

**AGREEMENT BETWEEN OWNER AND CONTRACTOR  
FOR A LUMP SUM DESIGN AND BUILD PROJECT**

**THIS AGREEMENT** made as of the \_\_\_\_\_ day of April in the year of Two Thousand and Twenty Four by and between University Hospital, a public instrumentality and agency of the State of New Jersey, with offices at 150 Bergen Street, Newark, New Jersey 07103 (hereinafter ("Owner")), and \_\_\_\_\_ an organization authorized to conduct business in the State of New Jersey, with offices at \_\_\_\_\_ (hereinafter "Contractor").

**THE PROJECT IS:**     **Design Build Contracting Services for Emergency Power System Upgrade at University Hospital, Newark, New Jersey.**

**THE OWNER'S REPRESENTATIVE IS:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**THE SURETY AND RESPECTIVE AMOUNTS FOR THE PAYMENT AND PERFORMANCE BONDS ARE:**   One Hundred Per Cent (100%) of the contract amount.

**THE OWNER AND CONTRACTOR FOR THE CONSIDERATION HEREINAFTER SET FORTH AGREE AS FOLLOWS:**

**ARTICLE 1**

**THE CONTRACT DOCUMENTS**

- 1.1 The Contract Documents shall mean and refer collectively to this Agreement, Conditions of the Contract (General, Supplementary and other Conditions enumerated herein), the Request for Proposal (including attachments), the Contractor's Proposal, Drawings, Basis of Design Narrative and Specifications, Analyses, Reports, Addenda issued prior to execution of this Agreement, other documents enumerated in this Agreement and Modifications, as defined in the General Conditions, issued after execution of this Agreement. These form the entire Contract between the Owner and Contractor, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents, other than Modifications, appears in Article 11 of this Agreement.
- 1.2 The Contract Documents represent the entire and integrated agreement between the parties hereto and supersede all prior negotiations, representations or agreements, either written or oral. The Contract Documents shall not be construed to create a contractual relationship of any kind between (1) the Contractor and Owner's Consultants; (2) the Contractor and Owner's Representative; (3) the Owner and a Subcontractor or a Sub-subcontractor; or (4) any other persons or entities other than the Owner or Contractor. The Owner's Representative shall, however, be entitled to represent the Owner's interests, interpret Contract Documents, provide project oversight on the Owner's behalf, and administer and enforce obligations under the Contract Documents that are intended to facilitate performance of Contractor's duties.
- 1.3 In the event that there is an inconsistency or conflict between the terms of any of the Contract Documents, the terms that shall govern shall be as set forth in subparagraph 1.2.8 of the General Conditions.

## ARTICLE 2

### **RELATIONSHIP OF THE PARTIES**

- 2.1 The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the, Owner and Owner's Representative and supervise and direct the Work in a good and workmanlike manner, applying thereto at least that degree of skill, care, supervision and effort necessary to be exercised by contractors on work of the type to be covered by this Contract and in accordance with general industry standards so as to further the interests of the Owner; to furnish efficient business administration and supervision; to make best efforts to furnish at all times an adequate supply of workers and materials satisfactory to the Owner; and to perform the Work in the best way and most expeditious and economical manner consistent with the interests of the Owner. The Owner agrees to exercise its best efforts to enable the Contractor to perform the Work in the best way and most expeditious manner by furnishing and approving, in a timely way, information required by the Contractor and making payments to the Contractor in accordance with requirements of the Contract Documents.
- 2.2 The Contractor has the duty and represents and agrees that it has carefully examined and understands the intent and purpose of this Agreement and the other Contract Documents, has investigated the nature, locality and site of the Work and the conditions and difficulties under which the Work is to be performed, and any other matter which may in any way affect the Work or its performance, and that it enters into this Agreement on the basis of its own examination, investigation and evaluation of all such matters and not in reliance upon any opinions or representations of the Owner's Representatives, Owner's consultants or the Owner, or of any of their respective officers, representative, servants or employees. As a result of such examination, investigation and evaluation, Contractor agrees that it will make no claim for

additional payment or extension of time for completion of the Work or any other concession because of any misinterpretation or misunderstanding of the Contract Documents on the part of the Contractor or any failure of the Contractor to become fully acquainted with all conditions relating to the Work.

2.3 Contractor shall forward all communications to the Owner or, if directed by the Owner, communications shall be forwarded to the Owner through the Owner's Representative, as designated by the Owner. If the Owner directs communications to be forwarded through the Owner's Representative, Contractor agrees that any instructions, reviews, advice, approvals, orders or directions that are rendered to the Contractor by the Owner's Representative are authorized and directed by the Owner.

2.4 Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for safety precautions and programs in connection with the Work and hereby agrees with respect thereto that the Owner and Owner's Representative will not be responsible thereof or have control or charge thereof. Contractor shall be responsible to Owner for the acts and omissions of its agents or employees, subcontractors, suppliers, any of their agents or employees, or any other persons performing any of the Work. Contractor further agrees that it shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner's Representative in its administration of the Contract or by tests, inspections or approvals required or performed by persons other than Contractor.

2.5 Contractor shall employ the services of qualified design professionals, to include architects, engineers, surveyors and other experts licensed to practice in the State of New Jersey, to provide the design services indicated in the design and construction phases, including but not limited to construction drawings, plans and specifications. Design professionals shall be experts in their field and shall exercise the highest level of care and professionalism. Design professionals shall perform

all services in a manner that protects public welfare and holds the safety of life paramount. All instruments and products produced by the design professionals shall bear the seal and signature of the professional performing the work.

- 2.6 Contractor's Architect/Engineer shall review and affirm all studies, designs, plans and specifications included in the Contract Documents and, during all subsequent phases of design, and construction, shall provide information about the existing site, including its current condition and actual construction and systems, and about the suitability of the site, foundations, structures, systems and materials-selected for installation and construction of the project.

### **ARTICLE 3**

#### **THE WORK OF THIS CONTRACT**

- 3.1 The "Project" is the total design and construction for which the Contractor is responsible under this Agreement, including all professional design services and all labor, materials and equipment used or incorporated in such design and construction.
- 3.2 The "Work" comprises the complete final design, construction documents, construction and services required to complete the construction designed to produce the Project and includes labor and services necessary to produce such construction, and materials and equipment incorporated or to be incorporated in such construction, as well as any other labor, services, materials or equipment necessary to fulfill Contractor's obligations under this Agreement.
- 3.3 The drawings, specifications, other documents, and data furnished by the Contractor are instruments of service and shall become the property of the Owner.
- 3.4 Owner hereby hires the Contractor to design and to renovate the MSP area and provide necessary related equipment and systems at the University Hospital, Newark, New Jersey ("Project"), according to plans and specifications to be prepared by a qualified Professional Architect/Engineer firm and/or team,

licensed in appropriate disciplines to practice in the State of New Jersey, that is retained by the Contractor and that will function as a subcontractor to the Contractor. Contractor agrees that the Owner shall have the right to approve the selection of the Architect/Engineer. Contractor agrees that the terms and conditions of this Agreement shall be included in all contracts between the Contractor and his Subcontractors, including the Agreement between the Contractor and Architect/Engineer.

- 3.5 The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others. The Work shall include the following alternates:

NONE

- 3.6 Design and construction document drawings shall be developed utilizing AutoCAD Version 2016 or later. Specifications shall be developed in current CSI formats utilizing AIA MasterSpec Products and Documents or other format acceptable to Owner, procured and paid for by the Contractor.
- 3.7 The Contractor shall be responsible to the Owner for the acts and omissions of the Contractor's employees, subcontractors and parties in privity of contract with the Contractor to perform a portion of the Work, including their agents and employees.

## ARTICLE 4

### **Design Phase**

#### 4.1 Preliminary Design Development Phase

- 4.1.1 The Contractor's Architect/Engineer shall review the Schematic Design (RFP) Documents furnished by the Owner to ascertain and determine the requirements of the Project and shall confirm such requirements with the Owner and Contractor. The Architect/Engineer shall prepare and submit a certified statement to the Owner and Contractor stating that the Architect/Engineer has reviewed the Schematic Drawings, Design Narrative and Specifications, and visually inspected the site so that the Architect/Engineer is satisfied that nothing exists that could adversely affect the design and construction cost of the Project.
- 4.1.2 Based on the confirmed Project requirements, Architect/Engineer shall work with Owner and Contractor to prepare Preliminary Design documents as necessary to develop an approved solution to meet the Project requirements of the Owner. The documents shall consist of drawings, specifications and other documents illustrating the scale and relationship of the design components including adjacencies, circulation, uses of space, general arrangements, capacity and performance for approval by the Contractor and Owner.
- 4.1.3 The Architect/Engineer, shall physically verify critical dimensions and other information and existing conditions pertaining to any existing structure or site.
- 4.1.4 The Architect/Engineer, shall obtain written verification from the appropriate authorities that utility facilities exist and can service the Project. The Architect/Engineer shall forward such written verification or report availability concerns to the Contractor and Owner.
- 4.1.5 The Preliminary Design Documents shall be completed within sixty (60) Days from execution of this Agreement.
- 4.1.6 The Architect/Engineer shall document the applicable requirements necessary for the various Project functions or

operations, such as those for existing and projected personnel, equipment, operating procedures, security criteria and communications relationships.

- 4.1.7 The Architect/Engineer shall provide services for the design and selection of systems identification graphics and signage in accordance with Owner's standards.
- 4.1.8 The Architect/Engineer shall identify any existing conditions that will affect the work including requirements for selective demolition, hazards, hazardous materials or suspect hazardous materials that may require further survey or testing by the Owner to determine abatement requirements.
- 4.1.9 The Architect/Engineer shall perform any necessary analysis and studies, including affirmation of those included as part of the RFP Schematic Design, any additional studies specified in the RFP Schematic Design, and any others required to perform the work or comply with governing regulations.
- 4.1.10 The Contractor and Architect/Engineer shall provide a preliminary project schedule that includes but is not limited to all design and construction document submissions, long lead equipment items with necessary delivery dates, permit approvals, construction, start-up, testing, commissioning, beneficial use, final completion and other project milestones.. Contractor acknowledges that University Hospital is a 24/7 operation and that all services, construction and testing will be coordinated with the University Hospital personnel to minimize shut down of or disruption of services to any operation, including electrical service.

#### 4.2 Final Design Document Phase

- 4.2.1 Based on the Owner approved Preliminary Design Documents, the Architect/Engineer shall work with the Owner and Contractor and shall develop the Final Design Documents as necessary to provide an approved solution to meet the Project program and design requirements of the Owner.



- 4.2.2 The documents shall consist of drawings, specifications and other documents illustrating the scale and relationship of the design components, including adjacencies, circulation, uses of space, general arrangements, capacities and performance, for approval by the Contractor and Owner.
- 4.2.3 The Final Design Documents Phase shall be completed within thirty (30) Days of commencement of services on this phase.
- 4.2.4 The Final Design Documents shall consist of drawings and other documents to fix and describe the size and character of the entire Project as to site, civil, architectural, structural, mechanical, fire protection and electrical systems, required for the complete design documentation of the Project. The Final Design Documents shall be suitable for review, evaluation and development into Construction Documents, including all necessary federal, state and local approvals. All designs and equipment shall be sufficiently defined and graphically presented so that major equipment and long lead items can be procured for any necessary engineering and incorporation into construction documents. The Final Design Documents shall include submittal of preliminary shop drawings for major equipment and systems, to include make, model, vendor and product data with sufficient information to demonstrate general size, arrangement, duty, performance, features, options, qualities and other characteristics. Major equipment and systems shall include but not limited to generators, switchgear, equipment enclosures and fueling systems.
- 4.2.5 Architect/Engineer shall provide Owner with a complete code analysis for the Project, including issues relevant to compliance. The Architect/Engineer shall verify Project code and other regulatory requirements with the New Jersey Department of Community Affairs, New Jersey Department of Environmental Protection and any other governmental authority having jurisdiction over the Project. After such verification, Architect/Engineer shall present all required code compliance issues and upgrades to Owner, with Architect/Engineer's

recommendations, for Owner's review and consideration. Owner shall determine if any deferrable code compliance items shall be included as part of the Project. Architect/Engineer shall address and incorporate in the design all required code compliance items and any Owner approved upgrades.

4.2.6 Architect/Engineer shall provide the Final Design Documents and Project Schedule to the Owner and Contractor in the form specified by the Owner. The Architect/Engineer shall review the Final Design Documents with the Contractor and Owner for Owner's acceptance.

#### 4.3 Construction Documents Phase

4.3.1 Based upon approved Final Design Documents, the Architect/Engineer shall work with the Owner and Contractor and shall provide the construction document services, including civil, architectural, structural, mechanical, electrical, fire protection and other design services, as required to prepare Construction Documents. The Construction Documents Phase shall be completed within ninety (90) Days of commencement of services on this phase.

4.3.2 Upon acceptance of the Final Design Documents the Contractor shall initiate the procurement of major equipment as necessary to be considered in the Construction Document Phase and/or may be necessary to maintain schedule. Procurement of any such equipment by the Contractor shall include final submission of fully engineered shop drawings for review and acceptance by the Owner prior to any release for manufacture or fabrication.

4.3.3 The Architect/Engineer shall prepare Construction Documents as may be necessary to obtain approval and permits for construction by authorities having jurisdiction at the appropriate time during the Construction Document Phase. Contractor shall be responsible for submitting all such applications, and securing all such required permits. Contractor shall be responsible for all associated fees for securing required permits.

- 4.3.4 The Construction Documents shall consist of Final Drawings, Specifications and other associated documents that may include shop drawings and product data and shall set forth in detail the requirements for the construction of the Project ("Work") and the Work required for the phasing of construction for the structural, mechanical, plumbing, fire protection and electrical systems, equipment, site work and all other elements required for the completion of the Project. The Construction Documents shall also detail the requirements to comply with all governmental authorities having jurisdiction over the Project, as well as with the requirements of the National Fire Protection Association (NFPA) and the Factory Mutual Insurance Company loss prevention codes and standards so as to provide a fully functional, code complaint Project, and shall further comply with all requirements of the RFP Schematic Design Requirements, Design Narrative and Specifications.
- 4.3.5 The Construction Documents shall be submitted to the Owner for Owner's approval and shall include, but not be limited to: Site logistic Plans, including locations for cranes and hoists, Contractor parking, waste containers, construction trailers and staging areas; Construction Phasing plans; Design data, analyses, Specifications and design calculations which set forth the requirements for all equipment characteristics, installation and workmanship, and which shall follow the CSI format, and other documents detailing the requirements for fabrication, procurement, shipment, delivery and installation of all equipment, and systems. Contractor shall provide schedules and a submittal log identifying items for which shop drawings and/or samples are to be submitted by the Contractor.
- 4.3.6 The Construction Document Phase will consist of 50% and 90% complete submissions for Owner review. When instructed by the Owner, the Architect/Engineer shall proceed with the completion of the Construction Documents. When the Construction Documents are one hundred percent (100%) complete, Architect/Engineer shall provide one (1) set of sealed and signed, reproducible documents

to the Contractor and one (1) set sealed and signed reproducible documents to the Owner. In addition, the Architect/Engineer shall supply the Owner with a compact disk containing computer files of any work done on a CADD system in a format compatible with AUTOCAD Version 2016 and later, with a hard copy listing of all files and their contents and a diskette containing all specifications produced utilizing word processing software at no additional cost to Owner. Architect/Engineer shall provide the Owner any 3-D or BIM Models developed for Construction Documents.

## **ARTICLE 5**

### **Construction Phase**

- 5.1 The Construction Phase will commence with completion of the Construction Documents and acceptance by the Owner and will terminate when the final Certificate for Payment is paid by the Owner.
- 5.2 The Contractor shall provide administration of the Construction Contract and shall perform all of the duties and obligations as set forth herein and in the General Conditions of the Contract for Construction, using the services of the Architect/Engineer as indicated and required. The term Contractor as used herein shall mean the Design-Build Contractor for construction, procurement or installation for the Work. The term Contractor means the Contractor or the Contractor's authorized representative. The term Architect/Engineer shall mean Design Professionals that may include Architects, Engineers and other individuals with expertise that are contracted or employed by the Design-Build Contractor.
- 5.3 The Architect/Engineer may consult with the Owner's Representative, if requested by Contractor, before issuing instructions to Contractors.
- 5.4 The Architect/Engineer and those consultants engaged by the Architect/Engineer shall confer with the Contractor as often as may be required in connection with the services to be rendered under this Agreement.

- 5.5 The Architect/Engineer shall advise the Contractor of all the Architect/Engineer's instructions and intentions through interpretations of Construction Documents in conferences and/or written communications.
- 5.6 The Architect/Engineer shall be responsible for assisting the Contractor with administering any change order process. The Architect/Engineer shall evaluate and report on Construction Document changes, Change Orders, Construction Change Directives or any supplementary work initiated after commencement of the Construction phase.
- 5.7 The Architect/Engineer and its consultants shall have access to the Work at all times, wherever it is in preparation or progress, and shall make frequent visits to the Site to maintain familiarity, by observation or inspection, with the conditions, progress, quantity and quality of the Work to determine if the Work is proceeding in accordance with the Construction Documents and Project Schedule. On the basis of on-site observations and inspections, the Architect/Engineer and its consultants shall guard the Owner and Contractor against errors, omissions, defects and deficiencies in the work, but this shall not make the Architect/Engineer or its consultants responsible for the Contractor's construction means, methods, techniques, sequences or procedures, safety precautions and programs. The Architect/Engineer shall forward significant comments resulting from site visits to the Owner for appropriate action.
- 5.8 At the request of the Contractor, the Architect/Engineer shall evaluate and make specific written recommendations on all claims and change order requests of the Contractor relating to the Architect/Engineer's design, the execution and progress of the Work and on all matters or questions related thereto.
- 5.9 The Architect/Engineer shall be the initial interpreter of the requirements of the Construction Documents and the judge of the performance thereunder by the Contractor.
- 5.10 After the start of construction the Architect/Engineer shall revise the Construction Documents to incorporate bulletin

information issued after the construction documents were complete. The revisions shall be identified and the Construction Documents shall be dated to reflect their revisions.

5.11 The Architect/Engineer shall advise the Owner and Contractor of work which the Architect/Engineer finds does not conform to the Construction Documents.

5.12 The Contractor shall conduct regular and special job site meetings with contractors and other involved parties and report on and make recommendations relative to the progress of the Work. Regular job meetings shall be held at least once every two weeks or more frequently if required by the Owner or by job progress. Minutes of each meeting shall be prepared by the Contractor and distributed to Subcontractors and Owner's Representative within five (5) Days after each meeting.

5.13 The Architect/Engineer shall promptly review and approve shop drawings, coordination drawings, samples, and other submissions of the Contractor for conformity with the design intent of the Project, contract requirements and for compliance with the Construction Documents so as to avoid unreasonable delay in the progress of the Project and shall identify what changes if any are needed to bring them into compliance. The Architect/Engineer shall also promptly render interpretations of the Construction Documents, drawings and specifications in order that the intent and meaning thereof shall be faithfully carried out and understood by the Contractor. Submittals shall include shop drawings, coordination drawings, product data, plans, test reports and similar information as related to all construction, installed equipment and installed systems, sufficiently demonstrating compliance with the Construction Documents.

5.14 The Architect/Engineer shall conduct inspections in conjunction with the Contractor and Owner to determine the dates of Substantial Completion and Final Completion of the Project. The Architect/Engineer shall prepare and issue the "punch list" of items to be completed within three (3) Days of the inspection date.

- 5.15 The Architect/Engineer shall receive any written guarantees and other closeout documents from the Contractor, and the Architect/Engineer shall review all such documents.
- 5.16 The Architect/Engineer shall provide assistance to the Contractor in the start-up, testing, testing under load, adjusting or balancing of equipment or systems, in the preparation of operation and maintenance manuals, and in the training of Owner personnel for operation and maintenance functions, unless such services are included in the contracts of others as requested by Contractor and approved by the Owner.
- 5.17 Upon completion of the Project, the Architect/Engineer shall review the marked-up Record Drawings redline prints of Construction Documents, as furnished to it by the Contractor, showing the locations, elevations and sizes of all Work as actually built and installed. Within thirty (30) days of Substantial Completion, the Architect/Engineer shall make any required corrections to these Construction Documents and shall provide Owner with one (1) complete set of Project record drawings, complete with addenda and change order documentation. The drawings are to be CADD generated. Engineer shall provide electronic copies of all drawing files to Owner on compact disk, with a hard copy list of file names and content description. Files are to be submitted in the "DWG" format compatible with AUTOCAD 2016 and later, or in the "DXF" format if the DWG" format is not possible.
- 5.18 The Architect/Engineer may be requested to coordinate the schedules for delivery and installation of the Work, but shall not be responsible for any malfeasance, neglect or failure of Contractor or suppliers to meet their schedules for completion or to perform their respective duties and responsibilities.

**ARTICLE 6**

**Project Close-Out Phase**

- 6.1 The Architect/Engineer shall perform the post-construction services so as to administer the closing out of the Construction as requested by the Contractor. The Architect/Engineer shall obtain from the Contractor all required close-out documents including, but not limited to: warranties; guarantees; waivers and releases of liens; general release; affidavit of payment of all sums owed and settlement of all claims to all vendors, material suppliers and sub-Contractors; operating and maintenance manuals; spare parts and attic stock; and manufacturers' warranties and literature that will be needed by the Owner to properly operate and maintain the completed Project. All of this material shall be reviewed and approved by the Architect/Engineer for completeness, accuracy and Contract Document compliance and shall be transmitted to Owner before the Final Application for Payment.
- 6.2 The Contractor and Architect/Engineer shall act in a prompt manner so as to complete the Project close-out phase within sixty (60) calendar days or as otherwise agreed by Owner.
- 6.3 The Architect/Engineer's responsibilities under this Agreement continue through the Contractor(s)' one year guarantee period and the Architect/Engineer shall prepare, review and approve the corrective action required to correct any defects discovered during the Contractor(s)' one year guarantee period, at no additional expense to the Owner.

**ARTICLE 7**

**DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

- 7.1 Time is of the essence. The date of commencement is the date from which the Contract Time of Subparagraph 7.2 is measured and shall be the date of this Agreement, as first written above.
- 7.2 The Contractor shall achieve Substantial Completion of the entire Work not later than Six Hundred Seventy (670) calendar days from



the date of commencement, subject to adjustments of this Contract Time as provided in the Contract Documents. Unless the Owner otherwise agrees in writing, the Contractor shall achieve final completion of the entire Work not more than Sixty (60) calendar days from the date of Substantial Completion.

7.3 The Contractor shall commence the Work on the date of commencement and shall diligently and continuously prosecute and complete the Work, including commissioning, and shall coordinate the Work with the other Work being performed on the Project, in accordance with procedures identified by the Owner and in accordance with the project schedule, any revisions to the project schedule, and any other scheduling requirements identified in the Contract Documents and within the time period specified in this Agreement, so as not to delay, impede, obstruct, hinder or interfere with the commencement, progress or completion of the whole or any part of the Work or other work on the Project.

7.4 The Contractor shall participate, cooperate and develop the project schedule providing information for the scheduling of the times and sequence of operations required for its Work to meet the Owner's overall completion schedule requirements, shall continuously monitor the project schedule so as to be fully familiar with the timing, phasing and sequence of operations of the Work, and shall execute the Work in accordance with the requirements of the project schedule, including any revisions thereto, so that the Work is fully completed within the time period specified in this Agreement.

## **ARTICLE 8**

### **CONTRACT SUM**

8.1 The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract, including the alternates, if any, listed in paragraph 3.5, the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) ("Contract Sum").

- 8.2 The Contract Sum shall include all costs necessary for the proper performance of the Work which shall include, but is not limited to the following: all labor costs, including wages, benefits, taxes, insurance; all subcontract costs; all cost of materials and equipment incorporated in the Work, including transportation and storage; all cost of other material and equipment used on the site, including transportation, installation, dismantling, removal, renting, temporary facilities, machinery equipment and hand tools; removal of debris, utilities, communications costs; insurance; bonds; taxes; permits and licenses; testing; salaries and compensation for supervision; expenses of offices; overhead; and profit.
- 8.3 The Owner is exempt from certain taxes and will provide to the Contractor evidence of such exemption for the Contractor's use in purchasing materials and equipment for this Project.
- 8.4 The amounts agreed to for unit prices and labor rates, if any, for additional work items that are not included in the Contract Sum, but that may be included as part of a Change Order in accordance with Article 7 of the General Conditions are listed in Exhibit A attached and made a part hereof.
- 8.5 Adjustments to the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Subparagraph 7.3.3 of the General Conditions.

## **ARTICLE 9**

### **SUBCONTRACTS AND OTHER AGREEMENTS**

- 9.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontract or by other appropriate agreement with the Contractor. The Contractor, prior to entering into agreements with specific Subcontractors, architects, engineers, surveyors, consultants or suppliers, shall deliver to the Owner the names of the proposed Subcontractors or suppliers. The Owner

will then determine, with the advice of the Contractor and subject to the reasonable objection of the Owner's Representative, if the Subcontractor or supplier is acceptable; provided, however, that Contractor shall not be required to contract with anyone to whom the Contractor has a reasonable objection.

- 9.2 Contractor shall be fully responsible to the Owner for the acts and omissions of its Subcontractors and all persons or entities directly or indirectly employed by such Subcontractors, equally to the extent that Contractor is responsible for the acts and omissions of persons and entities employed directly or indirectly by Contractor.

#### **ARTICLE 10**

##### **ACCOUNTING RECORDS**

- 10.1 The Owner reserves the right to review and audit the records of Contractor in connection with all matters related to this Contract at any time during the term of this Contract and for ten (10) years thereafter. If any unsubstantiated or over payments are discovered as a result of such audit, Contractor shall be notified by Owner in writing and Contractor agrees to repay such unsubstantiated or over payment(s) as provided in subparagraph 13.16.2.5 of the General Conditions.
- 10.2 The Contractor shall keep full and detailed accounts and shall exercise such controls as may be necessary for proper financial management under the Contract Documents and said accounting and control systems shall be satisfactory to Owner. Contractor shall also maintain, and permit access to and examination of, all records relating to any matter that pertains to the Contract Documents in accordance with paragraph 13.16.2.1 of the General Conditions.

**ARTICLE 11**

**PROGRESS PAYMENTS**

- 11.1 Based upon Applications for Payment submitted by the Contractor to the Owner or Owner's Representative and Certificates for Payment issued by the Owner or Owner's Representative, the Owner shall make progress payments on account of the Contract Sum, less retainage of ten percent (10%), to the Contractor, as provided in Article 9 of the General Conditions.

**ARTICLE 12**

**FINAL PAYMENT**

- 12.1 For purposes of this Agreement, final payment shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor, except for the Contractor's responsibility to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and other documents required under Article 9 of the General Conditions have been submitted by the Contractor to the Owner or Owner's Representative; and (3) a final Certificate for Payment has been issued by the Owner or Owner's Representative in accordance with subparagraph 9.10 of the General Conditions. Final payment shall be made by the Owner not more than 45 days after issuance of the Owner's or Owner's Representative's final Certificate for Payment.

**ARTICLE 13**

**TERMINATION OR SUSPENSION**

- 13.1 The Contract may be terminated by the Contractor for cause as provided in Article 14 of the General Conditions.
- 13.2 The Contract may be terminated by the Owner for cause or convenience as provided in Article 14 of the General Conditions.

13.3 The Work may be suspended, delayed or interrupted by the Owner, with or without cause, as provided in Article 14 of the General Conditions.

**ARTICLE 14**

**ENUMERATION OF CONTRACT DOCUMENTS**

14.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

14.1.1 The Agreement is this executed Agreement Between Owner and Contractor for a Lump Sum Design Build Project, originally presented as Attachment A of RFP UH-P24-011.

14.1.2 The Request for Proposal is the Request for Proposal, UH-P24-011, ("RFP"), Dated: \_\_\_\_\_ and Attachments \_\_\_\_\_.

14.1.3 The Contractor's Proposal is the Contractor's response to the RFP dated \_\_\_\_\_, comprised of \_\_\_\_\_ pages.

14.1.4 The General Conditions are the General Conditions of the Contract for Construction, originally presented as Attachment A of RFP UH-P24-011.

14.1.5 The Supplementary and other Conditions of the Contract are those contained in the RFP and are as follows:

| <b>Document</b> | <b>Title</b> | <b>Pages</b> |
|-----------------|--------------|--------------|
| None            |              |              |

14.1.6 The Specifications are those contained in the RFP and its attachments, and are as follows:

14.6.1.1 TBD.

14.6.1.2 UH-P24-011, Attachment D.

14.6.1.3 UH-P24-011, Attachment E.

14.6.1.4 UH-P24-011, Attachment F.

14.6.1.5 UH-P24-011, Attachment G

14.1.7 UH-P24-011, Attachment H.

14.1.8 The Addenda, if any, are as follows:

| <b>Number</b> | <b>Date</b> | <b>Pages</b> |
|---------------|-------------|--------------|
|---------------|-------------|--------------|

Portions of Addenda relating to bidding requirements are part of the Contract Documents.

14.1.10 Other Documents, if any, forming part of the Contract Documents are as follows:

| <b>Number</b> | <b>Date</b> | <b>Pages</b> |
|---------------|-------------|--------------|
| None          |             |              |

**ARTICLE 15**

**MISCELLANEOUS PROVISIONS**

15.1 Definitions: Capitalized terms used, but not defined herein, shall have the meaning ascribed to such terms in the General Conditions.

15.2 Contract Document References: Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

- 15.3 Interest: Payments due and unpaid under the Contract shall bear no interest from the date payment is due.
- 15.4 Governing Law: The Contract Documents shall be governed by and construed in accordance with the Constitution and laws of the State of New Jersey and any claims against the Owner shall be subject to the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. and the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and shall be venued only in the state of New Jersey, County of Essex.
- 15.5 Proper Fit Notwithstanding the dimensions of the Drawings, Specifications, and other Contract Documents, it shall be the obligation and responsibility of the Contractor to take such measurements as will insure the proper matching and fitting of the Work covered by the Contract Documents with contiguous Work.
- 15.6 The Contractor shall prepare and submit to the Owner or Owner's Representative such coordination and shop drawings as may be necessary to describe completely the details and construction of the Work. Acceptance of such shop drawing by the Owner or Owner's Representative shall not relieve the Contractor of its obligation to perform the Work in strict accordance with the Contract Documents and Governing Regulations, nor of its responsibility for the proper matching and fitting of the Work with contiguous Work and the coordination of the Work with other Work existing or being performed on the site, which obligation and responsibility shall continue until completion of the Work.
- 15.7 Should the proper and accurate performance of the Work hereunder depend upon the proper and accurate performance of other Work not covered by the Contract Documents, the Contractor shall carefully examine such other Work to determine whether it is in fit, ready and suitable condition for the proper and accurate performance of the Work hereunder, use all means necessary to discover any defects in such Work, and before proceeding with the Work, report promptly any such improper conditions and defects to the Owner and the Owner's Representative in writing

and allow the Owner a reasonable time to have such improper conditions and defects remedied.

15.8 Insurance Contractor shall provide insurance in accordance with Article 11 of the General Conditions.

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

**OWNER:**  
FOR UNIVERSITY HOSPITAL:

**CONTRACTOR:**

\_\_\_\_\_  
Edward Jimenez  
President & CEO  
University Hospital

\_\_\_\_\_  
Date

Jbj 1/29/24

\_\_\_\_\_  
Date