

**CONSTRUCTION SERVICES AGREEMENT**

This Construction Services Agreement (this “**Agreement**”) is effective as of <<DATE>> by and between Owner and Contractor for the Project.

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| Owner is:Vanderbilt Universityc/o Department of Facilities110 21st Avenue South, Suite 1110Nashville, Tennessee 37203 | The Contractor is:<<CONTRACTOR LEGAL NAME>><< STREET ADDRESS>><<CITY, STATE, ZIP CODE>> |
| Owner’s Representative is:<<REPRESENTATIVE NAME>>110 21st Avenue South, Suite 1110Nashville, Tennessee 37203<<PHONE NUMBER>><<E-MAIL>> | The Contractor’s Representative is:<<REPRESENTATIVE NAME>><< STREET ADDRESS>><<CITY, STATE, ZIP CODE>><<PHONE NUMBER>><<E-MAIL>> |
| The Project is:<<PROJECT NAME>><<STREET ADDRESS>><<CITY, STATE>> |  |

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| **Date of Commencement:***(check one)* | [ ] <<INSERT DATE>>, or[ ] To be established by Owner’s Representative in a Notice to Proceed |
| **Contract Time:***(check one)* | [ ] <<NUMBER OF DAYS>> Days; or[ ] <<INSERT DATE>> |
| **Contract Sum:***(check one)* | [ ]  **Stipulated Sum** of <<DOLLAR AMOUNT>> Dollars ($<<###.##>>); **or**[ ] To be Determined Based on **Time and Materials** with aMaximum Price of <<DOLLAR AMOUNT>> Dollars ($<<###.##>>) |
| **Builder’s Risk****Insurance:***(check one)* | [ ] Contractor Provided;[ ] Owner Provided;**or**[ ] Not Required for Project |

In consideration of the mutual covenants and promises set forth herein, Owner and Contractor hereby agree as follows:

1. Contract
	1. The Contract Documents include this Agreement, subsequent written amendments signed by Owner and Contractor, Change Orders issued in accordance with Article 7, drawings, specifications and documents subsequently approved in writing in accordance with Paragraph ‎6.3 and the exhibits enumerated in Paragraph ‎12.1.
	2. The Contract Documents form the Contract, which constitutes the entire and integrated agreement between Owner and Contractor with respect to the Project and supersedes prior negotiations, representations or agreements, both written and oral. All modifications to the Contract must be in writing and are limited to formal Amendments to this Agreement signed by Owner and Contractor and Change Orders issued in accordance with Article7.
	3. The Contract shall not be construed to create a contractual relationship with any third party or a cause of action in favor of any third party against either Owner or Contractor.
	4. Drawings, specifications, models and other documents included or to be included in the Contract Documents are solely for purposes related to the Project. Except as specifically provided, nothing herein shall be deemed to transfer common law, statutory and other reserved rights therein, including copyrights. With respect to design documents provided by or on behalf of Owner, Contractor and anyone acting on its behalf shall have a royalty-free license to use, reproduce and distribute the documents for purposes of the Project. With respect to documents or media that Contractor is required to furnish to Owner under this Contract, Owner is hereby granted an irrevocable, royalty-free license to use, reproduce and distribute the documents and media for any purposes related to the Project. With respect to any building information modeling (BIM), video, photos, or other media captures prepared by or on behalf of Contractor as required under this Contract, the modeling and media shall be works for hire, and become become the sole property of Owner for its use as it deems appropriate.
2. Work
	1. Except to the extent specified in the Contract Documents to be the responsibility of others, Contractor shall provide and pay for all labor, services, tools, materials, supplies, equipment, machinery, fabrication, storage, shipping, delivery, unloading, testing and other items necessary to complete the improvements and services depicted and/or described in the Contract Documents (the “Work”), including permits and inspections required by Law, design services specified or required by law or standard practice, items reasonably inferable from existing and subsequent Contract Documents, the correction of deficiencies and defects in the Work, and other obligations of the Contractor under the Contract.
	2. The Work may constitute the whole or a portion of the Project. Owner has the right to carry out other portions of the Project with its own forces and/or under contracts with separate contractors. Contractor shall cooperate with Owner’s forces and all separate contractors working on and around the Project as reasonably necessary to facilitate and expedite the Project. Subject to Owner’s approval, Contractor shall be responsible for scheduling and coordinating the Work with the work of others working on or around the Project. Contractor shall provide Owner full access to the Work and the site of the Project.
	3. The Work must comply with the laws, statutes, codes, ordinances, rules, regulations, and lawful orders and any other requirements of public authorities applicable to the Work or the Project, including those that relate to the Americans with Disabilities Act, accessibility for the physically challenged, hazardous materials, environmental protection and restrictions on the development of wetlands (collectively the “Law” or “Laws”). Further, the Work must comply with all minimum industry standards and Owner’s design and finish standards. If Contractor knowingly performs Work contrary to applicable standards or Laws, Contractor shall be solely responsible for the correction thereof and costs resulting therefrom.
	4. Execution of this Agreement by Contractor is a representation that Contractor has carefully reviewed all current Contract Documents and become generally familiar with the Laws and conditions under which the Work is to be performed and that Contractor is unaware of any errors, omissions, ambiguities or conflicts in the Work or Contract Documents that have not already been clarified in writing.
	5. Portions of the Work that are not performed by Contractor’s own employees shall be performed under written agreements with Contractor that incorporate and specifically bind its subcontractors, consultants or suppliers to the applicable terms and conditions of the Contract for the benefit of Owner, including the suspension and termination provisions. All subcontractors and consultants must be approved in writing in advance by Owner and, if requested by Owner, Contractor shall furnish Owner copies of the agreements. No subcontractor or consultant shall be replaced without the prior written consent of Owner. No contract shall be awarded to a subcontractor, supplier or consultant on the basis of cost plus a fee without the prior written approval of Owner. As used herein, the term “Contractor Parties” means the Contractor, its subcontractors, consultants and suppliers, sub-subcontractors of any tier, anyone directly or indirectly employed, retained or contracted by any of them, and other persons or entities performing portions of the Work for, or on behalf of, any of them. Contractor shall be responsible to Owner for the work, services and conduct of the Contractor Parties.
	6. The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless the services are specifically included, required by law or required by standard practice to carry out the Work. If the Work includes these services, they must be provided by a properly licensed or registered design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, shop drawings and other documents prepared by the design professional.
3. Contract Time
	1. The Contract Time commences on the Date of Commencement, as defined above, and expires on the date or after the days stated above for Contract Time. Subject only to adjustment by Change Orders issued in accordance with Article 7, Contractor shall perform the Work in accordance with the applicable schedules and achieve Substantial Completion of the Work within the Contract Time. If the Work is to be substantially completed and delivered in phases, the Contract Time established above shall apply to the substantial completion of the final phase. Final completion of the Work must be achieved no later than thirty (30) days following the date of Substantial Completion. Contractor hereby acknowledges the Contract Time is reasonable and the time limits stated herein are of the essence of the Contract. The term “day” shall mean calendar day.
	2. Substantial Completion of the Work, or a designated portion thereof, is achieved when the Work, or a designated portion thereof, is sufficiently complete in accordance with the Contract Documents so Owner can occupy or utilize the Work, or the designated portion thereof, for its intended use and in compliance with applicable law, including all required approvals, certificates or permits of public authorities.
	3. Contractor shall not commence operations on the Project site prior to the Date of Commencement stated above or prior to obtaining, and furnishing to Owner, the necessary authorizations, licenses and permits. Contractor shall notify Owner in writing not less than five (5) days before commencing operations on the Project site to allow for timely notices.
	4. No portion of the Work shall be performed at the Project site outside the normal working hours specific to the Project except as provided in the Contract Documents or as specifically approved by Owner in writing. Notwithstanding the foregoing, Owner shall have the right to require that certain activities or portions of Work be performed outside normal working hours or restricted to certain hours to accommodate the ongoing operations of Owner. Neither approvals nor denials of requests to perform activities outside normal working hours shall warrant or be construed as adjustments to the Contract Sum or Contract Time, and additional costs incurred by Contractor due to the performance of activities outside normal working hours shall be the responsibility of Contractor, unless specifically stated and approved by Owner in writing. Contractor shall be responsible for identifying all legal and facility specific limitations and incorporating the limitations into the Contractor’s construction schedule, including limited pedestrian or vehicle access, noise restrictions, partial occupation and use of adjacent structures. No construction activity shall take place during commencement activities, which are in May each year.
	5. Contractor shall perform the Work in general accordance with the Contractor’s most recent schedules approved by Owner. In the event Contractor or Owner determines that the performance of the Work has not progressed or reached a level of completion required under the Contractor’s schedule to achieve Substantial Completion within the Contract Time, Contractor shall propose a plan of specific actions that will expedite the progress and correct the delay (a “Schedule Correction Plan”). Upon approval by Owner in writing, Contractor shall implement the Schedule Correction Plan. Contractor shall not be entitled to an adjustment in the Contract Sum for additional costs incurred due to the Schedule Correction Plan except as provided under Paragraph 3.6. In the event Owner deems it necessary to supplement Contractor’s efforts to correct delays caused by one or more of the Contractor Parties, Contractor shall be responsible to Owner for the costs incurred in accordance with Section 5.5.
	6. If Contractor is delayed in the commencement or progress of the Work by an act or neglect of Owner or others for which it is responsible; or by changes ordered in the Work in accordance with Article 7; or by concealed or unforeseen conditions; or by fire, unavoidable casualties or other causes beyond the control of Contractor or other Contractor Parties; or by delay authorized by Owner; and provided the delay is not caused in part by any of the Contractor Parties, Contractor shall be entitled to a Change Order either (1) adjusting the Contract Sum to compensate the Contractor for additional costs incurred due to the Schedule Correction Plan approved by Owner in accordance with Paragraph 3.5 or (2) extending the Contact Time by the actual number of days the performance of the Work is delayed. Whenever Contractor becomes aware of circumstances or conditions that might warrant a Schedule Correction Plan, an adjustment in the Contract Sum, or an extension of the Contract Time, Contractor shall promptly notify Owner and proceed in accordance with Paragraphs 3.5 and 7.4. To the extent Contractor and Owner cannot agree with respect to an adjustment in the Contract Sum or an extension of the Contract Time, Claims must be made in accordance with applicable provisions of Articles 7 and 11.
	7. Neither adjustments in the Contract Sum nor extensions of the Contract Time will be granted for labor disputes or delays in deliveries. Adjustments to the Contract Sum or Contract Time to correct for delays caused by weather will be limited to the actual delays in the critical path of Contractor’s schedule and conditions that are more severe than should have been anticipated based on the records of the National Weather Service.
4. Contract Sum
	1. Subject only to adjustment by Change Orders issued in accordance with Article 7, the Contract Sum is the total amount payable from Owner to Contractor for the complete and proper performance of the Work. Owner will pay the Contract Sum in monthly progress payments based on the progression of the Work and portions of the Work completed during the applicable payment period plus, if specified in Paragraph 12.2, deposits for particular equipment or materials.
	2. For each month within which the Contractor performs any portion of the Work, Contractor shall submit an invoice or a request for payment (an “Application for Payment”) to Owner’s Representative, in form and substance satisfactory to Owner, that clearly identifies he Contractor’s name and address, the date and number of the Application for Payment, the Project, the applicable Owner Purchase Order number and the Work completed by Contractor. If the Contract provides for any deposit(s), Contractor must timely invoice for the deposit(s) with an Application for Payment to maintain all applicable schedules. Each Application for Payment must include the documentation requested by Owner to support Contractor’s right to payment and satisfaction of payment obligations, such as time cards, invoices, receipts, releases and waivers of liens, etc. Contractor warrants that title to all portions of the Work covered by an Application for Payment will pass to Owner no later than the time of payment.
	3. If the Contract Sum is a Stipulated Sum and the Contract Time is more than sixty (60) days, Contractor must submit an itemization of the Work prior to commencing the Work that allocates the Stipulated Sum among the various portions of the Work (the “Schedule of Values”), in form and substance satisfactory to Owner and with separate line items, as applicable and requested by Owner, for each part, trade, allowance, deposit, fee, general condition, etc. If requested, Contractor shall also provide descriptions of the line items to provide more detail to Owner. Once approved by Owner, the Schedule of Values will provide the basis for approving progress payments and each Application for Payment must clearly indicate the percentage of completion of each line item in the schedule. As requested by Owner, Contractor will update the Schedule of Values to incorporate Change Orders, if any.
	4. If the Contract Sum is to be determined based on Time and Materials, the Contract Sum is equal to (a) payment for the documented billable time at the specified hourly billable rates, plus (b) payment for the equipment and materials with specified rates to the extent documented and incorporated into the Work, plus (c) reimbursement for the actual costs incurred by the Contractor for other equipment and materials incorporated into the Work, plus (d) reimbursement for the actual costs incurred by the Contractor for subcontractors and consultants in accordance with this Agreement, plus (e) markup on the reimbursements provided in items (c) and (d) above, plus (f) if applicable and specifically provided for in this Agreement, the other specific reimbursements, markups, and fees.
	5. If a Maximum Price is specified above, the Contract Sum shall not exceed the Maximum Price absent adjustment by Change Order in accordance with Article 7. The Maximum Price includes all labor, materials, equipment, allowances, fees, markups, taxes, items and services necessary for the proper execution and completion of the Work, including any items reasonably inferable from the Contract Documents. Costs incurred by the Contractor in excess of the Maximum Price shall be borne by the Contractor without reimbursement by Owner.
	6. All allowances described in Paragraph 12.2 or another Contract Document are included in the Stipulated Sum or, if applicable, Maximum Price. Costs allocated to any allowance will be limited to the particular expenses, items, and purposes specified in the Contract Documents for the allowance. Subject only to a Change Order in accordance with Article 7 increasing the amount of the allowance, expenses that exceed an allowance shall be the responsibility of the Contractor and not reimbursable by Owner. Prior to final payment, the Stipulated Sum or, if applicable, Maximum Price shall be reduced by Change Order to deduct the unallocated balance of any allowances.
	7. If the Contract Sum is a Stipulated Sum, unit pricing in any exhibit or other Contract Document is included only for purposes of pricing allowance work or changes in the Work, unless the specific unit pricing is described in Paragraph ‎12.2 as a variable component of the Contract Sum. Unless otherwise specifically provided, unit pricing includes all materials, equipment, labor, delivery, installation, overhead, profit, and all other costs or expenses in connection with, or incidental to, the performance of the unit of work to which the pricing applies.
	8. If the Contract Sum is a Stipulated Sum, the amount of each progress payment shall be calculated as follows: (a) take the portion of the Stipulated Sum allocable to completed portion of the Work determined by multiplying the amount of each line item in the Schedule of Values by the line items’ percentage of completion as of the last day of the applicable payment period; (b) unless otherwise provided below in Paragraph 4.10, subtract Retainage, which is five percent (5%) of the amount described in (a) above; (c) subtract the sum of all previous payments by Owner under the Contract; and (d) subtract all amounts, if any, withheld in accordance with Paragraphs 4.11 and 4.12.
	9. If the Contract Sum is to be determined based on Time and Materials, the amount of each progress payment shall be calculated as follows: (a) take all amounts owed for the time and materials delivered during the applicable payment period; (b) unless otherwise provided below in Paragraph 4.10, subtract Retainage, which is five percent (5%) of the amounts described in (a) above; and (c) subtract all amounts, if any, withheld in accordance with Paragraphs 4.11 and 4.12.
	10. If the Contract Sum is expected to be Five Hundred Thousand Dollars ($500,000) or greater, Retainage shall not be withheld from payments to Contractor by Owner as required in Paragraphs 4.8 and 4.9. In lieu of this Retainage, Contractor shall deposit five percent (5.0%) of all amounts paid to Contractor by Owner into a separate, interest bearing escrow account established in accordance with Section 66-34-104 of Tennessee Code Annotated and withhold retainage of five percent (5.0%) from all payments to subcontractors. Contactor shall establish the escrow account with a financial institution and under an escrow agreement approved by Owner in writing, and the escrow agreement must require two signatures of Owner for any disbursement. With each Application for Payment, Contractor shall submit an updated retainage summary and an account statement evidencing the proper balance and payments to the account.
	11. Except as otherwise required by Law, Owner shall pay Contractor within forty-five (45) days of receipt of an Application for Payment provided it complies with the requirements of the Contract. Owner may withhold from payments, in whole or in part, to the extent reasonably necessary to protect Owner from damages or loss for which Contractor is responsible, including damages or loss arising out of defective work, claims of subcontractors, suppliers, or other third parties, property damage, untimely performance, or other default under the Contract Documents. Once reasons for withholding a payment are cured, payment shall be made for amounts withheld with the next progress payment. Neither the approval of an Application for Payment nor the payment thereof shall constitute acceptance of any portion of the Work not in accordance with the Contract Documents. No late fees or interest will be due on late payments.
	12. Payments received by Contractor for Work provided by its subcontractors or suppliers shall be held in trust for the applicable subcontractors and suppliers. Within seven (7) days of receiving any payment from Owner, Contractor shall pay each subcontractor and supplier for all portions of the Work provided by the subcontractor or supplier for which the payment was requested by Contractor less retainage, as applicable. Each subcontractor and supplier shall have the same payment obligations to its subcontractors and suppliers. If reasonably necessary to protect the interests of Owner, Owner is entitled to make payments to Contractor in the form of joint checks payable to Contractor and one or more other parties. To the full extent permitted by Law, Contractor shall indemnify, hold harmless and, if Owner elects, defend Owner from and against all claims, damages, losses and expenses, including attorney, expert and consultant fees and legal expenses, arising out of any liens or claims of nonpayment related to the Work, provided Owner has complied with its payment obligations under this Agreement with respect to the portion of the Work underlying the claims.
	13. If at any time a lien, notice of nonpayment, lis pendens or other type of claim of nonpayment is asserted, filed or recorded with respect to the Project by any of the Contractor Parties, Contractor shall, at its own expense, promptly take and diligently prosecute appropriate action to have the claim immediately released, discharged or bonded off, except to the extent the claim is the result of Owner’s breach of its payment obligations hereunder. Otherwise, Owner, in addition to any other right or remedy that Owner may have, may take any action reasonably necessary to protect Owner’s interest, including payment or settlement of the claim, and Contractor shall promptly reimburse Owner upon demand for any amounts paid or incurred by Owner, including any attorneys’ fees and expenses, in connection with the action. Owner, however, has no duty to take action. Owner and Contractor waive and agree not to assert claims against each other based on Sections 66-34-101, et al., of the Tennessee Code Annotated, except for the Sections identified in Section 66-34-701, which will remain applicable as required by Law.
	14. When Owner determines that the Work, or a designated portion thereof that Owner agrees to accept separately, has achieved Substantial Completion in accordance with Paragraph ‎3.2, Contractor shall issue a certificate of substantial completion for the signature of Owner, which shall establish the date of Substantial Completion and include a comprehensive list of all items that remain incomplete or are otherwise not in accordance with the requirements of the Contract Documents (the “Punch List”). Neither a certificate of substantial completion nor occupancy or use of the Project by Owner shall constitute acceptance of Work that is not in accordance with the Contract Documents. After Owner signs the certificate of substantial completion, Contractor shall submit an Application for Payment requesting payment of the remaining balance of the Contract Sum, or the portion thereof allocated to the portion of the Work substantially complete, less the amounts as reasonably necessary to protect Owner with respect to Punch List items and the amounts as Owner may otherwise withhold under Paragraph 4.11, including three percent (3.0%) of the Contract Sum until receipt of the documents required by Paragraph 6.17.
	15. After the deficiencies of the Punch List are cured and Contractor has fully performed under the Contract, except for its obligations to correct Work and other obligations that extend beyond final payment, Contractor shall submit a final Application for Payment for approval of Owner. Contractor shall not be entitled to final payment until it furnishes to Owner, in form and substance satisfactory to Owner, (a) certificates evidencing insurance required by the Contract to remain in force after final payment, (b) an assignment to Owner of, and all information on, all warranties and guarantees relating to the Work, (c) all required final approvals by public authorities, (d) all other items required by the Contract Documents, such as record documents, system studies, equipment manuals, etc., and (e) other documentation Owner deems reasonably necessary to establish satisfaction of payment obligations to all subcontractors, sub-subcontractors, and suppliers, of any tier. Acceptance of final payment by Contractor and the other Contractor Parties shall constitute a waiver of all Claims by payee, except for those claims previously made in writing and identified by payee as remaining unsettled at the time of the final Application for Payment.
	16. If at any time during or after completion of the Work, Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, 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, and, if final payment has been made, Contractor shall refund the amount of the adjustment to Owner promptly upon request.
5. Owner
	1. Except as otherwise provided herein, Owner’s Representative has authority to represent Owner with respect to all communications and notice. However, only the person who signs the Agreement on behalf of Owner, and others so designated by Owner’s Chancellor, have authority to approve or sign a Change Order or otherwise amend the Contract. The “Owner Parties” are Owner, Owner’s Representative, and Owner’s officers, directors, agents, representatives, and employees.
	2. Owner shall provide the documents and information it has relevant to the Work and the Project that are requested by Contractor in writing. Unless Owner indicates otherwise, Contractor shall be entitled to reasonably rely upon the accuracy and completeness of the information provided by Owner. Owner shall notify Contractor of changes in the Project relevant to the performance of the Work.
	3. Except for building permits, trade work permits and other permits and fees that are the responsibility of Contractor under the Contract Documents, Owner shall secure and pay for necessary approvals, certificates, easements, assessments and charges required for the Project.
	4. If Contractor fails to correct defective Work or otherwise fails to perform the Work in accordance with the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for the order has been eliminated. Owner, however, has no duty to exercise this right for the benefit of Contractor or any other person or entity.
	5. In addition to Owner’s rights under Paragraph 5.4 and Article 8, if Contractor defaults hereunder or neglects to timely perform any portion of the Work in accordance with the Contract Documents, and fails within forty-eight (48) hours of written notice from Owner to commence and continue correction of the deficiency with diligence and promptness, Owner may at any time thereafter, without prejudice to other remedies Owner may have, correct the deficiencies. In such case, the costs incurred by Owner to correct the deficiencies, including the costs of additional testing and inspections, demolition, uncovering and replacement and additional design and/or consultant services, shall be deducted from the Contract Sum. If the costs are greater than the unpaid balance of the Contract Sum, Contractor shall pay the difference to Owner promptly upon demand.
	6. Owner may visit the Project site at various times to observe the progress and quality of the Work. Owner, however, shall not (i) be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (ii) have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor’s rights and responsibilities; (iii) be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents; or (iv) be responsible for the acts or omissions of any of the Contractor Parties.
	7. Owner shall timely review and respond to each Application for Payment and shall approve for payment those amounts to which Contractor is entitled to payment in accordance with the terms and conditions of the Contract.
	8. Owner has the authority to reject Work that does not conform to the Contract Documents and to require uncovering and additional inspections or testing of the Work, whether or not the Work is fabricated, installed or completed. If the Work was performed in proper sequence and in accordance with the Contract Documents, a Change Order shall be issued for the additional costs incurred by Contractor for the uncovering, inspections and/or testing. Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents by omissions or duties of Owner, or by tests, inspections or approvals required or performed by any third party persons or entities.
	9. Owner will review and approve or take other appropriate action upon Contractor’s submittals such as shop drawings, product data and samples, but only for the limited purpose of checking for conformance with the Contract Documents. 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, all of which remain the responsibility of Contractor as required by the Contract Documents.
	10. Owner will issue decisions regarding matters concerning performance under, and requirements of, the Contract Documents; make decisions on all Potential Change Orders, claims, disputes and other matters in question; and investigate and make determinations and recommendations regarding concealed and unknown conditions in accordance with Paragraph ‎7.4.
	11. Owner will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; sign certificates of substantial completion in accordance with Paragraph 4.14; receive and review affidavits, certificates, written statements, manuals, warranties and guarantees and other documents and submittals required of Contractor by the Contract; and approve the final Application for Payment in accordance with Paragraph 4.15.
	12. As indicated in Paragraph 12.2 or otherwise at a later date, Owner may engage an architect, engineer, contractor, or other third-party to administer the Contract, inspect and opine on the Work, or perform responsibilities of Owner’s Representative.
6. Contractor
	1. Before proceeding or ordering materials or equipment, Contractor shall (a) carefully review, study and compare the Contract Documents with each other, and with any other information available to Contractor or furnished by Owner, (b) verify field measurements and conditions, (c) carefully compare the field measurements and conditions and other information known to Contractor with the Contract Documents and (d) if a portion of the Work depends upon the work of others, inspect the work for apparent discrepancies or defects that would render it unsuitable for receiving the Work. Any deficiencies, errors, omissions or inconsistencies discovered by Contractor, and any other conditions that may prevent successful completion of the Work, shall be reported promptly in writing to Owner and portions of the Work that may be affected by the deficiency, error, omission, inconsistency or condition shall be suspended until directed otherwise by Owner. If Contractor fails to perform these duties, Contractor shall be solely responsible for costs that could have otherwise been prevented.
	2. If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those that should have been reasonably anticipated based on the character of the Work, Contractor shall promptly notify Owner and, if applicable, submit a request for information and, if applicable, a Potential Change Order before the conditions are disturbed.
	3. To the extent designs, drawings, specifications, shop drawings, samples or submittals created after the signing of this Agreement will be relied upon or the basis for any portion of the Work, the designs, documents and items must be approved by Owner in writing prior to proceeding with the applicable portions of the Work or ordering materials or equipment therefor.
	4. Unless otherwise provided in the Contract Documents, Contractor shall prepare and submit for Owner’s approval a schedule for the Work. The schedule shall provide for expeditious and practicable performance of the Work within the Contract Time, shall provide reasonable deadlines for submittals and approvals required by the Contract Documents, shall be revised with the consent of Owner at appropriate intervals as required by the conditions of the Work and Project, and shall relate to the entire Project as required by the Contract Documents. Notwithstanding the foregoing, the Contract Time can only be adjusted by Change Orders issued in accordance with Article 7.
	5. Contractor shall supervise and direct the Work, using Contractor’s best knowledge, skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work, unless the Contract Documents provide other specific instructions concerning these matters. If the specific instructions are provided and the instructions deviate from good construction practice, might cause unsafe conditions or might adversely affect or invalidate any warranty or guarantee, Contractor shall promptly notify Owner in writing. Nothing in this Contract shall diminish Contractor’s sole responsibility for safety.
	6. Contractor shall employ a competent superintendent or representative who shall be in attendance at all Project meetings and at the Project site during performance of the Work. Such superintendent shall be competent in reading and understanding the Contract Documents and capable of effectively communicating in the necessary language(s) with all of the Contractor Parties. Communications given to the superintendent or Contractor’s Representative shall be effective notice on Contractor and approvals and authorizations with respect to the Contract granted by the superintendent or Contractor’s Representative shall be binding on Contractor. Contractor shall not replace any superintendent, project manager, designer or other key employee working on the Project, without Owner’s prior written consent.
	7. Contractor will enforce strict discipline and good order among Contractor Parties. Contractor will not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Contractor will be responsible to Owner for the defaults and negligent acts and omissions of the Contractor Parties. All Contractor Parties must have visible identification; and they are prohibited from smoking or the use of tobacco products on Owner property or the Work premises, from whistling at or using other loud noises to get the attention of persons on Owner property; from conversing with persons on Owner property other than Contractor Parties unless necessary to the performance of the Work, and from personal use of Owner facilities (e.g., toilets, telephones, interior premises, etc.) or grounds elements (e.g., benches, dumpsters, containers, etc.) without specific Owner approval. In the event that any employee, agent, or consultant of any of the Contractor Parties fails to properly perform their duties, violates any Owner policies or the prohibitions herein, or otherwise creates a nuisance or hinders the Project’s progress, Contractor will replace the person or entity as reasonably requested by Owner. For security purposes, Contractor must promptly notify Owner whenever any employee, agent, or consultant of any of the Contractor Parties who has security access to any of Owner’s facilities is terminated or removed from the Work.
	8. The Contractor Parties shall, at their own expense, perform local, state and federal background and reference checks, including criminal background checks, on all employees to be assigned to the Project, for every county of residence of prospective employees for the past ten (10) years. Unless Owner specifically approves, no employee with a conviction involving violent crime, theft, possession or receipt of stolen property, sexual offense or illegal sale, use or possession of drugs within the past ten (10) years can be assigned to the Project. Owner reserves the right to remove any anyone from the Project if arrested, charged or convicted of any of these crimes or if the individual conceals information regarding these crimes. Further, Contractor shall validate social security identification numbers and not assign any undocumented persons to the Project.
	9. Contractor acknowledges the ongoing operations of Owner at or in close proximity to the Project and agrees to coordinate the timing of the Work with Owner’s ongoing operations; perform the Work in a manner that minimizes or eliminates any adverse impact on Owner’s ongoing operations; confine operations at the site to areas approved by Owner and permitted by Law, permits and the Contract Documents; comply with Owner’s standard security, health and safety policies and procedures; not unreasonably encumber the site with any materials or equipment; and not place signs or advertising on or about the site without prior approval of Owner. Contractor is responsible for obtaining access to secured areas necessary for the Work through coordination with the Owner’s Representative and Owner’s Key Shop and Card Office. Prior to commencement of the Work, Contractor must submit a list of personnel who require card access to the Project site. Upon exit and at the end of each work day, secured areas must be left secure as Owner deems appropriate, and all existing locksets and cores that are removed must be returned to Owner’s Key Shop. Contractor is responsible for purchasing the parking permits necessary for the Work and Contractor Parties. Contractor cannot temporarily park any vehicle or equipment on any grassed area, sidewalk, or other non-designated parking area unless absolutely necessary and approved in advance by Owner.
	10. Contractor shall be solely responsible for initiating, maintaining and supervising appropriate safety programs; shall take all reasonable safety precautions to prevent personal injuries and conditions that may be hazardous to the health of persons at or in close proximity to the Project; and shall take adequate protective measures to prevent damage to the Work and existing property, improvements and conditions at or in close proximity to the Project, including dust containment measures to prevent dust from entering adjacent spaces and any HVAC systems. Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, providing safe and accessible alternate pedestrian routes, security fencing and screening around the site and equipment, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. Contractor shall promptly notify Owner of any actual or alleged damage, injury or loss to persons or property related to its operations under the Contract. Contractor shall be responsible for and shall promptly remedy or replace any damage or loss to property to the extent caused by any of the Contractor Parties without any cost to Owner. Otherwise, Owner may remedy or replace the damage or loss at Contractor’s expense in accordance with Paragraph ‎5.5.
	11. While its operations are ongoing, Contractor shall keep the premises and surrounding area clean and free from waste materials or rubbish from the Work and comply with a maintenance program to minimize the spread and accumulation of dirt and dust caused by the Work. Dust containment curtains and tacky mats must be installed and maintained as needed to prevent dust migration to non-construction areas, air scrubbers must be running during dust generating activities, an HVAC return grilles and open ducts must be covered with properly maintained filter media. Upon completion of the Work, Contractor shall remove all surplus and waste materials, rubbish, tools and equipment from the premises and leave the Work and premises in a clean condition, including glass surfaces and interior floors and walls. If Contractor fails to clean up during and after completion of the Work as required herein, Owner may do so at Contractor’s expense in accordance with Paragraph ‎5.5. All construction and demolition dumpsters and debris removal must be procured subject to Owner’s consolidated waste management contract.
	12. Unless otherwise specified in the Contract Documents or Paragraph ‎12.2, Contractor shall be responsible for all cutting, fitting and patching required to complete the Work, or to make portions of the Work and existing conditions fit together properly, and all impacted areas shall be restored to the conditions existing prior to the cutting, fitting and patching unless otherwise provided in the Contract Documents. Contractor must submit a written form request to Owner at least ten (10) days prior to any utility outage or shutdown, which must be scheduled during non-business hours if feasible and must be approved by Owner. All hot or cold plumbing work requires at least twenty-four (24) hours’ notice to Owner, and all work that involves an open flame, smoke, or dust requires a special permit from Owner, which must be applied for by the Owner’s Representative at least two (2) days before the work.
	13. Contractor shall review for compliance with the Contract Documents, approve and submit to Owner all shop drawings, product data, samples and similar submittals required by the Contract Documents with reasonable promptness and in sequence as to cause no delay in the Work. The Work shall be in accordance with approved submittals, except that Contractor shall not be relieved of responsibility for errors or omissions in submittals or deviations from the requirements of the Contract Documents by the approvals of the submittals by Owner. If professional design services or certifications by a design professional are required of Contractor by the Contract Documents or Laws, the services or certifications shall be provided by properly licensed or registered design professionals, whose signatures and seals shall appear on all drawings, calculations, specifications, certifications, shop drawings and other submittals prepared by design professionals. Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by any design professionals.
	14. Contractor shall not substitute any materials or equipment for those specified in Contract Documents unless approved in writing by Owner and incorporated into the Contract by a Change Order issued in accordance with Article 7. Contractor shall submit proposed substitutions to Owner before ordering and in a timely manner to prevent any delay in the Work.
	15. Contractor shall promptly correct any portion of the Work that is defective or not in accordance with the Contract Documents or rejected by Owner. Contractor shall be responsible for, and pay for all costs arising out of, any additional testing and inspections, demolition, uncovering and replacement and additional design and consulting services required to properly correct any portion of the Work. If a defect or deficiency in the Work is discovered within the year following the date of Substantial Completion or within the longer period as may be prescribed by any specific warranty or guarantee, and Owner elects to have Contractor correct the defect or deficiency, Owner shall notify Contractor of the defect or deficiency in writing. This period of correction relates only to the specific obligation to correct defects and deficiencies and in no way otherwise limits the Contractor’s responsibility for Work that is not in accordance with the Contract Documents. If Contractor fails to timely correct defects or deficiencies in the Work, Owner may correct them in accordance with Paragraph ‎5.5.
	16. Contractor shall comply with the Contract Documents and Laws, standards and handling criteria regarding hazardous substances, wastes and materials, including asbestos-containing materials, lead-based paints, petroleum (or any constituent thereof), mold, radon, and polychlorinated biphenyl (PCB), (“Hazardous Materials”) in performing the Work. Unless required by the Contract Documents and specifically approved by Owner in writing, no Hazardous Materials shall be incorporated into the Work by any of the Contractor Parties. In the event Hazardous Materials are encountered that are not expected or addressed in the Contract Documents, Contractor shall immediately (i) stop Work in the affected area, (ii) take any reasonably expected precautions to protect persons and property, and (iii) report the condition to Owner in writing. Contractor shall resume suspended Work upon receipt of a written opinion that the Work can safely and legally resume from a qualified consultant engaged by Owner. Provided Contractor fulfills its obligations herein, the Contract Time shall be extended appropriately by Change Order and Owner shall indemnify and hold harmless the Contractor Parties from and against all claims, damages, losses and expenses, including attorney, expert and consultant fees and legal expenses, arising out of or resulting from the discovery of Hazardous Materials at the Project site that are not addressed in the Contract Documents or brought to the Project Site by any of the Contractor Parties.
	17. Contractor shall maintain at the site of the Project for Owner one copy of all Contract Documents in good order and marked currently to indicate as-built conditions, changes and selections made during construction, and one copy of approved shop drawings, product data, samples and similar required submittals (the “Record Documents”). As applicable, some of the information indicated should include: dimensional changes; revisions to drawings and details; actual footing sizes and depths; locations, routing, and depths of existing and new utilities, including underground, under-slab, in-wall, and other concealed utilities, irrigation, piping, duct, conduit, and control and shut-off valves; revisions to electrical circuitry; and actual equipment locations. As applicable, Contractor must submit operating and maintenance manuals, Record Documents, and As-built Documents to Owner within sixty (60) days of Substantial Completion. If applicable, the operating and maintenance manuals must be digital, organized, and comprehensive and include an index that outlines all warranties by item, expiration, and responsible party. Further, the manuals must include, as applicable, operating and maintenance instructions, emergency instructions, inspection procedures, spare parts listings, shop drawings, product data, warranties, bonds, certificates, and other similar information.
	18. Unless otherwise provided in the Contract Documents, Contractor shall pay all sales, consumer, use and other similar taxes that are legally enacted as of the date of this Agreement, shall secure and pay for the building permit as well as for all other permits, fees, licenses, testing, inspections and approvals by government agencies necessary for proper performance and completion of the Work, and shall comply with and give notices required by Laws. Owner is a nonprofit entity entitled to special tax benefits. Contractor shall cooperate with Owner to maximize its tax benefits on the Project, including compliance with Owner’s tax management procedures if requested by Owner. The initial Contract Sum includes all applicable taxes, including those that might ultimately be avoided through tax savings procedures.
	19. Contractor shall be responsible for, and pay all royalties and license fees for, any intellectual property rights specified in the Contract Documents or otherwise required for the use of any particular design, process or product incorporated into the Work. Notwithstanding anything herein to the contrary, Contractor’s indemnification obligations set forth in Paragraph ‎6.21 shall not extend to infringement or misappropriation claims based on designs, processes or products required by those Contract Documents prepared by Owner or its consultants unless Contractor knowingly infringes or misappropriates the intellectual property rights.
	20. To the full extent permitted by Law, Contractor shall indemnify, hold harmless and, if Owner elects, defend Owner and its officers, directors, and employees (collectively, the “Indemnified Parties”) from and against any and all claims, damages, losses, liabilities and expenses, including fees and expenses of attorneys, consultants and experts, (collectively, “Damages”) arising out of, in connection with or resulting from the performance, or failure in the performance, of the Work or any other obligation in or related to the Contract, provided that the claim, damage, loss, liability or expense is caused, in whole or in part, by the acts or omissions of one of the Contractor Parties. However, if the Damages are caused in part by the negligence or misconduct of the Indemnified Parties, the Indemnified Parties shall be responsible for the Damages in proportion to their fault, including defense costs and fees and expenses of attorneys, consultants and experts. If any defense or indemnity obligation of the Contractor herein, or any other defense or indemnity obligation in favor of any of the Indemnified Parties required by or contained elsewhere in the Contract, is held to be unenforceable, Contractor agrees to defend, indemnify and hold harmless the Indemnified Parties to the full extent permitted by Law. Further, the liability of the Contractor arising out of all defense and indemnity obligations under the Contract shall survive completion, expiration or termination of the Contract, shall not be limited or diminished in any way by insurance coverage or any workers’ or workmen’s compensation acts, disability benefit acts or other employee benefit acts, and shall not be construed to negate, abridge or diminish other rights or obligations of indemnity that would otherwise exist in favor of the Indemnified Parties.
	21. Contractor warrants that any materials and equipment provided under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials and equipment not conforming to these requirements, including substitutions not properly approved by Change Order, shall be considered defective. This warranty excludes remedy for damage caused by abuse, alterations not performed by the Contractor Parties, improper or insufficient maintenance, improper operation or normal wear, tear and usage, and this warranty is not applicable to the professional design services if those services are part of the Work. This warranty is in addition to any other warranties elsewhere in the Contract Documents, it is not limited by any time period, and it is not waived or limited by any provision in any other Contract Document unless specifically provided in Paragraph ‎12.2 of this Agreement.
	22. Notwithstanding the previous Paragraph, warranties applicable to the performance and quality of particular materials, equipment and other products installed in the performance of the Work shall be limited as specified in the applicable warranties provided by the product manufacturer, provided the warranties comply with the requirements, if any, specified in the Contract Documents. Specific warranties or guarantees required or otherwise provided for particular materials, equipment, products or installations shall commence upon Substantial Completion. Contractor shall assign to Owner, or otherwise assure that Owner has the full benefit of, all warranties and guarantees of manufacturers, subcontractors, sub-subcontractors and suppliers. Contractor shall perform the Work in a manner that does not adversely affect or invalidate any warranties or guarantees, and Contractor shall remain responsible for fulfilling the requirements of warranties and guarantees specified by the Contract Documents even if the Contractor fails to obtain the required warranties and guarantees.
7. Changes in the Work
	1. Without invalidating the Contract, Owner may order modifications, additions, deletions or other changes in the Work after the date of the Agreement with adjustments to the Contract Sum and Contract Time as appropriate in accordance with this Article 7. No change in the Work, however, shall be incorporated into the Work until approved by Owner in writing in accordance with the procedures set forth in this Article. Contractor shall not be entitled to an increase in the Contract Sum or an extension of the Contract Time for furnishing labor, materials, equipment, services or other items that are not required by the Contract Documents as amended in accordance with this Article. The Contract Sum and Contract Time can only be adjusted by written Change Order.
	2. A Change Order is a written instrument, on, as requested by Owner, either a Construction Services Agreement - Change Order Form or a form similar to an AIA Document G701-2017, prepared by Contractor and signed by Owner that incorporates into the Contract Documents, by reference and attachment, one or more Potential Change Orders issued and approved in writing in accordance with this Article. A Change Order signed by Owner and Contractor constitutes a final settlement of all matters relating to the changes in the Work that are the subject of the Change Order, including all direct and indirect costs associated with the change and any and all adjustments to the Contract Sum and Contract Time unless specifically noted otherwise in the Change Order.
	3. A Potential Change Order is a written instrument prepared by Contractor for the written approval of Owner. A properly prepared, approved and signed Potential Change Order is necessary for each change in the Work prior to incorporation into the Contract Documents via Change Order. Each Potential Change Order must be a complete statement of the proposed (i) change in the Work, (ii) amount of adjustment, if any, to the Contract Sum and (iii) extent of the adjustment, if any, in the Contract Time.
	4. Whenever Contractor becomes aware of changes, concealed or unforeseen conditions or other circumstances that will change or may lead to a change in the Work or for any reason warrant adjustments to the Contract Sum or Contract Time, Contractor shall promptly notify Owner in writing of the circumstances and submit a Potential Change Order. The Potential Change Order shall specify in detail the basis for the request and include itemized estimates of costs and delay, documentation related to the reasons for the request and documentation supporting any requested adjustments to the Contract Sum or Contract Time. Upon Owner’s written approval of a Potential Change Order, Contractor shall promptly proceed with the approved change in the Work and prepare a Change Order incorporating the change into the Contract Documents. If prior to the written approval of a Potential Change Order, Owner specifically orders Contractor in writing to promptly proceed with a proposed change in the Work to prevent delay in the Work, Contractor shall confirm the order and directives in writing, proceed with the change and submit a Potential Change Order.
	5. In an emergency affecting safety of persons or property, Contractor shall promptly act in a reasonable manner to prevent threatened damage, injury or loss and timely thereafter submit a Potential Change Order for the costs incurred by Contractor due to its action in accordance with this Article.
	6. Unless otherwise agreed, all adjustments to the Contract Sum shall be determined based on net reasonable costs saved and incurred due to the change in the Work, plus or minus amounts for overhead and profit. Contractor and each entity performing a portion of the Work affected by the change shall furnish an itemized estimate and retain, in the form and detail as Owner prescribes, an itemized accounting of actual costs incurred and saved together with appropriate supporting data. Such estimates and accountings shall separately itemize overhead and profit, general conditions, allowances, each trade and service, labor, materials, equipment and all agreements to furnish any significant portion of the change in the Work and provide detail with respect to quantities, labor hours and rates, taxes, insurance, etc. The amounts allowed for overhead and profit combined shall not exceed (i) ten percent (10%) with respect to work performed by any entity’s own forces or (ii) five percent (5%) with respect to work performed by subcontractors, sub-subcontractors, and consultants.
	7. To the extent Owner and Contractor cannot reach agreement with respect to changes in the Work or a pending Potential Change Order or any other request for an adjustment in the Contract Sum or Contract Time, a Claim must be made in accordance with the applicable provisions of Article 11. Pending resolution or agreement, Contractor shall proceed diligently with performance of the Contract and Owner shall continue to make payments in accordance with the Contract Documents, including payments of amounts not in dispute for changes in the Work.
8. Termination
	1. If Owner fails to make payment as required herein within a period of forty-five (45) days through no fault of any of the Contractor Parties, Contractor may, upon seven (7) additional days’ written notice to Owner, terminate the Contract and recover from Owner payment for Work performed and damages, including costs incurred by reason of the termination, but not including overhead or profit on Work not performed.
	2. If Contractor defaults under this Agreement or otherwise neglects to timely perform the Work in accordance with the Contract Documents and fails to commence correction of the deficiency within seven (7) days of written notice from Owner or diligently complete the correction of the deficiency, Owner may, without prejudice to other remedies Owner may have, terminate for cause Contractor’s right to complete the Work and take possession of the site and of all materials, equipment, tools, and equipment and machinery thereon owned by any of Contractor Parties and may finish the Work by whatever reasonable method Owner may deem expedient. A termination under this Paragraph will not limit Owner’s rights and remedies under the Contract Documents or at law or equity, and will not terminate Contractor’s liability or obligations under the Contract Documents with respect to any portions of the Work already completed by Contractor or actions or omissions of any of Contractor Parties.
	3. Upon termination under Paragraph ‎8.3, Contractor will not be entitled to further payment, if any, until the Work is finished. Upon completion of the Work, if the unpaid balance of the Contract Sum or Maximum Price, as applicable, is greater than the costs of finishing the Work, including compensation for consultants, attorneys’ fees, expenses due to the termination, and other damages incurred by Owner, Owner will pay the difference to Contractor. But, if the costs and damages exceed the unpaid balance, Contractor will pay the difference to Owner upon demand.
	4. Owner may, at any time, terminate Contractor’s right to complete the Work for Owner’s convenience and without cause. Upon termination for convenience, Contractor shall be entitled to receive payment for the Work performed and costs incurred by reason of the termination, including unrecoverable costs for equipment and materials not yet delivered, but not for overhead or profit on the Work not performed. If it is determined that a termination of the Contractor’s right to complete the Work under to Paragraph ‎8.2 was wrongful or otherwise improper, the termination shall be deemed a termination for convenience under this Paragraph.
9. Insurance
	1. At a minimum, Contractor shall purchase and maintain without interruption the insurance coverages described in this Article 9 in forms and substance reasonably satisfactory to Owner and with insurance companies lawfully authorized to do business in Tennessee. The coverages described below shall have monetary limits of liability applicable to the Work that are no less than the limits of Contractor’s existing insurance coverage and no less than as follows:
		1. Commercial general liability insurance on an ISO form with all standard divisions of coverage, including products and completed operations, broad form property with coverage for work performed by subcontractors and blanket contractual liability, with monetary limits of $2,000,000 per project and aggregate for general and products and completed operations, $1,000,000 per occurrence for personal and advertising injury, $1,000,000 per occurrence for bodily injury and property damage, $50,000 per occurrence for damages to premises and $5,000 per person for medical expenses, maintained for a minimum of five (5) years after final completion of the Work;
		2. Automobile liability insurance covering owned, non-owned and hired motor vehicles with a combined single limit of $1,000,000 per accident;
		3. Worker’s compensation insurance compliant with state and federal requirements and limits and employer’s liability insurance without restriction to worker’s compensation coverage with monetary limits of $500,000 for accident (per occurrence), $500,000 for disease (policy limit) and $500,000 for disease (per employee);
		4. Pollution liability insurance with monetary limits of $1,000,000;
		5. Umbrella liability insurance following form of the underlying commercial general liability, automobile liability, worker’s compensation and employer’s liability and pollution liability policies with monetary limits of $5,000,000 per occurrence and in the aggregate, maintained for a minimum of five (5) years after final completion of the Work; and
		6. If the Work includes the services of a licensed or registered professional, including architectural, engineering, surveying or other professional services, professional liability (errors and omissions) insurance applicable to that portion of the Work with monetary limits of at least $1,000,000 per claim and $2,000,000 in the aggregate maintained for a minimum of five (5) years after final completion of the Work.
	2. With respect to the commercial general, automotive, pollution and umbrella liability coverage, Owner must be included as additional insured, providing coverage to the extent the injury or damage is caused by acts or omissions of the Contractor Parties in the performance of the Work, with the same categories of coverage (including products and completed operations) and monetary limits as applicable to the named insured. Further, this coverage shall apply as primary and non-contributory insurance before any other insurance or self-insurance, including any deductible maintained by or applicable to the additional insured. Unless specifically prohibited by Law or the existing policy, each policy applicable to the Work, including workers’ compensation and employer’s liability policies, shall include a waiver of subrogation in favor of Owner. Each subcontractor and consultant of Contractor must also obtain similar endorsements on its policies in favor of Owner.
	3. Attached to this Agreement, Contractor shall submit certificates of insurance that evidence the insurance coverages required by this Agreement. Owner must be in receipt of approved certificates prior to commencement of the Work, and Contractor must submit new certificates upon each renewal thereafter for the applicable duration. Owner must be notified in writing at least thirty (30) days prior to any cancellation or expiration of the insurance. Contractor’s failure to obtain or furnish proof of insurance shall not constitute a waiver of the insurance requirements herein.
	4. Each subcontractor and consultant of Contractor must also obtain and maintain the insurance coverages described in Paragraphs ‎9.1 and ‎9.2 except with monetary limits of liability proportional to and coverages applicable to its portion of the Work. Contractor must obtain, maintain, and, only upon Owner’s request, submit certificates of insurance from each subcontractor and consultant.
	5. Unless otherwise set forth on the first page of this Agreement, Contractor shall purchase and maintain, from an insurance company lawfully authorized to issue insurance in Tennessee, property insurance for the Work written on a builder's risk “all-risks” or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent modifications and the costs of materials supplied or installed by others, comprising the total value for the entire Work on a replacement cost basis. This insurance shall be maintained until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property required by this paragraph to be covered, whichever is earlier; shall allow for partial occupancy by the Owner; shall include the interests of the Owner, Contractor, and subcontractors as insureds; and shall be primary to any other insurance that may be applicable to a covered loss or damage. At a minimum, this insurance shall provide coverage for: physical loss or damage, including risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, and windstorm; ensuing loss or resulting damage from error, omission, or deficiency in methods, design, specifications, workmanship, or materials; loss or damage to falsework and other temporary structures and to building systems from testing and startup; debris removal, including and demolition occasioned by enforcement of any applicable legal requirements; and reasonable compensation for the Architect’s and Contractor’s services and expenses required as a result of an insured loss. Contractor shall be responsible for all deductibles, retentions, or co-insurance penalties. Owner and Contractor waive all rights against each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other, for damages caused by fire, or other causes of loss, to the extent and in the amount those losses are covered by property insurance required by this paragraph, except such rights as they have to proceeds of such insurance.
10. Miscellaneous
	1. The Contract shall be governed by the law of the State of Tennessee, and legal venue for any formal action arising out of this Agreement shall be initiated in Nashville, Davidson County, Tennessee.
	2. Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Neither party to the Contract shall assign the Contract as a whole without written consent of the other, except Owner may assign the Contract to a lender or an affiliated entity of Owner. If either party attempts to make an assignment without the consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.
	3. Written notice shall be deemed to have been duly served if delivered in person to the party’s representative identified in this Agreement or if delivered at, or sent by registered or certified mail or by overnight courier service providing proof of delivery to, the business address for the party’s representative identified in this Agreement.
	4. Except as expressly provided in the Contract Documents, the rights and remedies provided under the Contract shall be in addition to rights and remedies otherwise available at law or in equity. No act or failure to act by Owner or Contractor shall constitute a waiver of any right or duty or subsequent obligation or constitute an approval of or acquiescence in a breach hereunder, except as specifically agreed in the Contract Documents or otherwise in writing.
	5. If any provision of this Agreement is found to be invalid or unenforceable in whole or in part, the finding shall not affect the validity or enforceability of any other provisions of this Agreement or the remainder of the provision in question. In lieu of each provision of this Agreement, or part thereof, that is found to be invalid or unenforceable, there shall be added as part of this Agreement a provision as similar in terms to the invalid or unenforceable provision as is possible, valid and enforceable. Any uncertainty or ambiguity found in Contract shall not be interpreted or construed against either of the parties because of other’s involvement in the preparation hereof.
	6. This Agreement can be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall constitute a complete document. Signatures transmitted by facsimile, electronic mail in “portable document format” (.pdf) or any other digital or electronic means intended to preserve the original graphic and pictorial appearance of a document shall have the same effect as original signatures.
	7. In connection with performance under the Contract, the Contractor Parties may become aware of certain confidential information, including information regarding the Project, Owner’s operations, student information or any other records or business knowledge of Owner (the “Confidential Information”). This Confidential Information is owned exclusively by Owner, is used in the operation of its business and is secret, confidential and proprietary to Owner. Each of the Contractor Parties shall maintain the confidentiality of all Confidential Information, including all Project related information except as required by law. Each of the Contractor Parties agrees to (a) use the Confidential Information only as necessary to fulfill its obligations under the Contract or applicable law and, thus, restrict disclosure only to those persons who need to know for those purposes, (b) use a reasonable standard of care in maintaining the Confidential Information in strict confidence and (c) return or destroy all documents, copies, notes or other materials containing any Confidential Information upon completion of the Work or upon Owner’s request. Accordingly, none of the Contractor Parties shall divulge information concerning the Project to anyone (including information in applications for permits, variances and similar items) without Owner’s prior written consent. Owner reserves the right to release all Project information and to time its release, form and content. The obligations of this Paragraph shall survive final completion or termination of the Contract.
	8. Unless otherwise specifically approved in writing by Owner’s Office of Trademark Licensing, none of the Contractor Parties shall use Owner’s name, logos, or trademarks, or photographic or artistic representations of the Project in any professional, marketing, advertising, or promotional materials or media. The obligations of this Paragraph shall survive final completion or termination of the Contract.
	9. Contractor represents and warrants that it is in full compliance with the Immigration Reform and Control Act of 1986, as amended, and will only assign personnel to the Project whose employment eligibility has been verified. Further, Contractor warrants that it is in compliance with all applicable Federal, state, and local laws, as amended, including 41 CFR 60-1.4, CFR 60-250.4, and 41 CFR 60-741.4, with respect to nondiscrimination in employment on the basis of race, religion, color, national origin, or sex, equal opportunity, affirmative action, employment of disabled veterans, and veterans of the Vietnam era, and employment of the handicapped. None of the Contractor Parties shall discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation or national origin.
	10. Owner values and expects equity, diversity, and inclusion in all aspects of campus programs and activities. Accordingly, Contractor shall actively seek and use its best efforts to maximize the involvement of firms owned and controlled by minorities, women, and other socially and economically disadvantaged persons as subcontractors, sub-subcontractors, suppliers, consultants, and vendors for the Project. The diversity goal for the Project is for 30% of the Contract Sum to be paid to socially and economically disadvantaged entities, which include Disabled Veteran Business Enterprises (DVE), “Historically Underutilized Business Zones” (HUBZone), LGBT Business Enterprises (LGBTBE), local small business enterprises (LSBE). minority-owned business enterprises (MBE), small business enterprises (SBE), "Veteran-Owned Small Business" (VOSB) and woman-owned business enterprises (WBE). This Paragraph does not in any way relieve the Contractor from its obligations to evaluate the qualifications and suitability of all prospective subcontractors, sub-subcontractors, suppliers, consultants, and vendors for the Project.
	11. If any Work Contract constitutes a subcontract under a Federal prime contract, Contractor must comply with Federal Acquisition Regulation 52.203-7, Anti-Kickback Procedures, with the exception of subparagraph (c)(1) thereof. Further, if any Work Contract is entered into under a Federal award, the Work Contract must include the additional applicable provisions required by Appendix II to 2 C.F.R. Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, which can be found at: <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200>.
	12. Contractor represents and warrants that none of its principals, nor any employee, subcontractor, or consultant performing Work, is a faculty member, employee, postdoctoral scholar, student, or agent of Owner and that neither Contractor nor any of its principals, or any employees, subcontractors, or consultants performing Work, has a personal or other business relationship with any department of Owner authorizing payment under any Work Contract. Contractor represents and warrants that none of its principals, nor any employee, subcontractor, or consultant performing Work, has in the past or will offer, give, solicit or receive, either directly or indirectly, any commission, contributions or valuable gifts, in order to secure or influence the award of this Agreement or any Work Contract. Contractor shall not engage in any activity, or accept any employment, interest or contribution, that would reasonably appear to compromise the quality of the Work under any Work Contract or to compromise or influence Contractor’s judgment with respect to the Work under any Work Contract.
11. Dispute Resolution
	1. A “Claim” is any dispute or matter in question between Owner and Contractor arising out of or relating to the Contract or the Project, including either party seeking, as a matter of right, the payment of money or any other relief under the terms of the Contract or otherwise related to the Project. Claims must be initiated by written notice to the other party. Such notice of a Claim by either party for an adjustment in the Contract Time or for an increase in the Contract Sum must be delivered in writing within twenty-one (21) days after occurrence of the event giving rise to the Claim, within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim or, if a Potential Change Order was submitted with respect to the Claim, within twenty-one (21) days after Owner rejects the Potential Change Order in writing, whichever is later, or the Claim shall be deemed waived. Pending final resolution of any Claim, the Contractor shall proceed diligently with performance of the Contract and Owner shall continue to make payments in accordance with the Contract Documents.
	2. All Claims shall be subject to mediation as a condition precedent to litigation or arbitration. A request for mediation shall be made in writing, delivered to the other party to the Contract. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in that event, mediation shall proceed in advance of binding dispute resolution proceedings. The parties shall share the mediator’s fees and expenses equally. The mediation shall be held in Nashville, Tennessee. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof; and this obligation to mediate shall be specifically enforceable against Owner and all Contractor Parties in accordance with applicable law in any court having jurisdiction thereof.
	3. Except as otherwise provided herein, neither Owner nor Contractor shall be liable to the other for special, consequential, punitive, incidental or indirect damages, however caused, on any theory of liability, and whether or not they have been advised of the possibility of the damages, except to the extent (a) the damages arise out of gross negligence, willful misconduct, fraud or a violation of Law, (b) the damages are recoverable from insurance required by this Agreement or otherwise applicable to the Work or Project or (c) the liability for thr damages arises out of obligations to indemnify the other party against the claims of third parties. Reasonable costs and expenses incurred by Owner to mitigate or lessen damages or harm caused by any failure of the Work to comply with the requirements of the Contract Documents, including additional costs for furniture, fixtures and equipment supplied by Owner and rental expenses for temporary replacement facilities incurred by Owner due to delays in performance of the Work, shall be considered direct damages.
	4. In any legal proceeding or dispute arising out of the Contract or related to the Project, the prevailing party shall be entitled to recover from the non-prevailing parties all costs the prevailing party incurred pursuing and defending the underlying Claims, including reasonable fees and expenses of attorneys, consultants and experts and fees and costs associated with any related litigation, bankruptcy proceedings or appeals. The prevailing party is the party that prevails, either affirmatively or via a successful defense, with respect to the Claims of greatest value or importance as reasonably determined by the court.
12. Project Information and Clarifications
	1. In addition to the documents described in Paragraph ‎1.1, the Contract Documents include: (*Insert below the titles and dates of all documents intended to be part of the Contract, for example, drawings, specifications, addenda, reports, descriptions of scope of work, performance schedules, hourly billable rate schedules, materials pricing schedules, schedules of values, schedules of alternates, allowances and unit pricing, qualifications, etc.*)

Exhibit A: <<TITLE OF DOCUMENT>> dated <<DATE>>;

Exhibit B:<<TITLE OF DOCUMENT>>dated <<DATE>>;

Exhibit C: <<TITLE OF DOCUMENT>> dated <<DATE>>;

Exhibit D: dated <<DATE>>;

<<ETC>>

Unless specifically enumerated herein, the Contract Documents do not include any other documents, such as bidding documents, proposals or requests for proposals, and the provisions of this Agreement control with respect to any inconsistency with other Contract Documents. If a proposal letter or similar document is attached as an exhibit, the document is solely for purposes of defining services, work and/or schedule. Accordingly, any legal terms, compensation terms, general conditions, terms and conditions, sale terms, contracts, legal forms or contractual provisions referred to or contained in the documents are not included or incorporated into the Contract except as specifically and separately provided in Paragraph ‎12.2 of this Agreement.

* 1. The only clarifications, assumptions, exclusions or qualifications to the Contract Documents, if any, are as follows: (*List and describe in detail any and all variations from or clarifications to the Work as described and illustrated by the Contract Documents and all deviations, if any, from the rights, duties or obligations set forth herein. For example, “The Work does not include the necessary asbestos abatement.”*)

<<DESCRIPTION OF ASSUMPTION, EXCLUSION OR QUALIFICATION>>

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<<DESCRIPTION OF ASSUMPTION, EXCLUSION OR QUALIFICATION>>

1. <<DESCRIPTION OF ASSUMPTION, EXCLUSION OR QUALIFICATION>>

This Agreement is signed as of the day and year written below, but effective no later than the date Contractor first commences any Work contracted for herein.

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| --- | --- |
| **OWNER:**VANDERBILT UNIVERSITY\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_By: <<NAME OF SIGNEE>>Title: <<POSITION OF SIGNEE>>Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **CONTRACTOR:**<<CONTRACTOR LEGAL NAME>>\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_By: <<NAME OF SIGNEE>>Title: <<POSITION OF SIGNEE>>Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |