

AIA[®] Document A141[®] – 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the 18th day of October in the year 2023
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, address and other information)

Virginia Commonwealth University Health System Authority
Box 980648
Richmond, VA 23298

403 North 13th Street
Richmond, VA 23298

and the Design-Builder:
(Name, address and other information)

DPR Construction, a General Partnership
5500 Cox Road, Suite M
Glen Allen, VA 23060

for the following Project:
(Name, location and detailed description)

Demolition of Public Safety Building at 10th and Clay Street.

The Owner and Design-Builder agree as follows.

Notwithstanding the date of this Agreement, the parties acknowledge that the Design-Builder began performing services prior to the signing of this Agreement and the Parties agree that all terms and conditions herein shall apply to all services rendered by the Design-Builder for the Project as if this Agreement was executed and in effect on the date the Design-Builder performed such

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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Notwithstanding the date of this Agreement, the parties acknowledge that the Design-Builder began performing services prior to the signing of this Agreement and the Parties agree that all terms and conditions herein shall apply to all services rendered by the Design-Builder for the Project as if this Agreement was executed and in effect on the date the Design-Builder performed such services. TABLE OF ARTICLES

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the

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requested information is contained in the design documents, identify the design documents and insert “see Owner’s design documents” where appropriate.)

§ 1.1.1 The Owner’s program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

| See Exhibit F

§ 1.1.2 The Owner’s design requirements for the Project and related documentation:

(Identify below, or in an attached exhibit, the documentation that contains the Owner’s design requirements, including any performance specifications for the Project.)

| See Exhibit F

§ 1.1.3 The Project’s physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

| See Exhibit F

§ 1.1.4 The Owner’s anticipated Sustainable Objective for the Project, if any:

(Identify the Owner’s Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™–2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner’s Sustainable Objective.)

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder’s services, are as follows:

(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

§ 1.1.6 The Owner’s budget for the Work to be provided by the Design-Builder is set forth below:

(Provide total for Owner’s budget, and if known, a line item breakdown of costs.)

§ 1.1.7 The Owner’s design and construction milestone dates:

.1 Design phase milestone dates:

.2 Submission of Design-Builder Proposal:

.3 Phased completion dates:

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.4 Substantial Completion date:

.5 Other milestone dates:

§ 1.1.8 As of the date of this Agreement, the Design-Builder has retained or shall retain the following Architect, Consultants and Contractors as part of the Work:

(List name, legal status, address and other information.)

.1 Architect

.2 Consultants

.3 Contractors

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:

(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

See Exhibit F

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 Unless the parties agree otherwise, the Design-Builder intends to use building information modeling ("BIM") as part of the design and construction of the Project. To that end, the Design-Builder shall collaborate with the Owner, Architect and other members of the Project team to develop a "BIM Execution Plan" that sets forth the uses of BIM, the team members' BIM responsibilities, and certain protocols to facilitate the implementation of BIM on the Project. Upon the Owner's approval of the BIM Execution Plan, it shall become a Design-Build Document.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:

(List name, address and other information.)

Andi Morrone
Director, Real Estate Project Management
VCU Health System Authority
Capital Programs
1200 E. Broad Street
Box 980207
Richmond, VA 23298

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Email: Adrienne.morrone@vcuhealth.org

§ 1.2.2 The persons or entities, in addition to the Owner’s representative, who are required to review the Design-Builder’s Submittals are as follows:

(List name, address and other information.)

§ 1.2.3 The Owner will retain the following consultants and separate contractors:

(List discipline, scope of work, and, if known, identify by name and address.)

§ 1.2.4 The Design-Builder’s representative is its project manager, who is identified below in accordance with Section 3.1.2:

(List name, address and other information.)

Liam Francis
DPR Construction, a General Partnership
5500 Cox Road, Suite M
Glen Allen, VA 23060
LiamF@dpr.com

§ 1.2.5 Neither the Owner’s nor the Design-Builder’s representative shall be changed without ten days’ written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim not involving enforcement of lien rights or that is subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

Arbitration pursuant to Section 14.4

Litigation in the Virginia Circuit Court for the City of Richmond, which shall be the exclusive forum.

Other: *(Specify)*

§ 1.4 Definitions

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the “Agreement”); other documents identified in this Agreement as Design-Build Documents; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive. Should any of the Design-Build Documents conflict with each other, the conflict will be resolved using the following order of precedence:

- (1) Modifications, in reverse chronological order;
- (2) Design-Build Amendment;
- (3) the other Exhibits to this Agreement;
- (4) this Agreement;
- (5) BIM Execution Plan, if any;
- (6) Sustainability Plan, if any;
- (7) Drawings in the Pricing Set or Construction Documents, as applicable;
- (8) Specifications in the Pricing Set or Construction Documents, as applicable; and

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(9) any other Design-Build Documents.

§ 1.4.2 The Contract.

§ 1.4.2.1 The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder. The Contract cannot be amended or modified verbally or by conduct of the Parties. All negotiations, discussions, representations, and offers prior to the execution of the Contract are merged into the Contract.

§ 1.4.2.2 Design-Builder, as to the Work, is bound to Owner by the terms of the License Agreement, attached as Exhibit F, and assumes towards Owner all the obligations and responsibilities that Owner, by that agreement, assumes towards the City of Richmond.

§ 1.4.3 The Work. The term “Work” means the design, construction and related services required to fulfill the Design-Builder’s obligations under, or reasonably inferable from, the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project. The term “Construction Work” means that portion of the Work involving the installation and commissioning of the materials and equipment required to be installed by Design-Builder under the Design-Build Documents, and it specifically excludes any design or engineering services.

§ 1.4.4 The Project. The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder, whether engaged directly or as a tier-subcontractor at any level. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor

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is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as “confidential.” However, Confidential Information does not include any information that (1) is in the public domain without any breach of confidentiality by the Design-Builder or (2) was independently developed by the Design-Builder without use of Owner-provided information.

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Construction Work.

§ 1.4.14 Day. The term “day” as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after the effective date of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Effective Date of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to the effective date of the Design-Build Amendment shall be made monthly. For the Design-Builder’s performance of Work prior to the effective date of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the effective date of the Design-Build Amendment, state the amount of the limit.)

The Design-Builder shall be paid on the basis of the fixed hourly billing rates described in Section 2.1.2, provided that total compensation for Work performed prior to the effective date of the Design-Build Amendment shall not exceed \$204,000.00 without written authorization from the Owner increasing the not-to-exceed amount. This not-to-exceed amount includes a Design Contingency described below.

2.1.1.1 Design Contingency. The Design-Builder’s not-to-exceed amount in Section 2.1.1 includes a “Design Contingency” of \$40,000 for use prior to the effective date of the Design-Build Amendment. The Design-Builder may use this Design Contingency to pay for the services and Reimbursable Expenses of the Design-Builder, Architect, Consultants and Contractors prior to the effective date of the Design-Build Amendment to the extent arising from (a) refinement or reevaluation of design elements for the benefit of the Design-Builder; and (b) additional design effort recommended by the Design-Builder and approved by the Owner to improve the Project outcome during the Construction Phase but which would not require a Change Order. The Design Contingency is not to be used to defray costs for which the Design-Builder is entitled to an adjustment in compensation or time by Change Order, including but not limited to the Owner’s changes to scope or concealed site conditions per Section 5.5.3 below. The Design-Builder will notify the Owner of the nature and amounts applied from the Design Contingency.

§ 2.1.2 The agreed fixed hourly billing rates for services of the Design-Builder and the Design-Builder’s Architect, Consultants and Contractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Exhibit C

Individual or Position	Rate
See Exhibit C	

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Effective Date of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2, but subject to the not-to-exceed amount in Section 2.1.1, and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Payments made to lower-tier consultants or subcontractors in accordance with the requirements of their agreements;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents, royalties and license fees;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Costs for set-up, rental, maintenance and technology required for a co-location space, with prior approval of the Owner;
- .9 Costs of the Design-Builder's insurance at the agreed fixed rates in Exhibit C, which amounts shall be billed in the first Application for Payment;
- .10 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from negotiations or disputes between the Owner and Design-Builder or between Design-Builder and any Contractor, Subcontractor, laborer, or supplier, reasonably incurred by the Design-Builder after the effective date of the Agreement and in the performance of the Work;
- .11 With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work;
- .12 All taxes levied on professional services and on reimbursable expenses; and
- .13 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses actually incurred and include a fee of percent (%) of the expenses incurred.

§ 2.1.4 Payments to the Design-Builder Prior To Effective Date of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest as provided in Section 15.9.

(Insert rate of monthly or annual interest agreed upon.)

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of five years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first, but only to the extent that any of them do not involve the calculation, composition or determination of any stipulated or fixed sums or rates agreed by the parties and set forth in the Design-Build Documents.

§ 2.2 Contract Sum and Payment for Work Performed After Effective Date of Design-Build Amendment

For the Design-Builder's performance of the Work after the effective date of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT**§ 3.1 General**

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located. Notwithstanding anything to the contrary in the Design-Build Documents, Design-Builder shall perform the design and engineering services with the degree of care and skill used by members of the architectural/engineering profession performing design services for projects of comparable scale and complexity in the state in which the Project is located. The standard of care for construction services provided by the Design-Builder shall be the degree of care and skill used by members of the construction profession performing construction services for projects of comparable scale and complexity in the state in which the Project is located (collectively, the "Standard of Care").

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§ 3.1.2 Design-Builder shall employ a qualified and competent Project Manager and Superintendent who shall be assigned only to the Project during performance of the Work. The Design-Builder's Project Manager is the representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the design and engineering services required for the Work according to the Standard of Care in fulfilling the requirements of the Design-Build Documents and complying with Applicable Laws (defined below). The Design-Builder shall perform the Construction Work according to the construction-related requirements of the Design-Build Documents. Without limiting Section 4.4, the Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

If the Design-Builder fails to design the Project to comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities ("Applicable Laws"), and such failure is discovered prior to Final Completion, then with Owner's approval the Design-Builder shall, at Design-Builder's expense, redesign the Project so as to comply with such Applicable Laws without adjustment to the not-to-exceed amount in Section 2.1.1 or the Contract Sum, as applicable.

§ 3.1.3.1 The Design-Builder shall perform the Construction Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities pertaining to performance of Construction Work. If the Design-Builder performs Construction Work contrary to such applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such non-compliance and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6. If an Applicable Law changes (including without limit changes in trade regulation or tariffs) after the effective date of the Contract Sum, provided that the Design-Builder did not have notice of the pending change prior to such date and the change in Applicable Law materially impacts the cost or time required for performance of the Work, the Design-Builder is entitled to request a Change Order adjusting the Contract Time and the not-to-exceed amount in Section 2.1.1 or the Contract Sum, as applicable, for any associated impacts on the Design-Builder's performance.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress

reports (a "Progress Report") to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Current Project cash-flow and forecast reports; and
- .11 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any; and
- .2 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work (the "Project Schedule"). The Project Schedule, including the time required for design and construction, shall not exceed time limits currently required under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

All schedules for the Construction Work on Project shall employ critical path method ("CPM") scheduling, and shall include a level of detail of Contractor's work activities sufficient to illustrate its plan for sequencing and timely completion of the Work, and shall be both cost and resource loaded. Submission of an updated CPM Project Schedule with each invoice and Application for Payment shall be a mandatory condition precedent for the payment by the Owner to the Design-Builder pursuant to an invoice or Application for Payment. The Owner shall not be obligated to make payment on any invoice or Application for Payment that fails to include an updated CPM Project Schedule reflecting the then-current conditions on the Project and the anticipated progress of work based on those conditions. All requests for Change Orders, Modifications, or additional compensation from the Design-Builder affecting the Contract Time or Contract Sum shall include a fragnet showing the specific effect of the change, modification or differing site condition on the critical path Project Schedule.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent Project Schedule submitted to the Owner.

§ 3.1.10 Certifications. Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, or Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) meet the applicable Standard of Care in complying with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

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§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal in accordance with Section 7.3.1.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Construction Work will conform to the requirements of the Design-Build Documents and will be free from defects in materials, equipment and workmanship, except for those inherent in the quality of the Construction Work or otherwise expressly permitted by the Design-Build Documents. Construction Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranties exclude any remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear under normal or excessive usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 Unless otherwise specified in the Design-Build Documents, the Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright or patent violations are required by the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required by the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

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§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, Virginia Commonwealth University, the Commonwealth of Virginia, and the City of Richmond, including their respective partners, officers, directors, members, managers, committees, shareholders, agents, and employees; and their respective parents, subsidiaries, affiliates, successors, and assigns (each and “Indemnitee”; collectively, “Indemnitees”), from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (subject, with respect to the Work itself, to the provisions of Exhibit B), but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14. Nothing contained herein shall require Design-Builder to indemnify or hold harmless any Indemnitee against liability for damage arising out of bodily injury to persons or damage to property suffered in the course of performance of the contract, to the extent caused by or resulting from the negligence of such other party or his agents or employees. Nothing contained herein shall constitute a waiver of any right to sovereign immunity.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers’ compensation acts, disability benefit acts or other employee benefit acts. Notwithstanding the foregoing, the Design-Builder reserves, and does not waive, any right to assert any and all defenses available under law in any action brought by any employee or other third party.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder’s rights and obligations under the agreement arising after the effective date of the assignment, except to the extent further assigned under Section 3.1.15.3 below.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for the successor design-builder’s or other entity’s obligations under the agreement.

§ 3.1.16 Design-Builder’s Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EFFECTIVE DATE OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

The Work under Article 4 commences upon the Owner’s written authorization for the Design-Builder to begin such Work.

§ 4.1.1 Any information submitted by the Design-Builder, and any interim design decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner’s Criteria unless the Owner and Design-Builder execute a Modification or ratify the decisions by the Owner’s formal approval of the Preliminary Design, Pricing Set or Construction Documents that expressly identifies the modification and the Owner’s approval thereof.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Design-Build Documents, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:

(List additional information, if any, to be included in the Design-Builder's written report.)

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. If the written report as consented to in writing by the Owner contains any adjustments of the Owner's Criteria and expressly identifies the specific modification of the Owner's Criteria, then such written report shall be deemed a Modification changing the Owner's Criteria accordingly. Otherwise, the consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written approval of the Preliminary Design and the Owner's consent to proceed to development of the Design-Builder's Proposal and Pricing Set (defined below). If the Preliminary Design as approved in writing by the Owner contains any deviations from the Owner's Criteria and expressly identifies the specific modification of the Owner's Criteria, then such written approval shall be deemed a Modification changing the Owner's Criteria accordingly. Otherwise,

the consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification. The Owner's approval of the Preliminary Design shall not relieve the Design-Builder of any liability for errors in the Preliminary Design or for failure of the Project to meet any performance guarantees explicitly made in the Design-Build Documents.

§ 4.4 Pricing Set of Design Documents

§ 4.4.1 Following the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare Drawings and Specifications at a mutually agreed level of completion to support the Design-Builder's Proposal (the "Pricing Set"). The Pricing Set shall be consistent with the Design-Build Documents.

§ 4.4.2 The Design-Builder shall provide drafts of the Pricing Set to the Owner for the Owner's review and approval on or before the milestone for submission established in the approved Design-Builder's report described in Section 4.2.2. If the Owner discovers any deviations between the Pricing Set and the Design-Build Documents or other errors or omissions, the Owner shall promptly notify the Design-Builder of such deviations or problems in writing. Upon written approval by the Owner, the Pricing Set shall become part of the Design-Build Documents and supersede the Preliminary Design and the Owner's Criteria, provided the Pricing Set expressly identifies the specific modification of the Owner's Criteria, as the basis of the Design-Builder's Work. The failure of the Owner to discover any such deviations or problems shall not relieve the Design-Builder of its liability for errors or omissions in the Pricing Set. Moreover, the Owner's approval of the Pricing Set shall not relieve the Design-Builder of any liability for errors or omissions in the Pricing Set or for failure of the Project to meet any performance guarantees explicitly made in the Design-Build Documents.

§ 4.5 Design-Builder's Proposal

§ 4.5.1 Concurrent with or following the Owner's written approval of the Pricing Set under Section 4.4.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- 1 A list of the Pricing Set Drawings, Specifications and other information, including any deviations from the Owner's Criteria not previously approved, upon which the Design-Builder's Proposal is based;
- 2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- 3 The proposed date the Design-Builder shall achieve Substantial Completion;
- 4 An enumeration of any clarifications, qualifications and exclusions, if applicable;
- 5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- 6 The date on which the Design-Builder's Proposal expires.

§ 4.5.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with the visually observable local conditions under which the Work is to be completed; and that Design-Builder has evaluated and satisfied itself as to (i) the location, visually observable condition, layout, and nature of the Site and surrounding areas; (ii) generally prevailing climatic conditions; (iii) anticipated labor supply and costs; (iv) availability and cost of materials, tools, and equipment; and (v) other similar issues.

§ 4.5.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EFFECTIVE DATE OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents based upon the Pricing Set. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Pricing Set and other Design-Build Documents, as modified by any Change Orders.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Pricing Set or the Design-Build Documents, or any errors or omissions in the Construction Documents, the Owner shall promptly notify the Design-Builder of such items in writing. The Construction Documents shall not modify the Design-Build Documents unless

the Owner and Design-Builder execute a Modification or the deviation has been approved in accordance with Article 4. The failure of the Owner to discover any such deviations, errors or omissions shall not relieve the Design-Builder of its liability for errors or omissions in the Construction Documents. Moreover, the Owner's review of the Construction Documents shall not relieve the Design-Builder of any liability for errors or omissions in the Construction Documents or for failure of the Project to meet any performance guarantees explicitly made in the Design-Build Documents. The Construction Documents, after any revisions made in response to Owner's review, shall become part of the Design-Build Documents and govern over the Pricing Set.

§ 5.2 Construction

§ 5.2.1 Commencement. Except as permitted in Section 5.2.2, the date of commencement of the construction of the Construction Work shall be the later of: (i) the date of confirmation of Owner's funding for the Project, if required by the Design-Build Documents; (ii) the date of receipt of a valid building permit; and (iii) the effective date of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Construction Work, using the Design-Builder's best skill and attention. As between the Owner and the Design-Builder, the Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Construction Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Construction Work already performed to determine that such portions are in proper condition to receive subsequent Construction Work.

§ 5.2.5 The Design-Builder and each Contractor or Subcontractor shall be responsible for thoroughly examining all Drawings, including all details, plans, elevations, sections, schedules, and diagrams, as well as all measurements and dimensions, for each particular type of work, and for coordinating the work described in the Drawings with the related Specifications. The Design-Builder shall also be responsible for determining the exact scope of work for each type of work and for checking cross-references of work excluded from any division.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, communications, transportation, and other facilities and services, necessary for proper execution and completion of the Construction Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Construction Work. As an employer of labor or otherwise, Design-Builder and all persons furnished by Design-Builder; Contractors or Subcontractors and all persons furnished by Contractors or Subcontractors; and Sub-subcontractors and all persons furnished by Sub-subcontractors shall comply, at their own cost and expense and at no cost or expense to the Owner, with all Applicable Laws, including those pertaining to safety, employment, wages, benefits, classification of employees, employee benefits and taxes, labor, equal opportunity, non-discrimination, and health.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Construction Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Construction Work and Substantial Completion of the Project and that are customarily secured by design-build contractors.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Construction Work.

§ 5.5.3 Concealed or Unknown Conditions. If a party discovers conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the party shall promptly provide notice to the other party before conditions are disturbed and in no event later than 21 days after first discovery of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Section 13.2.3.

§ 5.6 Allowances

§ 5.6.1 Allowances are items of incompletely defined Work for which the Design-Builder carries rough estimates in the Contract Sum based on available information regarding such Work until the allowance Work is completely defined or performed. Time adjustments for allowance Work, if any, shall be determined at the time the allowance Work is completely defined or performed. The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents, identified by the Design-Builder or requested by Owner. Items covered by allowances shall be performed by such persons or entities as agreed by the parties.

§ 5.6.2 The following provisions apply to allowances:

- .1 allowances include rough estimates of the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's rough estimates of costs for unloading and handling at the site, labor, installation, and other expenses contemplated for stated allowance amounts, shall also be included in the allowances;
- .3 the Design-Builder's amounts for insurance, overhead and profit on the allowance Work are not included in the allowance, but are included in the Contract Sum based on the allowance estimate. These amounts are subject to adjustment when the allowance Work is completely defined or performed;
- .4 whenever costs are more than or less than allowances at the time the allowance Work is completely defined or performed, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between (a) the costs allowed under the Design-Build Documents at the time the allowance Work is completely defined or performed and (b) the allowance estimate carried in the Design-Build Documents; with the Contractor's amounts for insurance, overhead and profit adjusted accordingly as provided in the Design-Build Documents; and

- .5 when the allowance Work is completely defined or performed, the Design-Builder shall assess the impact, if any, upon the most current update of the Project schedule and any associated adjustment of the Contract Time, if any is warranted and supported, shall be granted pursuant to Section 8.2 on the same basis as a change in the Work.

§ 5.6.3 If it is the Owner's responsibility under the Design-Build Documents, the Owner shall provide the complete definition of Work subject to an allowance within the time, if any, set forth in the Design-Build Documents or else at a time that does not disrupt the orderly progress of the Work.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design), which may include the Design-Builder, proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner or in electronic versions available to the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Construction Work.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Construction Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors**§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts**

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the Project Schedule deemed necessary after a joint review and mutual agreement. The Project Schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised. The Owner shall cause its separate contractors to be subject to the Design-Builder's safety directions and program while on the jobsite, include the Design-Builder as an additional insured under the separate contractor's commercial general liability policy(ies), on a primary and non-contributory basis, and to waive subrogation rights against the Design-Builder to the extent of any recovery from applicable property insurance. If a separate contractor desires to use Design-Builder-provided facilities or equipment, such use is conditioned on the separate contractor signing Design-Builder's standard form of indemnity agreement.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Construction Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Construction Work, prepare a written report to the Owner, identifying apparent discrepancies or defects discovered in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Construction Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Construction Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will equitably allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents. No modification or other change in the Work, whether by way of alteration, deletion of, or addition to the Work, shall be the basis of an addition to the Guaranteed Maximum Price, or a change in the Project Schedule or extension of the Contract Time (if any), unless and until such alteration or addition has been authorized by either a written Change Directive or a Change Order executed and issued in strict compliance with the requirements of the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.1.4 For any Change in the Work proposed by the Owner, the Design-Builder shall submit estimated prices and proposed adjustments to the Guaranteed Maximum Price, Schedule of Values, Project Schedule, and Contract Time within ten (10) days after receiving the Owner's request and shall submit firm prices and any associated schedule revisions within thirty (30) days after receiving the Owner's request. The Design-Builder will not accept any request for a Change Order from anyone other than the Owner. In no event will any personnel of the Owner other than the Owner's Representative be authorized to request or approve Change Orders or to direct or affect in any other way the Design-Builder's performance of the Work.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time and Project Schedule.

§ 6.2.4 Except to the extent directed by the Owner as a result of an error or omission in the design, a change in the Work includes any Owner-directed revisions to the design that are inconsistent with the latest set of Preliminary Design documents or Pricing Set documents that were approved by the Owner, subject to the requirements of Article 4 as to modifications.

§ 6.2.5 Agreement on any Change Order shall constitute a full and final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs

and expenses associated with such change, and any adjustment in the Guaranteed Maximum Price, the Contract Time, and the Project Schedule.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly (within ten days) or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, then if the Owner wishes the Design-Builder to proceed with the change in the Work, the Owner shall give written notification for the Design-Builder to proceed on the basis of actual expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Where the Design-Build Documents define Cost of the Work, then the Design-Builder's actual expenditures for the Work of the Change Directive and overhead and profit will be calculated as provided in the Design-Build Documents.

Otherwise, actual expenditures and savings for the purposes of this Section 6.3.7 shall be determined based on the following categories of costs:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance, which costs shall be billed using fixed hourly billing rates;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;

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- .5 Costs for all bonds and insurance (billed using fixed billing rates), permit fees, and sales, use or similar taxes related to the Work;
- .6 Additional costs of supervision and field office personnel directly attributable to the change (billed using fixed billing rates); and
- .7 Such other costs as may be agreed by the Owner in writing for the applicable change in the Work.

§ 6.3.8.1 The Design-Builder shall also respond within ten days noting its agreement or disagreement with the adjustment (or lack thereof) in the Contract Time and/or Project Schedule provided in the Change Directive. If the Design-Builder disagrees with the adjustment in the Contract Time (or lack thereof), the Design-Builder shall submit with its response a TIA with supporting narrative, schedule analysis, and fragnet to support its position regarding the adjustment of the Contract Time and/or the Project Schedule for the Change Directive.

§ 6.3.8.2 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified, as well as the adjustment to the Contract Time and/or Project Schedule. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, as well as the adjustment to the Contract Time and/or Project Schedule, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

§ 6.3.11 Design-Builder-Initiated Change Order Requests and Notice of Changes in The Work

§ 6.3.11.1 If the Design-Builder believes any latent or otherwise concealed or changed condition requires a modification to the Contract, or if the Design-Builder receives any drawings, specifications, clarifications, directions, interpretations, information, or instructions from the Owner that (i) materially conflict with the Design-Build Documents, or (ii) change the Work in a manner that may change the Guaranteed Maximum Price, the scope of Work, or any Milestone Dates (including the Substantial Completion Date/Contract Time), then the Design-Builder shall notify the Owner in writing within ten (10) days after the Design-Builder knew of the condition (each notice a "Design-Builder Change Proposal"). The Design-Builder Change Proposal shall separately enumerate and identify all Change Order Costs on a line-item basis and identify Contractor or Subcontractor Change Order Costs, Contractor or Subcontractor Change Order Fee, General Conditions Costs, and any Design-Builder Change Order Fee. The Design-Builder Change Proposal shall also specify any adjustment to the Contract Time and the Project Schedule, including a narrative description of the critical-path impact of the Change and a Time Impact Analysis ("TIA"), including a detailed fragnet incorporating the proposed or purported Change(s), to support the requested adjustment in the Contract Time and/or Project Schedule. Design-Builder shall enter into written subcontracts with all of its Contractors or Subcontractors that include these requirements and make the Contractors or Subcontractors bound to the same notice requirements and deadlines. Time is of the essence. Failure of the Design-Builder to comply with the notice, submission or other requirements of Article 6 and the Design-Build Documents as to changes shall constitute a waiver by the Design-Builder of the right to an adjustment in the Guaranteed Maximum Price, the Project Schedule, and/or Contract Time for all or that portion of the purported changed/extra work for which the Design-Builder has failed to provide timely, sufficient notice or support as required by the Contract.

§ 6.3.11.2 If and when the Owner approves the Change Proposal, then a written Change Directive or executed Change Order shall be issued. The requirement for an executed Change Order or Construction Change Directive is of the essence of the Design-Build Documents. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been

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unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Guaranteed Maximum Price, or a change in the Project Schedule or extension of the Contract Time (if any).

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents within the time period, if any, specified in the Design-Build Documents or else with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; environmental and subsurface conditions and information regarding the presence of pollutants at the Project site; or other information or services under the Owner's control and relevant to the Design-Builder's performance of the Work. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, permits, inspections, government approvals, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Construction Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

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§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the Design-Builder's Work. Upon the Owner's request, the Design-Builder shall advise regarding the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness so as not to delay the Work while allowing sufficient time in the Owner's reasonable judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Construction Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Construction Work, because, as between the Owner and the Design-Builder, these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Construction Work that does not conform to the Construction Documents. The Owner shall have authority to require inspection or testing of the Construction Work in accordance with Section 15.5.2, whether or not such Construction Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of Final Completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person

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or entity, except to the extent required by Section 5.13.1.3. The Contractor shall not be entitled to an increase in the Guaranteed Maximum Price or Contract Time as a consequence of the Owner's stoppage of the Work pursuant to this Section.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Construction Work.

§ 8.1.2 The Design-Builder shall not knowingly commence the construction operations at the site or elsewhere prior to the effective date of insurance required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 Upon commencement of the Construction Work, the Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2 Delays and Extensions of Time

§ 8.2.1.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or (2) by changes ordered in the Work by the Owner (items (1)) and (2), "Owner-Caused Delay"); or (3) by labor disputes, adverse weather, fire, unusual delay in deliveries (beyond those disclosed by Design-Builder's review consistent with Section 4.5.2 above), unavoidable casualties, changes in trade regulations, disease outbreaks, declared health emergencies or other causes beyond the Design-Builder's control; or (4) by acts or inactions of government authorities for which the Design-Builder is not responsible; or (5) by delay authorized by the Owner pending mediation and binding dispute resolution; or (6) by other causes that the Owner determines may justify delay (items (1)-(6), "Excusable Delay"), then the Contract Time shall be extended by Change Order for such reasonable time as the Owner and the Design-Builder shall mutually agree, subject to the following requirements in this Section 8.2, or else as determined under Article 14.

§ 8.2.1.2 Design-Builder shall be required to use diligent, commercially reasonable efforts to mitigate both the necessity of the delay and the period of the delay.

§ 8.2.1.3 No adjustments to the Contract Time or Milestone Dates shall be made unless both (a) the critical path indicated in the then-current Project Schedule is delayed, and (b) adjustments to the Contract Time and/or Milestone Dates will be permitted only to the extent that the delays resulting therefrom (1) are not caused by or due to, in whole or in part, the fault of the Design-Builder, a Contractor or Subcontractor, a supplier, or anyone for whom they may be responsible; (2) could not be limited or avoided by the Design-Builder's timely notice to the Owner of the reasonable likelihood of a delay; (3) have an impact of at least one (1) day; and (4) have no concurrent or contributing cause for which the Design-Builder would not be entitled to an extension of the Contract Time.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 For Owner-Caused Delay or Excusable Delay, in addition to any adjustment to the Guaranteed Maximum Price on account of the change in the Work (if any), the Design-Builder shall be entitled to an increase in the Guaranteed Maximum Price to the extent of (i) its demobilization and remobilization costs (if it is reasonable under the circumstances to demobilize) and (ii) extended General Conditions actually incurred. In no event shall the Design-Builder be entitled to receive damages for home office overhead, loss of productivity, inefficiency,

interference, or lost profits regardless of the length or cause of any delay to the Project. The remedies in this Section 8.2 constitute the Design-Builder's (and any affected Contractor's or Subcontractor's) sole remedies for Excusable Delays, including Owner-Caused Delay.

8.3 Adverse Weather. The Contract Time, Contract Sum and the Design-Builder's overall schedule shall include and accommodate an allowance of work days anticipated to be lost for adverse weather impacts on the critical path, which allowance shall be set forth in the Design-Build Amendment. A work day is considered lost due to adverse weather when the Design-Builder reasonably demonstrates that adverse weather conditions or their ongoing effects prevented the normal labor and equipment force from working at least five (5) hours of an otherwise available and scheduled work day on critical path activities (in other words, more than three hours of critical path work was lost). Moreover, a work day may also be deemed lost due to adverse weather if the Design-Builder obtains the Owner's approval to dismiss field labor that work day due to anticipated weather conditions, such approval to be evidenced by an e-mail or other writing from the Owner. The Design-Builder shall notify the Owner of any days lost due to adverse weather (together with dates, description of work activities impacted, etc.) at the next construction meeting, and shall review and justify to the Owner that the adverse weather delayed the critical path. At such time as the accumulated number of lost days due to adverse weather exceeds the weather delay allowance, that difference shall constitute the amount of time extension to the Contract Time and corresponding adjustment to the Contract Sum.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

§ 9.2.1 Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment, shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.2.2 At a minimum, the Design-Builder shall update the Schedule of Values with each Application for Payment, and more frequently as requested by Owner to reflect changes in the Work (each, an "Updated Schedule of Values"). Each Updated Schedule of Values shall be based on the then-current Design-Build Documents and include the documents and information, prepared in a format, reasonably requested by Owner.

§ 9.2.3 The Owner will meet with the Design-Builder to discuss the Updated Schedule of Values. After the Owner's approval, the Updated Schedule of Values will become the Schedule of Values under the Design-Build Documents. No Schedule of Values or Updated Schedule of Values, however, shall increase the Guaranteed Maximum Price unless and until a Change Order or Construction Change Directive is issued.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be supported by data substantiating the Design-Builder's right to payment as the Owner may reasonably require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents. With each Application for Payment, Design-Builder shall submit conditional waivers and releases of liens for the amount in the current Application for Payment and unconditional waivers and release of liens for payments previously made by the Owner to the Design-Builder, using the Design-Builder's standard forms of waiver and release.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

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§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner at the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work, except for those claims or liens specifically noted in the Application for Payment. If the Design-Builder has knowledge of any claims or liens, the Design-Builder will certify as to what it knows of the claim or liens in the Application for Payment, and the Design-Builder will covenant to promptly bond or otherwise discharge or expunge such liens to the extent Owner has paid the Design-Builder for the Work in question. If any Architect, Consultant, Contractor or supplier records or files, or maintains any action on or respecting a claim of mechanics' lien, stop payment notice, or lis pendens relating to the Work, the Design-Builder will promptly procure appropriate release bonds that will extinguish or expunge the mechanics' lien, stop payment notice, or lis pendens, provided that the Owner has paid the Design-Builder for the Work in question.

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's reasonable determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of:

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly due to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Construction Work cannot be completed for the unpaid balance of the Contract Sum for reasons for which the Design-Builder is responsible;
- .5 damage to the Owner or a separate contractor for which the Design-Builder is responsible;
- .6 reasonable evidence that the Construction Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay unless the anticipated delay is excusable under Section 8.2; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered. Any amounts paid by joint check shall be credited against the Contract Sum. No direct or joint payment shall create any relationship between the recipient thereof and the Owner, nor any duty on the part of the Owner. The Design-Builder shall cooperate with the Owner to facilitate any such direct or joint payments and shall provide such evidence as the Owner may request for purposes of determining any amount to be so paid.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner may, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to the Architect, a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents, nor will any of them be construed as a waiver of any right or claim by the Owner regarding such Work or stored materials.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.7 Failure of Payment

If the Owner does not make payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and

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start-up, plus interest as provided for in the Design-Build Documents. Notwithstanding anything to the contrary in the Design-Build Documents, the Design-Builder shall not be obligated to remove or be liable for liens recorded due to Owner's failure to make payment pursuant to the terms of the Design-Build Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Construction Work when the Construction Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Construction Work for its intended use. Substantial Completion shall not occur until (i) construction of all of the Work is sufficiently complete in accordance with the Design-Build Documents and all City issued permits have been closed out; (ii) the Design-Builder has prepared and submitted to the Owner, in accordance with Section 9.8.2 below, the punch list of Work remaining (the "Design-Builder's Punchlist"); (iii) the Owner (or the Architect, if authorized, and approved by the Owner) has issued a Certificate of Substantial Completion; and (vi) all other conditions precedent to and requirements for Substantial Completion as set forth in the Design-Build Documents have been satisfied. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's Punchlist, the Owner shall make an inspection to determine whether the Construction Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's Punchlist, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Construction Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Construction Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Construction Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Construction Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Construction Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Construction Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Construction Work and insurance, and have agreed in writing concerning the period for correction of the Construction Work. Commencement of warranties for such portion of the Construction Work shall commence upon the date specified in the separate agreement with the Design-Builder. When the Design-Builder considers a

portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Construction Work shall be determined by written agreement between the Owner and Design-Builder. Upon any partial occupancy or use, the Owner shall reduce retainage proportionately to the Design-Builder at the time of partial occupancy or use.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Construction Work to be used in order to determine and record the condition of the Construction Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Construction Work shall not constitute acceptance of Construction Work not complying with the requirements of the Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Construction Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Work is complete in accordance with the Design-Build Documents and the Contract fully performed ("Final Completion"), the Owner will, subject to Section 9.10.2, issue a final Certificate for Payment within 7 days of the inspection.

§ 9.10.2 Final payment shall not become due until the Design-Builder submits to the Owner (1) a final, conditional lien waiver signed by the Design-Builder in the form acceptable to the Owner including an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid, or will be paid from amounts in the final payment, or are reserved pursuant to Section 9.10.5 or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or conditional final payment releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as required by the Design-Build Documents, provided that the Owner has complied with its payment obligations. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish such a release or waiver required by the Design-Build Documents, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after the Owner has made all payments due to the Design-Builder, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Construction Work, Final Completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting Final Completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents;
- .3 terms of special warranties required by the Design-Build Documents;

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- .4 audits or cost verification performed by the Owner, if permitted by the Design-Build Documents, after final payment;
- .5 continuing obligations, liabilities, or responsibilities of the Design-Builder that are required (in accordance with the Contract) to survive completion and acceptance of the Work and final payment by the Owner, including, without limitation, the Design-Builder's insurance and indemnification obligations under the Design-Build Documents; or
- .6 matters arising after final payment.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to:

- .1 employees on the Construction Work and other persons who may be affected thereby;
- .2 the Construction Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Contractors or other person or entity providing construction services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Construction Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Construction Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 Without limiting Section 3.1.4, the Design-Builder shall promptly remedy damage and loss (other than damage or loss required to be insured under property insurance required by the Design-Build Documents or otherwise insured) to property referred to in Sections 10.2.1.2 and 10.2.1.3, to the extent negligently caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14. .

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

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§ 10.2.8 Injury or Damage to Person or Property. If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery, provided however, Articles 6, 8, and 14 will apply to Design-Builder's notices of any Changes in the Work or requested extensions of the Contract Time. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance the remediation of which is not part of the Work, including but not limited to asbestos or polychlorinated biphenyl (PCB), the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the area affected by hazardous materials or substances that have not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 [Not used]

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for fines, penalties or the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ 10.4 Emergencies

§ 10.4.1 In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

§ 10.4.2 The Design-Builder shall promptly report in writing to the Owner all accidents arising out of or in connection with the performance of the Work, whether on or off the Project Site, which cause death, personal injury, or material property damage, giving full details and statements of any witnesses. In addition, if death, serious

personal injury, or property damages are caused, the accident shall be reported immediately by telephone and e-mail to the Owner.

ARTICLE 11 UNCOVERING AND CORRECTION OF CONSTRUCTION WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Construction Work that the Design-Builder has covered to determine if the Construction Work has been performed in accordance with the Design-Build Documents. If such Construction Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Construction Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Construction Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. Prior to Final Completion, the Design-Builder shall promptly correct Construction Work rejected by the Owner under Section 7.6 or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Construction Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Construction Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition that notes its defective or non-conforming nature. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Construction Work, if the Owner discovers the non-conforming Work and fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder. If the Design-Builder or its Contractor or supplier fails to correct nonconforming Construction Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 The one-year period for correction of Construction Work shall be extended with respect to portions of Construction Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Construction Work.

§ 11.2.2.3 The one-year period for correction of Construction Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 Prior to the expiration of such one-year period, upon written notice from the Owner, the Design-Builder shall remove from the site portions of the Construction Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Construction Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Construction Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Construction Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings

may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Construction Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Construction Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by or through the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, conditioned upon the Owner properly performing its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. The Owner shall not otherwise assign, transfer or sub-license the foregoing license without the prior written agreement of the Design-Builder. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

§ 12.3.1 The Design-Builder shall obtain appropriate rights from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's applicable agreements with the Architect, Consultants and Contractors shall require them to also provide the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, with a limited, irrevocable and non-exclusive license in such party's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the applicable Architect, Consultant or Contractor all amounts due, and (2) provide the Design-Builder and the applicable Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Design-Builder and the applicable Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this

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Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice with an opportunity to cure to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice with an opportunity to cure.

§ 13.1.4 Notwithstanding any election made by the Design-Builder under Section 13.1.1, either party may terminate this Agreement upon not less than seven days' written notice with an opportunity to cure should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience for any or no cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

1. Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
2. An act of government, such as a declaration of national emergency that requires all Work to be stopped;
3. Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
4. The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 60 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice with an opportunity to cure to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the

Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice with an opportunity to cure to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 If the Design-Builder does any of the following, the Owner may give written notice to the Design-Builder and the Design-Builder must commence curing the problem within seven days of the Owner's notice and thereafter diligently complete curing the problem:

- .1 for reasons within the Design-Builder's control, fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 If the Design-Builder fails to commence or diligently complete curing any of the above reasons in Section 13.2.2.1 after receiving the Owner's written notice, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, and tools purchased for incorporation into the Construction Work or rented for the Construction Work provided that the Owner assumes the applicable rental agreement(s);
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine. Design-Builder will take reasonable steps to mitigate any potential added costs resulting from an Owner suspension.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include overhead and profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible, provided that the Owner has so notified the Design-Builder in writing of such Design-Builder responsibility at or before the time of suspension; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract on account of the suspension.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

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§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination.

§ 13.2.4.4 Upon a final, binding and unappealable determination by a court or other competent authority that termination of Design-Builder pursuant to Section 13.2.2 was without sufficient cause (or wrongful), such termination will be automatically converted to a termination for convenience pursuant to Section 13.2.4, and the Design-Builder's remedy for such termination will be limited to the recovery of the payments permitted for termination for convenience as set forth in Section 13.2.4.3.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 **Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 **Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. The notice requirement in Section 14.1.3.1 and the initial decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make undisputed payments in accordance with the Design-Build Documents.

§ 14.1.5 **Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) a written directive from the Owner, (2) an order by the Owner to stop the Work where the Design-Builder was not at fault, (3) failure of payment pursuant to the terms of the Design-Build Documents by the Owner, (4) Owner's suspension, or (6) other bases provided in the Design-Build Documents for additional compensation,

Claim shall be filed in accordance with this Article 14. Design-Builder waives any Claim where it executed the Work prior to making a Claim for the portion of the Work that is the subject of the Claim.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Untimely claims are waived.

§ 14.1.6.2 See Section 8.3 for provisions regarding adverse weather conditions.

§ 14.1.6.3 The Design-Builder shall have the burden of demonstrating the effect of the claimed delay on the Contract Time and the critical path and shall furnish such documentation relating thereto as may be reasonably required by the Owner. Any such notice must: (i) explicitly state that an extension is claimed; (ii) state in detail the circumstances which form the basis of the delay; (iii) describe, as fully as practicable at the time, the date of commencement and duration or expected duration of the delay and its effect on the various portions of the Work; and (iv) include a written TIA meeting the requirements described herein. The Design-Builder shall provide such supporting documentation as the Owner may require, including, where appropriate, a revised schedule for construction indicating all of the activities affected by the circumstances which form the basis for the Claim. The Design-Builder's TIA must illustrate the influence of each change or delay on the Contract Time utilizing the then-current Project Schedule and the last Progress Schedule Update and establish that the change or delay will extend the date of Substantial Completion of the Work.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for the following categories of damages arising out of or relating to this Contract. This mutual waiver includes:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons, and any other damages that are indirect or consequential in nature; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work, and any other damages that are indirect or consequential in nature.

This mutual waiver is also applicable, without limitation, to all indirect and consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to an Owner action under Section 14.2.2.2 or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. If both parties do not approve the initial decision, the Claim shall be subject first to mediation and, if the parties fail to resolve their dispute through mediation, then to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of a Claim at any time, subject to the terms of Sections 14.2.1 and 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, file a mediation request pursuant to Section 14.3.2.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 If a dispute arising out of or relating to this Contract or the breach thereof has not been settled by the parties under Section 14.2 or otherwise, the parties shall endeavor to resolve their Claims by mediation using a third party mediator mutually approved by the parties. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. The parties shall endeavor in good faith to settle the dispute in an amicable manner within 45 days of submission to mediation.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

§ 14.4 [Not Used]
(Paragraphs Deleted)

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, without giving effect to conflict of law principles, except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment; provided, however, that the Design-Builder shall not be required to execute any consent that would materially alter the Design-Builder's rights, remedies, or obligations under the Design-Build Documents, including without limitation, any consent that would require continued performance without the Design-Builder receiving the following: payment of all past-due sums; the assignee's agreement to assume all the Owner's obligations under the Design-Build Documents and pay for all remaining Work and withheld retainage on the terms of the Design-Build Documents; and an equitable adjustment to the Contract Sum and the Contract Time for any delay or disruption arising out of or connected with the assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice (which shall include electronic transmission) shall be deemed to have been duly served when delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or three business days after deposit in the United States Mail, if sent by registered or certified mail, return receipt requested; or if transmitted before 5:00 p.m. local time, on a business day, on the date transmitted by electronic mail or facsimile (as evidenced by facsimile confirmation), otherwise on the next business day; or when delivered by a reputable courier service providing proof of delivery to, the last business address known to the party giving notice. Delivery by electronic mail is not deemed effective if the sender receives an automated reply indicating that the e-mail was not delivered to the intended recipient or that the intended recipient was out of the office.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Construction Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals as provided for in the Design-Build Documents. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations

concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Construction Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Construction Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects, as modified by the parties.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The terms and conditions of this Agreement will be interpreted in accordance with their plain meaning, and not strictly for or against either Party.

Any rule of construction or interpretation to the contrary will be of no force or effect with respect to this Agreement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ 15.8.3 Severability If an arbitrator or court of competent jurisdiction finds any term or provision of the Design-Build Documents to be invalid or unenforceable for any reason, the remaining provisions will be valid and binding upon the parties, except when such invalidity would constitute an essential deviation from the general intent and purpose of the parties as reflected in the Design-Build Documents.

§ 15.9 Interest Amounts due and unpaid under the Design-Build Documents shall bear interest from the date payment is due at 5% per annum over the U.S. prime rate prevailing on the 25th day of the month preceding the date that payment was due, as published by the Wall Street Journal. By charging interest, a party does not waive its rights to any other remedy, including any right to suspend performance under or terminate the Contract.

§ 15.10 Independent Contractor The Design-Builder is an independent contractor and not an employee, agent, or fiduciary of the Owner.

§ 15.11 Without limiting any confidentiality obligations under the Design-Build Documents or any non-disclosure agreement for the Project, the Design-Builder is granted a non-exclusive, royalty-free, irrevocable license to use any photos, videos or other media created by the Design-Builder, Architect or Contractors during the course of the Project when the copyright of such media is owned by Owner.

§ 15.12 Counterparts This Agreement may be executed in counterparts, each of which will be deemed an original, and all of which when taken together will constitute one instrument. Electronic copies or photocopies of the Agreement showing the true signatures of the parties may be used for all purposes as originals.

§ 15.13 The Design-Builder agrees to pay when due all money it owes for labor, materials, equipment, or other sums due and owing by the Design-Builder on the Project. The Design-Builder shall take reasonable steps to prevent the recording of mechanic’s liens against the Project or the Site by any Contractor, Subcontractors, suppliers, or sub-subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable (a “Subcontractor Lien”). If any such Subcontractor Lien is asserted, filed, or recorded, then provided the Owner is in compliance with its payment obligations under the Design-Build Documents, the Design-Builder shall proceed to have it removed or bonded off within twenty (20) days. The Design-Builder also agrees to indemnify and defend Owner against any such Subcontractor Liens. If the Design-Builder fails to proceed to remove any such Subcontractor Lien within twenty (20) days, then the Owner may, but without obligation to do so, do everything necessary in its sole discretion to have the Subcontractor Lien released, and the Design-Builder shall pay any and all costs, including attorney’s fees, incurred by the Owner in connection therewith, provided Liens are not a result of Owner’s non-payment of an undisputed amount properly due under the Contract.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141TM-2014, Standard Form of Agreement Between Owner and Design-Builder, as modified by the parties
- .2 AIA Document A141TM-2014, Exhibit A, Design-Build Amendment, as modified by the parties and if executed
- .3 AIA Document A141TM-2014, Exhibit B, Insurance and Bonds, as modified by the parties
- .4 [Intentionally Deleted].
- .5 [Intentionally Deleted].
- .6 Other:

Exhibit C – Design-Builder’s Fixed Billing Rates

Exhibit D – [Not Used]

(Paragraph Deleted)

Exhibit E – VCUHS General Terms & Conditions

Exhibit F – License Agreement between the City of Richmond and Virginia Commonwealth University Health System Authority, dated July 14, 2023

Exhibit G – Purchase Order No. 10-10231836, including DPR Clay Street Design Proposal, dated August 8, 2023

BIM Execution Plan, if used and upon the Owner’s written approval

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

Init.

DocuSigned by:

Marlon Levy, MD

OWNER (Signature)

Marlon Levy, MD., Interim CEO

(Printed name and title)

DocuSigned by:

Emily Covey

DESIGN-BUILDER (Signature)

Emily Covey, Business Unit Leader - Richmond

(Printed name and title)

License #: **2705137646**

(Table Deleted)



Init.

/

Additions and Deletions Report for **AIA® Document A141® – 2014**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 10:39:44 ET on 10/25/2023.

PAGE 1

AGREEMENT made as of the 18th day of October in the year 2023

...

(Name, ~~legal status~~, address and other information)

...

Virginia Commonwealth University Health System Authority
Box 980648
Richmond, VA 23298

403 North 13th Street
Richmond, VA 23298

...

(Name, ~~legal status~~, address and other information)

...

DPR Construction, a General Partnership
5500 Cox Road, Suite M
Glen Allen, VA 23060

...

Demolition of Public Safety Building at 10th and Clay Street.

...

Notwithstanding the date of this Agreement, the parties acknowledge that the Design-Builder began performing services prior to the signing of this Agreement and the Parties agree that all terms and conditions herein shall apply to all services rendered by the Design-Builder for the Project as if this Agreement was executed and in effect on the date the Design-Builder performed such

PAGE 2

Notwithstanding the date of this Agreement, the parties acknowledge that the Design-Builder began performing services prior to the signing of this Agreement and the Parties agree that all terms and conditions herein shall apply to all services rendered by the Design-Builder for the Project as if this Agreement was executed and in effect on the date the Design-Builder performed such

...

services. TABLE OF ARTICLES

...

4 WORK PRIOR TO EXECUTION EFFECTIVE DATE OF THE DESIGN-BUILD AMENDMENT

...

5 WORK FOLLOWING EXECUTION EFFECTIVE DATE OF THE DESIGN-BUILD AMENDMENT

...

11 UNCOVERING AND CORRECTION OF CONSTRUCTION WORK

...

1 DESIGN-BUILDER'S FIXED RATES

...

2 OWNER'S PROGRAM AND DESIGN REQUIREMENTS

PAGE 3

See Exhibit F

...

See Exhibit F

...

See Exhibit F

PAGE 4

§ 1.1.8 The Owner requires the Design-Builder to As of the date of this Agreement, the Design-Builder has retained or shall retain the following Architect, Consultants and Contractors at the Design-Builder's cost as part of the Work:

...

See Exhibit F

...

~~§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™ 2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling. Unless the parties agree otherwise, the Design-Builder intends to use building information modeling (“BIM”) as part of the design and construction of the Project. To that end, the Design-Builder shall collaborate with the Owner, Architect and other members of the Project team to develop a “BIM Execution Plan” that sets forth the uses of BIM, the team members’ BIM responsibilities, and certain protocols to facilitate the implementation of BIM on the Project. Upon the Owner’s approval of the BIM Execution Plan, it shall become a Design-Build Document.~~

...

Andi Morrone
Director, Real Estate Project Management
VCU Health System Authority
Capital Programs
1200 E. Broad Street
Box 980207
Richmond, VA 23298
Email: Adrienne.morrone@vcuhealth.org

PAGE 5

~~§ 1.2.4 The Design-Builder identifies the following representative Design-Builder’s representative is its project manager, who is identified below in accordance with Section 3.1.2:~~

...

Liam Francis
DPR Construction, a General Partnership
5500 Cox Road, Suite M
Glen Allen, VA 23060
LiamF@dpr.com

...

For any Claim not involving enforcement of lien rights or that is subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

...

Litigation in a court of competent jurisdiction the Virginia Circuit Court for the City of Richmond, which shall be the exclusive forum.

...

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the “Agreement”); other documents ~~listed in this Agreement; identified in this Agreement as Design-Build Documents;~~ and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive. ~~Should any of the Design-Build Documents conflict with each other, the conflict will be resolved using the following order of precedence:~~

...

(1) Modifications, in reverse chronological order:

...

(2) Design-Build Amendment:

...

(3) the other Exhibits to this Agreement:

...

(4) this Agreement:

...

(5) BIM Execution Plan, if any:

...

(6) Sustainability Plan, if any:

...

(7) Drawings in the Pricing Set or Construction Documents, as applicable:

...

(8) Specifications in the Pricing Set or Construction Documents, as applicable; and

PAGE 6

(9) any other Design-Build Documents.

...

§ 1.4.2 The Contract.

...

§ 1.4.2.1 The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder. The Contract cannot be amended or modified verbally or by conduct of the Parties. All negotiations, discussions, representations, and offers prior to the execution of the Contract are merged into the Contract.

...

§ 1.4.2.2 Design-Builder, as to the Work, is bound to Owner by the terms of the License Agreement, attached as Exhibit F, and assumes towards Owner all the obligations and responsibilities that Owner, by that agreement, assumes towards the City of Richmond.

...

§ 1.4.3 The Work. The term “Work” means the design, construction and related services required to fulfill the Design-Builder’s obligations ~~under~~ under, or reasonably inferable from, the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project. The term “Construction Work” means that portion of the Work involving the installation and commissioning of the materials and equipment required to be installed by Design-Builder under the Design-Build Documents, and it specifically excludes any design or engineering services.

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§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the ~~Design-Builder~~ Design-Builder, whether engaged directly or as a tier-subcontractor at any level. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

...

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as “confidential.” -However, Confidential Information does not include any information that (1) is in the public domain without any breach of confidentiality by the Design-Builder or (2) was independently developed by the Design-Builder without use of Owner-provided information.

...

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Construction Work.

...

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after ~~execution~~ the effective date of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

...

§ 2.1 Compensation for Work Performed Prior To ~~Execution~~ Effective Date of Design-Build Amendment

...

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to ~~Execution~~ the effective date of the Design-Build Amendment shall be made monthly. For the Design-Builder’s performance of Work prior to the ~~execution~~ effective date of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

...

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the ~~execution~~ effective date of the Design-Build Amendment, state the amount of the limit.)

...

The Design-Builder shall be paid on the basis of the fixed hourly billing rates described in Section 2.1.2, provided that total compensation for Work performed prior to the effective date of the Design-Build Amendment shall not exceed \$204,000.00 without written authorization from the Owner increasing the not-to-exceed amount. This not-to-exceed amount includes a Design Contingency described below.

...
2.1.1.1 Design Contingency. The Design-Builder’s not-to-exceed amount in Section 2.1.1 includes a “Design Contingency” of \$40,000 for use prior to the effective date of the Design-Build Amendment. The Design-Builder may use this Design Contingency to pay for the services and Reimbursable Expenses of the Design-Builder, Architect, Consultants and Contractors prior to the effective date of the Design-Build Amendment to the extent arising from (a) refinement or reevaluation of design elements for the benefit of the Design-Builder; and (b) additional design effort recommended by the Design-Builder and approved by the Owner to improve the Project outcome during the Construction Phase but which would not require a Change Order. The Design Contingency is not to be used to defray costs for which the Design-Builder is entitled to an adjustment in compensation or time by Change Order, including but not limited to the Owner’s changes to scope or concealed site conditions per Section 5.5.3 below. The Design-Builder will notify the Owner of the nature and amounts applied from the Design Contingency.

...
§ 2.1.2 The agreed fixed hourly billing rates for services of the Design-Builder and the Design-Builder’s Architect, Consultants and Contractors, if any, are set forth below.

...
See Exhibit C

...
See Exhibit C
PAGE 8

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution-Effective Date of Design-Build Amendment

...
§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and ~~2.1.2~~ 2.1.2, but subject to the not-to-exceed amount in Section 2.1.1, and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder’s Architect, Consultants, and Contractors, as follows:

...
.2 Dedicated data and communication services, teleconferences, Project web sites, and extranets; Payments made to lower-tier consultants or subcontractors in accordance with the requirements of their agreements;

...
.4 Printing, reproductions, plots, standard form ~~documents;~~ documents, royalties and license fees;

...
.8 Costs for set-up, rental, maintenance and technology required for a co-location space, with prior approval of the Owner;

.9 Costs of the Design-Builder’s insurance at the agreed fixed rates in Exhibit C, which amounts shall be billed in the first Application for Payment;

...

.10 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from negotiations or disputes between the Owner and Design-Builder or between Design-Builder and any Contractor, Subcontractor, laborer, or supplier, reasonably incurred by the Design-Builder after the effective date of the Agreement and in the performance of the Work;

...

.11 With the Owner’s prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work;

...

.12 All taxes levied on professional services and on reimbursable expenses; and

...

~~.9~~ .13 Other Project-related expenditures, if authorized in advance by the Owner.

...

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses ~~the Design-Builder and the Design-Builder’s Architect, Consultants and Contractors incurred, plus an administrative~~ actually incurred and include a fee of percent (%) of the expenses incurred.

...

§ 2.1.4 Payments to the Design-Builder Prior To ~~Execution~~ Effective Date of Design-Build Amendment

...

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder’s invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest ~~at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder, as provided in Section 15.9.~~

...

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of ~~two-five~~ years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs ~~first-first~~, but only to the extent that any of them do not involve the calculation, composition or determination of any stipulated or fixed sums or rates agreed by the parties and set forth in the Design-Build Documents.

...

§ 2.2 Contract Sum and Payment for Work Performed After ~~Execution~~ Effective Date of Design-Build Amendment

...

For the Design-Builder's performance of the Work after ~~execution~~ the effective date of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

...

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located. Notwithstanding anything to the contrary in the Design-Build Documents, Design-Builder shall perform the design and engineering services with the degree of care and skill used by members of the architectural/engineering profession performing design services for projects of comparable scale and complexity in the state in which the Project is located. The standard of care for construction services provided by the Design-Builder shall be the degree of care and skill used by members of the construction profession performing construction services for projects of comparable scale and complexity in the state in which the Project is located (collectively, the "Standard of Care").

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§ 3.1.2 ~~The Design-Builder shall designate in writing a Design-Builder shall employ a qualified and competent Project Manager and Superintendent who shall be assigned only to the Project during performance of the Work. The Design-Builder's Project Manager is the representative who is authorized to act on the Design-Builder's behalf with respect to the Project.~~

...

§ 3.1.3 ~~The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The design and engineering services required for the Work according to the Standard of Care in fulfilling the requirements of the Design-Build Documents and complying with Applicable Laws (defined below). The Design-Builder shall perform the Construction Work according to the construction-related requirements of the Design-Build Documents. Without limiting Section 4.4, the Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.~~

...

If the Design-Builder fails to design the Project to comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities ("Applicable Laws"), and such failure is discovered prior to Final Completion, then with Owner's approval the Design-Builder shall, at Design-Builder's expense, redesign the Project so as to comply with such Applicable Laws without adjustment to the not-to-exceed amount in Section 2.1.1 or the Contract Sum, as applicable.

...

§ 3.1.3.1 The Design-Builder shall perform the Construction Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. ~~authorities pertaining to performance of Construction Work.~~ If the Design-Builder performs Construction Work contrary to such applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such ~~Work-non-compliance~~ and shall bear the costs attributable to correction.

...

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the

violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6. If an Applicable Law changes (including without limit changes in trade regulation or tariffs) after the effective date of the Contract Sum, provided that the Design-Builder did not have notice of the pending change prior to such date and the change in Applicable Law materially impacts the cost or time required for performance of the Work, the Design-Builder is entitled to request a Change Order adjusting the Contract Time and the not-to-exceed amount in Section 2.1.1 or the Contract Sum, as applicable, for any associated impacts on the Design-Builder’s performance.

...

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder’s employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

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§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports (a “Progress Report”) to the Owner, showing estimated percentages of completion and other information identified below:

...

~~.10 Cumulative total of the Cost of the Work to date including the Design-Builder’s compensation and Reimbursable Expenses, if any;~~

...

~~.11—Current Project cash-flow and forecast reports; and~~

...

~~.12—~~.11 Additional information as agreed to by the Owner and Design-Builder.

...

~~.1 Design-Builder’s work force report;~~Cumulative total of the Cost of the Work to date including the Design-Builder’s compensation and Reimbursable Expenses, if any; and

...

~~.2 Equipment utilization report; and~~

...

~~.3—Cost summary, comparing actual costs to updated cost estimates.~~

...

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner’s information a schedule for the Work. ~~The schedule, Work (the “Project Schedule”).~~ The Project Schedule, including the time required for design and construction, shall not exceed time limits ~~current~~ currently required under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner’s review and for approval of submissions by authorities having jurisdiction over the Project.

...
All schedules for the Construction Work on Project shall employ critical path method (“CPM”) scheduling, and shall include a level of detail of Contractor's work activities sufficient to illustrate its plan for sequencing and timely completion of the Work, and shall be both cost and resource loaded. Submission of an updated CPM Project Schedule with each invoice and Application for Payment shall be a mandatory condition precedent for the payment by the Owner to the Design-Builder pursuant to an invoice or Application for Payment. The Owner shall not be obligated to make payment on any invoice or Application for Payment that fails to include an updated CPM Project Schedule reflecting the then-current conditions on the Project and the anticipated progress of work based on those conditions. All requests for Change Orders, Modifications, or additional compensation from the Design-Builder affecting the Contract Time or Contract Sum shall include a fragnet showing the specific effect of the change, modification or differing site condition on the critical path Project Schedule.

...
§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent ~~schedules~~ Project Schedule submitted to the Owner.

...
§ 3.1.10 Certifications. Upon the Owner’s written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, ~~and or~~ Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) ~~comply meet the~~ applicable Standard of Care in complying with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner ~~and its consultants~~ shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder’s Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

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§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective ~~Submittal~~. Submittal in accordance with Section 7.3.1.

...
§ 3.1.12 Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Construction Work will conform to the requirements of the Design-Build Documents and will be free from ~~defects, defects in materials, equipment and workmanship~~, except for those inherent in the quality of the Construction Work or otherwise expressly permitted by the Design-Build Documents. Construction Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder’s ~~warranty excludes warranties~~ exclude any remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear ~~and normal~~ under normal or excessive usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

...
§ 3.1.13.1 ~~The~~ Unless otherwise specified in the Design-Build Documents, the Design-Builder shall pay all royalties and license fees.

...

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in or patent violations are required by the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in-by the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

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§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, Virginia Commonwealth University, the Commonwealth of Virginia, and the City of Richmond, including their respective partners, officers, directors, members, managers, committees, shareholders, agents, and employees; and their respective parents, subsidiaries, affiliates, successors, and assigns (each and "Indemnitee"; collectively, "Indemnitees"), from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property (subject, with respect to the Work itself, to the provisions of Exhibit B), but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14. Nothing contained herein shall require Design-Builder to indemnify or hold harmless any Indemnitee against liability for damage arising out of bodily injury to persons or damage to property suffered in the course of performance of the contract, to the extent caused by or resulting from the negligence of such other party or his agents or employees. Nothing contained herein shall constitute a waiver of any right to sovereign immunity.

...

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts. Notwithstanding the foregoing, the Design-Builder reserves, and does not waive, any right to assert any and all defenses available under law in any action brought by any employee or other third party.

...

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement arising after the effective date of the assignment, except to the extent further assigned under Section 3.1.15.3 below.

...

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

...

§ 3.1.16 **Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B-B.

...
ARTICLE 4 WORK PRIOR TO EXECUTION EFFECTIVE DATE OF THE DESIGN-BUILD AMENDMENT

...
The Work under Article 4 commences upon the Owner’s written authorization for the Design-Builder to begin such Work.

...
§ 4.1.1 Any information submitted by the Design-Builder, and any interim design decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner’s Criteria unless the Owner and Design-Builder execute a ~~Modification~~Modification or ratify the decisions by the Owner’s formal approval of the Preliminary Design, Pricing Set or Construction Documents that expressly identifies the modification and the Owner’s approval thereof.

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§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the ~~Owner’s Criteria, Design-Build Documents,~~ on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

...
§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner’s Criteria as set forth in Section ~~1.1~~The 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner’s Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder’s recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

...
§ 4.2.3 The Owner shall review the Design-Builder’s written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. ~~The~~If the written report as consented to in writing by the Owner contains any adjustments of the Owner’s Criteria and expressly identifies the specific modification of the Owner’s Criteria, then such written report shall be deemed a Modification changing the Owner’s Criteria accordingly. Otherwise, the consent to proceed shall not be understood to modify the Owner’s Criteria unless the Owner and Design-Builder execute a Modification.

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§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written approval of the Preliminary Design and the Owner’s consent to proceed to development of the Design-Builder’s Proposal. ~~The Preliminary Design shall not Proposal and Pricing Set (defined below).~~ If the Preliminary Design as approved in writing by the Owner contains any deviations from the Owner’s Criteria and expressly identifies the specific modification of the Owner’s Criteria, then such written approval shall be deemed a Modification changing the Owner’s Criteria accordingly. Otherwise, the consent to proceed shall not be understood to modify the Owner’s Criteria unless the Owner and Design-Builder execute a Modification. The Owner’s approval of the Preliminary

Design shall not relieve the Design-Builder of any liability for errors in the Preliminary Design or for failure of the Project to meet any performance guarantees explicitly made in the Design-Build Documents.

...

§ 4.4 Design-Builder's Proposal Pricing Set of Design Documents

...

§ 4.4.1 Upon Following the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare Drawings and Specifications at a mutually agreed level of completion to support the Design-Builder's Proposal (the "Pricing Set"). The Pricing Set shall be consistent with the Design-Build Documents.

...

§ 4.4.2 The Design-Builder shall provide drafts of the Pricing Set to the Owner for the Owner's review and approval on or before the milestone for submission established in the approved Design-Builder's report described in Section 4.2.2. If the Owner discovers any deviations between the Pricing Set and the Design-Build Documents or other errors or omissions, the Owner shall promptly notify the Design-Builder of such deviations or problems in writing. Upon written approval by the Owner, the Pricing Set shall become part of the Design-Build Documents and supersede the Preliminary Design and the Owner's Criteria, provided the Pricing Set expressly identifies the specific modification of the Owner's Criteria, as the basis of the Design-Builder's Work. The failure of the Owner to discover any such deviations or problems shall not relieve the Design-Builder of its liability for errors or omissions in the Pricing Set. Moreover, the Owner's approval of the Pricing Set shall not relieve the Design-Builder of any liability for errors or omissions in the Pricing Set or for failure of the Project to meet any performance guarantees explicitly made in the Design-Build Documents.

...

§ 4.5 Design-Builder's Proposal

...

§ 4.5.1 Concurrent with or following the Owner's written approval of the Pricing Set under Section 4.4.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

...

- .1 A list of the Preliminary Design documents Pricing Set Drawings, Specifications and other information, including the Design-Builder's clarifications, assumptions and any deviations from the Owner's Criteria, Criteria not previously approved, upon which the Design-Builder's Proposal is based;

...

- .4 An enumeration of any clarifications, qualifications and exclusions, if applicable;

...

§ 4.4.2-4.5.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with the visually observable local conditions under which the Work is to be completed; and that Design-Builder has evaluated and satisfied itself as to (i) the location, visually observable condition, layout, and nature of the Site and surrounding areas; (ii) generally prevailing

climatic conditions; (iii) anticipated labor supply and costs; (iv) availability and cost of materials, tools, and equipment; and (v) other similar issues.

...

~~§ 4.4.3~~ 4.5.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

...

ARTICLE 5 WORK FOLLOWING ~~EXECUTION~~ EFFECTIVE DATE OF THE DESIGN-BUILD AMENDMENT

...

~~§ 5.1.1~~ Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. Documents based upon the Pricing Set. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the ~~Design-Build Documents.~~ Pricing Set and other Design-Build Documents, as modified by any Change Orders.

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~~§ 5.1.2~~ The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Pricing Set or the Design-Build Documents, or any errors or omissions in the Construction Documents, the Owner shall promptly notify the Design-Builder of such ~~deviations~~ items in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a ~~Modification.~~ Modification or the deviation has been approved in accordance with Article 4. The failure of the Owner to discover any such ~~deviations~~ deviations, errors or omissions shall not relieve the Design-Builder of its liability for errors or omissions in the Construction Documents. Moreover, the Owner's review of the Construction Documents shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents. any liability for errors or omissions in the Construction Documents or for failure of the Project to meet any performance guarantees explicitly made in the Design-Build Documents. The Construction Documents, after any revisions made in response to Owner's review, shall become part of the Design-Build Documents and govern over the Pricing Set.

...

~~§ 5.2.1~~ **Commencement.** Except as permitted in Section 5.2.2, ~~construction shall not commence prior to execution~~ the date of commencement of the construction of the Construction Work shall be the later of: (i) the date of confirmation of Owner's funding for the Project, if required by the Design-Build Documents; (ii) the date of receipt of a valid building permit; and (iii) the effective date of the Design-Build Amendment.

...

~~§ 5.2.3~~ The Design-Builder shall supervise and direct the Construction Work, using the Design-Builder's best skill and attention. ~~The As between the Owner and the Design-Builder, the Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Construction Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.~~

...

~~§ 5.2.4~~ The Design-Builder shall be responsible for inspection of portions of Construction Work already performed to determine that such portions are in proper condition to receive subsequent Construction Work.

...

§ 5.2.5 The Design-Builder and each Contractor or Subcontractor shall be responsible for thoroughly examining all Drawings, including all details, plans, elevations, sections, schedules, and diagrams, as well as all measurements and dimensions, for each particular type of work, and for coordinating the work described in the Drawings with the related Specifications. The Design-Builder shall also be responsible for determining the exact scope of work for each type of work and for checking cross-references of work excluded from any division.

...

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, communications, transportation, and other facilities and services, necessary for proper execution and completion of the Construction Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Construction Work. As an employer of labor or otherwise, Design-Builder and all persons furnished by Design-Builder; Contractors or Subcontractors and all persons furnished by Contractors or Subcontractors; and Sub-subcontractors and all persons furnished by Sub-subcontractors shall comply, at their own cost and expense and at no cost or expense to the Owner, with all Applicable Laws, including those pertaining to safety, employment, wages, benefits, classification of employees, employee benefits and taxes, labor, equal opportunity, non-discrimination, and health.

...

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Construction Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

...

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, Design-Builder that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

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§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Construction Work and Substantial Completion of the Project. Project and that are customarily secured by design-build contractors.

...

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Construction Work.

...

§ 5.5.3 Concealed or Unknown Conditions. ~~If the Design-Builder encounters a party~~ discovers conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the ~~Design-Builder party~~ shall promptly provide notice to the ~~Owner other party~~ before conditions are disturbed and in no event later than 21 days after first ~~observance~~ discovery of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If

the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

...

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in ~~Article 14.~~Section 13.2.3.

...

§ 5.6.1 ~~Allowances are items of incompletely defined Work for which the Design-Builder carries rough estimates in the Contract Sum based on available information regarding such Work until the allowance Work is completely defined or performed. Time adjustments for allowance Work, if any, shall be determined at the time the allowance Work is completely defined or performed. The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Documents, identified by the Design-Builder or requested by Owner. Items covered by allowances shall be supplied for such amounts, and performed by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.~~agreed by the parties.

...

§ 5.6.2 ~~Unless otherwise provided in the Design-Build Documents,~~The following provisions apply to allowances:

...

~~.1 allowances shall cover~~include rough estimates of the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

...

~~.2 the Design-Builder's rough estimates of costs for unloading and handling at the site, labor, installation costs, overhead, profit, installation, and other expenses contemplated for stated allowance amounts, shall also be included in the allowances;~~

...

~~included in the Contract Sum but not in the allowances; and~~.3 the Design-Builder's amounts for insurance, overhead and profit on the allowance Work are not included in the allowance, but are included in the Contract Sum based on the allowance estimate. These amounts are subject to adjustment when the allowance Work is completely defined or performed;

...

~~.3—~~.4 whenever costs are more than or less than allowances, allowances at the time the allowance Work is completely defined or performed, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under the difference between (a) the costs allowed under the Design-Build Documents at the time the allowance Work is completely defined or performed and (b) the allowance estimate carried in the Design-Build

Documents; with the Contractor's amounts for insurance, overhead and profit adjusted accordingly as provided in the Design-Build Documents; and

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Section 5.6.2.2.5 when the allowance Work is completely defined or performed, the Design-Builder shall assess the impact, if any, upon the most current update of the Project schedule and any associated adjustment of the Contract Time, if any is warranted and supported, shall be granted pursuant to Section 8.2 on the same basis as a change in the Work.

...

~~§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection. If it is the Owner's responsibility under the Design-Build Documents, the Owner shall provide the complete definition of Work subject to an allowance within the time, if any, set forth in the Design-Build Documents or else at a time that does not disrupt the orderly progress of the Work.~~

...

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) design, which may include the Design-Builder, proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

...

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

...

The Design-Builder shall maintain at the site for the Owner or in electronic versions available to the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

...

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Construction Work.

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The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Construction Work in preparation and progress wherever located. The Design-Builder shall notify the Owner

regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

...

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the ~~construction schedule~~ Project Schedule deemed necessary after a joint review and mutual agreement. The ~~construction schedules~~ Project Schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised. The Owner shall cause its separate contractors to be subject to the Design-Builder's safety directions and program while on the jobsite, include the Design-Builder as an additional insured under the separate contractor's commercial general liability policy(ies), on a primary and non-contributory basis, and to waive subrogation rights against the Design-Builder to the extent of any recovery from applicable property insurance. If a separate contractor desires to use Design-Builder-provided facilities or equipment, such use is conditioned on the separate contractor signing Design-Builder's standard form of indemnity agreement.

...

§ 5.14.2 If part of the Design-Builder's Construction Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Construction Work, prepare a written report to the Owner, identifying apparent discrepancies or defects discovered in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Construction Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Construction Work, except as to defects not then reasonably discoverable.

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If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will equitably allocate the cost among those responsible.

...

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents. No modification or other change in the Work, whether by way of alteration, deletion of, or addition to the Work, shall be the basis of an addition to the Guaranteed Maximum Price, or a change in the Project Schedule or extension of the Contract Time (if any), unless and until such alteration or addition has been authorized by either a written Change Directive or a Change Order executed and issued in strict compliance with the requirements of the Design-Build Documents.

...

§ 6.1.4 For any Change in the Work proposed by the Owner, the Design-Builder shall submit estimated prices and proposed adjustments to the Guaranteed Maximum Price, Schedule of Values, Project Schedule, and Contract Time within ten (10) days after receiving the Owner's request and shall submit firm prices and any associated schedule revisions within thirty (30) days after receiving the Owner's request. The Design-Builder will not accept any request for a Change Order from anyone other than the Owner. In no event will any personnel of the Owner other than the Owner's Representative be authorized to request or approve Change Orders or to direct or affect in any other way the Design-Builder's performance of the Work.

...

.3 The extent of the adjustment, if any, in the Contract ~~Time~~ Time and Project Schedule.

...

§ 6.2.4 Except to the extent directed by the Owner as a result of an error or omission in the design, a change in the Work includes any Owner-directed revisions to the design that are inconsistent with the latest set of Preliminary Design documents or Pricing Set documents that were approved by the Owner, subject to the requirements of Article 4 as to modifications.

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§ 6.2.5 Agreement on any Change Order shall constitute a full and final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and expenses associated with such change, and any adjustment in the Guaranteed Maximum Price, the Contract Time, and the Project Schedule.

...

§ 6.3.7 If the Design-Builder does not respond promptly (within ten days) or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, ~~the Owner shall determine the method and the adjustment on the basis of reasonable then if the Owner wishes the Design-Builder to proceed with the change in the Work, the Owner shall give written notification for the Design-Builder to proceed on the basis of actual~~ expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. ~~Unless otherwise provided in the Design-Build Documents, costs~~ Where the Design-Build Documents define Cost of the Work, then the Design-Builder's actual expenditures for the Work of the Change Directive and overhead and profit will be calculated as provided in the Design-Build Documents. Otherwise, actual expenditures and savings for the purposes of this Section 6.3.7 shall be ~~limited to the following:~~ determined based on the following categories of costs:

...

- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation ~~insurance; insurance, which costs shall be billed using fixed hourly billing rates;~~

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- .5 Costs of ~~premiums~~ for all bonds and ~~insurance; insurance~~ (billed using fixed billing rates), permit fees, and sales, use or similar taxes related to the Work; ~~and~~

...

- .6 Additional costs of supervision and field office personnel directly attributable to the ~~change~~ change (billed using fixed billing rates); and

...

- .7 Such other costs as may be agreed by the Owner in writing for the applicable change in the Work.

...

§ 6.3.8.1 The Design-Builder shall also respond within ten days noting its agreement or disagreement with the adjustment (or lack thereof) in the Contract Time and/or Project Schedule provided in the Change Directive. If the Design-Builder disagrees with the adjustment in the Contract Time (or lack thereof), the Design-Builder shall submit with its response a TIA with supporting narrative, schedule analysis, and fragnet to support its position regarding the adjustment of the Contract Time and/or the Project Schedule for the Change Directive.

...

~~§ 6.3.8~~ 6.3.8.2 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

...

~~§ 6.3.9~~ Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably ~~justified~~ justified, as well as the adjustment to the Contract Time and/or Project Schedule. ~~The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, as well as the adjustment to the Contract Time and/or Project Schedule, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.~~

...

~~§ 6.3.10~~ When the Owner and Design-Builder agree ~~with a determination~~ concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, ~~or otherwise reach agreement upon the adjustments~~, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

...

§ 6.3.11 Design-Builder-Initiated Change Order Requests and Notice of Changes in The Work

...

§ 6.3.11.1 If the Design-Builder believes any latent or otherwise concealed or changed condition requires a modification to the Contract, or if the Design-Builder receives any drawings, specifications, clarifications, directions, interpretations, information, or instructions from the Owner that (i) materially conflict with the Design-Build Documents, or (ii) change the Work in a manner that may change the Guaranteed Maximum Price, the scope of Work, or any Milestone Dates (including the Substantial Completion Date/Contract Time), then the Design-Builder shall notify the Owner in writing within ten (10) days after the Design-Builder knew of the condition (each notice a "Design-Builder Change Proposal"). The Design-Builder Change Proposal shall separately enumerate and identify all Change Order Costs on a line-item basis and identify Contractor or Subcontractor Change Order Costs, Contractor or Subcontractor Change Order Fee, General Conditions Costs, and any Design-Builder Change Order Fee. The Design-Builder Change Proposal shall also specify any adjustment to the Contract Time and the Project Schedule, including a narrative description of the critical-path impact of the Change and a Time Impact Analysis ("TIA"), including a detailed fragnet incorporating the proposed or purported Change(s), to support the requested adjustment in the Contract Time and/or Project Schedule. Design-Builder shall enter into written subcontracts with all of its Contractors or Subcontractors that include these requirements and make the Contractors or Subcontractors bound to the same notice requirements and deadlines. Time is of the essence. Failure of the Design-Builder to comply with the notice, submission or other requirements of Article 6 and the Design-Build Documents as to changes shall constitute a waiver by the Design-Builder of the right to an adjustment in the Guaranteed Maximum Price, the Project Schedule, and/or Contract Time for all or that portion of the purported

changed/extra work for which the Design-Builder has failed to provide timely, sufficient notice or support as required by the Contract.

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§ 6.3.11.2 If and when the Owner approves the Change Proposal, then a written Change Directive or executed Change Order shall be issued. The requirement for an executed Change Order or Construction Change Directive is of the essence of the Design-Build Documents. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Guaranteed Maximum Price, or a change in the Project Schedule or extension of the Contract Time (if any).

...

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents within the time period, if any, specified in the Design-Build Documents or else with reasonable promptness.

...

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; ~~or~~ environmental and subsurface conditions and information regarding the presence of pollutants at the Project site ~~site~~; or other information or services under the Owner's control and relevant to the Design-Builder's performance of the Work. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the ~~site under the Owner's control site~~.

...

§ 7.2.5 The services, permits, inspections, government approvals, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and ~~except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing,~~ the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Construction Work.

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§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner ~~shall, upon request from the Design-Builder,~~ shall furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the ~~design services furnished by the Design-Builder.~~ In such event, the Design-Builder shall specify Design-Builder's Work. Upon the Owner's request, the Design-Builder shall advise regarding the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

...

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions

and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness so as not to delay the Work while allowing sufficient time in the Owner's reasonable judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

...

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Construction Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, ~~because Construction Work, because, as between the Owner and the Design-Builder,~~ these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

...

§ 7.6 The Owner has the authority to reject Construction Work that does not conform to the ~~Design-Build~~ Construction Documents. The Owner shall have authority to require inspection or testing of the Construction Work in accordance with Section 15.5.2, whether or not such Construction Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

...

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of ~~final completion~~ Final Completion in accordance with Section 9.10.

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If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3. The Contractor shall not be entitled to an increase in the Guaranteed Maximum Price or Contract Time as a consequence of the Owner's stoppage of the Work pursuant to this Section.

...

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Construction Work.

...

§ 8.1.2 The Design-Builder shall ~~not, except by agreement of the Owner in writing, commence the Work not~~ knowingly commence the construction operations at the site or elsewhere prior to the effective date of insurance;

~~other than property insurance, insurance~~ required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

...

§ 8.1.3 ~~The~~ Upon commencement of the Construction Work, the Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

...

~~§ 8.2.1~~ § 8.2.1.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or (2) by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties Owner (items (1) and (2), "Owner-Caused Delay"); or (3) by labor disputes, adverse weather, fire, unusual delay in deliveries (beyond those disclosed by Design-Builder's review consistent with Section 4.5.2 above), unavoidable casualties, changes in trade regulations, disease outbreaks, declared health emergencies or other causes beyond the Design-Builder's control; or (4) by acts or inactions of government authorities for which the Design-Builder is not responsible; or (5) by delay authorized by the Owner pending mediation and binding dispute resolution or resolution; or (6) by other causes that the Owner determines may justify delay, ~~delay~~ (items (1)-(6), "Excusable Delay"), then the Contract Time shall be extended by Change Order for such reasonable time as the Owner and the Design-Builder shall mutually agree, subject to the following requirements in this Section 8.2, or else as determined under Article 14.

...

§ 8.2.1.2 Design-Builder shall be required to use diligent, commercially reasonable efforts to mitigate both the necessity of the delay and the period of the delay.

...

~~may determine.~~ § 8.2.1.3 No adjustments to the Contract Time or Milestone Dates shall be made unless both (a) the critical path indicated in the then-current Project Schedule is delayed, and (b) adjustments to the Contract Time and/or Milestone Dates will be permitted only to the extent that the delays resulting therefrom (1) are not caused by or due to, in whole or in part, the fault of the Design-Builder, a Contractor or Subcontractor, a supplier, or anyone for whom they may be responsible; (2) could not be limited or avoided by the Design-Builder's timely notice to the Owner of the reasonable likelihood of a delay; (3) have an impact of at least one (1) day; and (4) have no concurrent or contributing cause for which the Design-Builder would not be entitled to an extension of the Contract Time.

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§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents. For Owner-Caused Delay or Excusable Delay, in addition to any adjustment to the Guaranteed Maximum Price on account of the change in the Work (if any), the Design-Builder shall be entitled to an increase in the Guaranteed Maximum Price to the extent of (i) its demobilization and remobilization costs (if it is reasonable under the circumstances to demobilize) and (ii) extended General Conditions actually incurred. In no event shall the Design-Builder be entitled to receive damages for home office overhead, loss of productivity, inefficiency, interference, or lost profits regardless of the length or cause of any delay to the Project. The remedies in this Section 8.2 constitute the Design-Builder's (and any affected Contractor's or Subcontractor's) sole remedies for Excusable Delays, including Owner-Caused Delay.

...

8.3 Adverse Weather. The Contract Time, Contract Sum and the Design-Builder's overall schedule shall include and accommodate an allowance of work days anticipated to be lost for adverse weather impacts on the critical path, which allowance shall be set forth in the Design-Build Amendment. A work day is considered lost due to adverse weather when the Design-Builder reasonably demonstrates that adverse weather conditions or their ongoing effects prevented the normal labor and equipment force from working at least five (5) hours of an otherwise available and scheduled work day on critical path activities (in other words, more than three hours of critical path work was lost). Moreover, a work day may also be deemed lost due to adverse weather if the Design-Builder obtains the Owner's approval to dismiss field labor that work day due to anticipated weather conditions, such approval to be evidenced by an e-mail or other writing from the Owner. The Design-Builder shall notify the Owner of any days lost due to adverse weather (together with dates, description of work activities impacted, etc.) at the next construction meeting, and shall review and justify to the Owner that the adverse weather delayed the critical path. At such time as the accumulated number of lost days due to adverse weather exceeds the weather delay allowance, that difference shall constitute the amount of time extension to the Contract Time and corresponding adjustment to the Contract Sum.

...

§ 9.2.1 Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment, shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

...

§ 9.2.2 At a minimum, the Design-Builder shall update the Schedule of Values with each Application for Payment, and more frequently as requested by Owner to reflect changes in the Work (each, an "Updated Schedule of Values"). Each Updated Schedule of Values shall be based on the then-current Design-Build Documents and include the documents and information, prepared in a format, reasonably requested by Owner.

...

§ 9.2.3 The Owner will meet with the Design-Builder to discuss the Updated Schedule of Values. After the Owner's approval, the Updated Schedule of Values will become the Schedule of Values under the Design-Build Documents. No Schedule of Values or Updated Schedule of Values, however, shall increase the Guaranteed Maximum Price unless and until a Change Order or Construction Change Directive is issued.

...

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may reasonably require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents. With each Application for Payment, Design-Builder shall submit conditional waivers and releases of liens for the amount in the current Application for Payment and unconditional waivers and release of liens for payments previously made by the Owner to the Design-Builder, using the Design-Builder's standard forms of waiver and release.

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§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than at the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-

Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the ~~Work-Work~~, except for those claims or liens specifically noted in the Application for Payment. If the Design-Builder has knowledge of any claims or liens, the Design-Builder will certify as to what it knows of the claim or liens in the Application for Payment, and the Design-Builder will covenant to promptly bond or otherwise discharge or expunge such liens to the extent Owner has paid the Design-Builder for the Work in question. If any Architect, Consultant, Contractor or supplier records or files, or maintains any action on or respecting a claim of mechanics' lien, stop payment notice, or lis pendens relating to the Work, the Design-Builder will promptly procure appropriate release bonds that will extinguish or expunge the mechanics' lien, stop payment notice, or lis pendens, provided that the Owner has paid the Design-Builder for the Work in question.

...

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

...

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's reasonable determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously ~~issued-issued~~, to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because ~~of~~:

...

.3 failure of the Design-Builder to make payments properly due to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;

...

.4 reasonable evidence that the Construction Work cannot be completed for the unpaid balance of the Contract ~~Sum;Sum~~ for reasons for which the Design-Builder is responsible;

...

.5 damage to the Owner or a separate ~~contractor;contractor~~ for which the Design-Builder is responsible;

...

.6 reasonable evidence that the Construction Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated ~~delay; delay unless the anticipated delay is excusable under Section 8.2;~~ or

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§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered. Any amounts paid by joint check shall be credited against the Contract Sum. No direct or joint payment shall create any relationship

between the recipient thereof and the Owner, nor any duty on the part of the Owner. The Design-Builder shall cooperate with the Owner to facilitate any such direct or joint payments and shall provide such evidence as the Owner may request for purposes of determining any amount to be so paid.

...

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, ~~but in no event more than seven days after receipt of payment from the Owner~~ the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

...

§ 9.6.3 The Owner ~~will, may,~~ on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

...

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to the Architect, a Consultant or Contractor, except as may otherwise be required by law.

...

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents. Documents, nor will any of them be construed as a waiver of any right or claim by the Owner regarding such Work or stored materials.

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If the Owner does not ~~issue a Certificate for Payment, make payment,~~ through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven ~~additional~~ days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents. Notwithstanding anything to the contrary in the Design-Build Documents, the Design-Builder shall not be obligated to remove or be liable for liens recorded due to Owner's failure to make payment pursuant to the terms of the Design-Build Documents.

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Construction Work when the Construction Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Construction Work for its intended use. Substantial Completion shall not occur until (i) construction of all of the Work is sufficiently complete in accordance with the Design-Build Documents and all

City issued permits have been closed out; (ii) the Design-Builder has prepared and submitted to the Owner, in accordance with Section 9.8.2 below, the punch list of Work remaining (the "Design-Builder's Punchlist"); (iii) the Owner (or the Architect, if authorized, and approved by the Owner) has issued a Certificate of Substantial Completion; and (vi) all other conditions precedent to and requirements for Substantial Completion as set forth in the Design-Build Documents have been satisfied. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

...

§ 9.8.3 Upon receipt of the Design-Builder's ~~list, Punchlist,~~ the Owner shall make an inspection to determine whether the Construction Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's ~~list, Punchlist,~~ which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Construction Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

...

§ 9.8.5 When the Construction Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Construction Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Construction Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

...

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Construction Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

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§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Construction Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Construction Work and insurance, and have agreed in writing concerning the period for correction of the ~~Work and commencement of warranties required by the Design-Build Documents.~~ Construction Work. Commencement of warranties for such portion of the Construction Work shall commence upon the date specified in the separate agreement with the Design-Builder. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Construction Work shall be determined by written agreement between the Owner and Design-Builder. Upon any partial occupancy or use, the Owner shall reduce retainage proportionately to the Design-Builder at the time of partial occupancy or use.

...

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Construction Work to be used in order to determine and record the condition of the Construction Work.

...

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Construction Work shall not constitute acceptance of Construction Work not complying with the requirements of the Design-Build Documents.

...

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Construction Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. ~~When the Owner finds the Work acceptable under the Work is complete in accordance with the Design-Build Documents and the Contract fully performed,~~ performed ("Final Completion"), the Owner will, subject to Section 9.10.2, ~~promptly issue a final Certificate for Payment.~~ Payment within 7 days of the inspection.

...

§ 9.10.2 ~~Neither final payment nor any remaining retained percentage shall~~ Final payment shall not become due until the Design-Builder submits to the Owner (1) a final, conditional lien waiver signed by the Design-Builder in the form acceptable to the Owner including an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid, or will be paid from amounts in the final payment, or are reserved pursuant to Section 9.10.5 or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or conditional final payment releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner, ~~required by the Design-Build Documents, provided that the Owner has complied with its payment obligations.~~ If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish such a release or waiver required by the Owner, Design-Build Documents, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after ~~payments are made,~~ the Owner has made all payments due to the Design-Builder, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

...

§ 9.10.3 If, after Substantial Completion of the ~~Work,~~ final completion-Construction Work, Final Completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting ~~final completion,~~ Final Completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

...

.2 failure of the Work to comply with the requirements of the Design-Build Documents; or

...

.3 terms of special warranties required by the Design-Build Documents; Documents;

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.4 audits or cost verification performed by the Owner, if permitted by the Design-Build Documents, after final payment;

...

.5 continuing obligations, liabilities, or responsibilities of the Design-Builder that are required (in accordance with the Contract) to survive completion and acceptance of the Work and final payment by the Owner, including, without limitation, the Design-Builder's insurance and indemnification obligations under the Design-Build Documents; or

...

.6 matters arising after final payment.

...

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to:

...

.1 employees on the Construction Work and other persons who may be affected thereby;

...

.2 the Construction Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, Contractors or other person or entity providing construction services or work for the Design-Builder; and

...

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, Construction Work, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

...

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Construction Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

...

§ 10.2.5 ~~The~~ Without limiting Section 3.1.4, the Design-Builder shall promptly remedy damage and loss (other than damage or loss required to be insured under property insurance required by the Design-Build Documents) Documents or otherwise insured) to property referred to in Sections 10.2.1.2 and 10.2.1.3, to the extent negligently caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone

directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14. _

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§ 10.2.8 Injury or Damage to Person or Property. If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after ~~discovery~~ discovery, provided however, Articles 6, 8, and 14 will apply to Design-Builder's notices of any Changes in the Work or requested extensions of the Contract Time. The notice shall provide sufficient detail to enable the other party to investigate the matter.

...

§ 10.3 Hazardous Materials

...

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance ~~not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance,~~ the remediation of which is not part of the Work, including but not limited to asbestos or polychlorinated biphenyl (PCB), ~~encountered on the site by the Design-Builder,~~ the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

...

§ 10.3.3 To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, ~~if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has area affected by hazardous materials or substances that have not been rendered harmless,~~ provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

...

§ 10.3.4 ~~The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.~~ [Not used]

...

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for finest, penalties or the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

...

§ 10.4.1 In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

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§ 10.4.2 The Design-Builder shall promptly report in writing to the Owner all accidents arising out of or in connection with the performance of the Work, whether on or off the Project Site, which cause death, personal injury, or material property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injury, or property damages are caused, the accident shall be reported immediately by telephone and e-mail to the Owner.

...

ARTICLE 11 UNCOVERING AND CORRECTION OF CONSTRUCTION WORK

...

The Owner may request to examine a portion of the Construction Work that the Design-Builder has covered to determine if the Construction Work has been performed in accordance with the Design-Build Documents. If such Construction Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Construction Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Construction Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

...

§ 11.2.1 **Before or After Substantial Completion.** ~~The Prior to Final Completion,~~ the Design-Builder shall promptly correct Construction Work rejected by the Owner under Section 7.6 or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Construction Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

...

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Construction Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such ~~condition~~ condition that notes its defective or non-conforming nature. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Construction Work, if the Owner discovers the non-conforming Work and fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. ~~If the Design-Builder fails to correct nonconforming Design-Builder.~~ If the Design-Builder or its Contractor or supplier fails to correct nonconforming Construction Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

...

§ 11.2.2.2 The one-year period for correction of Construction Work shall be extended with respect to portions of Construction Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Construction Work.

...

§ 11.2.2.3 The one-year period for correction of Construction Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

...

§ 11.2.3 ~~The~~ Prior to the expiration of such one-year period, upon written notice from the Owner, the Design-Builder shall remove from the site portions of the Construction Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

...

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Construction Work that is not in accordance with the requirements of the Design-Build Documents.

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§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Construction Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Construction Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Construction Work.

...

If the Owner prefers to accept Construction Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

...

§ 12.1 Drawings, specifications, and other documents furnished by or through the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

...

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, ~~provided that the Owner substantially performs conditioned upon the Owner properly performing~~ its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. The Owner shall not otherwise assign, transfer or sub-license the foregoing license without the prior written agreement of the Design-Builder. If the Design-Builder rightfully

terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

...

§ 12.3.1 The Design-Builder shall obtain ~~non-exclusive licenses~~ appropriate rights from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's ~~licenses from the Architect and its Consultants and Contractors shall also allow applicable~~ agreements with the Architect, Consultants and Contractors shall require them to also provide the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, ~~to obtain with~~ a limited, irrevocable and non-exclusive license in such party's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the applicable Architect, Consultant or Contractor all amounts due, and (2) provide the Design-Builder and the applicable Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Design-Builder and the applicable Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

...

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. ~~The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2.~~ The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

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§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice with an opportunity to cure to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

...

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written ~~notice~~ notice with an opportunity to cure.

...

§ 13.1.4 ~~Either~~ Notwithstanding any election made by the Design-Builder under Section 13.1.1, either party may terminate this Agreement upon not less than seven days' written notice with an opportunity to cure should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

...

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience ~~and without for any or no cause.~~

...

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. ~~In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.~~

...

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, ~~repeated~~ suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or ~~120~~ 60 days in any 365-day period, whichever is less.

...

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice with an opportunity to cure to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

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§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice with an opportunity to cure to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

...

§ 13.2.2.1 ~~The Owner may terminate the Contract if the Design-Builder~~ If the Design-Builder does any of the following, the Owner may give written notice to the Design-Builder and the Design-Builder must commence curing the problem within seven days of the Owner's notice and thereafter diligently complete curing the problem:

...

- .1 for reasons within the Design-Builder's control, fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;

...

§ 13.2.2.2 ~~When any of the above reasons exist,~~ If the Design-Builder fails to commence or diligently complete curing any of the above reasons in Section 13.2.2.1 after receiving the Owner's written notice, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

...

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, ~~tools, and construction equipment and machinery thereon owned by the Design-Builder; and tools purchased for incorporation into the Construction Work or rented for the Construction Work~~ provided that the Owner assumes the applicable rental agreement(s);

...

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine. Design-Builder will take reasonable steps to mitigate any potential added costs resulting from an Owner suspension.

...

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include overhead and profit. No adjustment shall be made to the extent

...

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is ~~responsible; responsible, provided that the Owner has so notified the Design-Builder in writing of such Design-Builder responsibility at or before the time of suspension; or~~

...

- .2 that an equitable adjustment is made or denied under another provision of the ~~Contract.~~Contract on account of the suspension.

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§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such ~~termination, along with reasonable overhead~~ termination.

...

~~and profit on the Work not executed.~~ § 13.2.4.4 Upon a final, binding and unappealable determination by a court or other competent authority that termination of Design-Builder pursuant to Section 13.2.2 was without sufficient cause (or wrongful), such termination will be automatically converted to a termination for convenience pursuant to Section 13.2.4, and the Design-Builder's remedy for such termination will be limited to the recovery of the payments permitted for termination for convenience as set forth in Section 13.2.4.3.

...

§ 14.1.3.2 **Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by ~~prompt written notice to the other party.~~ written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. The notice requirement in Section 14.1.3.1 and the ~~Initial Decision~~ initial decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

...

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make undisputed payments in accordance with the Design-Build Documents.

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§ 14.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. If the Design-Builder believes additional cost is involved for reasons including but not limited to (1) a written directive from the Owner, (2) an order by the Owner to stop the Work where the Design-Builder was not at fault, (3) failure of payment pursuant to the terms of the Design-Build Documents by the Owner, (4) Owner’s suspension, or (6) other bases provided in the Design-Build Documents for additional compensation, Claim shall be filed in accordance with this Article 14. Design-Builder waives any Claim where it executed the Work prior to making a Claim for the portion of the Work that is the subject of the Claim.

...

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder’s Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. Untimely claims are waived.

...

§ 14.1.6.2 ~~If adverse weather conditions are~~ See Section 8.3 for provisions regarding adverse weather conditions.

...

~~the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.~~ **§ 14.1.6.3** The Design-Builder shall have the burden of demonstrating the effect of the claimed delay on the Contract Time and the critical path and shall furnish such documentation relating thereto as may be reasonably required by the Owner. Any such notice must: (i) explicitly state that an extension is claimed; (ii) state in detail the circumstances which form the basis of the delay; (iii) describe, as fully as practicable at the time, the date of commencement and duration or expected duration of the delay and its effect on the various portions of the Work; and (iv) include a written TIA meeting the requirements described herein. The Design-Builder shall provide such supporting documentation as the Owner may require, including, where appropriate, a revised schedule for construction indicating all of the activities affected by the circumstances which form the basis for the Claim. The Design-Builder’s TIA must illustrate the influence of each change or delay on the Contract Time utilizing the then-current Project Schedule and the last Progress Schedule Update and establish that the change or delay will extend the date of Substantial Completion of the Work.

...

The Design-Builder and Owner waive Claims against each other for ~~consequential~~ the following categories of damages arising out of or relating to this Contract. This mutual waiver ~~includes~~ includes:

...

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; persons, and any other damages that are indirect or consequential in nature; and

...

- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the ~~Work~~, Work, and any other damages that are indirect or consequential in nature.

...

This mutual waiver is also applicable, without limitation, to all indirect and consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

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§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a ~~Claim~~ an Owner action under Section 14.2.2.2 or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

...

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. ~~The initial decision shall be final and binding on the parties but subject to mediation.~~ If both parties do not approve the initial decision, the Claim shall be subject first to mediation and, if the parties fail to resolve their dispute through mediation, then to binding dispute resolution.

...

§ 14.2.6 Either party may file for mediation of an ~~initial decision~~ a Claim at any time, subject to the terms of ~~Section~~ Sections 14.2.1 and 14.2.6.1.

...

§ 14.2.6.1 ~~Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision. Either party may, within 30 days from the date of an initial decision, file a mediation request pursuant to Section 14.3.2.~~

...

§ 14.3.2 ~~The~~ If a dispute arising out of or relating to this Contract or the breach thereof has not been settled by the parties under Section 14.2 or otherwise, the parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement, using a third party mediator mutually approved by the parties. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. ~~If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~ The parties shall endeavor in good faith to settle the dispute in an amicable manner within 45 days of submission to mediation.

...

§ 14.4 Arbitration~~[Not Used]~~

...

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

...

§ 14.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

...

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

...

§ 14.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

...

§ 14.4.4 Consolidation or Joinder

...

§ 14.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

...

§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

...

~~§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.~~

...

The Contract shall be governed by the law of the place where the Project is ~~located~~ located, without giving effect to conflict of law principles, except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.

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~~§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.~~ assignment; provided, however, that the Design-Builder shall not be required to execute any consent that would materially alter the Design-Builder's rights, remedies, or obligations under the Design-Build Documents, including without limitation, any consent that would require continued performance without the Design-Builder receiving the following: payment of all past-due sums; the assignee's agreement to assume all the Owner's obligations under the Design-Build Documents and pay for all remaining Work and withheld retainage on the terms of the Design-Build Documents; and an equitable adjustment to the Contract Sum and the Contract Time for any delay or disruption arising out of or connected with the assignment.

...

Written notice (which shall include electronic transmission) shall be deemed to have been duly served if when delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by three business days after deposit in the United States Mail, if sent by registered or certified mail, return receipt requested; or if transmitted before 5:00 p.m. local time, on a business day, on the date transmitted by electronic mail or facsimile (as evidenced by facsimile confirmation), otherwise on the next business day; or when delivered by a reputable courier service providing proof of delivery to, the last business address known to the party giving notice. ~~Delivery by electronic mail is not deemed effective if the sender receives an automated reply indicating that the e-mail was not delivered to the intended recipient or that the intended recipient was out of the office.~~

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~~§ 15.5.1 Tests, inspections and approvals of portions of the Construction Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals.~~ approvals as provided for in the Design-Build Documents. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

...

~~§ 15.5.2 If the Owner determines that portions of the Construction Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for~~

such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

...

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Construction Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

...

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of ~~Architects~~Architects, as modified by the parties.

...

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The terms and conditions of this Agreement will be interpreted in accordance with their plain meaning, and not strictly for or against either Party. Any rule of construction or interpretation to the contrary will be of no force or effect with respect to this Agreement.

...

§ 15.8.3 Severability If an arbitrator or court of competent jurisdiction finds any term or provision of the Design-Build Documents to be invalid or unenforceable for any reason, the remaining provisions will be valid and binding upon the parties, except when such invalidity would constitute an essential deviation from the general intent and purpose of the parties as reflected in the Design-Build Documents.

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§ 15.9 Interest Amounts due and unpaid under the Design-Build Documents shall bear interest from the date payment is due at 5% per annum over the U.S. prime rate prevailing on the 25th day of the month preceding the date that payment was due, as published by the Wall Street Journal. By charging interest, a party does not waive its rights to any other remedy, including any right to suspend performance under or terminate the Contract.

...

§ 15.10 Independent Contractor The Design-Builder is an independent contractor and not an employee, agent, or fiduciary of the Owner.

...

§ 15.11 Without limiting any confidentiality obligations under the Design-Build Documents or any non-disclosure agreement for the Project, the Design-Builder is granted a non-exclusive, royalty-free, irrevocable license to use any photos, videos or other media created by the Design-Builder, Architect or Contractors during the course of the Project when the copyright of such media is owned by Owner.

...

§ 15.12 Counterparts This Agreement may be executed in counterparts, each of which will be deemed an original, and all of which when taken together will constitute one instrument. Electronic copies or photocopies of the Agreement showing the true signatures of the parties may be used for all purposes as originals.

...

§ 15.13 The Design-Builder agrees to pay when due all money it owes for labor, materials, equipment, or other sums due and owing by the Design-Builder on the Project. The Design-Builder shall take reasonable steps to prevent the recording of mechanic's liens against the Project or the Site by any Contractor, Subcontractors, suppliers, or sub-subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable (a "Subcontractor Lien"). If any such Subcontractor Lien is asserted, filed, or recorded, then provided the Owner is in compliance with its payment obligations under the Design-Build Documents, the Design-Builder shall proceed to have it removed or bonded off within twenty (20) days. The Design-Builder also agrees to indemnify and defend Owner against any such Subcontractor Liens. If the Design-Builder fails to proceed to remove any such Subcontractor Lien within twenty (20) days, then the Owner may, but without obligation to do so, do everything necessary in its sole discretion to have the Subcontractor Lien released, and the Design-Builder shall pay any and all costs, including attorney's fees, incurred by the Owner in connection therewith, provided Liens are not a result of Owner's non-payment of an undisputed amount properly due under the Contract.

...

.1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder, as modified by the parties

...

.2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, as modified by the parties and if executed

...

.3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds, as modified by the parties

...

.4 AIA Document A141™-2014, Exhibit C, Sustainable Projects, if completed[Intentionally Deleted].

...

.5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:[Intentionally Deleted].

...

.6 Other:

...

Exhibit C – Design-Builder's Fixed Billing Rates

...

Exhibit D – [Not

Used]

.6 Other:

Exhibit E – VCUHS General Terms & Conditions

Exhibit F – License Agreement between the City of Richmond and Virginia Commonwealth University Health System Authority, dated July 14, 2023

Exhibit G – Purchase Order No. 10-10231836, including DPR Clay Street Design Proposal, dated August 8, 2023

BIM Execution Plan, if used and upon the Owner’s written approval

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OWNER *(Signature)*

(Printed name and title)

OWNER *(Signature)*

(Printed name and title)

DESIGN-BUILDER *(Signature)*

(Printed name and title)

License #:

DESIGN-BUILDER *(Signature)*

(Printed name and title)

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, , hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 10:39:44 ET on 10/25/2023 under Order No. 3104237919 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ - 2014, Standard Form of Agreement Between Owner and Design-Builder, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

AIA® Document A141® – 2014 Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the 18th day of October in the year 2023 (the "Agreement")
(In words, indicate day, month and year.)

for the following PROJECT:
(Name and location or address)

Demolition of Public Safety Building at 10th and Clay Street.

THE OWNER:
(Name, legal status and address)

Virginia Commonwealth University Health System Authority
Box 980648
Richmond, VA 23298

403 North 13th Street
Richmond, VA 23298

THE DESIGN-BUILDER:
(Name, legal status and address)

DPR Construction, a General Partnership
5500 Cox Road, Suite M
Glen Allen, VA 23060

The Owner and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:
(Check the appropriate box.)

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

Init.

/

- Stipulated Sum, in accordance with Section A.1.2 below
- Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below
- Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

§ A.1.2 Stipulated Sum
[Intentionally Deleted].

(Table deleted)
(Paragraphs deleted)

§ A.1.3 Cost of the Work Plus Design-Builder's Fee
[Intentionally Deleted].

(Paragraphs deleted)

§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price

§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.4.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)

Five Percent (5%).

§ A.1.4.3 Guaranteed Maximum Price

§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed Four-Million, Seven-Hundred Eighty-Three Thousand, Two-Hundred and Fourteen Dollars (\$ 4,783,214), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price. *(Provide information below or reference an attachment.)*

See Exhibit A-1 – DPR Clay Street Demo Proposal Change Order 1, dated October 10, 2023, which is incorporated herein by reference.

§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)

See Exhibit A-1.

§ A.1.4.3.4 Unit Prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Init.

Item	Units and Limitations	Price per Unit (\$0.00)
See Exhibit A-1.		

§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

See Exhibit A-1.

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the last day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the last day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.2 Progress Payments—Stipulated Sum

[Intentionally Deleted] § A.1.5.3 Progress Payments—Cost of the Work Plus a Fee

[Intentionally Deleted].

(Paragraphs deleted)

Init.

§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.
2. Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
3. Add the Design-Builder's Fee, less retainage of ten percent (10 %). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
4. Subtract retainage of ten percent (10 %) from that portion of the Work that the Design-Builder self-performs;
5. Subtract the aggregate of previous payments made by the Owner;
6. Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
7. Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than

Init.

(Paragraphs deleted)

March 26, 2023, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

(Paragraphs deleted)

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

§ A.3.1.2 The Specifications:

(Either list the specifications here or refer to an exhibit attached to this Amendment.)

Section	Title	Date	Pages
---------	-------	------	-------

§ A.3.1.3 The Drawings:

(Either list the drawings here or refer to an exhibit attached to this Amendment.)

Number	Title	Date
--------	-------	------

§ A.3.1.4 The Sustainability Plan, if any:

(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
-------	------	-------

Other identifying information:

§ A.3.1.5 Allowances and Contingencies:

(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

See Exhibit A-1.

.2 Contingencies

See Exhibit A-1.

§ A.3.1.6 Design-Builder's assumptions and clarifications:

Init.

See Exhibit A-1.

§ A.3.1.7 Deviations from the Owner’s Criteria as adjusted by a Modification:

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

ARTICLE A.4 DESIGN-BUILDER’S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder’s key personnel are identified below:
(Identify name, title and contact information.)

.1 Superintendent

Matt Thompson, mattthompson@dpr.com, 315-382-4423

.2 Project Manager

Liam Francis, liamf@dpr.com, 954.649.0838

.3 Others

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:
(List name, discipline, address and other information.)

ARTICLE A.5 COST OF THE WORK

§ A.5.1 Cost To Be Reimbursed as Part of the Contract

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops.

§ A.5.1.1.2 With the Owner’s prior approval, wages or salaries of the Design-Builder’s supervisory and administrative personnel when stationed at the site.

(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder’s principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
-----------------	------------------------------	---------------	---------------------

§ A.5.1.1.3 Wages and salaries of the Design-Builder’s supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.

Init.

§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.

§ A.5.1.2 **Contract Costs.** Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

§ A.5.1.3 **Costs of Materials and Equipment Incorporated in the Completed Construction**

§ A.5.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.1.4 **Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.

§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.5.1.4.4 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

§ A.5.1.5 **Miscellaneous Costs**

§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the

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Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.

§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, or between Design-Builder and any Subcontractor or supplier of any tier (so long as Owner has paid Design-Builder pursuant to the terms of the Contract Documents) reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

§ A.5.1.5.9 With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.

§ A.5.1.5.10 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ A.5.1.6 Other Costs and Emergencies

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

§ A.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract

The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;

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- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;
- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.4 Other Agreements

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

§ A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

This Amendment to the Agreement entered into as of the day and year first written above.

DocuSigned by:

Marlon Levy, MD

OWNER (Signature)

Marlon Levy, MD., Interim CEO

(Printed name and title)

DocuSigned by:

Emily Covey

DESIGN-BUILDER (Signature)

Emily Covey, Richmond Business Unit Leader

(Printed name and title)



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User Notes:

(1853505903)

Additions and Deletions Report for AIA® Document A141® – 2014 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 15:35:18 ET on 10/18/2023.

PAGE 1

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the 18th day of October in the year 2023 (the "Agreement")

...

Demolition of Public Safety Building at 10th and Clay Street.

...

(Name, legal status and address)

Virginia Commonwealth University Health System Authority
Box 980648
Richmond, VA 23298

403 North 13th Street
Richmond, VA 23298

...

(Name, legal status and address)

DPR Construction, a General Partnership
5500 Cox Road, Suite M
Glen Allen, VA 23060

PAGE 2

Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

...

[Intentionally Deleted].

~~§ A.1.2.1 The Stipulated Sum shall be —(\$ —), subject to authorized adjustments as provided in the Design-Build Documents.~~

~~§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:~~

~~(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)~~

§ A.1.2.3 Unit prices, if any:
(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)
<u>[Intentionally Deleted]</u> .		

~~§ A.1.3.1~~ The Cost of the Work is as defined in Article A.5, Cost of the Work.

~~§ A.1.3.2~~ The Design Builder's Fee:
(State a lump sum, percentage of Cost of the Work or other provision for determining the Design Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)

...
Five Percent (5%).

...
§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed Four-Million, Seven-Hundred Eighty-Three Thousand, Two-Hundred and Fourteen Dollars (\$ 4,783,214), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

...
See Exhibit A-1 – DPR Clay Street Demo Proposal Change Order 1, dated October 10, 2023, which is incorporated herein by reference.

...
See Exhibit A-1.
PAGE 3

See Exhibit A-1.
...
See Exhibit A-1.

...
§ A.1.5.1.3 Provided that an Application for Payment is received not later than the last day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the last day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment.

...

[Intentionally Deleted] § A.1.5.3 Progress Payments—Cost of the Work Plus a Fee

[Intentionally Deleted].

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1— Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of — percent (—%) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2— Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of percent (—%);
- .3— Subtract the aggregate of previous payments made by the Owner; and
- .4— Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1— Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- .2— Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)

§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee

§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

§ A.1.5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1— Take the Cost of the Work as described in Article A.5 of this Amendment;
- .2— Add the Design-Builder's Fee, less retainage of — percent (—%). The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3— Subtract retainage of — percent (—%) from that portion of the Work that the Design-Builder self performs;
- .4— Subtract the aggregate of previous payments made by the Owner;

- ~~.5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~.6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.~~

~~§ A.1.5.3.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with those terms.~~

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- .3 Add the Design-Builder's Fee, less retainage of ten percent (10 %). The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of ten percent (10 %) from that portion of the Work that the Design-Builder self-performs;

...

~~§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than (—) days from the date of this Amendment, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)~~

Portion of Work

Substantial Completion Date

~~March 26, 2023, subject to adjustments of the Contract Time as provided in the Design-Build Documents.
(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)~~

PAGE 5

See Exhibit A-1.

...

See Exhibit A-1.

PAGE 6

See Exhibit A-1.

...

Matt Thompson, mattthw@dpi.com, 315-382-4423

...

Liam Francis, liamf@dpi.com, 954.649.0838

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§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, or between Design-Builder and any Subcontractor or supplier of any tier (so long as Owner has paid Design-Builder pursuant to the terms of the Contract Documents) reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.



Certification of Document's Authenticity ***AIA® Document D401™ – 2003***

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 15:35:18 ET on 10/18/2023 under Order No. 3104237919 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014 Exhibit A, Design-Build Amendment, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



10.10.2023

Andi Morrone,
VCU Health
Phone: 804.640.8186

Liam Francis
5500 Cox Road, Suite M
Glen Allen VA 23060-9257
Phone: (804) 433-4160

Reference: VCUH – Clay Street PSB Demo Change Order Proposal

Subject: Clay Street PSB Demo Change Order Proposal – DPR Construction

Proposal: Clay Street PSB Demo.

VCUH Clay Street PSB Demo	9/26/2023
Prepared By:	Liam Francis
Summary	
Item	Cost
General Conditions/ General Requirements	\$743,971.00
Fencing and Site Barriers	\$490,000.00
Remaining Abatement Work	\$236,809.00
Building Demolition	\$2,174,201.00
Temporary Protection	\$125,000.00
Utility Disconnections & Make Safe	\$60,000.00
Construction Contingency	\$142,334.00
Temp Shoring Allowance	\$50,000.00
Additional Structural Inspections Post Demo	\$15,000.00
Final Cleanup & Final inspections	\$15,000.00
Elevator Decommissioning Allowance	\$100,000.00
Permit Fees	\$34,431.00
Site Electrical Allowance	\$150,000.00
Generator Allowance for Sump Pumps	\$50,000.00
Sump Pump Purchase and Installation (During Construction)	\$30,000.00
Insurances	129,151
Design Build Fee (5%)	237,316
Total	\$ 4,783,214



BASIS OF BUDGET

SEPTEMBER 26, 2023

This qualifications narrative presents a written explanation clarifying the assumptions, exclusions and other bases used in developing the budget estimate and schedule for the Clay Street PSB Demo Scope per the licensing agreement between VCU Health and the City of Richmond, Dated July 14th. Qualifications noted in this document are intended to supplement the design documents and clarify for discussion DPR's understanding of any identified conflicting or incomplete scope or design items.

General Qualifications

CONTINGENCIES

The following project contingency funds are established as detailed below.

01. Design Development Contingency: Design Development Contingency is included in the Budget Estimate amount as a Contractor Held Contingency intended for use through the completion of Detailed Design. This Contingency is created specifically to capture costs associated with the completion of design for the specific scope of Work as defined in this Estimate. The Design Development Contingency shall not be construed as an amount available for design fees, upgrades or increases in the scope of Work. Depending on the status of Design Development, Contingency allocations can cover costs that may occur prior to or after start of construction. Some examples of Design Development Contingency uses include, but are not limited to, building code interpretation and permit comments, design clarifications of Contract Documents, changes that are primarily completion of design details for included scope, and design clarifications for custom fabricated equipment that requires fabricator input.

02. Construction Contingency: Construction Contingency is an amount set aside to cover changes in the cost of work, and not for a specific scope of work. The amount for Construction Contingency is included in the Contract Price as an amount to be applied at DPR's discretion, to defray contractually allowable costs, including General Conditions, for which the Contractor is not otherwise entitled to a Change Order increasing the Contract Price. Examples of allowable uses of Construction Contingency include, but are not limited to: scope gaps in buyout of the Work, market-driven price fluctuations, non-compensable delays, errors in the Work not caused by the negligence of the Contractor or its Subcontractors, necessary increases to prior negotiated or awarded subcontracts or purchase orders, and cleanup or repair of damage to the Work not identifiable to a particular contractor. Construction Contingency is not to be used to defray costs for which Contractor is entitled to an increase in the Contract Price by Change Order, such as for design changes, design corrections, differing site conditions, or added scope.



OWNER'S ALLOWANCES

An "Owner's Allowance" is an allotted sum of money included for a particular system or scope of work for which sufficient detail is not available to determine a definitive cost. Because of the undefined nature of the scope, there may need to be adjustments to the Contract Price and Schedule when the allowance item is sufficiently defined or performed. The allowances included herein provide for the following costs of the associated scope of work: labor, material, equipment, and subcontractor costs. A rough estimate for an assumed scope and quality is used for each allowance. The owner receives the savings for any amount under the allowance and is at risk for any amount over the allowance for both cost and schedule allocations. When the allowance item's scope of work is sufficiently defined or performed, the Contract Price will be adjusted by change order, which will include any increase in DPR's Contract Time, General Conditions, insurance, overhead and profit associated with additional work beyond that assumed in the allowance.

Allowance Item and Description	Value
1. Temporary Shoring during Demolition and construction	\$50,000
2. Elevator Decommissioning for demolition	\$100,000
3. Site Electrical Items	\$150,000
4. Generator Allowance for Sump Pumps	\$50,000

INSURANCE PROGRAM

- 1) The following insurances have been included within the Estimate:
 - a) Contractor's Insurance
 - b) Subcontractor Default Insurance

Basis of Budget

GENERAL QUALIFICATIONS, CLARIFICATIONS, AND EXCLUSIONS

Please note the following general qualifications, clarifications, exclusions, and assumptions on which the Budget are based.

General Qualifications & Clarifications

1. The Budget Estimate is based upon the following documents:
 - a. COR and VCU Health License agreement.
 - i. Dated: 07/14/23
2. All Subcontractors that the Owner requires DPR to contract with, or any owner controlled contractors or vendors working on the project prior to turnover (if any) will be held to and follow the latest DPR Construction EH&S, safety policies and procedures and must meet or exceed all DPR Insurance requirements for subcontractors.
3. VA state sales tax is figured as 6%.
4. Permits and fees, including plan check fees are included at an estimated value of 34,431. True permit cost will be reconciled with the owner once incurred, if greater or less than this value.



5.

General Exclusions

6. Escalation. Pricing is based on current construction costs.
7. Utility permit, connection fees, or system modifications (i.e. Domestic Water, Sanitary Sewer, Storm Drain, Fire Water, Gas, Electrical).
8. Tax exempt provisions, including accounting and documentation.
9. Contaminated or hazardous material removal, or associated work or impacts (including delays and delay damages) except asbestos abatement specifically for the work being demolished.
10. Premium and Overtime provisions; all work has been provided on regular hours.
11. P&P Bonds.
12. 3rd Party Testing & Inspections.
13. Auditing and monitoring of existing structures and roadways for movement or changes in condition.
14. Mill, overlay, and any modifications to existing and active roadways.
15. Site lighting (See Allowances).
16. Removal of existing power meter/transformer on site.

- End of Qualifications -

AIA[®] Document A141[®] – 2014 Exhibit B

Insurance and Bonds

for the following PROJECT:
(Name and location or address)

Demolition of Public Safety Building at 10th and Clay Street.

THE OWNER:
(Name, legal status and address)

Commonwealth University Health System Authority
Box 980648
Richmond, VA 23298

403 North 13th Street
Richmond, VA 23298

THE DESIGN-BUILDER:
(Name, legal status and address)

DPR Construction, a General Partnership
5500 Cox Road, Suite M
Glen Allen, VA 23060

THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the 18th day of October in the year 2023.

(In words, indicate day, month and year.)

TABLE OF ARTICLES

- B.1 GENERAL
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS
- B.3 OWNER'S INSURANCE
- B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

jurisdiction where the Project is located, and having a Best's rating of "A" or better. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:

(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

See Exhibit B-1.

§ B.2.1.1 Commercial General

(Paragraphs deleted)

Liability: See Exhibit B-1.-

§ B.2.1.2 Automobile Liability: See Exhibit B-1.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation: See Exhibit B-1.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two-million dollars (\$ 2,000,000) per claim and two-million dollars (\$ 2,000,000) in the aggregate.

§ B.2.1.7 Pollution Liability: See Exhibit B-1.

§ B.2.1.7.1 Excess Liability: See Exhibit B-1.

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first. All policies described herein shall provide at least thirty (30) days' prior written notice of modification or cancellation be given to Owner.

§ B.2.1.9 Additional Insured Obligations. The Owner, its consultants and contractors, and all Indemnitees pursuant to § 3.1.14 of the Agreement shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

§ B.2.1.11 Contractor’s insurance required by this Section B.2.1 shall be primary insurance which will not call upon for defense, contribution of payment, any other insurance effected or procured by Owner or the City of Richmond.

§ B.2.2 Performance Bond and Payment Bond

The Design-Builder shall provide surety bonds as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
------	--------------------

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE B.3 OWNER’S INSURANCE

§ B.3.1 Owner’s Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner’s usual liability insurance.

§ B.3.2 Property Insurance

§ B.3.2.1 [Intentionally Deleted].

§ B.3.2.1.1 [Intentionally Deleted].

§ B.3.2.1.2 [Intentionally Deleted].

§ B.3.2.1.3 [Intentionally Deleted].

§ B.3.2.1.4 [Intentionally Deleted].

§ B.3.2.2 **Boiler and Machinery Insurance.** [Intentionally Deleted].

§ B.3.2.3 [Intentionally Deleted].

§ B.3.2.4 **Loss of Use Insurance.** At the Owner’s option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner’s property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner’s property, including consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

§ B.3.2.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.3.2.7 **Waivers of Subrogation.** The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, and (3) the City of Richmond for damages caused by fire or other causes of

Init.

loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design-Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Additions and Deletions Report for AIA® Document A141® – 2014 Exhibit B

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:12:29 ET on 10/18/2023.

PAGE 1

Demolition of Public Safety Building at 10th and Clay Street.

...

(Name, legal status and address)

Commonwealth University Health System Authority
Box 980648
Richmond, VA 23298

403 North 13th Street
Richmond, VA 23298

...

(Name, legal status and address)

DPR Construction, a General Partnership
5500 Cox Road, Suite M
Glen Allen, VA 23060

...

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the 18^h day of October in the year ~~-2023~~.

...

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is ~~located.~~ located, and having a Best's rating of "A" or better. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:

PAGE 2

See Exhibit B-1.

§ B.2.1.1 Commercial General ~~Liability with policy limits of not less than (\$) for each occurrence and (\$) in the aggregate providing coverage for claims including~~

- ~~.1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;~~
- ~~.2 personal injury;~~

- ~~.3 — damages because of injury to or destruction of tangible property;~~
- ~~.4 — bodily injury or property damage arising out of completed operations; and~~
- ~~.5 — contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.~~Liability: See Exhibit B-1.

~~§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than (\$) per claim and (\$) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.~~Liability: See Exhibit B-1.

...

~~§ B.2.1.4 Workers' Compensation at statutory limits.~~Compensation: See Exhibit B-1.

...

~~§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than two-million dollars (\$ 2,000,000) per claim and two-million dollars (\$ 2,000,000) in the aggregate.~~

~~§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than (\$) per claim and (\$) in the aggregate.~~Liability: See Exhibit B-1.

~~§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than (\$) per claim and (\$) in the aggregate.~~Excess Liability: See Exhibit B-1.

~~§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first. All policies described herein shall provide at least thirty (30) days' prior written notice of modification or cancellation be given to Owner.~~

~~§ B.2.1.9 Additional Insured Obligations. The Owner and its consultants and contractors~~Owner, its consultants and contractors, and all Indemnitees pursuant to § 3.1.14 of the Agreement shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

PAGE 3

~~§ B.2.1.11 Contractor's insurance required by this Section B.2.1 shall be primary insurance which will not call upon for defense, contribution of payment, any other insurance effected or procured by Owner or the City of Richmond.~~

...

~~§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis~~

~~without optional deductibles. The insurance required under this section shall include interests of the Owner, Design Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement. [Intentionally Deleted].~~

~~§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design Builder's services and expenses required as a result of such insured loss. [Intentionally Deleted].~~

~~§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles. [Intentionally Deleted].~~

~~§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit. [Intentionally Deleted].~~

~~§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance. [Intentionally Deleted].~~

~~§ B.3.2.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design Builder shall be named insureds. [Intentionally Deleted].~~

~~§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design Builder in writing prior to any construction that is part of the Work. The Design Builder may then obtain insurance that will protect the interests of the Owner, Design Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto. [Intentionally Deleted].~~

...

~~§ B.3.2.7 Waivers of Subrogation. The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, and (3) the City of Richmond for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would~~

otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.



AGENCY CUSTOMER ID: _____

LOC #: _____



ADDITIONAL REMARKS SCHEDULE

Page 2 of 2

AGENCY Willis Towers Watson Insurance Services West, Inc.	NAMED INSURED DPR Construction, A General Partnership 11109 Sunset Hills Road, Suite 200 Reston, VA 20190
POLICY NUMBER See Page 1	EFFECTIVE DATE: See Page 1
CARRIER See Page 1	NAIC CODE See Page 1

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 FORM TITLE: Certificate of Liability Insurance

It is agreed that Virginia Commonwealth University Health System, City of Richmond, Virginia are named as Additional Insureds as respects to General Liability and Auto Liability where required by written contract.

It is understood and agreed that this insurance is primary and any other insurance maintained by the additional insured shall be excess only and not contributing with this insurance where required by written contract.

A waiver of subrogation in favor of the Additional Insured applies to the General Liability, Auto Liability and Workers' Compensation policies where required by written contract and as permitted by law.

INSURER AFFORDING COVERAGE: Indian Harbor Insurance Company

NAIC#: 36940

POLICY NUMBER: CEO742082805 EFF DATE: 09/01/2023 EXP DATE: 09/01/2025

TYPE OF INSURANCE:	LIMIT DESCRIPTION:	LIMIT AMOUNT:
Professional Liability	Each Claim/Aggregate:	\$5,000,000

ADDITIONAL REMARKS:

Annual Reinstatement of Limits apply to Professional Liability.

POLICY NUMBER: TB7-661-066943-023

COMMERCIAL GENERAL LIABILITY
CG 20 10 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. **Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

SCHEDULE

SCHEDULE (continued)

**Name Of Additional Insured Person(s)
Or Organization(s):**

Location(s) Of Covered Operations

Any person or organization (other than an architecture or engineering firm) whom you become obligated to include as an additional insured as a result of any written contract or agreement you have entered into, provided no other specific additional insured endorsements apply to such additional insured under this policy prior to a loss occurring.

All locations as required by a written contract or agreement entered into prior to an "occurrence" or offense.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

POLICY NUMBER: TB7-661-066943-023

COMMERCIAL GENERAL LIABILITY
CG 20 37 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

SCHEDULE

**Name Of Additional Insured Person(s)
Or Organization(s):**

Any person or organization (other than an architecture or engineering firm) whom you become obligated to include as an additional insured as a result of any written contract or agreement you have entered into, provided no other specific additional insured endorsements apply to such additional insured under this policy prior to a loss occurring.

Location And Description Of Completed Operations

All locations as required by a written contract or agreement entered into prior to an "occurrence" or offense.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

POLICY NUMBER: TB7-661-066943-023

COMMERCIAL GENERAL LIABILITY
CG 20 01 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

(1) The additional insured is a Named Insured under such other insurance; and

(2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

POLICY NUMBER: TB7-661-066943-023

COMMERCIAL GENERAL LIABILITY
CG 24 04 05 09

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to Paragraph 8. **Transfer Of Rights Of Recovery Against Others To Us of Section IV – Conditions:**

We waive any right of recovery we may have against the person or organization shown in the Schedule below because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule below.

SCHEDULE

Name Of Person Or Organization:

As required by written contract or agreement entered into prior to loss.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Policy Number: TB7-661-066943-023
 Issued by LIBERTY INSURANCE CORPORATION

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION TO THIRD PARTIES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
 EXCESS COMMERCIAL GENERAL LIABILITY COVERAGE PART
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
 LIQUOR LIABILITY COVERAGE PART
 COMMERCIAL LIABILITY – UMBRELLA COVERAGE FORM

Schedule		
Name of Other Person(s) / Organization(s):	Email Address or mailing address:	Number Days Notice:
PER SCHEDULE ON FILE WITH THE COMPANY		30

- A. If we cancel this policy for any reason other than nonpayment of premium, we will notify the persons or organizations shown in the Schedule above. We will send notice to the email or mailing address listed above at least 10 days, or the number of days listed above, if any, before the cancellation becomes effective. In no event does the notice to the third party exceed the notice to the first named insured.
- B. This advance notification of a pending cancellation of coverage is intended as a courtesy only. Our failure to provide such advance notification will not extend the policy cancellation date nor negate cancellation of the policy.

All other terms and conditions of this policy remain unchanged.

POLICY NUMBER: AS7-661-066943-013

COMMERCIAL AUTO
CA 20 48 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

SCHEDULE

Name Of Person(s) Or Organization(s):

Any person or organization whom you have agreed in writing to add as an additional insured, but only to coverage and minimum limits of insurance required by the written agreement, and in no event to exceed either the scope of coverage or the limits of insurance provided in this policy.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph **A.1.** of Section **II** - Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph **D.2.** of Section **I** - Covered Autos Coverages of the Auto Dealers Coverage Form.

Policy Number: AS7-661-066943-013
Issued by: Liberty Insurance Corp.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED - NONCONTRIBUTING

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
GARAGE COVERAGE FORM
MOTOR CARRIERS COVERAGE FORM
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" under the Who Is An Insured Provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage form.

Schedule

Name of Person(s) or Organizations(s):

Any person or organization for whom you perform work under a written contract if the contract requires you to obtain this agreement from us, but only if the contract is executed prior to the injury or damage occurring.

Regarding Designated Contract or Project:

As required by a written contract or agreement entered into prior to a loss.

Each person or organization shown in the Schedule of this endorsement is an "insured" for Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured Provision contained in Section II of the Coverage Form.

The following is added to the **Other Insurance Condition:**

If you have agreed in a written agreement that this policy will be primary and without right of contribution from any insurance in force for an Additional Insured for liability arising out of your operations, and the agreement was executed prior to the "bodily injury" or "property damage", then this insurance will be primary and we will not seek contribution from such insurance.

POLICY NUMBER: AS7-661-066943-013

COMMERCIAL AUTO
CA 04 44 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

SCHEDULE

Name(s) Of Person(s) Or Organization(s):

Any person or organization for whom you perform work under a written contract if the contract requires you to obtain this agreement from us, but only if the contract is executed prior to the injury or damage occurring.

Premium: \$ INCL

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

Policy Number: AS7-661-066943-013
Issued by LIBERTY INSURANCE CORPORATION

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION TO THIRD PARTIES

This endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE PART
- MOTOR CARRIER COVERAGE PART
- GARAGE COVERAGE PART
- TRUCKERS COVERAGE PART
- EXCESS AUTOMOBILE LIABILITY INDEMNITY COVERAGE PART
- SELF-INSURED TRUCKER EXCESS LIABILITY COVERAGE PART

Schedule		
Name of Other Person(s) / Organization(s):	Email Address or mailing address:	Number Days Notice:
PER SCHEDULE ON FILE WITH THE COMPANY		30

- A. If we cancel this policy for any reason other than nonpayment of premium, we will notify the persons or organizations shown in the Schedule above. We will send notice to the email or mailing address listed above at least 10 days, or the number of days listed above, if any, before the cancellation becomes effective. In no event does the notice to the third party exceed the notice to the first named insured.
- B. This advance notification of a pending cancellation of coverage is intended as a courtesy only. Our failure to provide such advance notification will not extend the policy cancellation date nor negate cancellation of the policy.

All other terms and conditions of this policy remain unchanged.

WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. (This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Not applicable in Alaska, Kansas, Missouri, New Hampshire and New Jersey.

Schedule

Any person or organization for which the employer has agreed by written contract, executed prior to loss, may execute a waiver of subrogation. However, for purposes of work performed by the employer in Missouri, this waiver of subrogation does not apply to any construction group of classifications as designated by the waiver of right to recover from others (subrogation) rule in our manual.

Where required by contract or written agreement prior to loss and allowed by law.

In the states of Alabama, Arizona, Arkansas, Colorado, Delaware, District of Columbia, Georgia, Idaho, Illinois, Indiana, Maine, Michigan, Mississippi, Montana, Nevada, New Mexico, North Carolina, Pennsylvania, South Carolina, South Dakota, Vermont, West Virginia, the premium charge is 2% of the total manual premium, subject to a minimum premium of \$100 per policy.

In the states of Connecticut, Florida, Iowa, Maryland, Nebraska, Oregon, the premium charge is 1% of the total manual premium, subject to a minimum premium of \$250 per policy.

In the state of Louisiana, the premium charge is 2% of the total standard premium, subject to a minimum premium of \$250 per policy.

In the state of Massachusetts, the premium charge is 1% of the total manual premium.

In the states of New York, Tennessee, the premium charge is 2% of the total manual premium, subject to a minimum premium of \$250 per policy.

In the state of Virginia, the premium charge is 5% of the total manual premium, subject to a minimum premium of \$250 per policy.

Issued by Liberty Insurance Corporation 21814

For attachment to Policy No. WA7-66D-066943-033

Effective Date 09/01/2023

Premium \$

Issued to DPR Construction, A General Partnership

Endorsement No.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION TO THIRD PARTIES

- A. If we cancel this policy for any reason other than nonpayment of premium, we will notify the persons or organizations shown in the Schedule below. We will send notice to the email or mailing address listed below at least 10 days, or the number of days listed below, if any, before cancellation becomes effective. In no event does the notice to the third party exceed the notice to the first named insured.
- B. This advance notification of a pending cancellation of coverage is intended as a courtesy only. Our failure to provide such advance notification will not extend the policy cancellation date nor negate cancellation of the policy.

SCHEDULE

Name of Other Person(s) / Organization(s):	Email Address or mailing address:	Number Days Notice:
PER SCHEDULE ON FILE WITH THE COMPANY		30

All other terms and conditions of this policy remain unchanged.

Issued by Liberty Insurance Corporation

For attachment to Policy No. WA7-66D-066943-033

Effective Date 09/01/2023

Premium \$

Issued to DPR Construction, A General Partnership

EXHIBIT C

Fixed Rates to the Agreement Between VCU Health and DPR Construction, A General Partnership

Fixed Equipment Rates - January 1, 2023 (Anniversary Date)

Cat Class	Rental Equipment	Daily	Weekly	Monthly	Cat Class	Rental Equipment	Daily	Weekly	Monthly
100-1010	AIR COMPRESSOR 1.1 HP 8 CFM ELECTRIC	\$ 73	\$ 218	\$ 545	376-1430	STRAIGHT MAST FORKLIFT 6K PROPANE	\$ 227	\$ 682	\$ 1,704
100-1030	AIR COMPRESSOR 130 HP 375 CFM DIESEL	\$ 248	\$ 744	\$ 1,860	376-1550	REACH FORKLIFT 5500LB 19' CAB	\$ 326	\$ 978	\$ 2,444
100-1080	AIR COMPRESSOR 49 HP 185 CFM DIESEL	\$ 120	\$ 360	\$ 900	382-1050	GENERATOR 175KW DIESEL	\$ 591	\$ 1,772	\$ 4,429
130-1030	BACKHOE CAB 4WD EXTENDAHOE	\$ 383	\$ 1,149	\$ 2,873	382-1080	GENERATOR 20KW DIESEL TOWABLE	\$ 164	\$ 492	\$ 1,229
130-1060	BACKHOE CANOPY 4WD EXTENDAHOE	\$ 383	\$ 1,149	\$ 2,873	382-1170	GENERATOR 56KW DIESEL	\$ 277	\$ 832	\$ 2,080
148-1030	MANLIFT 135' STRAIGHT TELESCOPIC	\$ 1,813	\$ 5,438	\$ 13,596	382-1180	GENERATOR 5KW GAS	\$ 63	\$ 189	\$ 472
148-1060	MANLIFT 30' ARTICULATING ELEC NAR W/JIB	\$ 256	\$ 769	\$ 1,923	382-1200	GENERATOR 6.5KW DIESEL	\$ 77	\$ 232	\$ 580
148-1120	MANLIFT 40' ARTICULATING ELEC NAR W/JIB	\$ 275	\$ 824	\$ 2,060	382-1250	GENERATOR 36KW DIESEL	\$ 254	\$ 763	\$ 1,907
148-1170	MANLIFT 40' STRAIGHT TELESCOPIC	\$ 263	\$ 788	\$ 1,971	382-1320	GENERATOR 125KW DIESEL	\$ 381	\$ 1,142	\$ 2,856
148-1180	MANLIFT 40' STRAIGHT W/JIB	\$ 263	\$ 788	\$ 1,971	436-1030	LIGHT TOWER 4000W TOWABLE NARROW	\$ 97	\$ 291	\$ 727
148-1230	MANLIFT 45' ARTICULATING W/JIB	\$ 256	\$ 769	\$ 1,923	436-1040	LIGHT TOWER 4000W TOWABLE SOLAR	\$ 168	\$ 503	\$ 1,257
148-1270	MANLIFT 60' ARTICULATING W/JIB	\$ 348	\$ 1,045	\$ 2,613	436-1060	SKIDSTEER 1900LB WHEEL	\$ 294	\$ 883	\$ 2,207
148-1300	MANLIFT 60' STRAIGHT TELESCOPIC	\$ 355	\$ 1,066	\$ 2,664	436-1140	ELECTRIC LED LIGHT TOWER 1200W PORTABLE	\$ 118	\$ 355	\$ 887
148-1340	MANLIFT 80' ARTICULATING W/JIB	\$ 682	\$ 2,046	\$ 5,116	454-1020	LIGHT TOWER 4000W TOWABLE	\$ 97	\$ 291	\$ 727
148-1350	MANLIFT 80' STRAIGHT TELESCOPIC	\$ 682	\$ 2,046	\$ 5,116	457-1120	SKIDSTEER 2400LB WHEEL	\$ 312	\$ 936	\$ 2,340
148-1360	MANLIFT 80' STRAIGHT W/JIB	\$ 682	\$ 2,046	\$ 5,116	457-1130	SKIDSTEER 2400LB WHEEL CAB	\$ 312	\$ 936	\$ 2,340
148-1580	ATRIUM BOOM LIFT 60'	\$ 1,741	\$ 5,222	\$ 13,056	457-1140	SKIDSTEER 2700LB WHEEL	\$ 389	\$ 1,167	\$ 2,919
148-1670	MANLIFT 185' STRAIGHT W/JIB	\$ 3,773	\$ 11,320	\$ 28,300	457-1200	WHEEL LOADER 3CY DIESEL	\$ 799	\$ 2,397	\$ 5,993
154-1030	DEMO HAMMER 30 LB AIR BREAKER	\$ 60	\$ 181	\$ 452	457-1230	LOADER LANDSCAPER 4WD TRACTOR	\$ 324	\$ 973	\$ 2,433
154-1070	DEMO HAMMER 60-68 LB ELECTRIC BREAKER	\$ 86	\$ 259	\$ 647	457-1240	LOADER TRACK SKID 68"/78"	\$ 409	\$ 1,227	\$ 3,067
154-1080	DEMO HAMMER 60-65 LB AIR BREAKER	\$ 63	\$ 188	\$ 469	457-1250	LOADER TRACK SKID 74"	\$ 444	\$ 1,333	\$ 3,333
154-1100	DEMO HAMMER 90LB AIR BREAKER	\$ 63	\$ 188	\$ 469	457-1320	LOADER SKID 68"	\$ 312	\$ 936	\$ 2,340
154-1110	JUMBO RIVET BUSTER	\$ 60	\$ 181	\$ 452	457-1340	LOADER SKID 74"	\$ 391	\$ 1,173	\$ 2,933
187-1200	PALLET JACK TRUCK ELECTRIC	\$ 101	\$ 302	\$ 756	463-1030	MANLIFT 20' SINGLE	\$ 80	\$ 240	\$ 600
187-1470	PALLET JACK 6000LB	\$ 62	\$ 187	\$ 467	469-1040	MATERIAL LIFT 18'-23'	\$ 84	\$ 253	\$ 633
205-1020	AIR CONDITIONER 1.25 TON 110V PORTABLE	\$ 114	\$ 343	\$ 859	469-1050	MATERIAL LIFT 24'-26'	\$ 116	\$ 347	\$ 867
205-1070	AIR CONDITIONER 20 TON 480V 3 PHASE	\$ 764	\$ 2,291	\$ 5,727	529-1025	PRESSURE WASHER 3500PSI COLD	\$ 101	\$ 304	\$ 760
205-1230	DEHUMIDIFIER 52 PINT	\$ 113	\$ 338	\$ 845	529-1080	PRESSURE WASHER 4000PSI COLD	\$ 120	\$ 360	\$ 900
205-1250	DEHUMIDIFIER 60-65 PINT 160-230 CFM	\$ 113	\$ 338	\$ 845	592-1020	CUTOFF SAW 14" ELECTRIC	\$ 77	\$ 232	\$ 580
205-1270	FAN 36" DRUM	\$ 44	\$ 133	\$ 333	592-1030	CUTOFF SAW 14" GAS	\$ 77	\$ 232	\$ 580
205-1320	FAN 24" PEDESTAL	\$ 65	\$ 196	\$ 489	592-1440	CONCRETE SAW 14" GAS	\$ 98	\$ 293	\$ 733
205-1390	FAN 42" DRUM	\$ 61	\$ 184	\$ 460	598-1010	CONCRETE PLANER 8" ELECTRIC	\$ 317	\$ 952	\$ 2,380
205-1770	AIR CONDITIONER 30 TON 480V 3 PHASE	\$ 764	\$ 2,291	\$ 5,727	598-1020	CONCRETE PLANER 8" GAS/PROP	\$ 317	\$ 952	\$ 2,380
205-1815	25GPD REFRIGERANT DEHUMIDIFIER	\$ 96	\$ 289	\$ 721	601-1020	SCISSORLIFT 13' ELECTRIC	\$ 70	\$ 210	\$ 525
208-1040	COMPACTION WHEEL ATTACHMENT 18"	\$ 83	\$ 250	\$ 625	601-1040	SCISSORLIFT 19' ELECTRIC	\$ 71	\$ 212	\$ 531
211-1020	JUMPING JACK TAMPER 135-165LB	\$ 102	\$ 307	\$ 767	601-1070	SCISSORLIFT 25-26' NARROW	\$ 99	\$ 297	\$ 743
211-1030	JUMPING JACK TAMPER 160-175LB	\$ 102	\$ 307	\$ 767	601-1080	SCISSORLIFT 25-26' WIDE	\$ 96	\$ 289	\$ 723
211-1080	PLATE TAMPER 200LB 19.5" W/WATER	\$ 95	\$ 285	\$ 713	601-1100	SCISSORLIFT 26' PLATFORM	\$ 96	\$ 289	\$ 723
211-1090	PLATE TAMPER 300LB	\$ 109	\$ 328	\$ 820	601-1120	SCISSORLIFT 30-33' ELECTRIC	\$ 126	\$ 378	\$ 945
211-1130	RIDE-ON ROLLER 36" DOUBLE DRUM DIESEL	\$ 206	\$ 618	\$ 1,545	601-1130	SCISSORLIFT 30-33' ELECTRIC NARROW	\$ 130	\$ 389	\$ 972
211-1140	RIDE-ON ROLLER 47" DOUBLE DRUM DIESEL	\$ 333	\$ 999	\$ 2,499	601-1370	SCISSORLIFT 26' MICRO	\$ 109	\$ 328	\$ 820
211-1210	ROLLER 24-33" WALKBEHIND PAD	\$ 296	\$ 888	\$ 2,220	601-1380	SCISSORLIFT 19' MICRO ELECTRIC	\$ 74	\$ 221	\$ 553
211-1220	RIDE-ON ROLLER 84" SMOOTH	\$ 717	\$ 2,152	\$ 5,380	601-1420	SCISSORLIFT 13' ELECTRIC W/STEP-UP	\$ 80	\$ 241	\$ 601
211-1250	PLATE TAMPER 700LB 24" WIDE REVERSABLE	\$ 164	\$ 493	\$ 1,232	601-1430	SCISSORLIFT 19' ELECTRIC W/STEP-UP	\$ 74	\$ 221	\$ 553
220-1020	CONCRETE BUGGY 21 CF POWER	\$ 126	\$ 378	\$ 945	625-1030	SKIDSTEER ATTACHMENT BREAKER 391-600LBS	\$ 182	\$ 547	\$ 1,367
220-1040	POWER BUGGY 16-21 CF PROPANE	\$ 158	\$ 473	\$ 1,183	655-1010	STREET BROOM 3-WHEEL	\$ 330	\$ 989	\$ 2,473
313-1020	MINI EXCAVATOR 18-18.9K CAB	\$ 531	\$ 1,592	\$ 3,980	655-1020	8' STREET BROOM 4-WHEEL	\$ 353	\$ 1,060	\$ 2,651

EXHIBIT C

Fixed Rates to the Agreement Between VCU Health and DPR Construction, A General Partnership

Fixed Equipment Rates – January 1, 2023 (Anniversary Date)

Cat Class	Rental Equipment	Daily	Weekly	Monthly	Cat Class	Rental Equipment	Daily	Weekly	Monthly
313-1090	EXCAVATOR 6K MINI	\$ 286	\$ 859	\$ 2,147	709-1030	TRASH PUMP 2" GAS	\$ 89	\$ 267	\$ 667
313-1120	MINI EXCAVATOR 7500-8000LB CAB	\$ 295	\$ 886	\$ 2,216	709-1040	TRASH PUMP 3" GAS	\$ 100	\$ 301	\$ 753
313-1130	EXCAVATOR 10K MINI	\$ 412	\$ 1,236	\$ 3,091	709-1060	TRASH PUMP 6" DIESEL	\$ 332	\$ 995	\$ 2,488
313-1250	MINI EXCAVATOR 10,000-11,000LB CAB	\$ 412	\$ 1,236	\$ 3,091	709-1465	2" 1HP SUBMERSIBLE DEWATERING PUMP	\$ 38	\$ 114	\$ 284
346-1010	FLOOR SCRUBBER 28" WALK BEHIND	\$ 301	\$ 902	\$ 2,256	709-1475	2" 1HP SUBMERSIBLE TRASH PUMP	\$ 38	\$ 114	\$ 284
346-1020	FLOOR SCRUBBER 32" WALK BEHIND	\$ 310	\$ 931	\$ 2,327	715-1020	TRENCHER 24" WALK BEHIND	\$ 196	\$ 587	\$ 1,467
352-1010	STREET BROOM 8' 3-WHEEL	\$ 330	\$ 989	\$ 2,473	715-1040	TRENCHER 48" RIDE ON	\$ 358	\$ 1,075	\$ 2,687
376-1070	REACH FORKLIFT 6K 42'	\$ 378	\$ 1,133	\$ 2,833	721-1010	DUMP TRUCK 14 CY DIESEL	\$ 844	\$ 2,533	\$ 6,333
376-1080	REACH FORKLIFT 6K 42' CAB	\$ 389	\$ 1,166	\$ 2,916	721-1020	DUMP TRUCK 5-6 YARD	\$ 355	\$ 1,065	\$ 2,663
376-1100	REACH FORKLIFT 8K 42'	\$ 445	\$ 1,335	\$ 3,337	721-1260	DUMP TRUCK 3 CY	\$ 390	\$ 1,171	\$ 2,927
376-1130	REACH FORKLIFT 10K 54'-55' 4WD	\$ 630	\$ 1,889	\$ 4,723	727-1020	DUMP TRAILER 10'	\$ 169	\$ 508	\$ 1,269
376-1140	REACH FORKLIFT 10K 55' CAB	\$ 630	\$ 1,889	\$ 4,723	730-1160	UTILITY VEHICLE 2 SEAT 4WD GAS	\$ 109	\$ 328	\$ 820
376-1150	REACH FORKLIFT 12K 55'	\$ 641	\$ 1,923	\$ 4,807	730-1180	UTILITY VEHICLE 4 SEAT 4WD DIESEL	\$ 116	\$ 347	\$ 867
376-1210	STRAIGHT MAST FORKLIFT 5K DIESEL	\$ 222	\$ 666	\$ 1,664	730-1290	UTILITY VEHICLE 4 SEAT 4WD DIESEL CAB	\$ 127	\$ 381	\$ 953
376-1250	STRAIGHT MAST FORKLIFT 5K PROPANE	\$ 205	\$ 615	\$ 1,537	739-1130	VACUUM TRAILER 500 GALLON	\$ 637	\$ 1,912	\$ 4,780
376-1310	REACH FORKLIFT 4400 LBS 16'-18'	\$ 321	\$ 962	\$ 2,404	739-1140	VACUUM TRAILER 800 GALLON	\$ 691	\$ 2,072	\$ 5,180
376-1320	REACH FORKLIFT 5500 LBS 19'	\$ 326	\$ 978	\$ 2,444	766-1020	WATER TRUCK 2000 GAL	\$ 447	\$ 1,340	\$ 3,349
376-1330	REACH FORKLIFT 10K 54' 4WD	\$ 630	\$ 1,889	\$ 4,723	766-1030	WATER TRUCK 4000 GAL	\$ 818	\$ 2,453	\$ 6,133
376-1350	REACH FORKLIFT 12K 55' CAB	\$ 658	\$ 1,973	\$ 4,933	766-1040	WATER TRAILER 500 GAL	\$ 114	\$ 343	\$ 859
376-1410	REACH FORKLIFT 8K 42' CAB	\$ 454	\$ 1,363	\$ 3,407	766-1070	WATER TRUCK 2000 GAL NON-CDL	\$ 447	\$ 1,340	\$ 3,349
694-1020	MANUAL TOTAL STATION (VARIES)	\$ 34	\$ 134	\$ 402	724-1010	RTK UAVS (VARIES)	\$ 42	\$ 166	\$ 499
694-1010	ROBOTIC TOTAL STATION 1 (TRIMBLE)	\$ 130	\$ 519	\$ 1,556	175-1130	SPECIALITY UAVS (LIDAR)	\$ 108	\$ 431	\$ 1,292
694-1010	ROBOTIC TOTAL STATION 2 (TOPCON)	\$ 137	\$ 546	\$ 1,639	658-1030	GPR CONCRETE SCANNER 1 (HILTI)	\$ 80	\$ 319	\$ 956
694-1010	ROBOTIC TOTAL STATION 3 (LEICA)	\$ 155	\$ 618	\$ 1,855	658-1020	GPR CONCRETE SCANNER 2 (HILTI)	\$ 39	\$ 155	\$ 464
594-1050	GPS/GNSS ROVER (LEICA)	\$ 155	\$ 619	\$ 1,858	175-1140	SITE CAMERA 1 (OXBLUE COBALT 50 mp)	\$ 58	\$ 231	\$ 694
694-1040	MULTI-STATION - SCANNER/RTS (LEICA)	\$ 212	\$ 849	\$ 2,548	175-1110	SITE CAMERA 2 (OXBLUE SAPPHIRE 8 mp)	\$ 29	\$ 114	\$ 343
175-1160	3D PHOTO SCANNER (MATTERPORT)	\$ 22	\$ 89	\$ 268	175-1080	SITE CAMERA 2 (OXBLUE INDIGO 12 mp)	\$ 22	\$ 89	\$ 268
448-1010	LASER SCANNER 1 (FARO)	\$ 214	\$ 854	\$ 2,562	632-1020	SOLAR POWER 1 (SITE CAMERA)	\$ 18	\$ 72	\$ 215
448-1010	LASER SCANNER 2 (TRIMBLE)	\$ 245	\$ 981	\$ 2,943	632-1020	SOLAR POWER 2 (SITE CAMERA)	\$ 21	\$ 84	\$ 251
448-1010	LASER SCANNER 3 (LEICA)	\$ 266	\$ 1,065	\$ 3,195	632-1030	SOLAR POWER 3 (SITE CAMERA)	\$ 24	\$ 96	\$ 287
448-1010	LASER SCANNER 4 (RIEGL)	\$ 319	\$ 1,277	\$ 3,832	632-1040	SOLAR POWER 4 (SITE CAMERA)	\$ 36	\$ 144	\$ 431
724-1010	NON-RTK UAVS (VARIES)	\$ 16	\$ 65	\$ 195					

NOTE: These equipment rates will increase (5%) per year effective on January 1st of each following year. Such rate change will be accomplished by change order to the Agreement. Due to volatility in current market pricing, rates are subject to compensable adjustment. These rates do not include any potential surcharges due to supply chain disruption or other market conditions. DPR reserves the right to remove any rate from this rate sheet if a product becomes unavailable or for any other reason necessary. The parties agree that other equipment may be added to this rate sheet at any point during the project, subject to Owner's approval. The rates are applicable to equipment owned by DPR or rented through DPR's subsidiary OES Equipment, LLC. Rental rates do not include sales tax, applicable fees, and delivery/pick-up charges.

EXHIBIT C

Fixed Rates to the Agreement Between VCU Health and DPR Construction, A General Partnership

Fixed Equipment Rates – January 1, 2023 (Anniversary Date)

Item Number	Manufacturer Item Number	Consumable Item	Purchase Price
21276	A4-10450352	CUT-OFF WHEEL 4-1/2".045 7/8" TYPE-1	\$ 1.30
28176	A1-11401191	CUT-OFF WHEEL 14"X1/8"X1" CHOP SAW	\$ 6.78
21273	A5-10451452	GRINDING WHEEL 4-1/2"X1/4"X7/8" CONTINEN	\$ 1.50
37935	264697	FL. ORANGE INVERTED MARKING PAINT 17OZ R	\$ 4.95
37936	264693	CLEAR INVERTED MARKING PAINT 17OZ RUSTOL	\$ 3.95
37938	264702	FL. PINK INVERTED MARKING PAINT 17OZ RUS	\$ 3.95
11319	152423	SHURTAPE WHITE POLY TAPE 2"X180' PE 333	\$ 8.58
11306	104950	SHURTAPE BLUE MASKING TAPE 2"X180' CP 011	\$ 4.99
22729	Y22M31000C-OES	CAUTION TAPE 3"X1000' OES LOGO 2.5 MIL QUEST	\$ 9.99
26912	WBX50G	FLOOR SWEEP GREEN WAX 50LB FLOORSWEEP	\$ 29.99
29435	5136	36" COTTON DUST MOP HEAD LOOPED END MAGN	\$ 12.25
21585	FX-60	60" WOOD FLEXSWEEP HANDLE MAGNOLIA BRUSH	\$ 10.50
28351	3724-FX	FLEXSWEEP 24" GRAY "FINE" BROOM MAGNOLIA	\$ 14.55
26001	FM01-RD	FIRE EXTINGUISHER STAND RED PLASTIC FIRE	\$ 149.99
24442	FE10C+TAG	FIRE EXTINGUISHER COSMIC 10LB ABC TAGGED	\$ 99.99
15530	54732	2PK E-Z UP 12' HEAVY DUTY DUST CONTAINMENT POLE TRIMACO	\$ 108.07
44951	06184-4	2PK E-Z UP PEEL & STICK SHEETING ZIPPER	\$ 14.99
21454	300172	4/30CTTRADEMASTER	\$ 75.99
26787	05-00366	EXTENSION CORD 100' 12/3 STJW LIGHED END	\$ 59.99
47984	05-00158-US	CORD 50' 12/3 15AMP U/G SJTW SINGLE	\$ 34.06
	49534	CLEANROOM TACKY MAT BLUE 24"X36" 4/30CT SURFACE SHIELDS	\$ 79.99

Item Number	Manufacturer Item Number	Consumable Item	Purchase Price
33465	DUC100-R	DUMP CART 1CY TRASH BUGGY SUR-PRO	\$ 499.99
37859	DOA3200	COMMERCIAL DRYWALL CART 3200LB SUR-PRO	\$ 279.99
29572	31174	SHOVEL SQUARE POINT WOOD HANDLE 45" TRUP	\$ 8.99
46819	CATC-C-55G	TRASH CAN 55GAL GREY PLASTIC MAGNUM TOOL	\$ 68.35
11375	175LH	MASTER LOCK 175LH RESETTABLE COMBO LOCK	\$ 20.06
24454	SBN22ORG4-FR	DEBRIS NETTING 4' X 150' FR ORANGE	\$ 55.00
10514	MT11500C	MIGHTY TIE 11" UV BLACK CABLE TIES 100CT	\$ 10.50
22706	CONE36"ORG	CONE 36" W/ REFLECTIVE COLLAR	\$ 33.73
24446	7150200	DIESEL CAN 5 GALLON TYPE 1 OSHA	\$ 54.99
22697	7150110	GASOLINE CAN 5 GALLON TYPE 1 OSHA	\$ 49.95
43343	26811R	CIGARRETE BUTT RECEPACLE 5 GALLON JUSTRITE	\$ 74.99
48899	WHE00083-P-201.140.E	ZENITH X HELMET WHITE HI-VIZ DPR LOGO CLASS E KASK	\$ 149.99
45498	WKI00002-500	KASK ZEN CLEAR 1/2 VISOR KIT FOR ZENITH HELMETS	\$ 79.99
13409	RWG13L	GLOVE FOAM NITRILE GRIPPER LG NYLON/SPANDEX	\$ 3.49
13411	RWGD101L	GLOVE AXIS A3 LG 13GA DYNEEMA SHELL PU COAT	\$ 7.94
35811	4KS0016TS	ARAMID SLEEVE W/THUMB A2 16"	\$ 9.20
35026	620FR	SHEETING 6MIL 20'X100' F/R REINFORCED	\$ 171.10
34667	620C	SHEETING 6MIL 20'X100' CLEAR	\$ 167.99
12504	LOGO	FLOORSHIELD 38"X100' 46MIL DPR LOGO TRIMACO	\$ 59.95

NOTE: These rates will increase (5%) per year effective on January 1st of each following year. Such rate change will be accomplished by change order to the Agreement. Due to volatility in current market pricing, rates are subject to compensable adjustment. These rates do not include any potential surcharges due to supply chain disruption or other market conditions. DPR reserves the right to remove any rate from this rate sheet if a product becomes unavailable or for any other reason necessary. The parties agree that other consumables may be added to this rate sheet at any point during the project, subject to Owner's approval. Consumable item rates do not include sales tax.

EXHIBIT C

Fixed Rates to the Agreement Between VCU Health and DPR Construction, A General Partnership

2. Equipment Rates as attached.

Trucks for Foreman or for general jobsite use shall be an allowable cost of work at \$1,300/month. This rate does not include fuel.

3. Insurance Rates:

(a) "Contractor's Insurance" (Contractor's entire enterprise insurance program, excluding SDI and builder's risk) provided for the Project is fixed at the stipulated rate of 1.5 percent (1.5%) times contract value. The amount for Contractor's Insurance is due and payable in full (based on estimated contract value) with Contractor's first invoice to Owner. This amount will be adjusted at the earlier of: (1) the point when the estimated contract value is exceeded; or (2) at the end of the Project based on actual contract value.

(B) Contractor's cost to enroll all qualified subcontractors into the subcontractor default insurance (SDI) program for the Project is fixed at the stipulated rate of 13 dollars (\$13.00) per thousand dollars of enrolled subcontract value, including qualified subcontractors that are contracted under a self-perform scope of work. The initial charge for the SDI program (based on then-estimated subcontract volume) is due and payable in full upon Contractor's enrollment of the Project into the SDI program and is in addition to the charge for Contractor's Insurance. At the earlier of (1) the point when the estimated enrolled subcontract volume is actually exceeded, or, (2) the end of the Project, the amount for the SDI program will be adjusted and reconciled based on the actual enrolled subcontract volume.

GENERAL: The rates in this Exhibit are fixed, stipulated rates by agreement of the Owner and Contractor. These fixed rates will be used to calculate the costs reimbursable to Contractor under the Agreement, including for change orders, for each listed labor, equipment, consumable, insurance and bond classification item by multiplying such rates by the actual, applicable units. These fixed rates govern over any contrary cost reimbursement terms of the Agreement or other contract documents. Where Owner has the right under the Agreement or other contract documents to audit Contractor's costs, such right with respect to these fixed rates is limited to auditing the quantity of allowable units and the application of the correct fixed rates, but such audit right does not extend to items of cost within the fixed rates or documentation of how such fixed rates were determined.

VCU Health System Authority General Terms & Conditions

1. Affiliates

For purposes of these terms and conditions, "VCUHS" refers to Virginia Commonwealth University Health System Authority and each of its affiliates. As used herein, "Affiliates" means those organizations directly or indirectly controlling, controlled by, or under common control with Virginia Commonwealth University Health System Authority. Contractor shall bill VCUHS or its designated Affiliates for their respective procurement under this Contract. The rights and obligations of the Contract shall apply to each Affiliate. No Affiliate shall be responsible for any act, omission, or financial obligation of VCUHS or any other Affiliate under these terms and conditions and any associated agreement, contract, statement of work, purchase order or similar document (collectively the "Contract"); nor shall VCUHS be responsible for any act, omission, or financial obligation of any Affiliate.

2. Anti-Discrimination

If the Contract is valued over \$10,000, Contractor agrees as follows:

- A. Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Contractor. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

3. Antivirus

Contractor shall ensure, as appropriate to this procurement, that all product(s) have been checked for viruses prior to delivery to VCUHS using the latest available release in antivirus/malware protection. All connections, remote or local, to VCUHS from Contractor will be accomplished through and with devices that contain the latest available release in antivirus/malware protection.

4. Applicable Laws and Courts, Arbitration and Waiver of Trial by Jury

Contractor agrees that this Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought to the Circuit Court in Richmond, Virginia. Contractor shall comply with applicable federal, state and local laws and regulations. Contractor acknowledges and agrees that VCUHS will not agree to binding arbitration or the waiver of rights to a trial by jury.

5. Assignment

Contractor shall not delegate any obligations, nor assign any rights or claims hereunder without the prior written consent of VCUHS, and any attempted delegation or assignment by Contractor without such prior written consent shall be void.

6. Audit

Contractor shall retain all books, records and other documents related to the Contract for the earlier of (i) five (5) years after final payment; or (ii) until audited by VCUHS or persons authorized by and acting on behalf of VCUHS including but not limited to its independent public accountants and federal and state governmental and bank regulatory authorities having jurisdiction over VCUHS business. Auditors shall have full access to and the right to examine any of Contractor's said materials during this period.

7. Billing and Payment

A. Invoices for items ordered, delivered and accepted shall be submitted by Contractor directly to:

VCUHS Accounts Payable Department
Box 980648
Richmond, VA 23298

- or -

ap@vcuhealth.org

Contractor acknowledges that invoices must include the Contract number and/or purchase order number.

- B. Payment by VCUHS shall be Net 45 from the date of receipt of an accurately submitted invoice. Contractor may indicate payment terms of less than 45 days so long as those terms also contain a cash discount for early payment (example 5%15/Net 45 would correspond to a 5% discount if paid in 15 days, otherwise Net 45).
- C. The date of the postmark shall be the date of payment in all cases where payment is made by mail.
- D. No extra interest, late payment, or other charges of any kind will be permitted unless specifically agreed to in writing by VCUHS.

8. Binding Effect

The terms and conditions appearing herein shall be binding and shall apply to any purchase order or contractual agreement entered into with Contractor by VCUHS. Any proposal for additional or different terms or any attempt by Contractor to vary, in any degree, any of the terms described herein shall be null, void, and without effect, and the terms provided herein shall apply.

In the event of a conflict between the terms set forth herein and any supplemental contract documents that may be entered into between VCUHS and Contractor, the terms set forth herein shall govern. Such terms and conditions shall not be modified or amended except by a writing signed by an authorized representative of both parties. The pre-printed terms and conditions appearing on any Contractor's quotation, invoice, or other form order documents shall be null and void. In the event that Contractor enters into terms of use agreements or other agreements or understanding, whether electronic, click-through, verbal or in writing, with VCUHS employees or other end users, such agreements shall be null, void and without effect, and the terms herein shall apply.

The use of the term Contractor, Vendor, Supplier, Contractor, et al. shall be synonymous in these General Terms and Conditions as well as purchase orders and other contract documents.

9. Changes

Changes can only be made to the Contract by a writing by and between the parties and signed by a duly authorized representative of VCUHS. Any increase in cost of the Contract must be explicitly agreed upon in such signed writing.

10. Confidentiality

As a result of doing business with VCUHS, Contractor may have access to confidential or proprietary information that belongs to VCUHS or that regards patients or patient care. Contractor, its employees and representatives shall not, unless required by law, disclose to any person or entity any information related to VCUHS which is proprietary or confidential and/or pertains to patients or patient care. VCUHS may immediately exercise its right to seek legal remedies available to it should such disclosures occur or be reasonably foreseeable.

11. Contractual Disputes

Contractual claims, whether for money or other relief, shall be submitted in writing to the VCUHS' Purchasing Department no later than 60 days after final payment; however, written notice of Contractor's intention to file such a claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Contractor may not institute legal action prior to receipt of VCUHS' decision on the claim, unless VCUHS fails to render such a decision within 45 days of receipt. The decision of VCUHS shall be final and conclusive unless Contractor, within six months of the date of the final decision on the claim, institutes legal action.

12. Delivery

Goods or services delivered must be strictly in accordance with specifications referred to by VCUHS and shall not deviate in any way from terms, conditions or specifications of the Contract and/or purchase order. Any equipment, materials and/or supplies delivered pursuant to the Contract shall be subject to inspection and test upon receipt. If rejected, same shall remain the property of Contractor. Contractor must notify the VCUHS Supply Chain of any anticipated delays in delivery or performance. In case of default by Contractor, or failure to deliver by the time specified, VCUHS, after due notice (oral or in writing), may procure such goods/services from other sources and hold Contractor responsible for any excess cost occasioned thereby.

Unless otherwise indicated, Delivery shall be F.O.B. Destination and Contractor certifies and warrants that the price offered for F.O.B. destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Contractor agrees that VCUHS reserves the right to use a third-party freight provider. Contractor shall include freight charges as a line item on all quotes and invoices. When freight cost are contractually allowed and applied by Contractor, Contractor should ship using OptiFreight, its third party freight firm by shipping freight collect via FedEx account 895159638. If combined shipping weight exceeds 150 lbs., call 888-457-5851 for carrier instructions prior to shipping.

Except as otherwise specified by VCUHS, standard commercial packaging, packing and shipping containers shall be used. Regardless of the shipping method or F.O.B point, risk of loss or damage to the goods to be delivered shall remain with Contractor until VCUHS' receipt of the goods. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, and container(s) shall include packing slip(s) adequately showing the purchase order number, exact quantity, and description of the goods shipped.

13. Drug Testing, Background Checks and Orientation

A. Drug Testing for Personnel Performing Services in VCUHS Clinical Facilities

Contractor acknowledges and certifies that appropriate drug testing shall be performed on any and all employees of Contractor, his subcontractors, and representatives who will perform the services defined in the Contract, and testing will be done before such persons begin work in VCUHS clinical facilities. Upon VCUHS' request, Contractor shall immediately attest to VCUHS that test results were satisfactory. Appropriate drug

testing is defined as a multi-panel drug screen performed by a lab accredited by the Department of Health and Human Services (NIDA Labs) and the College of American Pathologists specifically in Forensic Urine Drug Testing. The multi-panel drug screen includes testing for the following to the extent these substances remain unlawful under federal and Virginia law:

- Opiates
- Phencyclidine
- Amphetamines
- Methadone
- Propoxyphene
- Barbiturates
- Cocaine
- Benzodiazepine

B. Criminal Background Check for Personnel Performing Services in VCUHS Clinical Facilities

Contractor agrees to perform a criminal background investigation in (1) the state of permanent residence, (2) Virginia, and (3) each state in which Contractor's personnel assigned to a VCUHS engagement has lived or worked within the past seven years. Contractor's assigned personnel (to include any subcontractors) shall have no convictions for crimes related to drugs, sex offenses, theft, or violence. As required by law, for certain positions VCUHS may request additional background checks such as fingerprinting, affirmation statement regarding pending charges, confirmation for the Child Protective Services of the Department of Social Services that the candidate has no confirmed record of child abuse or neglect, and shall have no convictions as outlined in Virginia Code Title 63.2. Upon VCUHS' request, Contractor shall submit written attestation of satisfactory completion to VCUHS.

- C. Contractor further acknowledges and certifies that it understands that a violation of these prohibitions of this Section constitutes a breach of Contract and/or purchase order and may result in default action being taken by VCUHS in addition to any criminal penalties that may result from such conduct.

14. Equal Opportunity

VCUHS is an equal opportunity employer and complies with the applicable provisions of Executive Order 11246, Title VII of the Civil Rights Act of 1964, Section 503 of the Rehabilitation Act of 1973 and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as those laws have been most recently amended. Contractor agrees to comply with these laws, and their equal employment opportunity clauses, embodied at 41 CFR 60-1.4(a), 60-250.5(a), 60-300.5(a) and 60-741.5(a), as applicable. Contractor further certifies to VCUHS they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans with Disabilities Act, and the Notice Clause of Executive Order 13496 regarding Employee Rights under the National Labor Relations Act (NLRA) (29 CFR Part 471, Appendix A to Subpart A).

15. Evaluation of Services

VCUHS maintains deemed status with the Centers for Medicare & Medicaid Services (CMS) by maintaining accreditation with The Joint Commission (TJC) for some departments while CMS certifies others directly. VCUHS participates in The Joint Commission accreditation and CMS certification process which requires VCUHS to maintain oversight of certain contracted services through the selection of indicators to assess Contractor services for safety, quality and compliance with applicable hospital TJC standards and CMS Conditions of Participation. Contractors can expect to be evaluated based on 1) Quality of Service/Equipment/Product, 2) Quality/Competency of Contractor Personnel and Representatives, 3) Responsiveness to Issues, 4) Timeliness/Reliability of Services, 5) Adherence to applicable [a] Regulatory Standards, [b] VCUHS Human Resource Requirements as outline in the agreement with VCUHS, and [c] other pertinent VCUHS Policies and Procedures, and 6) Other relevant criteria as the parties may mutually agree upon. As a result of the evaluation, should VCUHS determine Contractor has not successfully met the above requirements and standards, VCUHS shall provide written notice to Contractor, and if Contractor does not cure the deficiency within 30 days of receipt of notice to the reasonable satisfaction of VCUHS, VCUHS shall have, at its discretion, the right to terminate this Contract immediately.

16. FDA Compliance

Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances and represents that it shall have obtained all licenses, permits, required by law to engage in the activities necessary to perform its obligations to VCUHS. Contractor hereby represents and warrants that all products provided to VCUHS shall have appropriate documentation in conjunction with FDA regulations, and copies of the approval or clearance documentation issued to Contractor by the FDA will be immediately provided to VCUHS upon request.

17. FDA Recall of Products

If recall or modification of any of Contractor provided product(s) is required by the FDA or voluntarily recommended or required by Contractor, Contractor shall, at its sole cost and expense, immediately notify VCUHS in writing of such recall or modification, remove, package, and ship to Contractor's or Contractor's plant the affected Product(s) and at no additional charge to VCUHS replace such Product(s) with Contractor's products which have been evaluated and accepted by VCUHS as clinically comparable. All recall notices must be sent to VCUHS, Director of Risk Management, Box 980510, Richmond, VA 23298.

18. HIPAA

The health information of patients is strictly regulated. To the extent the awarded Contract creates a Business Associate relationship as defined under the Health Insurance Portability and Accountability Act (the "Act"), the parties without limitation to their other requirements under HIPAA and other federal, state and local laws and regulations, agree to comply with the Act, the privacy standards set forth in 45 C.F.R. Parts 160 and 164 (the "Privacy Rule"), the security standards set forth in 45 C.F.R. Parts 160, 162, and 164 (the "Security Rule"), and the Health Information Technology for Economic Clinical Health Act, Title XIII of Division A and Title IV of Division D of Pub. L. 111-5 ("HITECH") and all of the rules and regulations implemented thereunder (collectively "HIPAA"). Contractor may only utilize or disclose VCUHS protected health information ("PHI") to carry out its obligations under the Contractor Purchase Order and for no other purpose. Contractor hereby covenants and agrees that it will not use VCUHS PHI in any manner that would constitute a violation of HIPAA.

Contractor's obligations set forth in this section are independent of, and in addition to, the obligations set forth in the Business Associate Agreement ("BAA") signed by the parties, if any.

19. Indemnification

Contractor agrees to indemnify, defend and hold harmless VCUHS, the Commonwealth of Virginia, their Affiliates and their officers, agents, and employees from any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, equipment of any kind or nature furnished by Contractor and any services of any kind or nature furnished by Contractor, provided that such liability is not attributable to the sole negligence of VCUHS or to failure of VCUHS to use the materials, goods, or equipment in the manner already and permanently described by Contractor on the materials, goods or equipment delivered.

Contractor acknowledges that as a public body corporate, public instrumentality, and political subdivision of the Commonwealth of Virginia, (i) VCUHS cannot and will not indemnify or hold harmless Contractor for any act or omission; and (ii) VCUHS does not have the right to assume legal liability on behalf of Contractor or waive the sovereign immunity of the Commonwealth of Virginia.

20. Inspection/Testing/Qualifications

VCUHS shall have the right to inspect and test the goods at any reasonable time during manufacture and prior to shipment, so long as such inspection or test shall not interfere with Contractor's production and shipping schedule. The making, or failure to make any inspection, shall in no way impair VCUHS' right to reject or revoke its acceptance of nonconforming goods, or to avail itself of other remedies to which VCUHS may be entitled.

VCUHS may make reasonable investigation as deemed necessary to determine the ability of Contractor to perform services/furnish goods and Contractor shall furnish such information promptly. VCUHS reserves the right to inspect Contractor's physical facilities prior to award of contract/purchase order to satisfy questions regarding Contractor's capabilities.

21. Insurance

Contractor shall (and shall require its subcontractors to), throughout the Term of the Contract, including any renewal terms, maintain sufficient insurance coverage to insure all its duties and responsibilities under the Contract with such coverage provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission and having a financial rating of A- or better by the AM Best and a financial size category of VIII. Minimum insurance coverages shall include:

A. **Workers' Compensation**

Contractor shall maintain statutory Virginia Workers' Compensation coverage in accordance with the Virginia Code § 65.2-800 for all its employees who will be engaged in the performance of the Contract, which policy shall include waiver of rights of subrogation against VCUHS, its subsidiaries, affiliates, directors, officers, and employees (collectively the "Insured Parties").

- i. **Agency Staff** – When Contractor provides leased staffing to VCUHS and/or its affiliates, "Insured Parties" shall be named as an "alternate employer" on Contractor's Workers' Compensation policy.
- ii. **Employer Liability** – Contractor shall also maintain Employer's Liability coverage including special coverage extensions where applicable with minimums of \$1,000,000.

B. **Commercial General Liability**

- i. Commercial General Liability coverage of at least \$1,000,000 per occurrence and \$3,000,000 aggregate;
- ii. Completed Operations/Products Liability aggregate of \$1,000,000.00;
- iii. Personal and Advertising Injury Limit \$1,000,000.00; and
- iv. Property Damage Coverage of \$1,000,000 (only applicable when leasing premises from VCUHS).

C. **Umbrella or Excess Coverage**

Minimum limit of \$5,000,000 in the same form as the Commercial General Liability policy.

D. **Automobile Liability**

When driving in performance of the Contract, \$1,000,000. "Insured Parties" shall be an "additional insured" with respect to liability arising out of the performance of the Contract.

E. **Crime Liability**

When Contractor's employees or subcontractors enter VCUHS premises or residences of VCUHS patients, \$100,000 per occurrence with deductible not to exceed \$5,000. Coverage shall include theft of client or customer property "third party coverage" and coverage shall be for the benefit of VCUHS.

F. **Professional Crime Liability**

When Contractor's employees or subcontractors are involved with the handling or movement of VCUHS assets, investments, or funds, \$5,000,000 per occurrence with deductible not to exceed \$5,000 per

occurrence, and coverage shall include theft of client or customer property “third party coverage” and coverage shall be for the benefit of VCUHS.

G. Healthcare Professional Liability (Medical Malpractice)

When providing services that fall under the Virginia Medical Malpractice Act (§ 8.01 – 581.1 et seq.), the amount of the applicable limitation of liability in medical malpractice actions in Virginia that is in effect at the time of the incident (see Virginia Code § 8.01 – 581.15, as amended) with an annual aggregate of three times this amount, and deductible not to exceed \$10,000.

H. Professional Liability

When providing professional services such as accounting services, legal services, consulting services, architects or engineers, etc.), \$5,000,000 with deductible not to exceed \$10,000.

I. Cyber Liability/Network Liability

When providing IT services, HIPAA-related services, accesses or exchanges PI/Protect Information, or provides other services that have direct access to or interface with VCUHS’ IT systems, \$5,000,000 or such greater minimum coverage as set forth in results of a VCUHS’ IT Risk Assessment.

J. Tail Insurance Coverage

In the event any of the above insurance policies are written on a Claims Made basis or change from or to a Claims Made basis from an occurrence basis during the term of the Contract, Contractor agrees to maintain appropriate coverage in the amounts stated above for a period not less than five years from the date the Contract is terminated.

For Healthcare Professional Liability coverage written on a Claims Made basis, if any of the medical practitioners treated any children under the age of 18, Contractor must provide lifetime tail coverage to recognize this open-end exposure.

K. Proof; Survival

Contractor shall provide evidence of the above insurance requirements prior to the execution of the Contract. Contractor shall provide at least 30 days’ notice of any cancellation or material change in coverage. Failure by Contractor to provide the appropriate form and evidence of coverage does not relieve Contractor of its obligations to meet the above requirements. This Insurance Section shall survive the termination or expiration of any Contract or Purchase Order.

22. Limitation of Liability

Contractor agrees it will not limit its liability to VCUHS for property damage, personal injury (including death) or breaches of confidentiality (including HIPAA). For all other types of damages, Contractor will not require VCUHS to accept liability limits below the minimum amounts of insurance coverage required in the Insurance section of these terms and conditions.

23. Notices

Any and all notices, requests, demands, or other communications which relate to the other party's failure to perform or which otherwise affect either party's rights under the Contract shall be deemed properly given when delivered by hand and received by the other party, deposited with an express courier or deposited with the U.S. Postal Service (postage prepaid, certified mail, return receipt requested). Except in situations involving hand-

delivery, Contractor shall address all notices, requests, demands, or other communications to the recipient at the following address: VCUHS, Supply Chain, 3008 Mechanicsville Turnpike, Richmond, Virginia 23223. VCUHS shall address all notices to Contractor at the address and contact information provided in the Vendor/Contractor Profile information as submitted to VCUHS or the Notices section of any executed agreement by the parties.

24. Policies; Vendor Visitation

- A. All vendors entering VCUHS facilities to conduct business must register with the symplr vendor management system prior to entering VCUHS facilities, and if access to restricted procedural areas is required purchase and utilize the RepScrubs product obtained from the VCUHS RepScrubs dispensing machine.
- B. All Contractor representatives entering VCUHS facilities to conduct business shall comply with all applicable VCUHS' policies and procedures including, without limitation, its Code of Conduct available at <https://www.vcuhealth.org/Our%20Story/Who%20We%20Are/Compliance%20Services/Compliance%20Documents>, Vendor Visitation Policy available at <https://www.vcuhealth.org/our-story/who-we-are/vendor-information>, anti-discrimination, sexual harassment, vaccination, Tobacco Free Campus and any requirements of The Joint Commission, the Virginia Department of Health, Virginia Department of Medical Assistance Services, and all other jurisdictions having authority over VCUHS.

25. Sanctioned Parties

Contractor represents and warrants that it and its agents, employees, officers, and representatives providing services under this Contract: (a) are not "sanctioned persons" under any federal or state program or law; (b) have not been listed in the current Cumulative Sanction List of the Office of Inspector General for the United States Department of Health and Human Services for currently sanctioned or excluded individuals or entities; (c) have not been listed on the System for Awards Management as excluded from Federal Programs; (d) have not been convicted of a criminal offense related to health care; and (e) are not a debarred or suspended contractor of the Commonwealth of Virginia. Contractor shall promptly notify VCUHS in the event that it is no longer able to make such representations and warranties. Without limitation to any other rights and remedies under this Contract, afforded by law or in equity, VCUHS may terminate this Contract without penalty by providing five days' prior written notice in the event that VCUHS has determined Contractor is in breach of this provision.

26. Taxes

Sales to VCUHS and its Affiliates are normally exempt from State sales tax. VCUHS is exempt from taxation pursuant to Virginia Code Section 23.1-2411. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries shall usually be free of Federal excise and transportation taxes.

27. Termination for Convenience

VCUHS reserves the right to terminate any resulting Contract and/or purchase order, in part or in whole, without penalty, upon 30 days' prior written notice to Contractor unless otherwise agreed upon by the parties. Any termination notice shall not relieve Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of termination.

28. VCU Health System Authority (VCUHS) Marks

"VCUHS Marks" include, but are not limited to the following: VCU Health System ("VCUHS"), Virginia Commonwealth University ("VCU"), VCU Rams, Massey Cancer Center, Pauley Heart Center, Hume-Lee Transplant Center, Children's Hospital of Richmond ("CHoR") at VCU, MCV Physicians ("MCVP"), Community Memorial Hospital ("CMH"), VCU Health Tappahannock Hospital, and Virginia Children's Care Network marks and accompanying designs, emblems, logos and seals (collectively the "VCUHS Marks").

Contractor acknowledges and agrees that VCU and/or VCUHS, individually or together, are the sole owners of the VCUHS Marks and have the exclusive right, title, and interest in and to, and ownership of, the VCUHS Marks, and Contractor acknowledges that nothing herein shall be construed to accord to Contractor any rights in the VCUHS Marks, except as expressly provided herein. Contractor shall not register or attempt to register the VCUHS Marks or a confusingly similar mark in any jurisdiction. Contractor shall have no right, title, interest or claim of ownership of the VCUHS Marks, except for the limited license granted in this Contract (if any). Contractor covenants that Contractor will not (a) at any time challenge VCU's or VCUHS's rights, title, or interest in, or ownership of the VCUHS Marks; (b) do, cause to be done, or omit to do anything which would contest, challenge, or in any way impair the rights of VCU or VCUHS in the VCUHS Marks; (c) represent to any third party that Contractor has any ownership or rights in the VCUHS Marks (other than the specific rights conferred by this Contract, if any); or (d) register or attempt to register the VCUHS Marks as a trademark, service mark, trade name, or legal name.

Notwithstanding any other provision hereof to the contrary, Contractor may not assign or sublicense any rights to any person or entity without VCU's or VCUHS's prior written permission, which may be granted or withheld at VCU's or VCUHS's sole discretion.

29. Virginia Freedom of Information Act

Except as provided below, once the Contract is issued, all related solicitation documents submitted to VCUHS, including, but not limited to, quotations, proposals, bids, contracts, statements of work, and/or specifications, will be open to inspection in accordance with the Virginia Freedom of Information Act ("FOIA"). Trade secrets or proprietary information submitted by a Contractor as part of its solicitation, contract, and/or purchase order documents are generally not subject to public disclosure under FOIA; however, Contractor must clearly invoke the protections of this section prior to or upon submission of its documents to VCUHS and must identify the specific data or other materials to be protected, and state the reasons why such protection is warranted.

Notwithstanding, VCUHS shall not agree to (i) keep the terms of the Contract or price paid or payable by VCUHS confidential; (ii) limit VCUHS' obligations to disclose records as required by law including but not limited to FOIA; (iii) provide prior notice to Contractor before complying with a FOIA request; or (iv) require permission from Contractor prior to disclosing records upon receipt of a FOIA request.

30. Warranty

Whether or not Contractor is a merchant of the product provided by it, Contractor warrants that all product provided by it to VCUHS shall (a) be of good quality and workmanship and free from all defects, latent, or patent, in design, materials and workmanship, (b) conform to all specifications, drawings, samples, and other descriptions furnished, specified, or adopted by VCUHS, (c) be merchantable and suitable, sufficient, and fit for their intended and particular purpose, and (d) be free of all liens and encumbrances, and any claim of title by any third party. None of the remedies available to VCUHS for the breach of any of the foregoing warranties may be limited except to the extent and in the manner agreed upon by VCUHS in a separate written agreement specifically designating such limitation and signed by an authorized representative of VCUHS. Furthermore, Contractor agrees the goods or services furnished shall be covered by the most favorable commercial warranty that Contractor or its manufacturer gives any customer for such goods or services. A copy of the warranty should be provided by Contractor at time of delivery.

Exhibit F**LICENSE AGREEMENT**

THIS LICENSE AGREEMENT (this “**Agreement**”) is made this 14th day of July, 2023, but shall be effective for all purposes only as of the Effective Date (hereinafter defined), by and between THE CITY OF RICHMOND, a municipal corporation and political subdivision of the Commonwealth of Virginia (the “**Licensor**”) and VIRGINIA COMMONWEALTH UNIVERSITY HEALTH SYSTEM AUTHORITY, a public body corporate, public instrumentality, and political subdivision of the Commonwealth of Virginia (“**Licensee**”).

I. DEFINED TERMS

Capitalized terms appearing in this Agreement are used having the meanings set forth in this Article I.

- A. “**Contract**” has the meaning set forth in Section II.B.ii.
- B. “**Contractor**” means a Person contracted by Licensee to perform services or work on the Property in connection with the Work.
- C. “**Cure Period**” has the meaning set forth in Section II.C.
- D. “**Expiration Date**” has the meaning set forth in Section II.D.
- E. “**Effective Date**” has the meaning set forth in Section III.I.
- F. “**Force Majeure Delay**” has the meaning set forth in Section II.B.
- G. “**Good Industry Practice**” means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced Person engaged in a similar type of undertaking under the same or similar circumstances.
- H. “**Law**” or “**Laws**” means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders, judgments, and requirements, to the extent applicable to the parties, the property or any portion thereof, including, without limitation, hazardous materials laws, whether or not in the present contemplation of the parties, and including, without limitation, all consents or approvals (including Regulatory Approvals) required to be obtained from, and all rules and regulations of, and all building and zoning laws or, all federal, state, and local governments, authorities, courts and any other body or bodies exercising similar functions.
- I. “**License**” has the meaning set forth in Section II.A.
- J. “**Licensee**” has the meaning set forth in the opening paragraph.

K. “**Licensee Parties**” means Licensee and its Contractors, Subcontractors, and agents.

L. “**Licensor**” has the meaning set forth in the opening paragraph.

M. “**Notice**” has the meaning set forth in Section III.E.

N. “**Person**” means any individual, corporation, partnership, association, cooperative, limited liability company, trust, business trust, joint venture, government, political subdivision or any other legal or commercial entity and any successor, representative, agent, agency or instrumentality thereof.

O. “**Property**” means the real property owned by Licensor identified as 500 North 10th Street, Richmond, VA 23219 (Parcel ID Number E0000235001).

P. “**Regulatory Approval**” means any authorization, approval or permit required or granted by any governmental organization having jurisdiction over the Property or the Work, including, without limitation, Licensor and the Commonwealth of Virginia.

Q. “**Subcontractor**” means a Person subcontracted to perform a portion of a contract by a Contractor or another Subcontractor.

R. “**Term**” has the meaning set forth in Section II.D.

S. “**Work**” means the demolition of the existing improvements located at the Property, including, without limitation, the old Public Safety Building, and the fencing work, which scope of work is fully described on Exhibit A attached hereto and made a part hereof.

II. AGREEMENT

For and in consideration of the mutual promises and agreements made herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. License. Subject to the satisfaction of the Licensee’s obligations described in Section II.B below, Licensor hereby grants unto the Licensee Parties, upon such terms and conditions as are further set forth in this Agreement, the right and privilege to enter the Property to the extent necessary to perform the Work (the “**License**”). The License granted herein does not include an exclusive right to occupy the Property and does not constitute a possessory estate in any part of the Property.

B. Licensee Obligations. Throughout the Term, Licensee shall :

i. Perform the Work and complete the Work on or before the later of: (i) December 31, 2023, or (ii) nine (9) months from the Effective Date, subject to Force Majeure Delay.

ii. Prior to beginning the Work, Licensee or Licensee Parties shall obtain, at their sole cost and expense, all Regulatory Approvals required pursuant to Law to permit the Licensee Parties to perform the Work.

iii. Within ninety (90) days of the Effective Date, subject to extension for Force Majeure Delay, Licensee shall enter into a contract (the "**Contract**") with Contractor to perform the Work and shall give a notice to proceed under such Contract. For purposes of this paragraph, "**Force Majeure Delay**" shall mean any actual delay in the performance of any part of the Work resulting from events beyond the reasonable control of Licensee or Licensee Parties, caused by or contributed to by acts of God, war; riot; civil strife; act of terrorism, domestic or foreign; embargo; governmental rule, regulation or decree; flood, fire, hurricane, tornado, or other casualty; epidemic, pandemic, outbreak of communicable disease, viral outbreak or quarantine; national or regional emergency; earthquake; strike, lockout, or other labor disturbance provided that Licensee has provided written notice to Licensor of any Force Majeure Delay within five (5) business days after the occurrence of such Force Majeure Delay. Licensee shall furnish Licensor with periodic reports regarding the progress of the Force Majeure Event and shall act diligently to minimize damages and to resume performance.

iv. Licensee shall cause Contractor to provide and maintain the insurance described on Exhibit B from the date on which Work commences and continuing for the balance of the Term. Contractor's insurance shall: (a) be provided by an insurance provider permitted to do business in the Commonwealth of Virginia and having a Best's rating of "A" or better; (b) be primary insurance which will not call upon for defense, contribution of payment, any other insurance effected or procured by Licensee or Licensor; (c) provide that the insurer waives the right of subrogation against Licensor; and (d) name the applicable Licensee Party, Licensee, and Licensor as additional insureds for on-going and completed operations. Worker's compensation insurance shall be carried by Contractor as required by Law. The policies described above shall provide at least thirty (30) days' prior written notice of modification or cancellation be given to Licensor. Prior to the start of any Work, at Licensor's request, Licensee shall provide Licensor with evidence, in the form of certificates of insurance that the insurance required to be carried by Contractor by this Section is in full force and effect.

v. Licensee and the Licensee Parties shall perform the Work in a reasonable and workmanlike manner in accordance with Good Industry Practice and in accordance with Law and all necessary Regulatory Approvals of the plans for the Work and the Work itself. Licensee and the Licensee Parties shall perform the Work at their sole cost and expense.

vi. Licensee shall cause Licensor to be a named beneficiary of any and all indemnities in favor of Licensee within the Contract. As between Licensor and Licensee, Licensee shall be responsible for any uninsured loss, liability, cost or reasonable settlement cost incurred as a result of any third party claims, damages, and actions of any kind or nature, whether at law or in equity, arising from or caused by Licensee's and Licensed Parties' performance of the Work provided that such liability is not attributable to the sole negligence of the Licensor or to Licensor's breach of any of the obligations of this Agreement. Nothing herein waives the sovereign immunity of Licensor or Licensee.

vii. As part of the scope of Work described on Exhibit A, the Licensee Parties shall erect and maintain construction fencing to surround and prevent unauthorized access to the Property and the Property shall be closed and secured at all times when the Work is not being performed. The Licensee Parties take all reasonable actions to protect and safeguard any equipment, materials, and supplies used in connection with the Work at the Property and shall maintain, at their cost and expense, all fencing it elects to install, locked storage areas, and other safekeeping features as shall be necessary in connection with the storage of such equipment, materials, and supplies. Following completion of the Work, the construction fencing shall be replaced with more permanent fencing suitable to secure the Property and prevent unauthorized access to the Property.

viii. Licensee shall not permit any liens to be recorded against the Property as a result of the Work. If any lien is recorded against the Property related to the Work, Licensee shall cause any such lien to be released or bonded off within thirty (30) days after receiving notice of such filing. Should Licensee fail to remove and discharge (or bond off) any lien within the aforesaid period, then Licensor shall have the right, but not the obligation, to do so, and in such event, Licensee shall be liable for and pay upon demand all of Licensor's costs and expenses relating thereto, including, without limitation, reasonable attorneys' fees.

ix. Licensee shall keep Licensor reasonably informed of the construction schedule for the Work, with monthly updates given to Licensor (which updates may be held informally through teleconference, video chat or other commercially reasonable form of communication).

C. Licensor Obligations. Provided that Licensee is in compliance with the terms and conditions of this Agreement, Licensor will not interfere with or disrupt Licensee's or Licensee Parties' use of the Property throughout the Term. During the Term, Licensor shall not revoke the License, except in the event of a default under this Agreement by Licensee Parties, and then only after (i) notice to Licensee Parties by Licensor as provided in Section III.E, and (ii) a reasonable opportunity for Licensee Parties to cure such default ("**Cure Period**"); provided, however, that such Cure Period shall not exceed thirty (30) days, subject to extension for Force Majeure Delay.

D. Term Expiration and Termination. The "**Term**" shall begin on the Effective Date and shall expire, unless earlier terminated as provided herein, on the earlier of (1) the date on which the Work is completed as evidenced by certificate(s) of completion issued by Contractor and/or the engineers and/or design professionals engaged in connection with the Work and with the concurrence of the Licensor, which will have the right to inspect the Work and verify the information in the certificate(s) of completion and thereby confirm the completion of the entire scope of Work described in Exhibit A; or (2) the date on which Licensee takes title to the Property (the "**Expiration Date**"). Upon the occurrence of the Expiration Date, this Agreement shall terminate and neither party shall have any further liability hereunder, except that a written claim by either party against the other party for which notice was given pursuant to Section III.E shall survive the Expiration Date.

III. MISCELLANEOUS

A. License is Personal. This Agreement and the License created herein are personal to the Licensee Parties and may not be assigned to any third-party without the prior written permission of Licensor. Except as provided herein, no rights, privileges or amenities will inure to the benefit of any third party, nor will any third party be deemed to be a third-party beneficiary. Nothing herein shall be construed as a covenant running with the Property or be binding upon Licensor's successors, or assigns.

B. No Recordation. This Agreement shall not be recorded among the land records of the City of Richmond, Virginia.

C. No Partnership. Nothing contained in this Agreement shall be construed to make the parties partners or joint venturers, or to render either party liable for the debts or obligations of the other.

D. Governing Law. This Agreement shall be governed, construed, and interpreted in accordance with the laws of the Commonwealth of Virginia without regard to conflicts of interest principles. Any and all disputes, claims, and causes of action arising out of or in connection with this Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond.

E. Notice. All notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "Notice") shall be in writing and addressed to the other party at its address set out below (or to any other address that the receiving party may designate from time to time in accordance with this Section III.E.). Each party shall deliver all Notices by personal delivery, nationally recognized overnight courier (with all fees pre-paid), or email. Notice is effective: (a) upon receipt in the case of personal delivery, (b) upon receipt after being sent by nationally recognized overnight courier, and (c) the date sent by email, provided (i) the email was sent between 9:00 a.m. and 5:00 p.m., local time of the recipient, (ii) on a business day, and (iii) a duplicate copy of the Notice was also sent the same day by personal delivery or nationally recognized overnight courier (with all fees pre-paid), otherwise, delivery of the Notice sent via email shall be deemed effective upon receipt of the personal delivery or nationally recognized overnight courier. Each party's respective address for Notice shall be as follows:

Licensor:	City of Richmond, Virginia 900 East Broad Street, Suite 201 Richmond, VA 23219 Attention: J. E. Lincoln Saunders Chief Administrative Officer Email: Lincoln.Saunders@rva.gov
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With a copy to: City Attorney
City of Richmond, Virginia
900 East Broad Street, Suite 400
Richmond, VA 23219
Attention: Bonnie Ashley, Esq.
Deputy City Attorney
Email: Bonnie.Ashley@rva.gov

Licensee: Virginia Commonwealth University Health System Authority
Office of the General Counsel
830 East Main Street, Suite 200
Box 980240
Richmond, VA 23298-0240
Attention: Anne G. Scher, Esq.
Email: anne.scher@vcuhealth.org

With a copy to: ArentFox Schiff LLC
1717 K Street, N.W.
Washington, D.C. 20006-5344
Attention: Kenneth S. Jacob, Esq.
Email: kenneth.jacob@afslaw.com

F. Severability. If any provision of this Agreement is held to be invalid or unenforceable as applied to a specific set of circumstances, then all of the other provisions of this Agreement, including such unenforceable provision as applied to any other circumstances, will continue in full force and effect.

G. Amendment. No amendment shall be effective unless in writing and signed by Licensor and Licensee.

H. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original but all of which together shall constitute but one and the same agreement. The exchange of copies of this Agreement by facsimile, DocuSign or Portable Document Format (“PDF”) transmission shall constitute effective execution and delivery of same as to the parties thereto and may be used in lieu of the original documents for all purposes. Signatures transmitted by facsimile, DocuSign or PDF shall be deemed to be original signatures for all purposes.

I. Effective Date. This Agreement is conditioned upon the authorization of the City Council of the City of Richmond (“City Council”) for Licensor to enter into the Agreement and shall become effective on the date City Council adopts an ordinance giving such authorization (“**Effective Date**”).

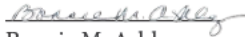
J. Authorization to Act. As of the Effective Date, the Chief Administrative Officer of the City of Richmond or a designee thereof is authorized to act on behalf of the City under this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Licensor and Licensee have caused this Agreement to be executed by their duly authorized representative effective as of the date first written above.

LICENSOR:

Approved as to Form:


Bonnie M. Ashley
Deputy City Attorney

THE CITY OF RICHMOND,
a municipal corporation of the Commonwealth of
Virginia

By:


Name: J.E. Lincoln Saunders
Title: Chief Administrative Officer

LICENSEE:

**VIRGINIA COMMONWEALTH
UNIVERSITY HEALTH SYSTEM
AUTHORITY**, a public body corporate, public
instrumentality, and political subdivision of the
Commonwealth of Virginia

By:


Name: James Siegel
Title: Chief Financial Officer

EXHIBIT A

Scope of Work

SCOPE OF WORK 1/26/23

- A. Remediation of identified contaminated and hazardous materials within the building and structure:
 - 1. Abatement to include removal of remaining asbestos items at windows, fire doors and elevators in the parts of the building to be demolished.

- B. Demolition and removal of building structure to the existing 9th Street elevation:
 - 1. Demolition of the South Building (running east-to-west in-line with Clay Street) down to grade of approx. 154.00' (at grade of the adjacent social services building lower level.) Provide internally braced supports as necessary for walls along 10th Street to support sidewalks and adjacent street. Demolition will be down to the Slab-on-Grade. Slab-on-Grade to remain in place.
 - 2. Demolition of the West Building (running parallel to 9th Street) and other structures and MEP equipment down to the elevation of 9th Street (approx. 172.00'). Basement level to remain in entirety to maintain structural integrity of surrounding infrastructure.
 - 3. Disconnect/plug all utility services to the building (Electrical, water, gas, telecom).

- C. Protect site with fencing:
 - 1. Include 8' chain-link fence with fabric screen installed around the perimeter of the site (outboard or on top of the existing wall) as well as providing Concrete K-rails at the intersections of Clay 10th Street and Clay/9th Street for secondary protection.
 - 2. Provide fall protection at all leading edges created by demolition.

EXHIBIT B

Contractor's Insurance Program



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/24/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UNDER THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Willis Towers Watson Insurance Services West, Inc. c/o 26 Century Blvd P.O. Box 305191 Nashville, TN 372305191 USA	CONTACT NAME: Willis Towers Watson Certificate Center PHONE (A/C, No, Ext): 1-877-945-7378 FAX (A/C, No): 1-888-467-2378 E-MAIL ADDRESS: certificates@willis.com														
INSURED DPR Construction, A General Partnership 11109 Sunset Hills Road, Suite 200 Reston, VA 20190	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A: Liberty Insurance Corporation</td> <td style="text-align: center;">42404</td> </tr> <tr> <td>INSURER B: XL Insurance America Inc</td> <td style="text-align: center;">24554</td> </tr> <tr> <td>INSURER C: Great American E & S Insurance Company</td> <td style="text-align: center;">37532</td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Liberty Insurance Corporation	42404	INSURER B: XL Insurance America Inc	24554	INSURER C: Great American E & S Insurance Company	37532	INSURER D:		INSURER E:		INSURER F:	
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INSURER C: Great American E & S Insurance Company	37532														
INSURER D:															
INSURER E:															
INSURER F:															

COVERAGES **CERTIFICATE NUMBER:** W27957263 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURED	INSURER	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC OTHER:			TR7-661-066943-022	09/01/2022	09/01/2023	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/> AUTOS ONLY			AS7-661-066943-012	09/01/2022	09/01/2023	COMBINED SINGLE LIMIT (Per accident) \$ 3,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0			US00035497L122A	09/01/2022	09/01/2023	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WR7-660-066943-032	09/01/2022	09/01/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Contractor's Pollution Liability (w/ Mold)			CSE 1827545 09	09/01/2022	09/01/2023	Each Poll Cond./Agg.: \$5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER Evidence of Insurance	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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Purchase Order



VCU Health System Authority
 Box 980648
 Richmond, VA 23298-0648
 United States of America

Purchase Order Number	10-10231836
Purchase Order Date	08/10/23
Account Number	
Issue Option	Print
Payment Terms	Net 30
Payment Type	ACH
Buyer	Elizabeth Chrestensen
Phone Number	+1 (804) 6280541
Email	Elizabeth.Chrestensen@vcuhealth.org

Supplier: DPR CONSTRUCTION 5500 COX ROAD SUITE M GLEN ALLEN, VA 23060 United States of America	Ship To: VCU Health System Authority 403 North 13th Street Richmond, VA 23298 United States of America Adrienne Morrone +1 (804) 6280541
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Comments: Subject: Clay Street Demo – Design Proposal Per the terms and conditions of agreement # CON-10011062	Bill To: VCUHSA VCU Health System Authority Box 980648 Richmond, VA 23298-0648 United States of America ap@vcuhealth.org +1 (804) 6280541
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Shipping Terms	Shipping Method	Shipping Instruction
FOB Dest, Optifrieght	Best Way	

Line	Description	Amount	Start Date	End Date
1	Design and Construction Document Generation:	124,000.00		
2	Permitting and Site CA Services:	40,000.00		
3	Design Contingency:	40,000.00		

Messages Each invoice must reference the Purchase Order number shown on this document as well as the vendor Taxpayer Number (Social Security Number, or Federal ID Number). Failure to provide this information will result in a delay of payment. If shipping charges contractually apply, ship via FedEx account # 797911399. Insert PO# in recipient 2nd address field. If combined shipping weight exceeds 150lbs, call 888-457-5851 for carrier instructions prior to shipping. Unless otherwise stated or referenced by an agreement number, this purchase order is subject to the general terms and conditions of the VCU Health System Authority (VCUHS) as well as any other terms and conditions identified on the front and attachment of this purchase order. A copy of these general terms and conditions may be found at http://www.vcuhealth.org/about-us/vendor-information .
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Currency:	USD
Total Line Amount:	204,000.00
PO Total Amount:	204,000.00



August 8, 2023

Adrienne Morrone
Director of Project Management, Real Estate
VCU Health System Authority
1200 E. Broad Street
Richmond, VA 23298

RE: Clay Street Demolition Project

Subject: Clay Street Demo - Design Proposal

Dear Andi:

Thank you for the opportunity be involved in the Clay Street Public Safety Building demolition project, located at located at 500 N 10th St. As discussed, please see the below breakout values to provide design services for the project:

- Design and Construction Document Generation: \$124,000
- Permitting and Site CA Services: \$40,000
- Design Contingency: \$40,000

Total: **\$204,000**

If you have any questions, please feel free to reach out to me at (954) 649-0838.

Sincerely,
DPR Construction, A General Partnership

Liam Francis

A handwritten signature in black ink that reads 'Liam Francis'.