

Fill in this information to identify the case:

Debtor 1 Fayette Memorial Hospital, Inc.

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: Southern District of Indiana

Case number 18-07762-JJG-11

RECEIVED
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Official Form 410
Proof of Claim

04/16

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Terrex Construction, LLC</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? <u>David J. Jurkiewicz, Bose McKinney & Evans LLP</u> Name <u>111 Monument Circle, Suite 2700</u> Number Street <u>Indianapolis IN 46204</u> City State ZIP Code Contact phone <u>317-684-5364</u> Contact email <u>djurkiewicz@boselaw.com</u>	Where should payments to the creditor be sent? (if different) <u>Terrex Construction, LLC, Attn: Matthew Packer</u> Name <u>3200 Madison Road, Suite 2B</u> Number Street <u>Cincinnati OH 45209</u> City State ZIP Code Contact phone <u>513-200-4760</u> Contact email <u>mpacker@terrexllc.com</u>
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 1,294,353.78. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Building improvements, work and material provided pursuant to a construction contract
secured by a mechanic's lien

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature of property:
 Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: Real Estate and Improvements
Basis for perfection: Mechanic's Lien
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ 10,501,300.00
Amount of the claim that is secured: \$ 1,294,353.78
Amount of the claim that is unsecured: \$ 0.00 (The sum of the secured and unsecured amounts should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ 1,294,353.78
Annual Interest Rate (when case was filed) 12 %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

No

Yes. Check one:

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Up to \$2,850* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

Amount entitled to priority

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* Amounts are subject to adjustment on 4/01/19 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

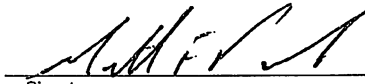
I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 02 25 2019
MM / DD / YYYY



Signature

Print the name of the person who is completing and signing this claim:

Name Matthew F. Packer
First name Middle name Last name

Title President

Company Terrex Construction, LLC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 3200 Madison Road, Suite 2B
Number Street
Cincinnati OH 45209
City State ZIP Code

Contact phone 513-200-4760 Email mpacker@terrexllc.com

ATTACHMENT TO PROOF OF CLAIM

Case No. 18-07762-JJG-11
Filed on October 10, 2018

In re: Fayette Memorial Hospital Association, Inc., Debtor.

Principal	\$1,254,237.05
Interest as of October 10, 2018	<u>40,116.73</u>
Total	\$1,294,353.78

ConsensusDocs™ 415
STANDARD DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS
BETWEEN OWNER AND DESIGN-BUILDER
(Lump Sum Price)

TABLE OF ARTICLES

1. AGREEMENT
2. GENERAL PROVISIONS
3. DESIGN-BUILDER'S RESPONSIBILITIES
4. OWNER'S RESPONSIBILITIES
5. SUBCONTRACTS
6. CONTRACT TIME
7. CONTRACT PRICE
8. CHANGES IN THE WORK
9. PAYMENT
10. INDEMNITY, INSURANCE, AND BONDS
11. SUSPENSION, NOTICE TO CURE, AND TERMINATION
12. DISPUTE MITIGATION OR RESOLUTION
13. MISCELLANEOUS
14. CONTRACT DOCUMENTS
AMENDMENT 1

ARTICLE 1 AGREEMENT

Job Number: 171023

This Agreement is made this ____ Day of August in the year 2017, by and between the

OWNER:

Fayette Regional Health System
C/O Mr. Randall A. White
President and CEO
1941 Virginia Avenue
Connersville, IN 47331

and the

DESIGN-BUILDER:

TERREX CONSTRUCTION, LLC
C/O Matthew F. Packer, President
3200 Madison Road, Suite 2B
Cincinnati, OH 45209

Tax identification number (TIN): **Redacted**

for services in connection with the following:

PROJECT: Fayette Regional Health System 3rd Floor Renovation
1941 Virginia Avenue
Connersville, IN 47331



Notice to the Parties shall be given at the above addresses.

ARTICLE 2 GENERAL PROVISIONS

2.1. TEAM RELATIONSHIP The Parties each agree to proceed with the Project on the basis of trust, good faith, and fair dealing. The Design-Builder agrees to furnish or procure, as permitted by Law, the architectural and engineering services set forth below and the construction and administration of the Work.

2.1.1. The Design-Builder represents that it is an independent contractor and that it is familiar with the type of work it is undertaking.

2.1.2. Neither the Design-Builder nor any of its agents or employees shall act on behalf of or in the name of the Owner unless authorized in writing by the Owner's Representative.

2.1.3. **ETHICS** The Parties shall perform their obligations with integrity, ensuring at a minimum that each: (a) avoids conflicts of interest or promptly discloses any to the other Party, and (b) warrants that it has not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including its agents, officers and employees, Subcontractors, or others for whom they may be liable, to secure preferential treatment.

2.2. DESIGN PROFESSIONAL Architectural and engineering services shall be procured from licensed, independent design professionals retained by the Design-Builder or furnished by licensed employees of the Design-Builder, as permitted by the Law. The person or entity providing architectural and engineering services shall be referred to as the Design Professional.

2.2.1. **STANDARD OF CARE** The Design Professional shall furnish and provide the architectural and engineering services necessary to design the Project in accordance with the Owner's requirements, as outlined in the Owner's Program and other relevant data defining the Project. The architectural and engineering services shall be performed in accordance with the standard of professional skill and care required for a Project of similar size, scope, and complexity, during the time in which the Services are provided.

2.2.2. If the Design Professional is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between the Design-Builder and the Design Professional. The Design Professional for the Project is Champlin Architecture.

2.3. DEFINITIONS

2.3.1. "Agreement" means this ConsensusDocs 415 Standard Design-Build Agreement and General Conditions Between Owner and Design-Builder (Lump Sum Price), as modified, amendments, exhibits, addenda, and attachments made part of this Agreement upon its execution.

2.3.2. "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

2.3.3. A "Change Order" is a written order signed by the Owner and the Design-Builder after execution of this Agreement, indicating changes in the scope of the Work or Contract Time, including substitutions proposed by the Design-Builder and accepted by the Owner.



- 2.3.4. The "Contract Documents" consist of those documents identified in section 14.1.
- 2.3.5. The "Contract Time" is the period between the Date of Commencement and Final Completion.
- 2.3.6. "Day" means calendar day.
- 2.3.7. "Date of Commencement" is as provided for in section 6.1.
- 2.3.8. "Defective Work" is any portion of the Work not in conformance to the requirements of the Contract Documents.
- 2.3.9. "Final Completion" occurs on the date when the Design-Builder's obligations under this Agreement are complete and accepted by the Owner and final payment becomes due and payable.
- 2.3.10. "Laws" means federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Work with which the Design-Builder must comply that are enacted as of the Agreement date.
- 2.3.11. A "Material Supplier" is a person or entity retained by the Design-Builder to provide material and equipment for the Work.
- 2.3.12. "Others" means other contractors and all persons at the Worksite who are not employed by the Design-Builder, its Subcontractors, or Material Suppliers.
- 2.3.13. "Overhead" shall mean (a) payroll costs and other compensation of Design-Builder's employees in the Design-Builder's principal and branch offices; (b) general and administrative expenses of the Design-Builder's principal and branch offices including charges against the Design-Builder for delinquent payments; and (c) the Design-Builder's capital expenses, including interest on capital used for the Work.
- 2.3.14. The "Owner" is the person or entity identified in ARTICLE 1, and includes the Owner's representative.
- 2.3.15. The "Owner's Program" is a description of the Owner's objectives, budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements, together with Schematic Design Documents which shall include drawings, outline specifications, and other conceptual documents illustrating the Project's basic elements, scale, and their relationship to the Worksite.
- 2.3.16. The "Parties" are collectively the Owner and Design-Builder.
- 2.3.17. The "Project," as identified in ARTICLE 1, is the building, facility, or other improvements for which the Design-Builder is to perform the Work under this Agreement. It may also include improvements to be undertaken by the Owner or Others.
- 2.3.18. A "Subcontractor" is a person or entity retained by the Design-Builder as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Design Professional or any separate contractor employed by the Owner or any separate contractor's subcontractors.
- 2.3.19. "Substantial Completion" of the Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended, without



unscheduled disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond the Design-Builder's control. This date shall be confirmed by a certificate of Substantial Completion signed by the Owner and Design-Builder. The certificate shall state the respective responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work, and insurance. The certificate shall also list the items to be completed or corrected, and establish the time for their completion and correction within the timeframe, if any, established in subsection 6.2.3 for the Date of Final Completion.

2.3.20. A "Subsubcontractor" is a party or entity who has an agreement with a Subcontractor or other Subsubcontractor to perform any portion of the Subcontractor's work.

2.3.21. "Terrorism" means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States Secretary of Treasury as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.3.22. The "Work" is the design services procured in accordance with section 3.1, the construction services provided in accordance with section 3.2, additional services in accordance with section 3.10, and other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

2.3.23. "Worksite" means the geographical area of the Project location mentioned in ARTICLE 1 where the Work is to be performed.

ARTICLE 3 DESIGN-BUILDER'S RESPONSIBILITIES

The Design-Builder shall be responsible for procuring or furnishing the design and for the construction of the Work consistent with the Owner's Program. The Design-Builder shall exercise reasonable skill and judgment in the performance of the Work.

3.1. DESIGN SERVICES Pursuant to a mutually agreeable schedule, the Design-Builder shall submit for the Owner's written approval, as applicable, Design Development Documents or Construction Documents, based on the Contract Documents in existence at the time of the execution of this Agreement or any further development of Contract Documents that have been approved in writing by the Owner.

3.1.1. If required, the Design Development Documents shall further define the Project, including drawings and outline specifications fixing and describing the Project size and character as to site utilization, and other appropriate elements incorporating the structural, architectural, mechanical, and electrical systems. When the Design-Builder submits the Design Development Documents, the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Contract Documents in existence at the time of the execution of this Agreement. Any changes in the Work contained in the Design Development Documents approved by the Owner shall result in a Change Order pursuant to ARTICLE 8 adjusting the Contract Price or the Date of Substantial Completion or the Date of Final Completion.

3.1.2. The Construction Documents shall set forth in detail the requirements for construction of the Work, and shall be based upon codes, laws, or regulations enacted at the time of their preparation. When the Design-Builder submits the Construction Documents, the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Design



Development Documents or the Contract Documents in existence at the time of the execution of this Agreement. Any changes in the Work contained in the Construction Documents approved by the Owner shall result in a Change Order pursuant to ARTICLE 8 adjusting the Contract Price or the Date of Substantial Completion or the Date of Final Completion. Construction shall be in accordance with the approved Construction Documents. One set of these documents shall be furnished to the Owner before commencing construction.

3.1.3. OWNERSHIP OF DOCUMENTS

3.1.3.1. OWNERSHIP OF TANGIBLE DOCUMENTS The Owner shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data, and information (hereinafter "Documents") prepared, provided or procured by the Design-Builder, its Design Professional, Subcontractors, or consultants and distributed to the Owner for this Project, upon the making of final payment to the Design-Builder or in the event of termination under ARTICLE 11, upon payment for all sums due to Design-Builder pursuant to ARTICLE 11.

3.1.3.2. COPYRIGHT The Parties agree that Owner shall obtain ownership of the copyright of all Documents. The Owner's acquisition of the copyright for all Documents shall be subject to the making of payments as required by subsection 3.1.3.1 and the payment of the fee reflecting the agreed value of the copyright set forth below:

If the Parties have not made a selection to transfer copyright interests in the Documents, the copyright shall remain with the Design-Builder.

3.1.3.3. USE OF DOCUMENTS IN EVENT OF TERMINATION In the event of a termination of this Agreement pursuant to ARTICLE 11, the Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project, regardless of whether there has been a transfer of copyright under subsection 3.1.3.1, provided payment has been made pursuant to subsection 3.1.3.1

3.1.3.4. OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT After completion of the Project, the Owner may reuse, reproduce, or make derivative works from the Documents solely for the purposes of maintaining, renovating, remodeling, or expanding the Project at the Worksite. The Owner's use of the Documents without the Design-Builder's involvement or on other projects is at the Owner's sole risk, except for the Design-Builder's indemnification obligations, and the Owner shall indemnify and hold harmless the Design-Builder, its Design Professional, Subcontractors, and consultants, and the agents, officers, directors, and employees of each of them, from and against any and all claims, damages, losses, costs, and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from any such prohibited use.

3.1.3.5. INTENTIONALLY DELETED

3.1.3.6. The Design-Builder shall obtain from its Design Professional, Subcontractors, and consultants rights and rights of use that correspond to the rights given by the Design-Builder to the Owner in this Agreement, and the Design-Builder shall provide evidence that such rights have been secured.

3.2. CONSTRUCTION SERVICES

3.2.1. Construction will commence upon the issuance by the Owner of a written notice to proceed.



3.2.2. In order to complete the Work, the Design-Builder shall provide all necessary construction supervision, inspection, construction equipment, construction labor, materials, tools, and subcontracted items.

3.2.3. **COMPLIANCE WITH LAWS** The Design-Builder shall give all notices and comply with all Laws at its own costs. The Design-Builder shall be liable to the Owner for all loss, cost, and expense attributable to any acts or omissions by the Design-Builder, its employees, subcontractors, and agents resulting from the failure to comply with Laws, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if notice to Owner was given, and advance approval by appropriate authorities, including the Owner, is received.

3.2.4. The Design-Builder shall maintain the Schedule of Work. This schedule shall indicate the dates for the start and completion of the various stages of the construction, including the dates when information and approvals are required from the Owner. It shall be revised as required by the conditions of the Work.

3.2.5. The Design-Builder shall obtain and the Owner shall pay, in addition to the Contract Price, for the building permits necessary for the construction of the Project.

3.2.6. The Design-Builder shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. The Owner shall be afforded access to all the Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to Change Order work performed on the basis of actual cost. The Design-Builder shall preserve all such records for a period of three years after the final payment or longer where required by law.

3.2.7. The Design-Builder shall provide periodic written reports to the Owner on the progress of the Work in such detail as is required by the Owner and as agreed to by the Owner and Design-Builder.

3.2.8. The Design-Builder shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the Design-Builder shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. The Design-Builder shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Design-Builder shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

3.2.9. The Design-Builder shall prepare and submit to the Owner either:

- final marked up as-built drawings
- updated electronic data

that generally document how the various elements of the Work including changes were actually constructed or installed, or as defined by the Parties by attachment to this Agreement.

3.3. **SCHEDULE OF THE WORK** The Design-Builder shall prepare and submit a Schedule of Work for the Owner's acceptance and written approval as to milestone dates. This schedule shall indicate the commencement and completion dates of the various stages of the Work, including the dates when information and approvals are required from the Owner. The Schedule shall be revised as required by the conditions of the Work.

3.4. SAFETY OF PERSONS AND PROPERTY



3.4.1. SAFETY PRECAUTIONS AND PROGRAMS The Design-Builder shall have overall responsibility for safety precautions and programs in the performance of the Work. However, such obligation does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of Laws.

3.4.2. The Design-Builder shall seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect:

3.4.2.1. its employees and other persons at the Worksite;

3.4.2.2. materials, supplies, and equipment stored at the Worksite for use in performance of the Work; and

3.4.2.3. the Project and all property located at the Worksite and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

3.4.3. DESIGN-BUILDER'S SAFETY REPRESENTATIVE The Design-Builder shall designate an individual at the Worksite in the employ of the Design-Builder who shall act as the Design-Builder's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Design-Builder in writing to the Owner, the designated safety representative shall be the Design-Builder's project superintendent. The Design-Builder will report immediately in writing all accidents and injuries occurring at the Worksite to the Owner. When the Design-Builder is required to file an accident report with a public authority, the Design-Builder shall furnish a copy of the report to the Owner.

3.4.4. The Design-Builder shall provide the Owner with copies of all notices required of the Design-Builder by Law. The Design-Builder's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction over the Work.

3.4.5. Damage or loss not insured under property insurance which may arise from the performance of the Work, to the extent of the negligence attributed to such acts or omissions of the Design-Builder, or anyone for whose acts the Design-Builder may be liable, shall be promptly remedied by the Design-Builder. Damage or loss attributable to the acts or omissions of the Owner or Others and not to the Design-Builder shall be promptly remedied by the Owner.

3.4.6. If the Owner deems any part of the Work or Worksite unsafe, the Owner, without assuming responsibility for the Design-Builder's safety program, may require the Design-Builder to stop performance of the Work or take corrective measures satisfactory to the Owner, or both. If the Design-Builder does not adopt corrective measures, the Owner may perform them and reduce the amount of the Contract Price by the costs of the corrective measures. The Design-Builder agrees to make no claim for damages, for an adjustment in the Contract Price or the Date of Substantial Completion or the Date of Final Completion based on the Design-Builder's compliance with the Owner's reasonable request.

3.5. EMERGENCIES In any emergency affecting the safety of persons or property, the Design-Builder shall act in a reasonable manner to prevent threatened damage, injury, or loss. Any change in the Contract Price, the Date of Substantial Completion, or the Date of Final Completion, and if appropriate the compensation for Design Phase services, on account of emergency work shall be determined as a Change Order. Owner shall not be responsible for costs related to emergencies derived from the Design-Builder's negligence or control.

3.6. HAZARDOUS MATERIAL



3.6.1. A Hazardous Material is any substance or material identified now or in the future as hazardous under any Laws, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal, or clean-up. The Design-Builder shall not be obligated to commence or continue Work until all Hazardous Material discovered at the Worksite has been removed, rendered, or determined to be harmless by the Owner as certified by an independent testing laboratory and approved by the appropriate government agency.

3.6.2. If after commencing the Work, Hazardous Material is discovered at the Project, the Design-Builder shall be entitled to immediately stop Work in the affected area. The Design-Builder shall report the condition to the Owner and, if required, the government agency with jurisdiction.

3.6.3. The Design-Builder shall not be required to perform any Work relating to or in the area of Hazardous Material without written mutual agreement.

3.6.4. The Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures or remedial action, unless the hazardous materials are a direct result of construction materials being delivered and installed by the Design-Builder or his subcontractors. Such measures shall be the sole responsibility of the Owner, and shall be performed in a manner minimizing any adverse effect upon the Work of the Design-Builder. The Design-Builder shall resume Work in the area affected by any Hazardous Material only upon written agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency or agencies with jurisdiction.

3.6.5. If the Design-Builder incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, the Design-Builder shall be entitled to an equitable adjustment in the Contract Price or the date of Substantial Completion.

3.6.6. To the extent not caused by the negligent acts or omissions of the Design-Builder, its Subcontractors and Subsubcontractors, and the agents, officers, directors, and employees of each of them, the Owner shall indemnify and hold harmless the Design-Builder, its Subcontractors and Subsubcontractors, and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution process, to the extent permitted pursuant to section 6.5, arising out of the presence of Hazardous Material or relating to the performance of the Work in any area affected by Hazardous Material.

3.6.6.1.1.1.1.1. Safety Data Sheets (SDS) as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Design-Builder, Subcontractors, the Owner or Others, shall be maintained at the Project by the Design-Builder and made available to the Owner and Subcontractors.

3.6.7. During the Design-Builder's performance of the Work, the Design-Builder shall be responsible for the proper handling of all materials brought to the Worksite by the Design-Builder. Upon the issuance of the Certificate of Substantial Completion, the Owner shall be responsible under this section for materials and substances brought to the site by the Design-Builder if such materials or substances are required by the Contract Documents.



3.6.8. Section 3.6 shall survive the completion of the Work under this Agreement or any termination of this Agreement.

3.7. WARRANTY

3.7.1. The Design-Builder warrants that all materials and equipment furnished under this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Warranties shall commence on the date of Substantial Completion of the Work or of a designated portion.

3.7.2. To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by the Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face thereof. To the extent products, equipment, systems, or materials incorporated in the Work are specified by the Owner but purchased by the Design-Builder and are inconsistent with selection criteria that otherwise would have been followed by the Design-Builder, the Design-Builder shall assist the Owner in pursuing warranty claims. **ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.**

3.7.3. The Design-Builder shall secure required certificates of inspection, testing, or approval and deliver them to the Owner.

3.7.4. The Design-Builder shall collect all written warranties and equipment manuals and deliver them to the Owner in a format directed by the Owner.

3.7.5. With the assistance of the Owner's maintenance personnel, the Design-Builder shall direct the checkout of utilities and start-up operations, and adjusting and balancing of systems and equipment for readiness.

3.8. CORRECTION OF WORK WITHIN ONE YEAR

3.8.1. If, prior to Substantial Completion and within one year after the date of Substantial Completion of the Work or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents, any Defective Work is found, the Owner shall promptly notify the Design-Builder in writing. Unless the Owner provides written acceptance of the condition, the Design-Builder shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period the Owner discovers and does not promptly notify the Design-Builder or give the Design-Builder an opportunity to test or correct Defective Work as reasonably requested by the Design-Builder, the Owner waives the Design-Builder's obligation to correct that Defective Work as well as the Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.8.2. With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall be extended by the period of time between Substantial Completion and the actual performance of the later Work. Correction periods shall not be extended by corrective work performed by the Design-Builder.

3.8.3. If the Design-Builder fails to correct Defective Work within a reasonable time after receipt of written notice from the Owner prior to final payment, the Owner may correct it in accordance with the Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting such deficiencies from payments then or thereafter due



the Design-Builder. If payments then or thereafter due Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

3.8.4. The Design-Builder's obligations and liability, if any, with respect to any Defective Work discovered after the one-year correction period shall be determined by the Law. If, after the one-year correction period but before the applicable limitation period has expired, the Owner discovers any Work which the Owner considers Defective Work, the Owner shall, unless the Defective Work requires emergency correction, promptly notify the Design-Builder and allow the Design-Builder an opportunity to correct the Work if the Design-Builder elects to do so. If the Design-Builder elects to correct the Work, it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from the Owner and shall complete the correction of Work within a mutually agreed timeframe. If the Design-Builder does not elect to correct the Work, the Owner may have the Work corrected by itself or Others, and, if the Owner intends to seek recovery of those costs from the Design-Builder, the Owner shall promptly provide the Design-Builder with an accounting of the correction costs it incurs.

3.8.5. If the Design-Builder's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing buildings, the Design-Builder shall be responsible for the cost of correcting the destroyed or damaged property.

3.8.6. The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of the Design-Builder's other obligations under the Contract Documents.

3.8.7. Prior to final payment, at the Owner's option and with the Design-Builder's agreement, the Owner may elect to accept Defective Work rather than require its removal and correction. In such case the Contract Price shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

3.9. CONFIDENTIALITY The Design-Builder shall treat as confidential and not disclose to third persons, except Subcontractors, Subsubcontractors, and the Design Professional as is necessary for the performance of the Work, or use for its own benefit any of the Owner's developments, confidential information, know-how, discoveries, production methods, and the like that may be disclosed to the Design-Builder or which the Design-Builder may acquire in connection with the Work. The Owner shall treat as confidential information all of the Design-Builder's estimating systems and historical and parameter cost data that may be disclosed to the Owner in connection with the performance of this Agreement. The Owner and the Design-Builder shall each specify those items to be treated as confidential and shall mark them as "Confidential."

3.10. ADDITIONAL SERVICES The Design-Builder shall provide or procure the following Additional services upon the request of the Owner. A written agreement between the Owner and Design-Builder shall define the extent of such Additional services. Such Additional services shall be considered a Change in the Work, unless they are specifically included in sections 3.1 or 3.2.

3.10.1. development of the Owner's Program, establishing the Project budget, investigating sources of financing, general business planning, and other information and documentation as may be required to establish the feasibility of the Project;

3.10.2. consultations, negotiations, and documentation supporting the procurement of Project financing;

3.10.3. surveys, site evaluations, legal descriptions, and aerial photographs;



- 3.10.4. appraisals of existing equipment, existing properties, new equipment, and developed properties;
- 3.10.5. soils, subsurface, and environmental studies, reports, and investigations required for submission to governmental authorities or others having jurisdiction over the Project;
- 3.10.6. consultations and representations before governmental authorities or others having jurisdiction over the Project other than normal assistance in securing building permits;
- 3.10.7. investigation or making measured drawings of existing conditions or the verification of Owner-provided drawings and information;
- 3.10.8. artistic renderings, models, and mockups of the Project or any part of the Project or the Work;
- 3.10.9. inventories of existing furniture, fixtures, furnishings, and equipment which might be under consideration for incorporation into the Work;
- 3.10.10. interior design and related services including procurement and placement of furniture, furnishings, artwork, and decorations for items outside of the allowances included within the Scope of Work;
- 3.10.11. making revisions to design documents after they have been approved by the Owner when revisions are due to causes beyond the control of the Design-Builder. Causes beyond the control of the Design-Builder do not include acts or omissions on the part of Subcontractors, Subsubcontractors, or the Design Professional;
- 3.10.12. design, coordination, management, expediting, and other services supporting the procurement of materials to be obtained, or work to be performed, by the Owner, including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems, and other specialty systems which are not a part of this Agreement;
- 3.10.13. estimates, proposals, appraisals, consultations, negotiations, and services in connection with the repair or replacement of an insured loss, provided such repair or replacement did not result from the negligence of the Design-Builder;
- 3.10.14. the premium portion of overtime work ordered by the Owner including productivity impact costs, other than that required by the Design-Builder to maintain the Schedule of Work;
- 3.10.15. out-of-town travel by the Design Professional in connection with the Work, except between the Design Professional's office, Design-Builder's office, Owner's office, and the Project site;
- 3.10.16. obtaining service contractors and training maintenance personnel; assisting and consulting in the use of systems and equipment after the initial start up;
- 3.10.17. services for tenant or rental spaces not a part of this Agreement;
- 3.10.18. services requested by the Owner or required by the Work which are not specified in the Contract Documents and which are not normally part of generally accepted design and construction practice;
- 3.10.19. serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project;



- 3.10.20. document reproduction exceeding the limits provided for in this Agreement;
- 3.10.21. providing services relating to Hazardous Material discovered at the Worksite; and
- 3.10.22. other services as agreed to by the Parties and identified in an attached exhibit.

3.11. DESIGN-BUILDER'S REPRESENTATIVE The Design-Builder shall designate a person who shall be the Design-Builder's authorized representative. The Design-Builder's Representative is Matthew Packer.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1. INFORMATION AND SERVICES PROVIDED BY OWNER

The Owner's responsibilities under this article shall be provided with reasonable detail and in a timely manner.

4.2. FINANCIAL INFORMATION Before commencing the Work and thereafter at the written request of the Design-Builder, the Owner shall provide the Design-Builder evidence of Project financing. Evidence of such financing shall be a condition precedent to the Design-Builder's commencing or continuing the Work. The Design-Builder shall be notified prior to any material change in Project financing.

4.3. WORKSITE INFORMATION To the extent the Owner has obtained, or is required elsewhere in the Contract Documents to obtain, the following Worksite information, the Owner shall provide at the Owner's expense and with reasonable promptness:

4.3.1. information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto, and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by the Design-Builder in laying out the Work;

4.3.2. tests, inspections, and other reports dealing with environmental matters, Hazardous Material, and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or by Law; and

4.3.3. any other information or services requested in writing by the Design-Builder which are required for Design-Builder's performance of the Work and under the Owner's control.

4.4. MECHANICS AND CONSTRUCTION LIEN INFORMATION Within three (3) Days after receiving the Design-Builder's written request, the Owner shall provide the Design-Builder with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include the Owner's interest in the real property on which the Project is located and the record legal title.

4.5. RESPONSIBILITIES DURING DESIGN



4.5.1. The Owner shall review and approve further development of the drawings and specifications as set forth in ARTICLE 3.

4.6. RESPONSIBILITIES DURING CONSTRUCTION

4.6.1. The Owner shall review the Schedule of Work, timely approve milestone dates set forth, and timely respond to its obligations.

4.6.2. If the Owner becomes aware of any error, omission, or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, the Owner shall give prompt written notice to the Design-Builder. The failure of the Owner to give such notice shall not relieve the Design-Builder of its obligations to fulfill the requirements of the Contract Documents.

4.6.3. The Owner shall have no contractual obligations to Subcontractors, suppliers, or the Design Professional.

4.6.4. The Owner shall provide insurance for the Project as provided in ARTICLE 10.

4.7. OWNER'S REPRESENTATIVE The Owner's representative is Jennie Wellman, Director of Facilities. The representative:

4.7.1. shall be fully acquainted with the Project;

4.7.2. agrees to furnish the information and services required of the Owner pursuant to section 4.3 so as not to delay the Design-Builder's Work; and

4.7.3. shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization, or written notice. If the Owner changes its representative or the representative's authority as listed above, the Owner shall notify the Design-Builder in writing in advance.

4.8. TAX EXEMPTION If in accordance with the Owner's direction the Design-Builder claims an exemption for taxes, the Owner shall indemnify and hold the Design-Builder harmless from all liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by the Design-Builder as a result of any action taken by the Design-Builder in accordance with the Owner's direction.

4.9. ELECTRONIC DOCUMENTS If the Owner requires that the Owner and Design-Builder exchange documents and data in electronic or digital form, prior to any such exchange, the Owner and Design-Builder shall agree on a written protocol governing all exchanges in ConsensusDocs 200.2 or a separate agreement, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. The Parties shall each bear their own costs for the requirements identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

ARTICLE 5 SUBCONTRACTS

Work not performed by the Design-Builder with its own forces shall be performed by Subcontractors or the Design Professional.



5.1. **RETAINING SUBCONTRACTORS** The Design-Builder shall not retain any Subcontractor to whom the Owner has a reasonable and timely objection, provided that the Owner agrees to increase the Contract Price for any additional costs incurred by the Design-Builder as a result of such objection. The Owner may propose subcontractors to be considered by the Design-Builder. The Design-Builder shall not be required to retain any subcontractor to whom the Design-Builder has a reasonable objection.

5.2. **MANAGEMENT OF SUBCONTRACTORS** The Design-Builder shall be responsible for the management of the Subcontractors in the performance of their work.

5.3. **CONTINGENT ASSIGNMENT OF SUBCONTRACT AGREEMENTS**

5.3.1. If this Agreement is terminated, each subcontract agreement shall be assigned by the Design-Builder to the Owner, subject to the prior rights of any surety, provided that:

5.3.1.1. this Agreement is terminated by the Owner pursuant to sections 11.2; and

5.3.1.2. the Owner accepts such assignment, after termination by notifying the Subcontractor and Design-Builder in writing, and assumes all rights and obligations of the Design-Builder pursuant to each subcontract agreement.

5.4. **BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS** The Design-Builder agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its Subsubcontractors and Material Suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractors' and Material Suppliers' portions of the Work.

ARTICLE 6 CONTRACT TIME

6.1. **DATE OF COMMENCEMENT** The Date of Commencement is the latter of which the Building Permit is issued and obtained by the Design-Builder or 105 days after the execution of the Contract. The Work shall proceed in general accordance with the Schedule of Work as such schedule may be amended from time to time, subject, however, to other provisions of this Agreement.

6.2. **SUBSTANTIAL COMPLETION/FINAL COMPLETION**

6.2.1. Substantial Completion of the Work shall be achieved in Two Hundred Seventy (270) Days from the Date of Commencement. Unless otherwise specified, the Work shall be finally complete within Thirty (30) Days after the date of Substantial Completion, subject to adjustments as provided for in the Contract Documents.

6.2.2. Time is of the essence for this Agreement and Contract Documents.

6.2.3. The Date of Final Completion of the Work is within Thirty (30) Days after the Date of Substantial Completion, subject to adjustments as provided for in the Contract Documents.

6.2.4. Unless instructed by the Owner in writing, the Design-Builder shall not knowingly commence the Work before the effective date of insurance that is required to be provided by the Design-Builder and the Owner.

6.3. **DELAYS AND EXTENSIONS OF TIME**



6.3.1. If the Design-Builder is delayed at any time in the commencement or progress of the Work by any cause beyond the control of the Design-Builder, the Design-Builder shall be entitled to an equitable extension of the Date of Substantial Completion or the Date of Final Completion. Examples of causes beyond the control of the Design-Builder include, but are not limited to, the following: (a) acts or omissions of the Owner or Others; (b) changes in the Work or the sequencing of the Work ordered by the Owner, or arising from decisions of the Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by the Owner pending dispute resolution or suspension by the Owner under Section 12.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving the Design-Builder; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions, (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. The Design-Builder shall process any requests for equitable extensions of the Date of Substantial Completion or the Date of Final Completion in accordance with the provisions of ARTICLE 8.

6.3.2. In addition, if the Design-Builder incurs additional costs as a result of a delay that is caused by acts or omissions of the Owner or Others, changes in the Work or the sequencing of the Work ordered by the Owner, or arising from decisions of the Owner that impact the time of performance of the Work, encountering Hazardous Materials unanticipated by the Design-Builder or concealed or unknown conditions, delay authorized by the Owner pending dispute resolution, and suspension by the Owner under section 11.1, the Design-Builder shall be entitled to an equitable adjustment in the Contract Price subject to section 6.5.

6.3.3. In the event delays to the project are encountered for any reason, the Parties agree to undertake reasonable steps to mitigate the effect of such delays.

6.4. LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Excluding losses covered by insurance required by the Contract Documents, the Owner and the Design-Builder agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement. The Owner agrees to waive damages including but not limited to the Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit, or financing related to the Project, as well as the loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of reputation, or insolvency. The Design-Builder agrees to waive damages including but not limited to loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency.

6.4.1. The following items of damages are excluded from this mutual waiver:

6.4.2. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination. The Owner and the Design-Builder shall require similar waivers in contracts with Subcontractors and Others retained for the Project.

ARTICLE 7 CONTRACT PRICE

The Contract Price is Six Million, Two Hundred Twenty-Seven Thousand, Five Hundred dollars (\$6,227,500.00) subject to adjustment in accordance with the provisions of ARTICLE 8.

ARTICLE 8 CHANGES IN THE WORK



Changes in the Work which are within the general scope of this Agreement may be accomplished without invalidating this Agreement by Change Order, Interim Directed Change, or a minor change in the Work, subject to the limitations stated in the Contract Documents.

8.1. CHANGE ORDERS

8.1.1. The Design-Builder may request or the Owner, without invalidating this Agreement, may order changes in the Work within the general scope of the Contract Documents consisting of adjustment to the Contract Price or the Date of Substantial Completion or the Date of Final Completion. All such changes in the Work shall be authorized by applicable Change Order, and processed in accordance with this article. Each adjustment in the Contract Price resulting from a Change Order shall clearly separate the amount attributable to Design services.

8.1.2. The Owner and the Design-Builder shall negotiate an appropriate adjustment to Contract Price or the Date of Substantial Completion or the Date of Final Completion in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the Contract Price or the Date of Substantial Completion or the Date of Final Completion shall not be unreasonably withheld.

8.1.3. NO OBLIGATION TO PERFORM The Design-Builder shall not be obligated to perform changes in the Work until a Change Order has been executed or a written Interim Directed Change has been issued.

8.2. INTERIM DIRECTED CHANGE

8.2.1. The Owner may issue a written Interim Directed Change directing a change in the Work prior to reaching agreement with the Design-Builder on the adjustment, if any, in the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate, the compensation for Design services.

8.2.2. The Owner and the Design-Builder shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design services, arising out of Interim Directed Changes. As the changed work is completed, the Design Builder shall submit its costs for such work with its Application for Payment beginning with the next Application for Payment within thirty (30) Days of the issuance of the Interim Directed Change. Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment and shall be paid by Owner.

8.2.3. If the Owner and the Design-Builder agree upon the adjustments in the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate, the compensation for Design services, for a change in the Work directed by an Interim Directed Change, such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Interim Directed Changes issued since the last Change Order.

8.3. MINOR CHANGES IN THE WORK

8.3.1. The Design-Builder may make minor changes in the design and construction of the Project consistent with the intent of the Contract Documents which do not involve an adjustment in the Contract Price or the Date of Substantial Completion or the Date of Final Completion; and do not materially and adversely affect the design of the Project, the quality of any of the materials or equipment specified in the Contract Documents, the performance of any materials, equipment, or



systems specified in the Contract Documents, or the quality of workmanship required by the Contract Documents.

8.3.2. The Design-Builder shall promptly inform the Owner in writing of any such changes and shall record such changes on the Design-Build Documents maintained by the Design-Builder.

8.4. DETERMINATION OF COST

8.4.1. An increase or decrease in the Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

8.4.1.1. unit prices set forth in this Agreement or as subsequently agreed;

8.4.1.2. a mutually accepted, itemized lump sum; or

8.4.1.3. if an increase or decrease cannot be agreed to as set forth in subsection 8.4.1.1 or 8.4.1.2 and the Owner issues a written order for the Design-Builder to proceed with the change, the adjustment in the Contract Price shall be determined by the reasonable expense incurred and savings realized in the performance of the Work resulting from the change. If there is a net increase in the Contract Price, a reasonable adjustment shall be made in the Design-Builder's overhead and profit. In the case of a net decrease in cost, the amount of decrease in the Contract Price will not include a reduction in overhead and profit. The Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings.

8.4.2. If unit prices are indicated in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to the Owner or the Design-Builder, such unit prices shall be equitably adjusted.

8.4.3. If the Owner and the Design-Builder disagree as to whether work required by the Owner is within the scope of the Work, the Design-Builder shall furnish the Owner with an estimate of the costs to perform the disputed work in accordance with the Owner's interpretations. If the Owner issues a written order for the Design-Builder to proceed, the Design-Builder shall perform the disputed work and the Owner shall pay the Design-Builder fifty percent (50%) of its estimated cost to perform the work. In such event, both Parties reserve their rights as to whether the work was within the scope of the Work. The Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of Work. The Design-Builder's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work.

8.5. CONCEALED OR UNKNOWN SITE CONDITIONS If the conditions encountered at the Worksite are (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, the Design-Builder shall stop affected Work after the condition is first observed and give prompt written notice of the condition to the Owner and the Design Professional. The Design-Builder shall not be required to perform any Work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the Contract Price or the Contract Time as a result of the unknown condition shall be determined as provided in this article.



8.6. CLAIMS FOR ADDITIONAL COST OR TIME For any claim for an increase in the Contract Price or an extension in the Date of Substantial Completion or the Date of Final Completion, the Design-Builder shall give the Owner written notice of the claim within twenty-one (21) Days after the occurrence giving rise to the claim or within twenty-one (21) Days after the Design-Builder first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Claims for design and estimating costs incurred in connection with possible changes requested by the Owner, but which do not proceed, shall be made within twenty-one (21) Days after the decision is made not to proceed. Thereafter, the Design-Builder shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties mutually agree upon a longer period of time. The Owner shall respond in writing denying or approving the Design-Builder's claim no later than fourteen (14) Days after receipt of the Design-Builder's documentation of claim. Owner's failure to so respond shall be deemed a denial of the Design-Builder's claim. Any change in Contract Price or the Date of Substantial Completion or the Date of Final Completion resulting from such claim shall be authorized by Change Order.

8.7. CHANGES IN LAW In the event any changes in laws or regulations affecting the performance of the Work, including taxes, were not reasonably anticipated and then enacted after the date of this Agreement, the Contract Price and the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design services, shall be equitably adjusted by Change Order.

8.8. INCIDENTAL CHANGES The Owner may direct the Design-Builder to perform incidental changes in the Work upon concurrence with the Design-Builder that such changes do not involve adjustments in the Cost of the Work or Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. The Owner shall initiate an incidental change in the Work by issuing a written order to the Design-Builder. Such written notice shall be carried out promptly and is binding on the Parties.

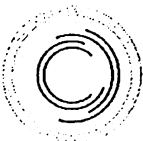
ARTICLE 9 PAYMENT

9.1. PROGRESS PAYMENT

9.1.1. Prior to submitting the first application for payment, the Design-Builder shall provide a Schedule of Values satisfactory to the Owner, consisting of a breakdown of the Contract Price, with a separate line item for Design services.

9.1.2. On or before the 5th Day of each month after the Work has commenced, the Design-Builder shall submit to the Owner an application for payment in accordance with the Schedule of Values based upon the Work completed and materials suitably stored on the Worksite or at other locations approved by the Owner. Approval of payment applications for such stored materials shall be conditioned upon submission by the Design-Builder of bills of sale and applicable insurance or such other procedures satisfactory to the Owner to establish the Owner's title to such materials, or otherwise to protect the Owner's interest including transportation to the site.

9.1.3. Within seven (7) Days after receipt of each monthly application for payment, the Owner shall give written notice to the Design-Builder of the Owner's acceptance or rejection, in whole or in part, of such application for payment. Within forty-five (45) days after accepting such Application, the Owner shall pay directly to the Design-Builder the appropriate amount for which application for payment is made, less amounts previously paid by the Owner. If such application is rejected in whole or in part, the Owner shall indicate the reasons for its rejection. If the Owner and the Design-Builder cannot agree on a revised amount, then, within fifteen (15) Days after its initial rejection in part of such application, the Owner shall pay directly to the Design-Builder the appropriate amount for those items not rejected by the Owner for which application for payment is



made, less amounts previously paid by the Owner. Those items rejected by the Owner shall be due and payable when the reasons for the rejection have been removed.

9.1.4. If the Owner fails to pay the Design-Builder at the time payment of any amount becomes due, then the Design-Builder may, at any time thereafter, upon serving written notice that the Work will be stopped within seven (7) Days after receipt of the notice by the Owner, and after such seven (7) Day period, stop the Work until payment of the amount owing has been received.

9.1.5. Payments due but unpaid pursuant to subsection 9.1.3, less any amount retained pursuant to section 9.2 or 9.3, may bear interest from the date payment is due at 12% or the highest rate then permitted by law at the location of the Project, whichever is greater.

9.1.6. The Design-Builder warrants and guarantees that title to all Work, materials, and equipment covered by an application for payment, whether incorporated in the Project or not, will pass to the Owner upon receipt of such payment by the Design-Builder free and clear of all liens, claims, security interests, or encumbrances, hereinafter referred to as "liens."

9.1.7. The Owner's progress payment, occupancy, or use of the Project, whether in whole or in part, shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents.

9.1.8. Upon completion of the punch list and receipt of the occupancy permit, the Owner shall pay the Design-Builder the unpaid balance of the Contract Price, less the retainage held on any subcontractor or trade not completed as agreed to between the Owner and Design-Builder as to extent and time for completion. The Owner thereafter shall pay the Design-Builder monthly the amount retained for unfinished items as each item is completed.

9.1.9. **STORED MATERIALS AND EQUIPMENT** Unless otherwise provided in the contract documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite, including applicable insurance, storage and costs incurred transporting the materials to an offsite storage facility. Approval of payment applications for stored materials and equipment stored offsite shall be conditioned on submission by the Design-Builder of bills of sale and proof of required insurance, or such other procedures satisfactory to the Owner to establish the proper valuation of the stored materials and equipment, the Owner's title to such materials and equipment, and to otherwise protect the Owner's interests therein, including transportation to the site.

9.2. **RETAINAGE** From each progress payment made prior to the time of Substantial Completion, the Owner may retain Ten percent (10%) of the amount otherwise due after deduction of any amounts as provided in section 9.3, and in no event shall such percentage exceed any applicable statutory requirements. If the Owner chooses to use this retainage provision:

9.2.1. after the Work is fifty percent (50%) complete, the Owner shall withhold no additional retainage and pay the Design-Builder the full amount due on account of subsequent progress payments;

9.2.2. the Owner may, in its sole discretion, reduce the amount to be retained at any time;

9.2.3. the Owner may release retainage on that portion of the Work a Subcontractor has completed, in whole or in part, and which work the Owner has accepted;



9.2.4. in lieu of retainage, the Design-Builder may furnish a retention bond or other security interest acceptable to the Owner, to be held by the Owner.

9.3. ADJUSTMENT OF DESIGN-BUILDER'S APPLICATION FOR PAYMENT The Owner may adjust or reject an application for payment or nullify a previously approved application for payment, in whole or in part, as may reasonably be necessary to protect the Owner from loss or damage based upon the following, to the extent that the Design-Builder is responsible under this Agreement:

9.3.1. the Design-Builder's repeated failure to perform the Work as required by the Contract Documents;

9.3.2. except as accepted by the insurer providing Builders Risk or other property insurance covering the project, loss or damage arising out of or relating to this Agreement and caused by the Design-Builder to the Owner, or Others to whom the Owner may be liable;

9.3.3. the Design-Builder's failure to pay the Design Professional or Subcontractors for labor, materials, equipment, or supplies properly furnished in connection with the Work, provided that the Owner is making payments to the Design-Builder in accordance with the terms of this Agreement;

9.3.4. Defective Work not corrected in a timely fashion;

9.3.5. reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Date of Substantial Completion or the Date of Final Completion, and that the unpaid balance of the Contract Price is not sufficient to offset any direct damages that may be sustained by the Owner as a result of the anticipated delay caused by the Design-Builder;

9.3.6. reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Work;

9.3.7. uninsured third-party claims involving the Contractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Contractor furnishes the Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which are sufficient to discharge such claims if established; and

9.3.8. uninsured third-party claims involving the Design-Builder or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Design-Builder furnishes the Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, the Owner shall give written notice to the Design-Builder, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by the Design-Builder in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

9.4. OWNER OCCUPANCY OR USE OF COMPLETED OR PARTIALLY COMPLETED WORK

9.4.1. Portions of the Work that are completed or partially completed may be used or occupied by the Owner when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) or sureties consent to the occupancy or use, and (c)



appropriate public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work. The Design-Builder shall not unreasonably withhold consent to partial occupancy or use. The Owner shall not unreasonably refuse to accept partial occupancy or use, provided such partial occupancy or use is of value to the Owner.

9.5. FINAL PAYMENT

9.5.1. Final payment, consisting of the unpaid balance of the Contract Price, shall be due and payable when the Work is fully completed. Before issuance of final payment, the Owner may request satisfactory evidence that all payrolls, materials bills, and other indebtedness connected with the Work have been paid or otherwise satisfied.

9.5.2. In making final payment the Owner waives all claims except for:

9.5.2.1. outstanding liens;

9.5.2.2. improper workmanship or defective materials appearing within one year after the date of Substantial Completion;

9.5.2.3. Work not in conformance with the Contract Documents; and

9.5.2.4. terms of any special warranties required by the Contract Documents.

9.5.3. In accepting final payment, the Design-Builder waives all claims except those previously made in writing and which remain unsettled.

ARTICLE 10 INDEMNITY, INSURANCE, AND BONDS

10.1. INDEMNITY

10.1.1. TO THE FULLEST EXTENT PERMITTED BY LAW, THE DESIGN-BUILDER SHALL INDEMNIFY AND HOLD HARMLESS THE OWNER, OWNER'S OFFICERS, DIRECTORS, MEMBERS, CONSULTANTS, AGENTS, AND EMPLOYEES (THE INDEMNITEES) FROM ALL CLAIMS FOR BODILY INJURY AND PROPERTY DAMAGE, OTHER THAN TO THE WORK ITSELF AND OTHER PROPERTY REQUIRED TO BE INSURED UNDER SECTION 10.3, INCLUDING REASONABLE ATTORNEYS' FEES, COSTS, AND EXPENSES THAT MAY ARISE FROM THE PERFORMANCE OF THE WORK, BUT ONLY TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF THE DESIGN-BUILDER, SUBCONTRACTORS, OR ANYONE EMPLOYED DIRECTLY OR INDIRECTLY BY ANY OF THEM OR BY ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE. THE DESIGN-BUILDER SHALL NOT BE REQUIRED TO INDEMNIFY OR HOLD HARMLESS THE INDEMNITEES FOR ANY NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNITEES. THE DESIGN-BUILDER SHALL BE ENTITLED TO REIMBURSEMENT OF ANY DEFENSE COSTS PAID ABOVE DESIGN-BUILDER'S PERCENTAGE OF LIABILITY FOR THE UNDERLYING CLAIM TO THE EXTENT PROVIDED FOR BY THE SUBSECTION BELOW.

10.1.2. TO THE FULLEST EXTENT PERMITTED BY LAW, THE OWNER SHALL INDEMNIFY AND HOLD HARMLESS THE DESIGN-BUILDER, ITS OFFICERS, DIRECTORS, OR MEMBERS, SUBCONTRACTORS, OR ANYONE EMPLOYED DIRECTLY OR INDIRECTLY BY ANY OF THEM OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE (THE "DESIGN-BUILDER INDEMNITEES") FROM ALL CLAIMS FOR BODILY INJURY AND



PROPERTY DAMAGE, OTHER THAN PROPERTY INSURED UNDER SECTION 10.3, INCLUDING REASONABLE ATTORNEYS' FEES, COSTS, AND EXPENSES, THAT MAY ARISE FROM THE PERFORMANCE OF WORK BY OTHERS (AS DEFINED IN SECTION 2.3.15) OR ANYONE FOR WHOSE ACTS ANY OF THEM MAY BE LIABLE. THE OWNER SHALL NOT BE REQUIRED TO INDEMNIFY OR HOLD HARMLESS THE DESIGN-BUILDER INDEMNITEES FOR ANY NEGLIGENT ACTS OR OMISSIONS OF THE DESIGN-BUILDER INDEMNITEES. THE OWNER SHALL BE ENTITLED TO REIMBURSEMENT OF ANY DEFENSE COSTS PAID ABOVE THE OWNER'S PERCENTAGE OF LIABILITY FOR THE UNDERLYING CLAIM TO THE EXTENT PROVIDED FOR BY THE SUBSECTION ABOVE.

10.1.3. NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of the Design-Builder, anyone directly or indirectly employed by the Design-Builder or anyone for whose acts the Design-Builder may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Design-Builder under Workers' Compensation acts, disability benefit acts, or other employee benefit acts.

10.2. DESIGN-BUILDER'S LIABILITY INSURANCE

10.2.1. Prior to commencing the Work and as a condition for payment, the Design-Builder shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. The Design-Builder shall maintain completed operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. The Design-Builder's Employers' Liability, Business Automobile Liability, and CGL policies shall be written with at least the following limits of liability:

10.2.1.1. Employers' Liability Insurance

- (a) \$1,000,000 bodily injury by accident per accident
- (b) \$1,000,000 bodily injury by disease policy limit
- (c) \$1,000,000 bodily injury by disease per employee

10.2.1.2. Business Automobile Liability Insurance per accident \$1,000,000.

10.2.1.3. Commercial General Liability Insurance

- (a) Per occurrence \$1,000,000
- (b) General aggregate \$1,000,000
- (c) Products/completed operations aggregate \$2,000,000
- (d) Personal and advertising injury limit \$1,000,000
- (e) Umbrella/Excess greater than or equal to \$5,000,000 per occurrence/aggregate

10.2.2. Employers' Liability, Business Automobile Liability, and Commercial General Liability coverage required under subsection 10.2.1 may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess or Umbrella Liability policies.



10.2.3. The Design-Builder shall maintain in effect all insurance coverage required under subsection 10.2.1 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If the Design-Builder fails to obtain or maintain any insurance coverage required under this Agreement, the Owner may purchase such coverage and charge the expense to the Design-Builder, or terminate this Agreement.

10.2.4. To the extent commercially available to the Design-Builder and its current insurance company, insurance policies required under subsection 10.2.1 shall contain a provision that the insurance company or its designee must give the Owner written notice transmitted in paper or electronic format: (a) 30 Days before coverage is nonrenewed by the insurance company and (b) within 10 Business Days after cancelation of coverage by the insurance company. Prior to commencing the Work and upon renewal or replacement of the insurance policies, the Design-Builder shall furnish the Owner with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under subsection 10.2.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Design-Builder shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

10.3. PROPERTY INSURANCE

10.3.1. Before commencing the Work, the Owner shall obtain and maintain Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss. This insurance shall also name the Design-Builder, Subcontractors, Subsubcontractors, as Additional named insureds via a general endorsement. This insurance shall be written as a Builder's Risk Policy or equivalent form to cover all risks of physical loss except those specifically excluded by the policy, and shall insure at least against the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of Design-Builder) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused, and damage resulting from defective design, workmanship, or material, and material or equipment stored offsite, onsite, or in transit. The Owner shall be solely responsible for any deductible amounts or coinsurance penalties. This policy shall provide for a waiver of subrogation in favor of the Design-Builder, Subcontractors, Subsubcontractors, Material Suppliers, and Design Professional. This insurance shall remain in effect until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until the Owner has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, the Owner shall provide a copy of the property policy or policies obtained in compliance with this subsection.

10.3.2. If the Owner does not intend to purchase the property insurance required by this Agreement, including all of the coverages and deductibles described herein, the Owner shall give written notice to the Design-Builder and the Design Professional before the Work is commenced. The Design-Builder may then provide insurance to protect its interests and the interests of the Subcontractors and Subsubcontractors, including the coverage of deductibles. The cost of this insurance shall be charged to the Owner in a Change Order. The Owner shall be responsible for all of Design-Builder's costs reasonably attributed to the Owner's failure or neglect in purchasing or maintaining the coverage described above.

10.3.2.1. If the Owner does not obtain insurance to cover the risk of physical loss resulting from Terrorism, the Owner shall give written notice to the Design-Builder before the Work



commences. The Design-Builder may then provide insurance to protect its interests and the interests of the Subcontractors and Subsubcontractors against such risk of loss, including the coverage of deductibles. The cost of this insurance shall be charged to the Owner in a Change Order.

10.3.3. Owner and Design-Builder waive all rights against each other and their respective employees, agents, contractors, subcontractors, and subsubcontractors and the Design Professional for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance and such rights as the Design-Builder may have for the failure of the Owner to obtain and maintain property insurance in compliance with subsection 10.3.1.

10.3.4. To the extent of the limits of Design-Builder's Commercial General Liability Insurance specified in subsection 10.2.1 the Design-Builder shall indemnify and hold harmless the Owner against any and all liability, claims, demands, damages, losses, and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of the Owner's existing adjacent property that may arise from the performance of the Work, to the extent of the negligent acts or omissions of the Design-Builder, Subcontractor, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

10.3.5. RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Work shall be upon the Design-Builder until the Date of Substantial Completion, unless otherwise agreed to by the Parties.

10.4. OWNER'S INSURANCE

10.4.1. BUSINESS INCOME INSURANCE The Owner may procure and maintain insurance against loss of use of the Owner's property caused by fire or other casualty loss.

10.4.2. OWNER'S LIABILITY INSURANCE The Owner shall either self-insure or obtain and maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including, without limitation, loss of use and claims, losses and expenses arising out of the Owner's acts or omissions.

10.5. ADDITIONAL LIABILITY COVERAGE

10.5.1. The Owner shall not require the Design-Builder to purchase and maintain additional liability coverage, primary to Owner's coverage under subsection 10.4.2.

Any documented additional cost in the form of a surcharge associated with procuring the additional liability coverage in accordance with this subsection shall be paid by the Owner directly or the costs may be reimbursed by the Owner to the Design-Builder by increasing the contract price to correspond to the actual cost required to purchase and maintain the additional liability coverage.

Before commencing the Work, the Design-Builder shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that the Owner has been named as an additional insured, as applicable.

10.6. ROYALTIES, PATENTS, AND COPYRIGHTS The Design-Builder shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by the Design-Builder and incorporated in the Work. The Design-Builder shall indemnify and



hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to indemnify and hold the Design-Builder harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by the Owner.

10.7. PROFESSIONAL LIABILITY INSURANCE The Design-Builder shall obtain, either itself or through the Design Professional, professional liability insurance for claims arising from the negligent performance of professional services under this Agreement, which shall be:

Practice Policy

written for not less than \$1,000,000 per claim and in the aggregate with a deductible not to exceed \$50,000. The Professional Liability Insurance shall include prior acts coverage sufficient to cover all services rendered by the Design Professional. This coverage shall be continued in effect for One (1) year(s) after the Date of Substantial Completion.

10.8. BONDING

10.8.1. Performance and Payment Bond shall not be required of the Design-Builder.

10.8.2. The Design-Builder shall require Payment and Performance Bonds from major or high-risk subcontractors. The Owner and Design-Builder shall work together to identify which Subcontractors shall require Bonding based on contract value, Subcontractors current workload, duration spent on site, and experience. Design-Builder shall make recommendations to the Owner, who shall approve or disapprove within two business days.

10.8.3. The Design-Builder has included in the Contract Amount an Allowance of Sixty Thousand Dollars (\$60,000.00) to cover the additional cost of bonding of the identified such Subcontractors.

ARTICLE 11 SUSPENSION, NOTICE TO CURE, AND TERMINATION

11.1. SUSPENSION BY THE OWNER FOR CONVENIENCE

11.1.1. The Owner may order the Design-Builder in writing to suspend, delay, or interrupt all or any part of the Work without cause for such period of time as the Owner may determine to be appropriate for its convenience.

11.1.2. Adjustments caused by suspension, delay, or interruption shall be made for increases in the Contract Price or the Date of Substantial Completion or the Date of Final Completion. No adjustment shall be made if the Design-Builder is or otherwise would have been responsible for the suspension, delay, or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

11.2. OWNER'S RIGHT TO PERFORM DESIGN-BUILDER'S OBLIGATIONS AND TERMINATION BY THE OWNER FOR CAUSE

11.2.1. If the Design-Builder persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved Schedule of the Work, or fails to make prompt payment to its workers, Subcontractors, or Material Suppliers, disregards Laws or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, the Design-Builder may be deemed in default.



If the Design-Builder fails within seven (7) Days after receipt of written notice to commence and continue satisfactory correction of such default, then the Owner shall give the Design-Builder a second notice to correct the default within a three (3) Day period.

11.2.2. If the Design-Builder fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, the Owner without prejudice to any other rights or remedies may: (a) take possession of the Worksite; (b) complete the Work utilizing any reasonable means; (c) withhold payment due to the Design-Builder; and (d) as the Owner deems necessary, supply workers and materials, equipment, and other facilities for the satisfactory correction of the default, and charge the Design-Builder the costs and expenses, including reasonable Overhead, profit, and attorneys' fees.

11.2.3. In the event of an emergency affecting the safety of persons or property, the Owner may immediately commence and continue satisfactory correction of a default without first giving written notice to the Design-Builder, but shall give prompt written notice of such action to the Design-Builder following commencing the action.

11.2.4. If the Design-Builder files a petition under the bankruptcy code, this Agreement shall terminate if the Design-Builder or the Design-Builder's trustee rejects the Agreement or, if there has been a default, the Design-Builder is unable to give adequate assurance that the Design-Builder will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

11.2.5. In the event the Owner exercises its rights under subsections 11.2.1 or 11.2.2, upon the request of the Design-Builder the Owner shall provide a detailed accounting of the cost incurred by the Owner.

11.2.6. If the Owner terminates this Agreement for default, and it is later determined that the Design-Builder was not in default, or that the default was excusable under the terms of the Contract Documents, then, in such event, the termination shall be deemed a termination for convenience, and the rights of the Parties shall be as set forth in section 11.3.

11.3. TERMINATION BY OWNER FOR CONVENIENCE If the Owner terminates this Agreement other than as set forth in section 11.2, the Owner shall pay the Design-Builder for all Work executed and for all proven loss, cost, or expense in connection with the Work, plus all demobilization costs and costs of terminating subcontracts. In addition, the Design-Builder shall be paid the balance of the Design-Builder's Fee as if the Contract would have been fully performed and paid.

11.3.1. If Owner terminates this Agreement for default and it is later determined Design-Builder was not in default, or that the default was excusable under the terms of the Contract Documents, then the termination shall be deemed a termination for convenience and the rights of the Parties shall be as set forth in Section 11.3.

11.3.2. The Owner shall also pay to the Design-Builder fair compensation, either by purchase or rental at the election of the Owner, for all equipment retained. The Owner shall assume and become liable for obligations, commitments, and unsettled claims that the Design-Builder has previously undertaken or incurred in good faith in connection with the Work or as a result of the termination of this Agreement. As a condition of receiving the payments provided under this article, the Design-Builder shall cooperate with the Owner by taking all steps necessary to accomplish the legal assignment of the Design-Builder's rights and benefits to the Owner, including the execution and delivery of required papers.



11.4. TERMINATION BY THE DESIGN-BUILDER

11.4.1. Upon seven (7) Days' written notice to the Owner, the Design-Builder may terminate this Agreement for any of the following reasons:

11.4.1.1. if the Work has been stopped for a thirty (30) Day period (a) under court order or order of other governmental authorities having jurisdiction, or (b) as a result of the declaration of a national emergency or other governmental act emergency during which, through no act or fault of the Design-Builder, materials are not available;

11.4.1.2. if the Work is suspended by the Owner for thirty (30) Days; or

11.4.1.3. if the Owner fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project in accordance with section 4.2 of this Agreement.

11.4.2. If the Owner has for thirty (30) Days failed to pay the Design-Builder pursuant to subsection 9.1.3, the Design-Builder may give written notice of its intent to terminate this Agreement. If the Design-Builder does not receive payment within seven (7) Days of giving written notice to the Owner, then upon seven (7) Days' additional written notice to the Owner, the Design-Builder may terminate this Agreement.

11.4.3. Upon termination by the Design-Builder in accordance with subsection 11.4.1, the Design-Builder shall be entitled to recover from the Owner payment for all Work executed and for all proven loss, cost, or expense in connection with the Work, plus all demobilization costs and reasonable damages. In addition, the Design-Builder shall be paid an amount calculated as set forth either in subsection 11.3.1 or 11.3.2, depending on when the termination occurs, and subsection 11.3.3.

ARTICLE 12 DISPUTE MITIGATION OR RESOLUTION

12.1. WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, the Design-Builder shall continue the Work and maintain the approved schedules during any dispute mitigation or resolution proceedings. If the Design-Builder continues to perform, the Owner shall continue to make payments in accordance with the Agreement.

12.2. DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who will record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days of the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected herein.

12.3. MEDIATION If direct discussions pursuant to section 12.2 do not result in resolution of the matter and no dispute mitigation procedure is selected under section 12.3, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American



Arbitration Association (AAA), or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) Business Days of the matter first being discussed and shall conclude within forty-five (45) Business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The costs of the mediation shall be shared equally by the Parties.

12.4. BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

Arbitration using the current Construction Industry Arbitration Rules of the AAA or the Parties may mutually agree to select another set of arbitration rules. The administration of the arbitration shall be as mutually agreed by the Parties. The arbitrator shall establish reasonable procedures and requirements for the production of relevant documents and require the exchange of information concerning witnesses to be called. The parties shall be entitled to discover all documents and information reasonably necessary for a full understanding of any legitimate issue raised in the arbitration and the parties may use all methods of discovery available under the Ohio Rules of Civil Procedure and shall be governed thereby.

12.4.1. COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

12.4.2. VENUE The venue of any binding dispute resolution procedure shall be in Hamilton County, State of Ohio, unless the Parties agree on a mutually convenient location.

12.4.3. Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files its demand for arbitration with the person or entity administering the arbitration within thirty (30) Days after the entry of such order.

12.4.4. An award entered in an arbitration proceeding pursuant to this Agreement shall be final and binding upon the Parties, and judgment may be entered upon an award in any court having jurisdiction.

12.5. MULTIPARTY PROCEEDING The Parties agree that all Parties necessary to resolve a matter shall be Parties to the same dispute resolution procedure. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution proceedings.

12.6. LIEN RIGHTS Nothing in this article shall limit any rights or remedies not expressly waived by the Design-Builder that the Design-Builder may have under lien laws.

ARTICLE 13 MISCELLANEOUS



13.1. **EXTENT OF AGREEMENT** Except as expressly provided, this Agreement is solely for the benefit of the Parties, represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Owner and Design-Builder and not for the benefit of any third party.

13.2. **ASSIGNMENT** Neither the Owner nor the Design-Builder shall assign its interest in this Agreement without the written consent of the other except as to the assignment of proceeds. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party to this Agreement shall assign the Agreement as a whole without written consent of the other except that the Owner may assign the Agreement to a wholly owned subsidiary of the Owner when the Owner has fully indemnified the Design-Builder or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to the Design-Builder than this Agreement. In the event of such assignment, the Design-Builder shall execute all consents reasonably required. In such event, the wholly-owned subsidiary or lender shall assume the Owner's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under the Agreement, unless otherwise agreed by the other Party.

13.3. **GOVERNING LAW** This Agreement shall be governed by the law in effect at the location of the Project.

13.4. **SEVERABILITY** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

13.5. **NO WAIVER OF PERFORMANCE** The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance.

13.6. **TITLES AND GROUPINGS** The title given to the articles and sections are for ease of reference only and shall not be relied upon or cited for any other purpose.

13.7. **JOINT DRAFTING** The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

13.8. **RIGHTS AND REMEDIES** The Parties' rights, liabilities, responsibilities, and remedies with respect to this Agreement, whether in contract, tort, negligence, or otherwise, shall be exclusively those expressly set forth in this Agreement.

13.9. **NOTICE** All notices required to be delivered to Owner or Design-Builder under the Contract Documents shall be construed to have been properly delivered if it is delivered to the other Parties representative, as designated in Section 3.11 as to Design-Builder and Section 4.7 as to Owner, and, where written notice is specified, to the address provided in Article 1 hereof. Written notices may be delivered in person, by certified mail (return receipt requested), or by express mail delivery carrier (with tracking service). Notice will be deemed given upon receipt or upon refusal to accept delivery by any of the permitted delivery methods. Email is an accepted delivery method and is effective only if the receiving party confirms receipt of such an email by responding to said email.

ARTICLE 14 CONTRACT DOCUMENTS



14.1. CONTRACT DOCUMENTS The Contract Documents are as follows:

- (a) This Agreement;
- (b) Exhibit A – Revised Budget Proposal dated August 16, 2017
- (c) Exhibit B – Third Floor Schematic Drawings dated April 28, 2017
- (d) Exhibit C – Second Floor Preliminary Sleep Lab Sketch Drawing dated June 13, 2017
- (e) The Construction Documents upon Owner approval under section 3.1;

14.2. ORDER OF PRECEDENCE In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement, including Amendment 1; (b) this Agreement; (c) design documents approved by the Owner pursuant to subsection 2.3.15 and section 3.1 in order of the most recently approved; (d) information furnished by the Owner pursuant to section 4.1 or designated as a contract document in section 14.1; (e) other documents listed in this Agreement. Except as otherwise provided, among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.

OWNER: FAYETTE REGIONAL HEALTH SYSTEM

BY: *Randall White*

Date: 25 Aug 17

NAME: Randall A. White

TITLE: President and CEO

WITNESS: *Alison Gates*

Date: 8/25/2017

NAME: Alison Gates

TITLE: C.O.O.

DESIGN-BUILDER:

TERREX CONSTRUCTION, LLC

BY: *Matthew F. Packer*

Date: 8/23/2017

NAME: Matthew F. Packer

ITS: President

WITNESS: *Pete T. Horton*

Date: 8/23/2017

NAME: Pete T. Horton



TITLE: Principal

END OF DOCUMENT.





April 27, 2017 Revised August 23, 2017

Mr. Randall A. White
President and CEO
Fayette Regional Health System
1941 Virginia Ave.
Connersville, IN 47331

RE: Fayette Regional Hospital / Third Floor Detox Unit

Fayette Regional Leadership Team,

Pursuant to our team discussions, meetings with the State of Indiana, and culminating design advancements to date, please see the following scope and preliminary budget for the renovation of Third Floor Detox Unit consisting of approximately 19,450 SF.

The renovation will be composed of the following items:

1. General Conditions
 - On-site project management
 - Field supervision
 - Dumpsters
 - Construction and final cleaning
 - Temporary protection of finished surfaces
 - Infection Control Standards including negative pressurization and segregation of work zones.
2. General Requirements
 - Insurances (General/Professional/Pollution Liability and Workman's Comp)
 - Permits and fees
 - Design services including:
 - Architectural
 - Structural
 - HVAC
 - Plumbing
 - Electrical
 - Fire Suppression
3. Demolition
 - Demo of partitions, doors, and mechanical systems as required.
 - Relocation of existing third floor Sleep Lab
 - Misc demo and removal
 - ~~Abatement per Alliance Environmental Group, Inc.~~
4. Cabinetry and Casework
 - New Nurse Station casework
 - Staff Breakroom / Locker casework



Fayette Regional Hospital
Level 4 Detox Unit

- Exam Room casework
 - Nourish Room casework
 - Misc. shelving
5. Doors, Frames, and Hardware
- Anti-ligature entry doors at Patient Rooms
 - Anti-ligature bathroom door in Patient Rooms
 - Special access doors at Sally Ports and Control areas
 - Add / modify existing openings as required
6. Aluminum Glass and Glazing
- Install security glass at existing windows in Patient Rooms
7. Gypsum Assemblies
- Plaster repair as required
 - 3-5/8", 20 gauge metal framing at partitions
 - Drywall suspension grid at hard ceilings and soffits
 - Blocking at cabinets, openings, and as required
 - Fiberglass batt insulation at partition walls
 - 5/8" type X drywall and high abuse board as required
 - Moisture resistant drywall at wet walls and in shower room
 - New acoustic ceilings in common areas and back-of house.
 - Fire stopping and safing as required
8. Flooring
- Install new LVT wood plank flooring at all Patient Rooms, Corridors, and public spaces.
 - Install new ceramic tile in restrooms on both floor and walls
 - Install carpet in select rooms as desired
9. Painting & Wall Coverings
- All walls, ceilings, and door frames to receive one (1) coat of primer, and two (2) coats of finish paint
 - Painting of north stair
 - Corridors to receive wall protection
10. Specialties
- Grab bars, and restroom accessories as required
 - Access doors in hard ceilings as required
 - Safe Room protection
11. Fire Suppression
- Additional / new heads for revised layout
 - New Anti-ligature heads in patient rooms
 - ~~New 4" riser fire suppression riser and coverage for existing 2,550-SF currently un-protected~~
12. Plumbing
- Rough-in and finish for Patient and Public restrooms including:
 - Anti-ligature fixtures in Patient Rooms



- Re-configuration of restrooms as required to meet revised plan and ADA.
- Existing fixtures and piping to be re-used where possible.

13. HVAC

- Re-work of existing four (4) pipe system to meet revised layout and requirements including:
 - Anti-ligature grills in Patient Rooms
 - Re-work / replacement of existing fan coils in Patient Rooms to relocate system to main corridor
 - Install new fresh air distribution to third floor as required.
 - Reconfigure existing system to meet requirements of revised layout.

14. Electrical

- Lighting
 - Provide new anti-ligature lights in Patient rooms
 - Modify and add additional lighting per revised layout.
- Power
 - Re-work power as required for revised layout
- Fire Alarm
 - Reconfigure and install additional addressable devices and circuitry as required to meet codes
- Security and Access Control
 - Install Access Control and CCTV devices as required.
- Phone and Data
 - Provided by others
- Staff Duress System
 - Provided by others

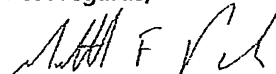
15. Rooftop Plaza

- Install new ramp, landings and railings
- Install new pedestal mounted pavers to create a plaza area over the existing roof.
- Install new Canopy over a portion of the rooftop plaza
- Install new "barrier" walls surrounding the rooftop plaza to provide security and fall protection.

Original Budget without ICU Re-vamp and Sprinkler and Abatement Work:	\$	6,167,500
Addition of Payment and Performance Bond on Key Subcontractors (Allowance)	\$	<u>60,000</u>
Revised Project Total:	\$	6,227,500

If you require additional information, or have any questions, please do not hesitate to contact me at (513) 200-4760.

Best regards,

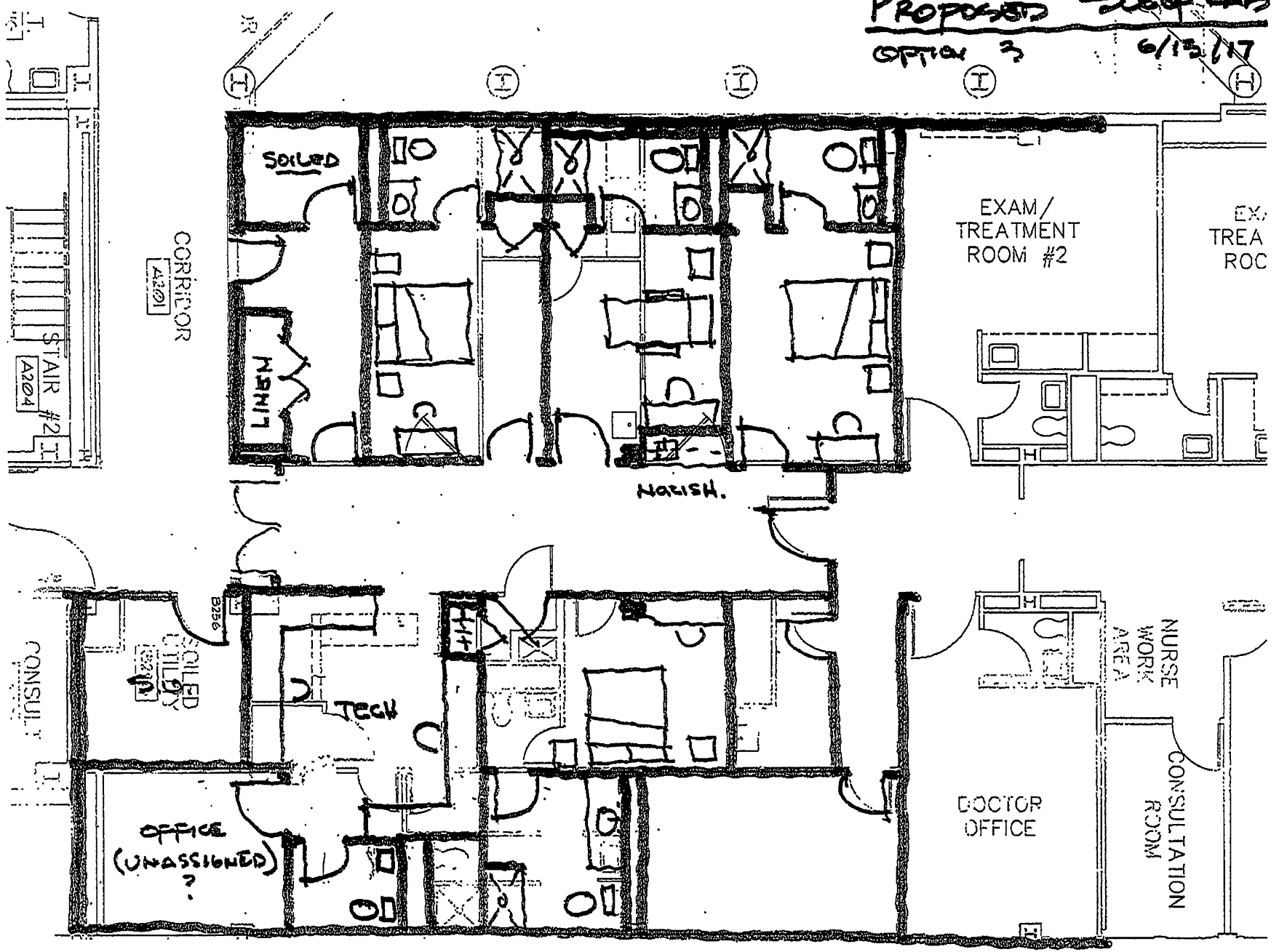

Matthew Packer
Principal

cc: Pete Horton – Terrex Development & Construction



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PROPOSED SLEEP LAB
OPTION 3 6/15/17



**BOSE
McKINNEY
& EVANS LLP**

ATTORNEYS AT LAW

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*PACE Registered Paralegal
Indiana Registered Paralegal*

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February 28, 2019

VIA UPS DAYSAVER

BMC Group, Inc.
Attention: FMHA Claims Processing
3732 West 120th Street
Hawthorne, CA 90250

RE: *In Re Fayette Memorial Hospital, Inc., Debtor*
Case No. 18-07762-JJG-11

Dear Sir or Madam:

Enclosed please find the original and one (1) copy of the Proof of Claim of our client, Terrex Construction, LLC. A self-addressed, stamped envelope is enclosed for your convenience in returning a filed copy of the Proof of Claim.

If you have any questions with regard to the enclosed, please do not hesitate to contact me.

Very truly yours,


Melissa A. Wakefield, RP[®], IRP

MAW/dll
Enclosures
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