Construction Services Fee, and the Development Fee. FSMC and COR shall mutually agree in writing on the budget for the Project. To the extent the Cost of Work, Fixed Construction Services Fee, and the Development Fee is less than \$10,660,000, COR shall not be entitled to the difference or any portion thereof. The Cost of Work shall include all Labor Costs, Subcontract Costs, Material and Equipment Costs, and Miscellaneous Costs, as follows:

**A. LABOR COSTS:** Labor Costs are:

(i) Wages of construction workers directly employed by COR to perform Project construction work at the site or, with the Owner's prior approval, at off-site workshops;

(ii) Wages or salaries of COR's supervisory and administrative personnel that perform Project work whether on-site or off-site; and

(iii) Costs paid or incurred by COR for taxes, insurance, contributions, assessments and benefits required by law, including customary benefits such as sick leave, medical and health benefits, holidays, and vacations.

**B. SUBCONTRACT COSTS:** Subcontract costs are all payments due to subcontractors in accordance with the requirements of subcontracts.

**C. MATERIAL AND EQUIPMENT COSTS:** Material and Equipment Costs are:

(i) Costs, including transportation, of materials and equipment incorporated, or to be incorporated into the Project;

(ii) Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers, which are provided to COR at the site and that are necessary in order to complete the Project;

(iii) Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers, which are provided by COR at the Project site, whether rented from COR or others, and costs of transportation, installation, minor repairs and replacements, and dismantling and removal thereof;

(iv) Costs of removal of debris from the Project site;

(v) Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the Project site and reasonable petty cash expenses of the Project site office; and

(vi) That portion of the reasonable travel expenses of COR's personnel incurred while traveling in discharge of duties connected with the Project.

**D. MISCELLANEOUS COSTS:** Miscellaneous Costs are:

(i) Insurance costs directly attributable to the Project;

(ii) Sales, use or similar taxes imposed by a governmental authority which are related to the completion of the Project;

(iii) Fees and assessments for the building permit and for other permits, licenses and inspections for which COR is required to pay;

(iv) Fees of testing laboratories for tests required to complete the Project;

(v) Deposits lost for causes other than COR's negligence, or failure to fulfill a specific responsibility to FSMC, as set forth in this Agreement;

(vi) Legal, mediation and arbitration costs, other than those arising from disputes between FSMC and COR, that are reasonably incurred by COR in the performance of the Project;

(vii) Other costs directly incurred in the performance of the Project;

(viii) Costs in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property; and

(vix) Costs in repairing or correcting damaged or nonconforming Project work, as long as such work was not caused by COR's negligence or failure to fulfill a specific responsibility to FSMC as set forth in this Agreement, or the failure of COR's personnel to adequately supervise Project work and only to the extent that the cost of repair or correction is not recoverable from insurance, subcontractors or suppliers.

**E. CHANGE ORDERS:** FSMC may order changes in the Project. Any increased costs as a result of the changes shall become a part of the Cost of Work as provided herein. If after the date of this Agreement, COR receives any drawings, specifications, or instructions from FSMC which are inconsistent with the Project Plans, which will result in a significant change in the Cost of Work, or estimated date of substantial completion, COR shall promptly notify FSMC.

**F. TAX EXEMPT:** COR will be completing the Project work on behalf of FSMC, a tax-exempt entity and therefore on a tax-exempt basis. FSMC shall provide COR with any necessary tax-exempt certificates, or any other documentation necessary to provide the basis to complete the Project in a manner that is not subject to any sales, use or similar taxes imposed by any governmental authority, which might otherwise be applicable to the completion of the Project work.

7. **INVOICES:** The parties agree that all invoices shall be billed to FSMC on a monthly basis, no later than the last day of the month utilizing an AIA G702 form or such other form, documents and information as required by FSMC or the Funding Entity, including waiver of liens from COR and all tier-subcontractors and suppliers. Payment shall be due no later than the thirtieth (30<sup>th</sup>) day of the month following approval of an invoice by FSMC and the Funding Entity. COR agrees to keep reasonably detailed accounts necessary for the tracking of the Cost of the Work and upon reasonable notice to COR, FSMC may review COR's Project books and records, e.g. correspondence, drawings, subcontracts, purchase orders, and other Project data, during typical business hours. COR agrees to preserve such books and records for a period of one (1) year from the date of final payment, or for such longer period as may be required by law or the Funding Entity. FSMC shall be entitled to withhold ten percent (10%) of the Cost of Work, Construction Services Fee, and the Developer Fee, as retainage, to be held until thirty (30) days following final completion of the Project.

8. **INTENTIONALLY OMITTED.**

9. **INTENTIONALLY OMITTED.**

10. **INTENTIONALLY OMITTED**

11. **DEFAULT AND/OR TERMINATION:** If COR defaults or neglects to perform the Project work in accordance with the terms and conditions of this Agreement and fails within five (5) business days after receipt of a default notice from FSMC, to (i) expeditiously proceed with due diligence to remedy such default, or (ii) in the event that such default cannot be remedied within such five (5) business day period, has commenced and is diligently proceeding to remedy such default, FSMC may, without prejudice to other remedies FSMC may have, correct such deficiencies, suspended the work by COR and/or its subcontractors, and/or terminate this Agreement. The cost of correcting such deficiencies, neglect or failure, shall be deducted from payments otherwise due COR under this Agreement.

12. **MISCELLANEOUS:**

(i) **AUTHORIZATION:** COR and FSMC represent and warrant each to the other, that the persons signing this Agreement on COR's and FSMC's behalf have the authority to do so.

(ii) **INTENTIONALLY OMITTED.**

(iii) **INDEPENDENT CONTRACTOR:** COR is acting under this Agreement as an Independent Contractor.

(iv) **PUBLIC ANNOUNCEMENTS:** Any and all public announcement, information sharing, and/or marketing reference of the Project to the media or any entity for any purpose whatsoever is prohibited, unless granted by the express prior written authorization of FSMC.

(v) **INTENTIONALLY OMITTED.**

(vi) **FORCE MAJEURE:** The time for which either party has to perform an obligation under this Agreement other than the payment of money, shall be excused by any delays caused by events of *force majeure*, which shall include, adverse weather conditions, Acts of God, labor or material shortages, dispute resolution activities that stop work, litigation commenced by any third party with respect to the Project, or strikes, or other governmental restrictions.

(vii) **REMEDIES/OBLIGATIONS:** Duties, obligations, rights and remedies available under this Agreement shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed by or available at law, or in equity.

(viii) **INTENTIONALLY OMITTED.**

IN WITNESS WHEREOF, the parties have signed this Agreement as of the day and year first above written.

**FORT SCHUYLER MANAGEMENT COMPANY    COR ASPEN PARK BOULEVARD COMPANY, LLC**

By: Walter G Barber  
Walter G. Barber

By: Steven E. Aiello  
Steven E. Aiello, General Manager

January 14, 2015

January 7, 2015

## EXHIBIT A

The Project shall include the construction of a Building of approximately 52,000 square feet and supporting site improvements, as set forth in the plans and specifications noted below.

- Architectural Elevations – prepared by QPK Design Architecture Engineering Site & Planning Drawings including Exterior Elevations, A-200 dated April 25, 2014; Exterior Elevations A-201 dated April 25, 2014, and Perspectives A-202 dated April 25, 2014, attached hereto as Schedule 1
- Building Plans and Specifications – prepared by QPK Architecture Engineering Site & Planning Drawings noted on the G-1 coversheet dated September 10, 2014 and specifications shown in the Collamer Crossings CNY Hub core & shell specifications dated July 8, 2014, attached hereto as Schedule 2
- Civil Drawings – prepared by Bergmann Associates dated April 28, 2014, attached hereto as Schedule 3

The Architectural Elevations, Building Plans, and Civil Drawings referenced above are incorporated herein by reference thereto.

**EXHIBIT B**  
**FSMC TERMS AND CONDITIONS**

1. Indemnification. To the fullest extent permitted by law, COR shall indemnify, save, hold harmless and defend FSMC, The Research Foundation for the State University of New York, the College of Nanoscale Science and Engineering, State University of New York, State of New York, and their respective officers, directors, managers, shareholders, members, employees, agents, and assigns (each individually an "Indemnitee") from and against any and all claims, direct damages, demands, actions, judgments, lawsuits, proceedings, assessments, liabilities, losses, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees, costs and expenses), whether or not subject to litigation, incurred by any Indemnitee in connection with, by reason of, or arising out of (a) the material breach of or the untruthfulness or inaccuracy of any representation set forth in the Agreement, (b) COR's or its employees', agents', and contractors' negligent acts or omissions in connection with activities undertaken pursuant to the Agreement, (c) any negligent act or omission involving fraud of COR or its employees, agents or contractors in connection with the performance of responsibilities under the Agreement, (d) any damage or destruction of property, or injury, sickness, disease or death to persons, caused by COR or any of its employees', contractors' or agents' negligence or misconduct in connection with activities undertaken pursuant to the Agreement, or (e) any negligent act, omission or violation of statutory duty or regulation by COR or any of its employees, contractors or agents in connection with activities undertaken pursuant to the Agreement.
2. No Agency. The signing, delivery and performance of the Agreement shall not be construed as creating any agency relationship, partnership, joint venture or similar association among the Parties. Each Party shall be responsible for their own project administration, insurance, employees, taxes and other similar matters. Neither Party shall have the right to bind the other Party to third parties.
3. Confidentiality. Either FSMC or COR (with respect to information disclosed by it, the "Disclosing Party") may disclose Confidential Information (as defined below) to the other (with respect to such information, the "Receiving Party") orally or in writing or by other media or by transfer of materials. When disclosed in writing or by such other media or materials, Confidential Information shall be expressly identified in writing as Disclosing Party's Confidential Information. When disclosed orally, Disclosing Party shall identify the information as confidential at the time of such disclosure, with subsequent written confirmation to Receiving Party within thirty (30) days of such disclosure indicating the date and type of information disclosed. In addition, by example and not in any way limiting, all information pertaining to the design and construction of the Project and the property on which the Project will be constructed shall be deemed to constitute Confidential Information. Receiving Party shall clearly label any of Disclosing Party's Confidential Information reduced to writing by Receiving Party as "XYZ CONFIDENTIAL INFORMATION" where XYZ is replaced with the name of Disclosing Party. For purposes hereof, the term "Confidential Information" shall mean all information that is maintained in confidence by a Party ("Owning Party") and is disclosed to or obtained by another Party in connection with and during the term of the Agreement, including, but not limited to, information that relates to such Owning Party's announcement of this relationship shall be mutually coordinated and agreed upon by the Parties, and (b) a summary of pertinent Sections of the Agreement that are reasonably necessary for disclosing and/or licensing under the Agreement; provided, that such disclosure is under a written agreement containing restrictions of confidentiality at least as stringent as those contained in the Agreement.
4. No Assignment. COR may not assign the Agreement other than to a COR entity to be formed for the development of the Project, nor any rights afforded hereunder, without the prior written consent of FSMC, which such consent may be withheld in its sole discretion.



5. Governing Law; No Jury Trial. The Agreement shall be construed, governed, interpreted, and applied in accordance with the laws of the State of New York, without regard to the conflict of laws principles thereof. Any legal action or proceeding brought in respect of the Agreement may be brought only in a United States Federal District Court located in the State of New York or in any state court of the State of New York. Each Party hereby consents to the exclusive jurisdiction and venue of such courts. The Parties expressly waive any right to a jury trial for any legal action or proceeding brought under the Agreement and the Parties agree that any legal action or proceeding under the Agreement shall be tried by a judge without a jury.
6. Statutory Compliance. To the fullest extent permitted by law, COR acknowledges and agrees that the Work (including, without limitation, any construction, demolition, reconstruction, excavation, rehabilitation, repair, renovation, alteration or improvement in connection with activities undertaken pursuant to the Agreement), or contracts or subcontracts for such Work, shall be performed in a good and workmanlike manner, in compliance with all governmental requirements, and in such manner as to cause a minimum of interference with the transaction of business at the Project site. In addition, COR acknowledges and agrees that it shall undertake all Work and/or shall cause to be undertaken by any contractors or subcontractors, in compliance with Article 15-A of the New York Executive Law pertaining to Equal Employment Opportunities for Minorities and Women and Article 8 of the New York Labor Law pertaining to Wage and Hours, except for those portions of the Work, that were authorized prior to the date of the Agreement. Furthermore, no laborer, workman or mechanic, in the employ of a contractor or subcontractor engaged in the performance of any the work, shall be paid less than the "prevailing rate of wage," in the same trade or occupation in the locality within the state where such work is situated. The "prevailing rate of wage," for purposes of this provision shall be the rate of wage paid in the locality, as, by virtue of collective bargaining agreements between bona fide labor organizations and employers of the private sector, performing public or private work provided that said employers employ at least thirty per centum of workers, laborers or mechanics in the same trade or occupation in the locality where the work is being performed. "Locality" means such areas of the state described and defined for a trade or occupation in the current collective bargaining agreements between bona fide labor organizations and employers of the private sector, performing public and private work. COR agrees to indemnify FSMC and hold FSMC harmless against any loss, liability or damage resulting from such Work or from any violation of any state or federal laws including the New York state laws set forth in this Section 6 in connection with activities undertaken pursuant to the Agreement, and COR shall, if requested by FSMC, furnish insurance, bonds or other securities as are mutually agreeable, against any such loss, liability or damage.
7. Entire Agreement. The Parties acknowledge that the Agreement integrates all prior understandings and representations of the Parties, and sets forth the entire agreement and understanding of the Parties, on the subject matter hereof, and shall not be subject to any change or modification except by a written instrument signed by both Parties. Neither the Agreement nor any of the terms hereof may be changed, waived, or discharged except by an instrument in writing signed by both Parties.
8. Validity. The provisions of the Agreement are separable, and in the event that any provisions of the Agreement are determined to be invalid or unenforceable under any controlling body of law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.
9. Notices. All communications, notices and disclosures required or permitted by the Agreement shall be in writing and shall be deemed to have been given at the earlier of the date when actually delivered or one day after being deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, by hand delivery, by overnight courier service with signed receipt or by facsimile transmission (with written confirmation of receipt thereof), and addressed as follows, unless and until either party notifies the other party of a change of address:

In the case of COR:

Steven F. Aiello, General Manager  
COR Aspen Park Boulevard Company II, LLC  
540 Towne Drive  
Fayetteville, New York 13066  
Tel: 315-663-2100  
Fax: 315-663-2109

In the case of FSMC:

Walter Gerald Barber  
SUNY Polytechnic Institute  
257 Fuller Road  
Albany, New York 12203

Insurance. COR shall maintain and shall cause its subcontractors to maintain at a minimum the following insurance coverage, except to the extent otherwise noted below:

- A) Commercial General Liability ("CGL") with limits of insurance of not less than \$1,000,000 each Occurrence and \$2,000,000 Annual Aggregate. CGL coverage shall be written on ISO Occurrence form CG 00 01 10 93 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury. If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.

FSMC, The Research Foundation for the State University of New York ("FOUNDATION"), the State University of New York ("SUNY"), including the College of Nanoscale Science and Engineering ("CNSE"), and the State of New York ("STATE") shall each be named as Additional Insureds on the CGL policy using ISO Additional Insured endorsement CG 20 10 (11/85) or CG 20 10 (10/93) and CG 20 37 (10/01), or CG 20 33 (10/01) and CG 20 37 (10/01), or an endorsement providing equivalent coverage to the Additional Insureds. This insurance for the Additional Insureds shall be as broad as the coverage provided for the named insured. This insurance for the Additional Insureds shall apply as primary and non-contributing insurance before any insurance or self-insurance, including any deductible, maintained by, or provided to, the Additional Insureds.

COR and its subcontractors shall maintain CGL coverage for itself and all Additional Insureds for the duration of the Project.

- B) Business Automobile Liability ("AL") with limits of insurance of not less than \$1,000,000 each accident. AL coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles. FSMC, FOUNDATION, SUNY, CNSE and STATE shall each be named as Additional Insureds on the AL policy. This insurance for the Additional Insureds shall be as broad as the coverage provided for the named insured. The AL coverage for the Additional Insureds shall apply as primary and non-contributing insurance before any insurance maintained by the Additional Insureds.
- C) Workers Compensation ("WC") & Employers Liability ("EL") with limits of insurance of not less than required by New York State law. This policy shall include an All States endorsement.

- D) COR, but not its subcontractors, shall maintain Commercial Umbrella Liability ("UL") with limits of insurance of not less than a limit of \$15,000,000. UL coverage must include as Additional Insureds all entities that are Additional Insureds on the CGL and the AL. The UL insurance for the Additional Insureds shall apply as primary and non-contributing insurance before any insurance or self-insurance, including any deductible, maintained by, or provided to, the Additional Insureds other than the CGL and WC/EL coverage maintained by COR and its subcontractors.
- E) Professional Liability – Architects and Engineers Professional Liability ("AEL") in the amount of \$1,000,000 shall be maintained by the Project architects and engineers.
- F) COR shall supply FSMC with evidence of Environmental Impairment Liability Insurance ("EIL"), to the extent that it is mutually determined to be necessary, in the form of a certificate of insurance. A minimum coverage limit of \$10,000,000 for EIL should be maintained for the duration of the Agreement.
- G) COR and its subcontractors waive all rights against FSMC, FOUNDATION, SUNY, CNSE and STATE and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by CGL, AL, WC & EL or UL insurance maintained per the requirements stated above.
- H) Certificate of Insurance acceptable to FSMC must be provided prior to commencement of the Work. A copy of the General Liability Additional Insured endorsement shall be attached to the Certificate of Insurance.
- I) No insurance policy required above shall be cancelled, modified allowed to expire, or reduced in coverage without at least 30 days prior written notice to FSMC.

#### 10. Payment and Performance Bonds:

- A) COR shall provide labor and material payment and performance bonds only if mutually agreed to and approved by FSMC. If bonds are mutually agreed to, COR will require all subcontractors to be bonded, except:
- Work at or below \$25,000.
  - Ancillary work unrelated to the building structure or building systems.
  - Contracts solely related to materials or long lead time equipment.
- If a bond is provided then Section 11.C) applies.
- B) FSMC and project lender(s), if any, will be named co-obligee on all such bonds. COR shall provide copies of such bonds to FSMC and shall file all such bonds required to be filed pursuant to GOL section 5-322.3, with proof of filing, all given to FSMC at the earlier of the following: i) within fifteen (15) days of the signing of the agreement with the contractor or materialman; ii) not later than fifteen (15) days before said contractor is scheduled to commence work; or iii) when the first order for materials or equipment is placed with the contractor or materialman. In the event that the Agreement is terminated before final completion of the Work, at FSMC's election, COR will assign to FSMC contracts of COR with contractors and materialmen, and will assign to FSMC all rights under payment and performance bonds as FSMC shall designate. If bonds are mutually agreed to, COR shall also provide and pay for a labor and materials payment bond and a performance bond in the amount of 100% of the sum of the line items of the Work to be performed by COR's own forces. The cost of the Work shall not include, directly or indirectly, the cost of any payment or performance bond provided by contractors or materialmen whose contracts with COR to provide work, labor, materials, equipment or services are in an amount less than \$25,000.00.

C) All bonds shall be in a form satisfactory to FSMC from a surety company authorized to do business in New York State and satisfactory to FSMC with a minimum "A-" rating. COR shall defend and indemnify FSMC from any claim, loss, judgment, damage or liability arising pursuant to New York General Obligations Law section 5-322.3 by reason of COR 's failure to file said bonds as provided for herein, together with FSMC's actual attorneys' fees.

11. WMBE. COR shall in conjunction with applicable local labor requirements, utilize its best efforts to recruit and utilize minority and women owned business enterprises ("WMBE") in the community surrounding the Project, in order to satisfy at least a 23% WMBE participation goal in the Cost of Work incurred in conjunction with the construction of the building shell, including the current New York State regional goals for minority owned business enterprise and women owned business enterprise percentages. To the extent the Funding Entity requires a different MWBE participation percentage in its grant to FSMC, FSMC and COR will amend this Agreement to reflect the revised participation percentage, which revised percentage shall be applicable to portions of the work that have not yet been contracted for, or substantially completed.

12. Claims.

- A. Notice of Injury or Damage Claim. Should COR suffer injury or damage to person or property because of any act or omission of FSMC, or any of its employees, agents or others for whose acts FSMC may be legally liable, claims therefor shall be made in writing to FSMC no later than thirty (30) days after knowledge of such claim or first observance of injury or damage, whichever is the sooner, unless another time period is specified in this Agreement. COR may not make a claim for any issues addressed by change order to the extent such issues are addressed by such change order. Timely notice as provided for herein shall be a condition precedent to COR's right to commence an action for any such damage or injury.
- B. Claims for Additional Cost.
1. If COR wishes to make a claim for an increase in the GMP, COR shall give FSMC written notice thereof within thirty (30) days after the occurrence of the event giving rise to such claim. This notice shall be given by COR before proceeding with the execution of the affected portions of the work, except in the case of an emergency endangering life or property, in which case COR shall give notice thereof to FSMC as soon as possible and shall proceed in accordance with Section 13.E.3 of this Exhibit.
  2. Notwithstanding anything herein contained to the contrary, COR shall not be entitled to any increase in the GMP, unless COR has performed work outside the scope of this Agreement after duly authorized to do so by FSMC. COR agrees to make no claim for damages for delay in the performance of this Agreement occasioned by any act or omission to act of FSMC or any of its representatives, and agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the work as provided herein. COR shall not be entitled to any increase in the GMP caused by any delay attributable in whole or in part to FSMC.
- C. Claims for Extension of Time. Any claim for extension of the Project schedule shall be made in writing to FSMC not more than twenty-one (21) days after the commencement of the delay or after COR reasonably could have anticipated the delay, whichever shall first occur; otherwise such claim shall be waived. In the case of a continuing delay, only one claim is necessary, but the written notice of claim shall indicate that it is a continuing delay and COR shall further notify FSMC, in writing, when the circumstances causing the delay have abated or ended. Failure of COR to give notice of such abatement or ending shall result in a waiver of any claim for the delay. Further, COR shall, with the claim for an extension of time, provide an estimate of the probable effect of such delay on the progress of the work.

D. Other Claims. For all FSMC claims and for all COR claims, which are neither a claim for an extension of time or for an increase in the GMP, the party making the claim shall notify the other of the claim, in writing, which claim shall thereafter be resolved as hereafter provided in Paragraph 8.5.

E. Procedure for Resolution of or Preservation of Claims.

1. Claims, disputes and other matters arising under this Agreement and relating to the execution or progress of the work or the interpretation of the Agreement including claims for an adjustment to the GMP or an extension of the Project schedule, shall initially be decided by FSMC, who will render its decision in writing within a reasonable time.
2. Any decision or determination of FSMC made pursuant to the above provisions shall be final, binding and conclusive on COR unless COR shall, within ten (10) business days after said decision, make and deliver to FSMC a verified written statement of COR's contention that said decision is contrary to provisions of the Agreement and COR shall, in said verified written statement, set forth and identify each such provision of the Agreement on which it relies. Based upon said statement FSMC shall reconsider its determination, and render a written determination within ten (10) days of receipt of such verified written statement.
3. The determination of FSMC shall be final, conclusive and binding upon COR, unless COR, within thirty (30) days after receiving notice of FSMC's decision or determination, files a written statement with FSMC that COR reserves COR's rights in connection with the matters covered by said decision or determination. Notwithstanding an adverse determination in whole or in part by FSMC, COR shall proceed to complete the work required by the Agreement in strict conformance with such documents as interpreted by such decision or determination.

F. Limitations on Claims

1. No claim by COR against FSMC in connection with the Agreement shall be valid unless made in accordance with this Exhibit. No change in the GMP or Project schedule resulting from such claim shall be authorized except by change order signed by FSMC.
2. No action or proceeding, whether sounding in contract or tort, law or equity, shall lie or be maintained by COR against FSMC unless preserved in accordance with Section 13.E.3 of this Exhibit and unless timely notice as required by the Agreement is given. Compliance with such requirements shall be conditions precedent to COR's right to commence an action for any such damage or claim. Said action shall be commenced within eighteen (18) months after receipt by FSMC of COR's final application for payment or, if the Agreement is terminated by FSMC, said action shall be commenced within eighteen (18) months after the date of said termination. Nothing contained herein shall affect the time in which FSMC may commence an action or proceeding which shall be governed by the applicable laws, statutes, ordinances and regulations.

## EXHIBIT C

The Project shall be completed in accordance with the following schedule:

	<u>2014</u>
• Site Design	March - April
• Building pad clearing and grading	April
• Construction of site improvements	April
• Governmental development approvals	May
• Building program design	May
• Building design	May - June
• Building permit	June
• Building Foundations	December
• Building Steel	December
	<u>2015</u>
• Building Slab	October 2014 - January
• Building Special Construction	October 2014 - March
• Building Plumbing	October 2014 - April
• Building Exterior	December 2014 - April
• Building Interior	March - May
• Building Landscaping	March - May
• Building Turnover	June