

TRUSTEES OF THE PUBLIC LIBRARY OF THE CITY OF BOSTON

Meeting of the Trustees Finance and Audit Committee

Monday, November 9, 2020 at 8:00 a.m.

Held virtually via Zoom: <https://boston-public-library.zoom.us/j/84141135173>

DRAFT MINUTES

A meeting of the Boston Public Library (“BPL”) Trustees Finance and Audit Committee (“Committee”) was held virtually via Zoom on Monday, November 9, 2020 at 8:00 a.m.

Present at the meeting: Committee Chair, Evelyn Arana-Ortiz and members, Zamawa Arenas, and President David Leonard. John Hailer and Jeff Hawkins were absent. Also present were BPL staff including Ellen Donaghey, Chief Financial Officer, Pamela Carver, Clerk of the Board, along with members of the public.

Ms. Arana-Ortiz called the meeting to order at 8:00 a.m. A roll call was taken and determined there was a quorum. The first matter of business was review and approval of Meeting Minutes from September 15, 2020. With no edits or comments, a motion was duly made, seconded and the meeting minutes of September 15, 2020 were unanimously approved.

Next, Ms. Donaghey reviewed the contracts for approval. She explained the metal staircase between a staff workroom space and the basement kitchen for the Catered Affair (“TCA”) in the McKim building was deteriorating and in need of repair. Pieces of concrete were visibly crumbling and posed a health and safety issue. She noted that since the TCA closed due to the pandemic it was the perfect time to do the repairs and would not require any future closures or cancellations. A motion was duly made, seconded, and,

VOTED: “that, the Trustees Finance and Audit Committee of the City of Boston approve and award the contract for the project to replace the existing metal stairs in the Catered Affair kitchen in the McKim Building of the Boston Public Library to Anvil Steel Engineering, Inc., 256 Prospect Hill Street, Taunton, MA 02780, in the amount of sixty eight thousand, five hundred dollars and zero cents (\$68,500.00).”

Next, Ms. Donaghey explained the contract for snow plowing services was with a company the BPL has used for nearly twenty years. The BPL planned to bid the contract in the spring but was not feasible due to COVID-19. They committed to bid the contract next year. She explained the requested amount of fifty thousand dollars \$50,000 remained the same as last year. There were no questions or comments. A motion was duly made, seconded, and,

VOTED: “that, the Trustees Finance and Audit Committee of the City of Boston approve and award the contract for the Snowplowing and Sanding Services for specified neighborhood Branches of the Boston Public Library to Anzalone Construction, 20 Longmeadow Road, Arlington, MA 02474, in the amount of fifty thousand dollars and zero cents (\$50,000.00).”

Mr. Arana-Ortiz asked for any new business and public comment, for which there was none. With no further comments, the meeting adjourned at 8:11 a.m.

Respectfully submitted,

Pamela R. Carver, Clerk of the Board

TRUSTEES OF THE PUBLIC LIBRARY OF THE CITY OF BOSTON
STANDARD CONTRACT
GENERAL CONDITIONS

ARTICLE 1: DEFINITION OF TERMS

- 1.1 The following terms or pronouns used in their stead wherever they appear in these Contract documents shall be construed as follows:
- 1.1.1 “Trustees” shall mean the Trustees of The Public Library of the City of Boston.
- 1.1.2 “Contract” and “Contract Documents” shall include, as applicable, all Invitations for Proposals (Advertisements), Notices to Bidders/Applications, Specifications, Proposal/Application, Contractor Certification, Repetitive Services Contract Provisions, and all amendments thereto, which documents are incorporated herein by reference.
- 1.1.3 “Contractor” shall mean the individual, partnership, corporation or other entity to whom this Contract is awarded.
- 1.1.4 “Official” shall mean the officer acting on behalf of the Trustees in the execution of the Contract.

ARTICLE 2: PERFORMANCE

- 2.1 The contractor shall conform to all determinations and directions, in accordance with provisions of the Contract, of the Official concerning all questions which may arise relating to the performance of services under this Contract.
- 2.2 The Contractor shall, upon written request of the Official, remove from Trustees premises and replace all individuals in the Contractor’s employ whom the Official determines to be disorderly, careless or incompetent or to be employed in violation of the terms of this Contract.
- 2.3 The Trustees are entitled to ownership and possession of all deliverables purchased or developed with Contract funds. All work papers, reports, questionnaires and other written material prepared or collected by the Contractor in the course of completing the work to be performed under this Contract shall at all times be the exclusive property of the Trustees. The Contractors shall not use such materials for any purposes other than the purpose of this Contracts without the prior written consent of the Official. All contractor proprietary rights shall be detailed in the Contract Documents,
- 2.4 Prior to the beginning of performance under this Contract, Contractor must receive a Purchase Order from the Trustees.
- 2.5

ARTICLE 3: ACCEPTANCE OF SERVICE

- 3.1 Performance under this Contract shall include services rendered, obligations due, costs incurred, goods and deliverables provided by the Trustees. The Trustees shall have a reasonable opportunity to inspect all service performed by and work product of the Contractor and accept or reject such service or work product.

ARTICLE 4: TIME

- 4.1 It is understood and agreed that Contractor’s performance shall be timely and meet or

exceed industry standards for the performance required

ARTICLE 5: COMPENSATION

- 5.1 The Contractor may in the absence of a payment schedule, periodically submit the Official invoices, itemizing service, labor and expenses for which compensation is due and requesting payment for services rendered by the Contractor during the period covered by the invoice.
- 5.2 Thereupon the Official shall estimate the value of services accepted by, the Trustees, and the Trustees shall pay to the Contractor such amount less sums retained under the provisions of Article 8 of these General Conditions.
- 5.3 The Trustees shall pay in full and complete compensation for services performed under this Contract in an amount not to exceed the amount shown on the face of this Contract paid in accordance with the rate indicated or in accordance with a prescribed schedule. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the City from all claims, liabilities or other obligations relating to the performance of a Contract.
- 5.4 In the event that this Contract provides for reimbursement by the Trustees to the Contractor for travel or other expenses, the Contractor shall submit such proposed expenses to the Official for approval prior to the incurrence of such expenses, unless the Contracts specifically provides otherwise, and all travel reimbursement shall be consistent with the City of Boston's travel policies.
- 5.5 The Contractor shall furnish such information, estimate or vouches relating to the goods or services or to documentation of labor or expenses as may be requested by the Official.

ARTICLE 6: RELATIONSHIP WITH THE TRUSTEES

- 6.1 The Contractor is retained solely for the purposes of and to the extent set forth in the Contract. Contractor's relationship to the Trustees during the term of this Contract shall be that of an independent Contractor. The Contractor shall have no capacity to involve the Trustees in any contract nor to incur any liability on the part of the Trustees. The Contractor, its agents or employees shall not be considered as having the status or pension rights of an employee; provided that the Contractor shall be considered an employee for the purpose of General Laws c. 268A (the Conflict of Interest Law). The Trustees shall not be liable for any personal injury to or death of the Contractor, its agents or employees.
- 6.2 Unless all the terms and conditions for the delivery or provision of goods or services by the Contractor to the Trustees specified by this Contract are expressly set forth in a writing incorporated herein by reference, such delivery or provision of goods or services shall require written approval of or direction by the Official prior to the incurrence of any liability by the Trustees. The Trustees shall have no legal obligation to compensate a Contractor for performance that is not requested and is intentionally delivered by a Contractor outside the scope of a Contract.

- 6.3 All alterations or additions, material or otherwise to the terms and conditions of this Contract must be in writing and signed by the Official and the Contractor and filed with the Trustees Auditor. The Trustees' Standard Contract Document and Standard Contract Conditions shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, including contract forms, purchase orders, or invoices of the Contractor.
- 6.4 Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to the party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

ARTICLE 7: ASSUMPTION OF LOSS AND LIABILITY

- 7.1 The contractor shall pay and be exclusively responsible for all debts for the labor and material contracted for by Contractor for the rental of any appliance or equipment hired by Contractor and/or for any expense incurred on account of services to be performed under this Contract.
- 7.2 The Contractor shall bear the risk of all loss resulting from any cause, including any loss of goods and deliverables, before performance of services is completed and after performance of service if the service or work product fails to conform to specifications.

- 7.3 To the fullest extent permitted by law, the Contractor shall hold harmless and assume the defense of and hold the Trustees, its officers, agents or employees, with counsel acceptable to the Trustees, which acceptance shall not be unreasonably withheld from all suits and claims against them or any of them arising from any act or omission of the Contractor, its agents or employees in any way connected with performance under this Contract.

ARTICLE 8: REMEDIES OF THE TRUSTEES

- 8.1 If the Contractor shall provide services in a manner which is not to the satisfaction of the Official, the Official may request that the Contractor refurnish services at no additional cost to the Trustees until approved by the Official. If the Contractor shall fail to provide services or shall provide services which are not satisfactory to the Official, the Official, in the alternative, may make any reasonable purchase or Contract to purchase services in substitution for those due from the Contractor. The Trustees may deduct the cost of any substitute Contract or nonperformance of services together with incidental and consequential damages from the Contract price and shall withhold such damages from sums due or to become due to the Contractor.
- 8.2 If the damages sustained by the Trustees as determined by the Official exceed sums due or to become due, the Contractor shall pay the difference to the Trustees upon demand.
- 8.3 The Contractor shall not be liable for any damages sustained by the Trustees due to the Contractor's failure to furnish services under the terms of the Contract if such failure is in fact caused by the occurrence of a contingency the nonoccurrence of which was a basic assumption under which the Contract was made, including but not necessarily limited to a state of war, act of enemies, embargoes, expropriation or labor strike or any unanticipated federal, state or municipal governmental regulation or order, provided that the Contractor has notified the official in writing of such cause within fourteen (14) days after its occurrence.
- 8.4 This Contract may be terminated at any time for the convenience of the Trustees at the option of the Official by delivering or mailing to the Contractor at the Contractor's business address a written notice of termination setting forth the date, no less than seven (7) days after the date of such delivery or mailing, when such termination shall be effective. In the event of such termination for convenience, the Contractor shall be compensated for services rendered to the effective date of said termination in accordance with the rates of compensation specified in this Contract. The parties agree that if the Trustees erroneously, improperly or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

ARTICLE 9: REMEDIES OF CONTRACTOR

- 9.1 If damages, other than loss on nonconforming services or on services not performed, are actually, sustained by the Contractor due to any act or material omission for which, the Trustees is legally responsible, the Trustees may allow a sum equal to the amount of such damages sustained by the Contractor as determined by the Official in writing, provided the Contractor shall have delivered to the Official a detailed written statement of such damages and cause thereof within thirty (30) days after the act or material omission by the Trustees.

ARTICLE 10: PROHIBITION AGAINST ASSIGNMENT

- 10.1 The Contractor shall not assign, delegate, subcontract or in any way transfer any interest in this Contract without prior written consent of the Official.

ARTICLE 11: COMPLIANCE WITH LAWS AND PUBLIC POLICY

- 11.1 This Contract is made subject to all laws of the Commonwealth of Massachusetts. If the Contractor is a business, the Contractor certifies that it is listed under the Secretary of State's website as licensed to do business in Massachusetts, as required by law.
- 11.2 The Contractor shall provide, at its sole expense, all necessary licenses, permits or other authorizations required by the Trustees, the Commonwealth of Massachusetts or any other governmental agency with proper jurisdiction.
- 11.3 The Contractor shall where applicable take out and maintain during the term of this agreement such workmen's compensation insurance as may be reasonably necessary to protect the Contractor from claims under General Laws c. 152 (the Workmen's Compensation Laws). The Contractor shall at all times maintain professional liability, and other appropriate insurances as required by the solicitation or as otherwise required by the Trustees, but in no event less than the amount and type of insurance coverage sufficient to cover the performance.
- 11.4 The Contractor agrees and shall require any subcontractor to agree not to discriminate in connection with the performance of work under the Contract against any employee or applicant for employment because of sex, race, color, religious creed, national origin, sexual orientation, gender identity or expression, marital status, parental status, ex-offender status, prior psychiatric treatment, military status, disability, ancestry, source of income or age, unless based open a legally permissible and bona fide occupational qualification. The Contractor agrees and shall require any subcontractor to agree to post in conspicuous places notices to be provided by the Massachusetts Commission Against Discrimination, setting forth provisions of the Fair Employment Practice Law of the Commonwealth.
- 11.5 The Contractor's attention is called to General Laws c. 268A (the Conflict of Interest Law). The Contractor shall not act in collusion with any Trustees officer, agent, employee or any other party, nor shall the Contractor make gifts regarding this Contract or any other matter in which the Trustees has a direct and substantial interest.
- 11.6 The Contractor shall keep himself fully informed of all Trustees Ordinances and Regulations, and State and Federal laws which in any manner affect the work herein specified. The Contractor shall at all times observe and comply with said ordinances, regulations or laws, and shall protect and indemnify the Trustees, its officers, agents and employees against any claim or liability arising from or based on the violations of such ordinances, regulations or laws, caused by the negligent actions of the Contractor, his agents or employees.
- 11.7 In furtherance of the Mayor's Executive Order "Minority and Women Business Enterprises Development" dated December 31, 1987 and the Ordinance entitled "Promoting Minority and Women Owned Business Enterprises in the City of Boston" (Ordinances of 1987, Chapter 14), it is understood and agreed by the Contractor, and the

Contractor by the execution of the Contract so certifies, as follows: (1) That the Contractor shall actively solicit bids for the subcontracting of goods and services from certified minority and women businesses; (2) That in reviewing substantially equal proposals the Contractor shall give additional consideration to the award of subcontracts to certified minority and women bidders.

11.8 The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the U.S. government, the Commonwealth of Massachusetts, or any of its subdivisions.

11.9 The Contractor certifies that neither it nor any of its subcontractors have been subject to a federal or state criminal or civil judgment, administrative citation, final administrative determination, order or debarment resulting from a violation of M.G.L. c. 149, c. 151, or the Fair Labor Standards Act within three (3) years prior to the date of the Contract; or certifies that it has provided copies of any and all of the above to the Official prior to the date of the Contract and any required wage bond or insurance; and certifies that while the Contract is in effect, it will report any instance of the above to the Official within five (5) days of Contractor's receipt. The Contractor agrees and shall require any subcontractor to post in conspicuous places notices to be provided by the Trustees, informing employees of the protections of applicable local, state and federal law.

11.10 Contractor agrees that they shall comply fully all state and federal laws and regulations regarding human trafficking and forced labor. Failure to do so shall be considered a breach of this Contract.

11.11 If applicable, the Contractor shall comply with the Massachusetts Prevailing Wage Law for public works projects, M.G.L. c. 149, s.26-27H, which establishes minimum wage rates for workers on such projects. The Contractor shall comply and shall cause its subcontractors to comply with M.G.L. c. 149, s.27B, which requires that a true and accurate record be kept of all persons employed on a project for which prevailing wage rates are required. To the extent the Prevailing Wage Law is applicable, the Contractor shall, and shall cause its subcontractors to, submit weekly copies of their weekly payroll records to the Trustees.

ARTICLE 12: AVAILABLE APPROPRIATIONS

- 12.1 This Contract is subject to the availability of an appropriation therefore. Any oral or written representations, commitments, or assurances made by the Official or any other representative of the Trustees or of the Library are not binding. Contractors should verify funding prior to beginning performance.
- 12.2 If the Contract is funded under a grant with the Federal Government, it is being executed without further appropriation pursuant to General Laws c. 44, s.53A.
- 12.3 When the amount of the Library Trustees' certification of available funds is less than the face amount of the Contract, the Trustees shall not be liable for any claims or request for payment by the contractor which would cause total claims or payments under this Contract to exceed the amount so certified.

- 12.4 Unless otherwise expressly provided in a writing incorporated herein by reference the amount certified by the Library Trustees as available funds under this Contract may be increased or decreased by the official open written notice to the Contractor bearing the written approval of such change by the Library Trustees. Such notice shall be sent or delivered to the Contractor at the Contractor's business address and shall take effect not less than seven (7) days after the date of such delivery or mailing. In the event of such decrease, the Contractor shall be compensated for services rendered to the effective date of such reduction, in accordance with the rates of compensation specified in the Contract.

ARTICLE 13: RELEASE OF TRUSTEES ON FINAL PAYMENT

- 13.1 Acceptance by the Contractor of payment from the Trustees for final services under this Contract shall be deemed to release forever the Trustees from all claims and liabilities, except those which the Contractor notifies the Official in writing within six (6) months after such payment.

ARTICLE 14 -- PUBLIC RECORDS AND ACCESS

14.1 The Contractor shall provide full access to records related to performance and compliance to the Trustees for seven (7) years beginning on the first day after the final payment under this Contract or such longer period necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor records related to any breach or allegation of fraud, waste and/or abuse may not be denied and Contractor cannot claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse or collusion may be provided electronically and shall be provided at Contractor's own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under 950 C.M.R. 32.00.

ARTICLE 15 -- STATE TAXATION CERTIFICATION:

15.1 Pursuant to M.G.L. c. 62C, s. 49A, the Contractor certifies under penalties of perjury, that to the best of Contractor's knowledge and belief, Contractor has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support. (NOTE: The Taxpayer Identification Number will be furnished to the Massachusetts Department of Revenue to determine compliance with the above- referenced law).

ARTICLE 17 -- BID COLLUSION:

17.1 The Contractor certifies under penalties of perjury that his/her bid or proposal has been made and submitted in good faith and without collusion, fraud, or unfair trade practice with any other person. As used in this article, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity or group of individuals. Any actions to avoid or frustrate fair and open competition are prohibited by law, and shall be grounds for rejection or disqualification of a Response or termination of this Contract.

ARTICLE 18 -- FORUM AND CHOICE OF LAW:

18.1 Any actions arising out of this Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Boston, Massachusetts which shall have exclusive jurisdiction thereof.

Trustees of the Boston Public Library

SUPPLEMENTAL INFORMATION TECHNOLOGY¹ TERMS AND CONDITIONS TO FORM CM11

The following terms and conditions are added to the Trustees' Standard Contract General Conditions (Form TF-11), to the extent permitted by law, for purposes of Contract number _____ between the Trustees of the Boston Public Library (the "Trustees") and _____:

A. Indemnification for Information Technology Contracts. This paragraph A is in lieu of and replaces paragraph 7.3 of Form CM11. Contractor agrees to indemnify, defend and hold harmless the Trustee, its officers, agents and employees from all third party liabilities, suits, claims, damages, costs (including without limitation reasonable attorneys' fees), and losses related to (i) the injury or death of any individual, or (ii) loss or damage to any real or tangible personal property, arising out of the willful misconduct or negligent acts or omissions of Contractor or any of its agents, subcontractors, employees, suppliers, laborers, or any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract; or (iii) Contractor's breach of its confidentiality, data security or privacy obligations.

Further, the Contractor will, to the fullest extent permitted by law, indemnify, defend, and hold harmless the Trustees, its officers, agents, and employees, including all employees of the Boston Public Library, from all third party liabilities, suits, claims, damages, costs (including without limitation reasonable attorneys' fees), and losses related to infringement or violation of any U.S. intellectual property rights, including copyright or patent, by any goods, services, software, or intangible deliverables provided hereunder, provided that the foregoing obligation shall not apply to the extent of an action or claim resulting from the Trustees' misuse of Contractor's deliverables.

B. Limitation of Liability for Information Technology Contracts. Contractor's liability for damages to the Trustees for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the greater of One Hundred Thousand Dollars (\$100,000.00) or two times the Purchase Price. The "Purchase Price" will mean the Not to Exceed Contract amount, including amendments. The foregoing limitation of liability shall not apply (i) to liability for copyright or patent infringement, or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (ii) to claims arising under provisions herein calling for indemnification that include third party claims against the Trustees for bodily injury to persons or damage to real or tangible personal property caused by Contractor's negligence or willful misconduct; or (iii) to Contractor's breach of its confidentiality, data security or privacy obligations, including without limitation, indemnification obligations.

The Trustees' liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the greater of One Hundred Thousand Dollars (\$100,000.00) or two times the Purchase Price, as that term is defined in section B. above. The Trustees' liability for damages is subject to all privileges and immunities from liability enjoyed by Massachusetts cities and their agencies and departments. Nothing herein shall be construed to waive or limit any valid claim of immunity from suit provided by law.

In no event will either the Contractor or the Trustees be liable for consequential, incidental, indirect, or special damages, including lost profits, lost revenue, or damages from lost data or records (unless the contract or Statement of Work requires the Contractor to back-up data or records), even if notification has been given as to the possibility of such damages, except (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that Contractor's liability for such damages arises out of sub-section B(i), B(ii), or B(iii) above. Notwithstanding any other provision in this Contract, nothing herein is intended to limit the Trustees' ability to recover, where applicable, the reasonable costs the Trustees incur to repair, return, replace or seek cover (purchase of comparable substitute goods or services) under a Contract. Nothing in this section shall limit the Trustees' ability to negotiate higher limitations of liability in a particular Contract.

C. Confidentiality, Data Security, and Privacy. The Contractor agrees to maintain the security and confidentiality of all Library Data for which the Contractor becomes a holder, either as part of performance or inadvertently during performance, with special attention to restricting access, use and disbursement of personal data and information under M.G.L. c. 93H and c. 66A. The Contractor is required to comply with M.G.L. c. 93I for the proper disposal of all paper and electronic media, backups or systems containing personal data and information. Provided further, that any Contractor having access to credit card or banking information of Trustees or its customers certifies that the Contractor is PCI-DSS compliant in accordance with the Payment Card Industry Council Standards and shall provide

¹ "Information Technology" includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, and telecommunications which include voice, video, and data communications.
Supplement to Form CM11

confirmation of compliance during the Contract; provided further, that the Contractor shall immediately notify the Trustees in the event of any security breach including the unauthorized access, disbursement, use or disposal of personal data or information, and in the event of a security breach, the Contractor shall cooperate fully with the Trustees and provide access to any information necessary for the Trustees and the Library to respond to the security breach and Contractor shall be fully responsible for any damages associated with the Contractor's breach including but not limited to M.G.L. c. 214, s. 3B.

D. Rights to Data. The Trustees and Contractor agree that as between them, all rights, including all intellectual property rights, in and to Data shall remain the exclusive property of the Trustees, and Contractor has a limited, non-exclusive license to access and use the Data as provided to Contractor solely for performing its obligations under the Contract. "Data" means any information, or other content that the Trustees, employees of the Boston Public Library, agents and end users upload, create or modify using the software, goods or services pursuant to this Contract. Data also includes user identification information and metadata which may contain Data or from which the Trustees' Data may be ascertainable. Nothing herein shall be construed to confer any license or right to the Data, including user tracking Data within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of Data by Contractor or third parties is prohibited. For the purposes of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized. The Trustees, their agents and employees of the Boston Public Library may access and download the Data during the Term of this Agreement.

E. Work for Hire. If Deliverables are identified as works made for hire, this paragraph applies. All rights in deliverables made by either party under this Contract, including all rights, title and interest in all intellectual property rights, are works made for hire and shall be owned by the Trustees. To the extent, if any, that the Trustees do not own full right, title and interest in and to the deliverables pursuant to the previous sentence, Contractor hereby assigns all right, title and interest in the deliverables made or created by Contractor alone or jointly with others under this Contract, to the Trustees. Contractor shall retain all right, title and interest and all proprietary rights in and to any methods, materials, technologies, tools (including software tools), design code, templates, applications, techniques and other know-how developed by or for Contractor prior to and/or independent of the services provided hereunder.