

Virginia Tech

Supplemental General Conditions to the General Conditions of the Construction Contract (Design-Bid-Build)

September 1, 2022

The Virginia Tech General Conditions of the Construction, Form HECO-7 (Version 1 dated 04/12/2021), are modified and supplemented as hereinafter described:

1. DEFINITIONS

Delete the definitions listed below and replace with the following:

Change Order: A document (Form CO-11) issued on or after the effective date of the Contract Between Owner and Contractor which is agreed to by the Contractor and approved by the Owner, and which authorizes an addition, deletion or revision in the Work, including any adjustment in the Contract Price and/or the Contract Completion Date. The term Change Order shall also include written orders to proceed issued pursuant to Section 38 (a) (3). A Change Order, once signed by all parties, is incorporated into and becomes a part of the Contract.

Contract: The Contract Between Owner and Contractor, hereinafter referred to as the Contract.

Contract Documents: The Contract between Owner and Contractor signed by the Owner and the Contractor and any documents expressly incorporated therein. Such incorporated documents customarily include the bid submitted by the Contractor, these General Conditions, any Supplemental General Conditions, any Special Conditions, the plans and the specifications, and all modifications, including addenda and subsequent Change Orders.

Insert the following definitions:

Limited Renovation: Renovations that do not involve structural work (including, but not limited to, foundations, supports, beams, exterior roof supports, load bearing walls, and roofing structures) and that do not involve Hot Work (as defined by the Virginia Statewide Fire Prevention Code) with the exception of brazing, soldering, and grinding.

Major Renovation: Renovations that do not meet the definition of Limited Renovation.

2. CONTRACT DOCUMENTS

- (a) The Contract Between Owner and Contractor, the Workers' Compensation Certificate of Coverage (CO-9a), the Standard Performance Bond (CO-10), the Standard Labor and Material Payment Bond (CO-10.1), the Schedule of Values and Certificate for Payment (CO-12), the Affidavit of Payments of Claims (CO-13), the Contractor's Certificate of Substantial Completion (*HECO-13.2a), and the Contractor's Certificate of Completion (*HECO-13.2) issued by the Commonwealth of Virginia (* HECO-13.2a and HECO-13.2 are issued by the University Building Official) in its Construction and Professional Services Manual are forms incorporated in these General Conditions by reference and are made a part hereof to the same extent as though fully set forth herein. They must be used by the Contractor for their respective purposes.

3. LAWS AND REGULATIONS

- (e) Building Permit: Because this Project is on university property, codes or zoning ordinances of local political subdivisions do not apply to Work on the property. The Virginia Uniform Statewide Building Code applies to the Work and is administered by the University Building Official for University owned Buildings. The Building Permit will be obtained and paid for by the Owner. All other permits, local license fees, business fees, taxes, or similar assessments imposed by the appropriate political subdivision shall be obtained and paid for by the Contractor. See Section 25 for utility connection fees and services.

11. CONSTRUCTION MANAGER'S AND SUBCONTRACTOR'S INSURANCE

Delete and replace Section 11.b and 11.c.1 with the following:

- (b) Unless otherwise provided, the Contractor shall procure and maintain, as required herein, the following insurance coverages:
1. Workers' Compensation and Employer's Liability Insurance to cover all employees engaged in the Work of a type and in an amount to meet all Commonwealth of Virginia statutory requirements and regulations to provide all benefits to which employees may be entitled, with limits no less than \$1,000,000 bodily injury by accident or disease, each employee. Where applicable, coverage shall be extended to cover any claims under the United States Longshoreman's Act and Harbor Workers Act and Jones Act as may be appropriate for the work.
 2. Comprehensive General Liability insurance, including coverage for Broad Form Contractual, Premises/Operations, Product and Completed Operations, Independent Contractor's Liability, and Personal Injury Liability, with limits of at least \$1,000,000 per occurrence and \$2,000,000 aggregate, applicable on a per-project basis. The policy shall not exclude or limit the amount of coverage for the Work of the Project or for explosion, collapse, underground operations, mold, or exterior insulation and finish system ("EIFS").

3. Automobile Liability Insurance with a limit of not less than \$1 million combined single limit for bodily injury and property damage per occurrence, covering all owned, non-owned, hired and borrowed vehicles, whether on-Site or off-Site.
 4. Contractor or the Asbestos Subcontractor shall provide occurrence-based liability insurance with asbestos coverages in an amount not less than \$1,000,000, and shall cover completed operations. The following shall be named as additional insureds on this policy: the Commonwealth of Virginia, its officers, employees and agents; the A/E (if not the Asbestos Project Designer); and the Contractor (where the asbestos work is being performed by the Asbestos Subcontractor).
 5. Professional Liability, including design build errors and omissions and completed operations, with limits not less than \$1,000,000 per occurrence or claim.
- (c) Unless otherwise specified, Contractor shall ensure that all insurance required by Subsection (b) above contains the following provisions:
1. With the exception of Workers' Compensation and professional liability insurance, the Commonwealth of Virginia, the Owner, and their officers, employees and agents shall be named as additional insureds on all policies. The additional insureds as stated for the asbestos coverage shall be as stated in Section 11(b)(4).

REMAINING PORTION OF HECO-7 SECTION 11 IS APPLICABLE AND REMAINS UNCHANGED

12. "ALL-RISK" BUILDER'S RISK INSURANCE

Delete and replace Section 12.a, 12.b and 12.c with the following:

- (a) Unless otherwise provided, the Contractor shall procure and maintain, at its cost, all-risk Builder's Risk insurance with minimum coverage and limits as follows:
1. **New Construction, Addition, or Major Renovation:** When the work is new construction, addition or major renovation, the Contractor shall maintain "all-risk" Builder's Risk insurance for the Work and the entire structure or structures, if any, on which the Work is to be done with a minimum limit of not less than the insurable value of the structure(s) plus one hundred percent (100%) of the Contract Price and the value of all Change Orders, to represent the total value of the structure(s) and the Work on a replacement cost basis.
 2. **Limited Renovation:** When the work is limited renovation to an existing structure, the Contractor shall maintain "all risk" Builder's Risk insurance in an amount equal to one hundred percent (100%) of the Contract Price and the value of all Change Orders, to represent the total value of the Work on a replacement cost basis. The insurance must contain a Beneficial Occupancy Endorsement which enables Owner to occupy the facility during construction.

When the project is an addition with Limited Renovation to an existing structure, then the insurable value of the existing structure shall not be included.

- (b) Builder’s risk insurance shall be provided on an “all risk” or equivalent policy form and shall include, without limitation, insurance against all perils. The insurance shall cover the costs of debris removal, temporary buildings, legal requirements, and compensation for A/E services and Contractor services required following an insured loss. The insurance shall cover portions of the Work stored off-Site, Work in transit, and all materials, supplies, equipment, machinery, and fixtures that are or will be part of the Project. The policy shall include coverage for mold resulting from a covered peril, property in transit or temporary storage, equipment breakdown/course of construction, and soft costs within the aggregate or blanket limit of the of the policy. If not otherwise covered by the Builder’s Risk policy, Contractor also shall provide an installation floater to cover all equipment and materials intended for installation at the Project.

In the event the policy includes any coverages where the limit is less than the aggregate or blanket limit of the policy (sub limits), the coverage shall be no less than the stated minimum sub-limits for the following perils:

- Flood	\$2,000,000
- Earth Movement	\$2,000,000
- Debris Removal	\$1,000,000
- Extra or Expedited Expense	\$2,000,000
- Interior Water Damage	\$2,000,000
- Loss of Income/Extra Expenses	12 months
- Soft Costs	Blanket or Aggregate Limit/14-Day Waiting Period

The Certificate of Insurance provided to the Owner shall disclose all sub-limits, stating the peril and limit applying to each. In the event that the aggregate policy limit is less than the sub-limits identified above, coverage for all perils must be provided within the aggregate or blanket limit of the policy.

- (c) Builder’s risk insurance may include a deductible provision if the Owner so provides in the Supplemental General Conditions, in which case the Contractor will be liable for such deductible whenever a claim arises. Any loss payable under the Builder’s Risk insurance shall be payable to the Owner, in accordance with its interests, as they may appear, and then to any other persons insured thereunder.

Written evidence of this insurance and a copy of the policy shall be provided to the Owner no later than thirty (30) Days following the award of the Contract. The policy shall not be canceled, dropped, replaced, or materially changed without at least thirty (30) Days’ prior written Notice to and consent of the Owner.

13. TAXES, FEES AND ASSESSMENTS

The Contractor shall, without additional expense to the Owner, pay all applicable federal, state, and local taxes, fees and assessments except the taxes, fees and assessments on the real property comprising the Site of the project. If the University Building Official elects to have the local building official inspect the Work as provided by §36-98.1 of the Code of Virginia, the Owner shall pay the resulting fees to the local building official.

17. SUPERINTENDENCE BY CONTRACTOR

(a) The Contractor shall have a competent Superintendent, satisfactory to the Architect/Engineer and the Owner, on the Site at all times during the progress of the Work. The Superintendent shall be familiar with and be able to read and understand the plans and specifications, and be capable of communicating orally and in writing with the Owner's inspectors and the Contractor's workers. The Contractor shall be responsible for all construction means, methods, techniques, sequences and procedures, for coordinating all portions of the Work under the Contract except where otherwise specified in the Contract Documents, and for all safety and worker health programs and practices. The Contractor shall notify the Owner, in writing, of any proposed change in Superintendent, including the reason therefore, prior to making such change. Said notice shall be provided within forty-eight (48) hours of Contractor's knowledge regarding such change in Superintendent.

(b) The Contractor shall, at all times, enforce strict discipline and good order among the workers on the Project, and shall not employ on the Work, or contract with, any unfit person, anyone not skilled in the Work assigned to him, or anyone who will not work in harmony with those employed by the Contractor, the Subcontractors, the Owner or the Owner's separate contractors and their subcontractors.

(c) The Owner may, in writing, require the Contractor to remove from the Site any employee or Subcontractor's employee the Owner deems to be incompetent, careless, not working in harmony with others on the Site, or otherwise objectionable, but the Owner shall have no obligation to do so.

19. SCHEDULE

(a) The CPM schedule shall be developed using Primavera P6 software or other software as approved by the Owner.

36. PAYMENTS TO CONTRACTOR

(a) Unless otherwise provided in the Contract, the Owner will make partial payments to the Contractor on the basis of a duly certified and approved Schedule of Values and Certificate for Payment, Form CO-12, showing the estimate of the Work performed during the preceding calendar month or work period, as recommended by the Architect/Engineer. When evaluating the Contractor's Form CO-12, the

Architect/Engineer will consider the value of the Work in place, the value of approved and properly stored materials, the status of the Work on the critical path with regard to the Time for Completion, and the estimated value of the Work necessary to achieve Final Completion. To expedite the payment process, the Contractor is encouraged to submit a draft copy of his monthly pay application to the A/E and Owner for preliminary review prior to formally submitting the pay application in GC Pay. Once the draft copy is reviewed and returned, the Contractor shall submit the pay application to GC Pay after making any modifications to the estimates of work as noted by the A/E and/or Owner during their preliminary review. The submission date to GC Pay shall become the official receipt date of the pay application. The A/E and Owner shall then conduct a final review of the pay application in GC Pay and, if further modifications are deemed to be necessary, the Contractor shall make such modifications to the document and resubmit the pay application in GC Pay. The official receipt date shall then be reestablished as the date on which an approved pay application was submitted by the Contractor to GC Pay. In preparing estimates, the material delivered to the Site and preparatory Work done shall be taken into consideration, if properly documented as required by Section 20 of these General Conditions, or as may be required by the Architect/Engineer so that quantities may be verified. In addition to material delivered to the Site, material such as large pieces of equipment and items purchased specifically for the Project, but stored off the Site within the Commonwealth of Virginia, may be considered for payment, provided all of the following are accomplished prior to the submission of the monthly payment request in which payment for such materials is requested:

REMAINING PORTION OF FORM DGS-30-054 (CO-7) SECTION 36(a) IS APPLICABLE AND REMAINS UNCHANGED

- (h)** Unless there is a dispute about the compensation due to the Contractor, Defective Work, quality of the Work, compliance with the Contract Documents, completion itself, claims by the Owner, other matters in contention between the parties, or unless monies are withheld pursuant to the Comptroller's Debt Setoff Program, within thirty (30) days after the official receipt date of the pay application as defined in Paragraph (a) above, the Owner shall pay to the Contractor the amount approved by the Architect/Engineer, less all prior payments and advances whatsoever to or for the account of the Contractor. In the case of Final Payment, the completed Affidavit of payment of Claims (Form CO-13), the Certificate of Completion by the Contractor (Form HECO-13.2) and the Certificate of Completion by the Architect/Engineer (Form HECO-13.1) shall accompany the final Schedule of Values and Certificate for Payment (CO-12) which is forwarded to the Owner for payment. The date on which payment is due shall be referred to as the Payment Date. In the event of disputes, payment shall be mailed on or before the Payment Date for amounts and Work not in dispute, subject to any set offs claimed by the Owner; provided, however in instances where further appropriations are required by the General Assembly or where the issuance of further bonds is required, in which case, payment shall be made within thirty (30) days after the effective date of such appropriation or within thirty (30) days after the receipt of bond proceeds by the Owner. All prior estimates and payments including those relating

to extra Work may be corrected and adjusted in any payment and shall be corrected and adjusted in the Final Payment. In the event that any formal pay application (CO-12) by the Contractor to GC Pay contains a defect or impropriety, the Owner shall reject the pay application in GC Pay and notify the Contractor of any defect or impropriety which would prevent payment by the Payment Date, within ten (10) days after the official receipt date.

38. CHANGES IN THE WORK

- (a) Overhead and profit shall be equally and consistently applied to both additive and deductive changes in the Work (other than changes covered by unit prices) and shall be paid by applying the specified percentage markups only on the net cost of the changed Work (i.e. difference in cost between original and changed Work excluding overhead and profit). Said percentages for overhead and profit shall reasonably approximate the Contractor's overhead and profit, but shall not exceed the percentages for each category listed below:
- (1) If a Subcontractor does all or part of the changed Work, the Subcontractor's markup for overhead and profit on the Work it performs shall be a maximum of fifteen percent (15%). The Contractor's mark-up for overhead and profit on the Subcontractor's price shall be a maximum of ten percent (10%).
 - (2) If the Contractor does all or part of the changed Work, its markup for overhead and profit on the changed Work it performs shall be a maximum of fifteen percent (15%).
 - (3) If a Sub-subcontractor at any tier does all or part of the changed Work, the Sub-subcontractor's markup on that Work shall be a maximum of fifteen percent (15%). The markup for overhead and profit on a sub-subcontractor's Work by the Contractor and all intervening tiers of Subcontractors shall not exceed a total of ten percent (10%).
 - (4) Where Work is deleted from the Contract prior to commencement of that Work without substitution of other similar Work, one hundred percent (100%) of the Contract Price attributable to that Work shall be deducted from the Contract Price. However, in the event that material Submittals have been approved and orders placed for said materials, a lesser amount, but in no case less than eighty percent (80%) of the Contract Price attributable to that Work, shall be deducted from the Contract Price. The credit to the Owner for reduced premiums on labor and material bonds and performance bonds shall in all cases be one hundred percent (100%).

52. AUDIT OF CONTRACTOR RECORDS

The Contractor, Subcontractors, and Suppliers agree to retain all financial and non-financial books, records, electronic files and other documents relative to this project for a minimum of five (5) years after final payment. Virginia Tech, the Commonwealth of Virginia, and their

authorized agents shall have full access and the right to examine any of said materials at any time during the performance of this contract and the 5 year period following final payment.