

RESOLUTION APPROVING AMENDMENT AND MODIFICATION TO THE COMPREHENSIVE AGREEMENT FOR THE VT CARILION RESEARCH INSTITUTE BIOSCIENCES ADDITION IN ROANOKE, VIRGINIA IN ACCORDANCE WITH THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT (PPEA) OF 2002

WHEREAS, the Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA) grants responsible public entities the authority to create public-private partnerships for the development of a wide range of projects for public use if the public entity determines there is a need for the project and that the private involvement may provide the project to the public in a timely or cost-effective fashion; and

WHEREAS, a high-priority capital project was appropriated by the General Assembly Chapter 759/2016 under item 1.B with the title “Construct VT Carilion Research Institute Biosciences Addition”, commonly known as the “Health Sciences and Technology Expansion” project; and

WHEREAS, the Virginia Tech Board of Visitors at its September 11, 2017 meeting approved a Comprehensive Agreement (Agreement) with Carilion Clinic (Carilion) to construct the VT Carilion Research Institute Biosciences Addition at the Riverside Center in Roanoke, Virginia, as provided by the PPEA; and

WHEREAS, on September 11, 2017, the Virginia Tech Board of Visitors authorized the Vice President for Operations, his successors and/or assigns, to execute the Agreement forthwith; and

WHEREAS, on December 22, 2017, the Vice President for Operations executed the Agreement; and

WHEREAS, in accordance with the Virginia Tech Guidelines for Projects under the PPEA, any amendment to the Agreement must be approved by the Virginia Tech Board of Visitors; and

WHEREAS, Virginia Tech and Carilion desire to amend the Agreement and make certain other modifications to recognize an increase in the funding authorization by the Commonwealth of Virginia to complete two laboratory spaces within the project; and to modify the Agreement to align the project schedule.

WHEREAS, In an effort to mitigate cost overruns, Carilion has agreed to take one of the following actions: (i) require Skanska to execute and deliver a Corporate Guarantee of Performance; or (ii) require Skanska to leave the existing payment and performance bond in place; and

NOW, THEREFORE, BE IT RESOLVED that the Agreement with Carilion be hereby amended and modified as attached; and

BE IT FURTHER RESOLVED, that the Vice President for Operations, his successors and/or assigns, shall execute the Amendment to the Agreement in conformance with the terms set out herein.

RECOMMENDATION:

That the above resolution to amend and modify the Comprehensive Agreement with Carilion Clinic to construct the VT Carilion Research Institute Biosciences Addition at the Riverside Center in Roanoke, Virginia as provided by the PPEA and to authorize the Vice President for Operations, his successors and/or assigns, to execute the Amendment to the Comprehensive Agreement forthwith be approved.

November 26, 2018

**AMENDMENT TO
THE COMPREHENSIVE AGREEMENT**

This Amendment to the Comprehensive Agreement (“Amendment”) is made and entered into in accordance with the Virginia Public-Private Education Facilities and Infrastructure Act of 2002 (“PPEA”) and the enabling legislation in the Code of Virginia (Va. Code Ann. §56-575.1, et seq.) as of the ____ day of December, 2018 (the “Effective Date”), by and between Virginia Polytechnic Institute and State University, an agency of the Commonwealth of Virginia, (“Virginia Tech” or “University”), and Carilion Clinic (“Carilion” or the “Developer”), a nonprofit corporation incorporated in and authorized to do business in Virginia.

WHEREAS, University and Carilion are parties to that certain December 22, 2017, Comprehensive Agreement (the “Agreement”) which the parties desire to amend and to make certain other modifications thereto;

WHEREAS, the Commonwealth of Virginia increased the funding authorization to complete two laboratory spaces; and

WHEREAS, in an effort to mitigate cost overruns, Carilion has agreed to take one of the following actions: (i) require Skanska to execute and deliver a Corporate Guarantee of Performance; or (ii) require Skanska to leave the existing payment and performance bond in place.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants herein, the parties hereto agree as follows:

1. The following “*Definitions*” in Section 2 in the Agreement are hereby revised and replaced with the following:

(e) “Carilion’s Share” means the agreed fair market value of Carilion’s contribution of the Land to the Project in the amount of \$2,000,000, plus Carilion’s contribution of cash towards the part

of the TPC identified in Section 2 (x) as “Design, Construction & Other Costs” of the Project, in the amount of \$10,534,012, resulting in a total value of Carilion’s Share in the amount of \$12,534,012. In no event shall Carilion’s Share be increased without a Change Order to this Comprehensive Agreement executed by Carilion. Carilion is making no contribution to the cost of the portions of the TPC identified as Owner Contingency or Furnishings, Fixtures and Moveable Equipment (FF&E).

(p) “Firm Fixed Contract Price” or “FFCP” means that portion of Total Project Costs that Virginia Tech is obligated to pay Carilion under this Agreement. The FFCP as of the Effective Date is equal to \$73,039,000, which is the sum of (i) Virginia Tech’s contribution toward the Design, Construction and Other Costs of the Project in the amount of \$71,569,988 and (ii) \$1,470,000, being the amount of the Owner Contingency as set forth in Section 2 (x); provided, however, that any use of the Owner Contingency shall be reasonably agreed by Owner and Developer and unused Owner Contingency shall be credited from the FFCP. Except as hereinafter provided, Virginia Tech will procure, pay 100% of the cost of, deliver to the Project site, and install all of the Furnishings and Moveable Equipment (FF&E), estimated as of the Effective Date to equal the amount set forth in Section 2 (x), all of which costs are outside of the FFCP. Therefore, Carilion has no obligation with respect to the procurement, payment of the cost of, delivery or installation of such FF&E under this Comprehensive Agreement, except to the extent the Work expressly includes the same. As of the Effective Date, as provided in the Equipment Responsibility Matrix (**Exhibit C**) and in Section 8(c) below, the Work includes rough-in of the facility for the installation of items of FF&E as specified in **Exhibit C** and also the installation of the security system. The FFCP is subject to revision, as documented by Change Order. All prices agreed to by the Developer and Skanska and AECOM, including total Project pricing and any pricing of early release packages, shall be subject to Virginia Tech audit and subsequent Virginia Tech and Carilion approval. Under no circumstances will Virginia Tech make payments to Carilion in excess of the FFCP, as adjusted pursuant to this Agreement. In the event that the costs of the portion of the Project covered by the FFCP are less than the FFCP, the cost savings will be retained by or returned to Virginia Tech or applied to the Project, as provided by this Agreement.

(x) “Total Project Costs” or “TPC” means all costs incurred by the Project including design, construction, project management, construction inspections, auditing expenses, furnishings and equipment, and land acquisition. The amount of the Total Project Cost is estimated to equal the sum of the following:

Design, Construction & Other Costs	\$ 82,104,000
Furnishings, Fixtures and Moveable Equipment (FF&E)	\$ 6,122,000
Owner Contingency	\$ 1,470,000
<u>Land Acquisition</u>	<u>\$ 2,000,000</u>
Total Project Costs	\$ \$91,696,000

The TPC will be reviewed and modified as necessary (consistent with the requirements of Section 7(c)) at the following design stages and will be subject to Virginia Tech’s written approval:

Schematic Design
Preliminary Design (Design Development)
Working Drawings

Because the Project is subject to the Commonwealth of Virginia Pool funding process, the Total Project Costs will also be reviewed and approved by the Commonwealth of Virginia Bureau of Capital Outlay Management (BCOM) at the completion of Preliminary Design.

Should the Total Project Costs be revised as a result of Virginia Tech’s or BCOM’s foregoing reviews, the FF&E and the scope of the Project shall be modified accordingly by Change Order as further described in Section 8(b) below.

If the parties mutually agree to reduce the scope of the Project, pursuant to Section 8(b) below, in a manner that reduces the quality or quantity, or both, of the Carilion Premises (as defined in Section 37), then the parties agree to amend this Agreement to equitably reduce the cash portion of Carilion’s Share.

Of the Total Project Cost, Virginia Tech shall be responsible under this Agreement to pay Carilion the FF&E, as defined above. Virginia Tech will also pay for the above-referenced FF&E outside of the FF&E.

Carilion shall be responsible, without reimbursement from Virginia Tech, for Carilion's Share, as defined above, the cash portion thereof to be applied to the portion of the TPC identified as "Design, Construction and Other Costs" of the Project and the remainder of Carilion's Share in the form of its in-kind contribution of the Land to the Project.

2. "Section 5" is hereby revised and replaced with the following:

5. **Comprehensive Project Schedule**

Carilion shall, within thirty (30) days after execution of this Agreement, cause the Project Contractor to develop a comprehensive Project schedule to include the site design and development tasks, the design services, and the construction services as well as any additional related services that are requested by Virginia Tech. This schedule, in the form of a critical path method ("CPM") schedule, shall show all milestone dates, such as delivery dates of tasks and phases, completion of contemplated reviews by different agencies, response and resubmittal time for additional reviews as may be required, key meetings with Virginia Tech and others. The CPM schedule shall be in the time sealed precedence format and will identify total float and free float. The CPM will be aligned with the cost of each activity as indicated in the schedule of values. The parties agree that the Construction Contract will require the Project Contractor to achieve Substantial Completion by April 2, 2020 and to achieve Final Completion by May 4, 2020, which dates are subject to adjustment in accordance with this Agreement.

3. "Section 15" is hereby revised and replaced with the following:

15. **Payment Bonds, Performance Bonds, and Other Security.** To secure its performance of the portion of the Project to be covered by the Construction Contract, Carilion

shall take one of the following actions: (i) require Skanska to execute and deliver a Corporate Guarantee of Performance, in a form acceptable to Carilion and Virginia Tech, and after executed, it shall be incorporated herein as Exhibit G; or (ii) require Skanska to obtain a payment and performance bond from a surety authorized to do business in the Commonwealth of Virginia, in an amount equal to the guaranteed maximum price for the Work.

4. If Carilion takes action pursuant to Section 15 (i), “*Exhibit G*,” initially attached to the Agreement, shall be deleted in its entirety and replaced with “Revised Exhibit G.” If Carilion takes action pursuant to Section 15 (ii), then “*Exhibit G*” as initially attached shall remain in place.

5. “*Exhibit H*” initially attached to the Agreement is hereby deleted in its entirety and replaced with “Revised Exhibit H,” a copy of which is attached hereto and incorporated herein by this reference.

6. Except as amended and modified by this Amendment, the Agreement shall continue in full force and effect. The Agreement and this Amendment shall be construed as one and the same instrument.

7. This Amendment may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

8. This Amendment shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia.

Approved for Virginia Polytechnic Institute
and State University

By: _____

Approved for Carilion Clinic

By: _____