

AGREEMENT

This Agreement is made as of the 27th day of February, 2015 by and between Ingleside Presbyterian Community, Inc. ("**Ingleside**"), a District of Columbia not-for-profit organization located at Square 2287, Lot 809, more commonly known as 3050 Military Road, NW in Washington, DC ("**Ingleside Property**"), and the Carnegie Institution of Washington ("**Carnegie**"), a nonprofit educational and scientific organization incorporated by Act of Congress approved April 28, 1904, with an address of 1530 P Street, NW, Washington, DC, and two of its research departments on its campus located at 5241 Broad Branch Road, NW in Washington, DC ("**Carnegie Property**").

RECITALS

WHEREAS, Ingleside has applied to the District of Columbia Board of Zoning Adjustment ("**BZA**") for approval of plans to expand its facilities located at the Ingleside Property (Application No. 18898); Ingleside's current expansion and reconstruction of its facilities, including that set forth in such application and any amendments thereto, and all work and activities related thereto, is referred to herein as the "**Expansion Project**"; and

WHEREAS, the Ingleside Property and the Carnegie Property are located immediately adjacent to each other in Northwest Washington, DC; and

WHEREAS, Carnegie maintains valuable machinery and instruments on the Carnegie Property that are sensitive to vibrations and/or dust ("**Carnegie Equipment**"); and

WHEREAS, Carnegie conducts and will conduct research programs, experiments and studies on the Carnegie Property that are sensitive to vibrations and/or dust ("**Carnegie Work**"); and

WHEREAS, the Expansion Project will include excavation of the Ingleside Property and may include such construction techniques as blasting, earth drilling, or hoe ramming; and

WHEREAS, construction of the Expansion Project will take place for a period of years (all construction, excavation and other work or activities in furtherance of or related to the Expansion Project is referred to herein as the "**Work**"); and

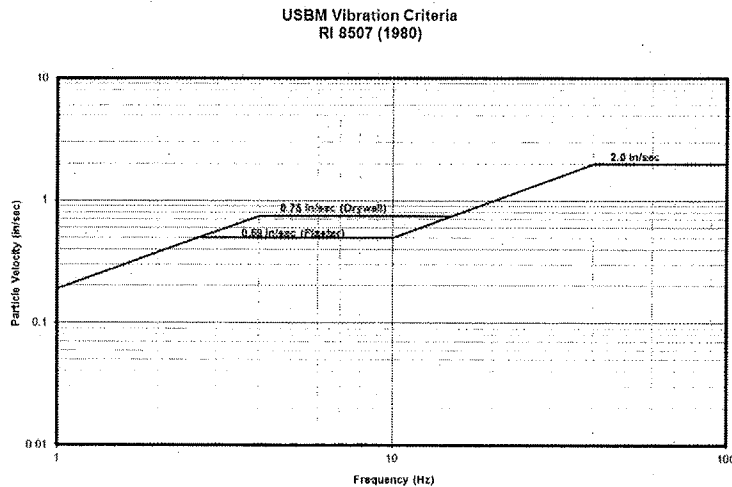
WHEREAS, Ingleside will undertake the measures set forth in this Agreement in an effort to guard against damage to the Carnegie Equipment and Carnegie Property or harm or interference with the Carnegie Work.

NOW THEREFORE, this Agreement sets forth the terms upon which Ingleside will conduct the Work and Expansion Project to minimize risk to Carnegie, Carnegie's Work, Carnegie's Equipment and Carnegie's Property.

- 1) Construction Work – Vibration Control. Ingleside shall investigate excavation and construction methods and alternatives and prepare Plans (as hereafter defined) so as to prevent vibrations from the Work from being transmitted to the Carnegie Property in

excess of a Peak Particle Velocity (“PPV”) of 0.1 mm/sec. more than 5 times within any consecutive five minute time period (the “**Vibration Threshold**”) (or in the case of blasting, if applicable, in excess of the Blasting Vibration Threshold (as defined below)).

During scheduled blasting activities, the blasting induced vibration levels will not exceed the USBM “Z” Curve Vibration criteria. The USBM “Z” curve consists of a vibration threshold defined by the following limits: PPV of 0.2 in/sec at 1 Hz, with uniform increase (as plotted on a log scale) to 0.75 in/sec. at 4 Hz; PPV of 0.75 in/sec from 4 to approximately 14 Hz; uniform PPV increase from 0.75 to 2.0 in/sec between 14 Hz and 40 Hz; and a uniform PPV of 2.0 in/sec for frequencies greater than 40 Hz (the “**Blasting Vibration Threshold**”). A graphic representation of this criterion is shown as follows:



Ingleside reserves the right to conduct ambient vibration studies three months prior to the start of construction in a similar manner as the ambient vibration studies conducted by Ingleside on the Carnegie Property during February, 2015, such studies to be coordinated with Carnegie so as not to interfere with Carnegie’s operations. If the results of those studies produce materially different results than the results of the ambient vibration studies conducted by Ingleside on the Carnegie Property during February, 2015, then Ingleside and Carnegie may amend this Agreement to reflect the new levels if each of Ingleside and Carnegie so agree, but neither party shall have any obligation to so amend this Agreement and no amendment shall be effective unless in writing and signed by both Ingleside and Carnegie.

- 2) Plan Preparation and Review. Prior to undertaking any Work for the Expansion Project on the Ingleside Property, Ingleside shall deliver to Carnegie detailed plans and specifications for the Work including detailed descriptions of methods, techniques and anticipated schedules (the “**Plans**”). The Plans will be accompanied by a certificate executed by Ingleside’s engineer and contractor stating that in such parties’ professional judgment the Plans constitute the methods and techniques that will reduce vibration to the Carnegie Property to the maximum extent practical and will not result in vibration on the Carnegie Property in excess of the Vibration Threshold (or in the case of blasting, if applicable, the Blasting Vibration Threshold). If other techniques could further reduce

vibrations, such certificate will discuss such techniques and explain why they are not practical. The Plans shall also contain measures to reasonably reduce dust. Carnegie shall review the Plans solely with respect to the impact the Work will have on the Carnegie Property, the Carnegie Equipment and the Carnegie Work.

Within thirty (30) days after Carnegie receives the Plans (with a request for approval referencing this Section), Carnegie shall advise Ingleside of Carnegie's reasonable approval or disapproval thereof, or request for more information or detail, and any disapproval shall specify Carnegie's objections in sufficient detail so that Ingleside can make the necessary revisions or provide the answers or information to satisfy such objections or to enable Carnegie to evaluate the Plans. If Carnegie shall fail to respond to the Plans (i.e., approve, disapprove or request more information or detail) within such thirty (30) day period, then it shall be deemed to have approved the Plans (so long as Ingleside gives Carnegie 30 days advance notice prior to delivering the first set of Plans to Carnegie so that Carnegie has the opportunity to prepare for such review). As noted above, Carnegie shall review the Plans solely with respect to the impact the Work will have on the Carnegie Property, the Carnegie Equipment and the Carnegie Work. Ingleside shall provide the information and/or revise the Plans, as reasonably required to address Carnegie's objections, except for any objections to which Ingleside shall object acting reasonably and in good faith (and Ingleside shall not object to addressing a Carnegie objection unless Ingleside demonstrates to Carnegie's reasonable satisfaction that vibrations will not exceed the Vibration Threshold (or in the case of blasting, the Blasting Vibration Threshold), nor shall Ingleside object if Carnegie's request is for reasonable information or detail). Ingleside shall deliver the revised Plans to Carnegie for Carnegie's approval, which shall not be unreasonably withheld, conditioned or delayed. Within thirty (30) days after Ingleside delivers the revised Plans to Carnegie, Carnegie shall advise Ingleside of Carnegie's approval or disapproval of the revised Plans, or request for more information or detail (which approval shall not be unreasonably withheld, conditioned or delayed and any disapproval shall specify Carnegie's objections in sufficient detail so that Ingleside can make the necessary revisions or provide answers or information to reasonably satisfy such objections or enable Carnegie to evaluate the Plans). If Carnegie shall fail to respond to the Plans (i.e., approve, disapprove or request more information or detail) within such thirty (30) day period, then it shall be deemed to have approved the Plans. Ingleside shall provide the information and/or revise the Plans, as reasonably required to address Carnegie's second set of objections, except for any objections to which Ingleside shall object reasonably and in good faith (subject other same proviso with respect to Ingleside's objections as set forth for the first delivery of Plans), and deliver the revised Plans to Carnegie for Carnegie's approval, which shall not be unreasonably withheld, conditioned or delayed. This process will repeat, if necessary, until the parties, acting diligently, reasonably and in good faith, reach agreement (the approved Plans being referred to herein as the "**Approved Plans**"). For the avoidance of doubt, it will be reasonable for Carnegie to withhold approval if Carnegie determines that the Carnegie Equipment or Carnegie Work likely would be harmed. However, Carnegie understands and agrees that there may be some level of vibration on the Carnegie Property and Carnegie and Ingleside will reasonably cooperate to schedule the Work and Carnegie Work to minimize the impact from vibration.

- 3) BZA Notification. Upon execution of this Agreement, Ingleside will file the signed Agreement with the BZA on or before March 2, 2015, with a copy to Carnegie, and as a part of that filing will request in writing that this Agreement be made a part of and a condition of the BZA approval for the Expansion Project. Carnegie will file a letter with the BZA no later than 3 pm on March 3, 2015, withdrawing the objection that Carnegie has made to Ingleside's application, and in support of Ingleside's request that the Agreement be made a part of and a condition of the BZA approval for the Expansion Project. The parties acknowledge that the record of the BZA hearing was left open through March 3, 2015, and Carnegie will not submit papers in opposition to the Expansion Project during such open record period.
- 4) Plans; Performance of Work. All of the Work shall be conducted at the sole cost and expense of Ingleside, in a good and workmanlike manner, in accordance with the generally accepted construction and safety practices in the District of Columbia Metropolitan Area, in accordance with the Approved Plans, and in accordance with all applicable laws. In performing the Work, Ingleside shall minimize the impact of the Work on the use of the Carnegie Property by the occupants thereof. More specifically, Ingleside will notify Carnegie (and reasonably cooperate with Carnegie to schedule such Work) and utilize excavation and foundation construction methods that minimize ground vibration that is likely to be transmitted to the Carnegie Property. By way of example, Ingleside will pre-auger and then push foundation piles into place rather than driving or pounding them into place. Pile driving will not be used. To the extent that any blasting, hoe ramming or earth drilling is required for the Work, it will be conducted only between 8:00 am and 4:00 pm, Monday through Friday and blasting will be consistent with the other provisions concerning blasting outlined in Section 7 below. No Work will be performed on Sundays or between the hours of 5:00 pm and 7:00 am Monday through Saturday (the "Blackout Periods"). Ingleside recognizes that the Blackout Periods are important to Carnegie, because Carnegie plans to schedule some of its long term projects and most sensitive or costly measurements during the Blackout Periods.
- 5) Vibration Monitoring; Cessation of Work. Prior to commencing any Work, Ingleside will install, and thereafter maintain until the Work is completed, vibration monitoring instruments on the Ingleside Property and Carnegie Property of such type and in such locations as reasonably agreed upon by Carnegie and Ingleside.

Without limiting the foregoing, vibration levels will be recorded by Ingleside on the concrete floor slab in locations protected from general laboratory operations in two of the following four rooms: Room G22-A, Room G22-B, Ion Probe Laboratory, and/or Nanosims Laboratory. The specific locations will be determined by designated Carnegie and Ingleside personnel prior to construction activities so as to accommodate laboratory operations. Carnegie will provide electrical power and computer network connections (consistent with Carnegie's systems) at each monitoring location, and will provide local IT support (limited to Carnegie's on-site staff) to assist with the setup of remote communications with the seismographs over their computer network; provided that no failure of Carnegie's systems, network or staff will limit or reduce Ingleside's obligations

under this Agreement. Ingleside will not be permitted access to Carnegie's computer system or data thereon, and Ingleside agrees not to access the same. Hardware required to connect the vibration monitoring equipment to the computer network will be provided by Ingleside or their designated consultant. In addition to the foregoing, vibration monitoring of blasting activities will be conducted by Ingleside at the exterior of Carnegie buildings nearest to the blasting activities. This exterior monitoring will be in addition to the instruments installed in the laboratory spaces.

Ingleside will provide Carnegie, on a weekly basis, with the reports from all such instruments (and immediately notify Carnegie when any instrument indicates a vibration in excess of the Vibration Threshold). Notwithstanding any previous approval of Plans or Approved Plans by Carnegie, if during the performance and, as a result of, any Work, vibrations are detected on the Carnegie Property in excess of the Vibration Threshold (or, in the case of blasting, if applicable, the Blasting Vibration Threshold), then Ingleside shall immediately cease such Work. Prior to recommencing such Work, Ingleside will provide Carnegie with Plans to accomplish the same without exceeding the Vibration Threshold (as the Vibration Threshold may be modified by an amendment to this Agreement as set forth in the next paragraph, if applicable), or, in the case of blasting, without exceeding the Blasting Vibration Threshold. Such Work will not be recommenced until it can be and is performed without exceeding such thresholds.

Without limiting the foregoing, in the event that vibration levels during the period of the Work exceed the Vibration Threshold (or, in the case of blasting, if applicable, the Blasting Vibration Threshold), then designated Carnegie Institute personnel will be notified and provided summary data and analysis of the vibration events. If it is determined by Carnegie personnel that the vibration levels of such event did not and will not impact Carnegie's Equipment or operations of Carnegie's Equipment, then adjustments to the Vibration Threshold may be made following consultation of Ingleside designated personnel and Carnegie's designated personnel if both Carnegie and Ingleside agree in writing to adjust the Vibration Threshold, it being agreed that Carnegie shall have no obligation to agree to adjust the Vibration Threshold and no adjustment of the Vibration Threshold will be effective unless memorialized in a written amendment to this Agreement signed by Carnegie and Ingleside. Such adjustments, if agreed upon, may take the form of temporary adjustment for a specific construction activity, or a long term adjustment if it is determined to be appropriate by both parties.

- 6) Permits/Insurance. No portion of the Work shall commence unless and until (i) all applicable permits for that Work have been issued by the authorized government agency of the District of Columbia based on overall construction plans for the Expansion Project, and (ii) Ingleside has provided to Carnegie certificates evidencing all of the required insurance as provided in Section 15.
- 7) Blasting Notice. At this stage of schematic design, Ingleside's pre-construction contractor anticipates a seven month excavation phase at the beginning of the construction of the Expansion Project. During the excavation phase, blasting may be required during as many as five of the seven months. If possible, it is Ingleside's intention to limit all blasting to the excavation phase, however, there may need to be as many as two

additional one month periods beyond the excavation phase, during the balance of the overall construction, where blasting will be required.

In addition to the other requirements of this Agreement, the following provisions will apply with respect to the timing of blasting:

- Blasting will be limited to one five month period, or “window”, towards the beginning of the Expansion Project (the “Initial Blasting Window”), and a maximum of two additional one month periods, or “windows” thereafter prior to completion of the Expansion Project (each, a “Subsequent Blasting Window”).
- There will be a period of at least one month between the Initial Blasting Window and the first Subsequent Blasting Window, and at least a one month period between the first Subsequent Blasting Window and the second Subsequent Blasting Window.
- During the Initial Blasting Window, after each four consecutive week period during which blasting could occur, there will be a one week period in which no blasting occurs (and Carnegie will be given at least one week advance written notice of such one week no blasting period). The intent and purpose of this provision is to provide Carnegie with at least one week of no blasting during each five week period contained within the Initial Blasting Window (and provide Carnegie with at least one week advance written notice of each such one week no blasting period).
- During the periods when blasting is permitted, it will be limited to three one-hour periods per day, Monday through Friday, but not before 8:00 am or after 4:00 pm.
- Ingleside will provide Carnegie with the notices set forth below prior to blasting. The parties acknowledge that notice of the times during which blasting will not occur are as important to Carnegie as notice of the times during which blasting will occur. For that reason, all notices of blasting from Ingleside will include both start and end dates (or times of the day, as applicable).
 - Ingleside will provide Carnegie written notice twelve months prior to the start of each of: the Initial Blasting Window, the first Subsequent Blasting Window and the second Subsequent Blasting Window. The date specified for commencement of blasting in each twelve month advance notice will be accurate to within three months of the first blasting during the applicable window.
 - Ingleside will provide Carnegie an additional written notice three months prior to the start of each of: the Initial Blasting Window, the first Subsequent Blasting Window and the second Subsequent Blasting Window. The date specified for commencement of blasting in each three month notice will be accurate to within one month of the first blasting during the applicable window.
 - One (1) week prior to each blasting, Ingleside will provide Carnegie written notice of the specific date for such blasting; this one week advance notice will be accurate to the day. For convenience, multiple blasting days may be included in one notice so long as the notice is given at least one week prior to the first blasting day and the notices are accurate to the day.

- 24 hours prior to each blasting, Ingleside will provide Carnegie email notice to Richard W. Carlson (rcarlson@carnegiescience.edu) of the one-hour periods during which the blasting will occur (not to exceed three one-hour periods per day). For convenience, multiple blasting periods may be included in one email notice (but not more than three one hour periods per day) so long as the notice is given at least 24 hours prior to the first blasting period and the notices are accurate to the one hour periods. Carnegie may change the name and email address of such contact person by written notice to Ingleside.
 - Ingleside will not blast on a day or at a time of day unless Carnegie has been given the foregoing notices for such blasting.
 - Ingleside will include in the twelve month advance notice referenced above the initial schedule for the construction of the Expansion Project, and will send Carnegie monthly updates thereto thereafter, provided that such schedules and updates will not take the place of the required notices set forth above, nor alter the restrictions on blasting set forth herein or otherwise reduce Ingleside's obligations hereunder.
- 8) Ingleside may use Broad Branch Road to access the Ingleside Property provided (a) in advance, Ingleside demonstrates to Carnegie's reasonable satisfaction that the same will not transmit vibrations in excess of the Vibration Threshold or unreasonable dust to the Carnegie Property, and (b) the same does not transmit vibration in excess of the Vibration Threshold or unreasonable dust to the Carnegie Property. In using Broad Branch Road if permitted herein, Ingleside must implement appropriate signage and utilize flagmen to address guide vehicles into and out of the Ingleside Property safely. Any improvements that must be made to the driveway due to the Work, will be made at Ingleside's expense, and, if on Carnegie's Property, subject to Carnegie's reasonable approval, which shall not be unreasonably withheld, conditioned or delayed.
- 9) Upon commencing any portion of the Work, Ingleside shall diligently and promptly complete the Work.
- 10) Notwithstanding anything to the contrary provided in this Agreement, neither Carnegie's approval of the Plans, nor any inspections or other approvals of the Plans and/or the Work or Expansion Project, or any portions thereof, by Carnegie or Carnegie's employees, agents or inspecting engineers or other consultants, shall constitute a warranty, representation or opinion by Carnegie and/or any of the foregoing, as to the technical sufficiency, adequacy or safety of the Plans, any of their component parts, or any other physical condition or feature pertaining to the Work or Expansion Project, or whether the same will transmit dust or cause vibration to or otherwise interfere with or damage the Carnegie Work, Carnegie Equipment or Carnegie Property; nor release Ingleside of its obligations, covenants and indemnities herein; it being acknowledged by Ingleside that Carnegie has made such approvals and inspections solely for internal purposes and not as an expert in construction-related matters.

11) Preconstruction Survey. Prior to commencing any Work that affects the Carnegie Property or Carnegie Equipment, Ingleside shall, at Ingleside's expense, perform a preconstruction survey, including a photographic survey, of the Carnegie Property to document the existing conditions thereof as of the date of such survey. Such preconstruction survey shall be performed on a date and time and by a firm agreeable to Carnegie. All parties performing such survey or inspection must at all times be accompanied by a Carnegie representative. All signs of structural weakness in the improvements on the Carnegie Property shall be documented and photographed where possible to determine any potential damage which may be caused or exacerbated by the Work. A written report of said survey or inspection, including photographs, shall be provided to Carnegie promptly after the survey or inspection is performed. If Ingleside has obtained or obtains soil sample reports with respect to the Carnegie Property, Ingleside shall provide copies thereof to Carnegie.

12) Compliance with Laws. In connection with the Work, Ingleside shall, at Ingleside's expense, (i) comply with all applicable laws, rules and regulations, whether such laws, rules and regulations apply to the Ingleside Property, the Carnegie Property or otherwise, and whether such laws, rules and regulations presently exist or are hereafter enacted, and (ii) obtain and comply with all licenses and permits issued by, and permitting requirements of, the District of Columbia (including, without limitation, those of the Building and Land Regulation Administration) required in connection with this Agreement.

13) Indemnification.

- a. As used in this Agreement: "Claim or Loss" means any loss, cost, expense, claim, demand, liability, judgment, legal action, arbitration or proceeding, investigation, fine or other penalty, loss, damage, cost, or expense (including, without limitation, attorneys' fees and disbursements actually and reasonably incurred), arising from or related to property damage, bodily injury or death, vibration or dust. "Indemnify" means to hold harmless and indemnify an indemnified party from and against a Claim or Loss and, where applicable, to defend such party by counsel reasonably satisfactory to the indemnified party (it being understood and agreed that counsel selected by the indemnifying party's insurance shall be deemed to be satisfactory), all at the sole expense and liability of the indemnifying party.
- b. Ingleside shall Indemnify Carnegie, and each of its respective owners, affiliates, successors, lenders, officers, directors, managers, members, agents, employees, contractors, property managers, residents and invitees, and their invitees and visitors, and all other persons or entities claiming by, through or under Carnegie (collectively, the "**Indemnitees**") with respect to (i) any and all Claims or Losses arising or incurred in connection with Ingleside's breach of its obligations under this Agreement; (ii) any Claims or Losses which would otherwise have been covered by any insurance required under this Agreement in the event any party fails to obtain and maintain any such insurance; (iii) any and all Claims or Losses arising from, related to, or incurred in connection with the Work and/or the Expansion Project including

any damage to the Carnegie Equipment, except to the extent such Claims or Losses arise from the negligence or willful misconduct of Carnegie (in no event will Carnegie's continuation of Carnegie Work or commencement of new Carnegie Work which is sensitive to vibrations or dust be considered negligence or misconduct); it being agreed, however, that such indemnity will not cover costs to repeat any experiments that are affected by the Work so long as the Work was not performed on Sundays or between the hours of 5:00 pm and 7:00 am Monday through Saturday; and, (iv) any reasonable costs and reasonable attorney's fees incurred by Carnegie in enforcing this Agreement. Neither (x) Carnegie's approval of any Plans or Approved Plans, nor (y) Carnegie's continuation of Carnegie Work or commencement of new Carnegie Work which is sensitive to vibrations or dust, shall derogate from Ingleside's indemnity obligations hereunder.

- 14) Review Costs/Consultation and Attorneys Fees. Ingleside shall reimburse Carnegie for its actual and reasonable costs and expenses incurred by Carnegie, including its legal fees and costs and engineering, environmental consultant, and/or architectural fees and costs, and costs and fees of third parties engaged by Carnegie to review the Plans and Work and advise Carnegie with respect thereto. Notwithstanding the foregoing, all such fees and costs for which Carnegie seeks reimbursement or payment after the date of this Agreement shall be reasonable and made in good faith and request for reimbursement must be submitted in a timely manner to Ingleside. Ingleside shall provide the reimbursement payment to Carnegie within fifteen (15) days following Carnegie's delivery of an invoice therefor with reasonable supporting documentation. For the sake of clarity, this Section 14 is intended to apply to costs incurred for review of the Plans and the Work, and not to a default or any indemnification obligations of Ingleside under this Agreement, and this Section 14 shall not be deemed a limitation on the provisions of this Agreement with respect thereto.
- 15) Insurance. Ingleside shall obtain and maintain and cause its general contractor without cost to Carnegie to obtain and maintain the following insurance policies in full force and at all times during the course of the Expansion Project (the "Insurance Policies"):
 - a. Commercial General Liability (CGL) Insurance (at least as broad as Insurance Services Office, Inc. (ISO) form CG 00 01 10 01 or equivalent occurrence basis commercial general liability insurance policy form that is reasonably satisfactory to Carnegie) on an occurrence basis covering liability arising from premises operations, independent contractors, product-completed operations, personal injury, bodily injury, death and/or property damage occurring in or about the Ingleside Property and/or the Carnegie Property, and the Indemnitees are named as additional insureds (the "**Insured Parties**"), including specifically naming Carnegie and parties related to Carnegie via ownership or Board control and whose names have been furnished to Ingleside 30 days prior to the start of the Work. Such insurance shall provide primary coverage without contribution from any other insurance or self-insurance carried by or for the benefit of the Insured Parties, shall be in excess of other valid and collectible insurance and shall include blanket broad-form contractual liability coverage. Such insurance shall include an express waiver, by endorsement or

otherwise (whether or not such waiver requires an additional premium), of any right of subrogation that the insurer under such policy might otherwise acquire against the Indemnitees by virtue of payment on any covered loss or claim. The minimum limits of liability under this CGL Insurance Policy shall be \$10,000,000 with a limit of not less than \$1,000,000 per occurrence.

- (i) Workers' Compensation Benefits Insurance as required by applicable law and Employer's Liability with a limit not less than \$500,000 each accident for bodily injury by accident or \$500,000 each employee for bodily injury by disease;
- b. Commercial Automobile Liability Insurance covering any auto including owned, hired, and non-owned autos with a combined single limit with respect to each occurrence in an amount of not less than \$1,000,000. The Commercial Auto policy shall include contractual liability coverage. The Insured Parties shall be named as additional insureds;
- c. Commercial Umbrella policy providing higher limits over the General Liability, Automobile Liability and Employers Liability at limits of \$10,000,000. Terms and conditions in the underlying policies to also be included in the Umbrella.
 - (i) Pollution Legal Liability Insurance coverage shall be maintained in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$1,000,000. The Insured Parties shall be named as additional insureds. Any provision of this Agreement to the contrary notwithstanding, only Ingleside shall be required to maintain this insurance; and
- d. Ingleside and its general contractor shall use best efforts to ensure that the insurance required to be maintained by them (i) contain a provision that the Insured Parties receive not less than ten (10) days prior written notice in advance of any cancellation or non-renewal, (ii) be for a term of one (1) year and renewed as required under this Agreement, (iii) provide that an act or omission of one of the Insured Parties, which would void or otherwise reduce coverage, shall not void or reduce coverage as to the other insureds or additional insureds, (iv) be effected under valid and enforceable policies in commercially reasonable form issued by reputable insurers authorized to do business in the District of Columbia and rated in AM Best's Insurance Guide or by Demotech, or any successor thereto. Such carriers to have an AM Best's or Demotech Rating of "A" or better. Payment of any deductible obligations are the responsibility of Ingleside, and not any of the Insured Parties. Any attempt to cancel or modify the insurance coverage required by this Agreement, or any failure to maintain such coverage, shall be a default by Ingleside under this Agreement and, upon such default, Carnegie will have the rights and remedies described in this Agreement.
- e. Prior to commencing the Work or any portion thereof, Ingleside shall deliver to Carnegie certificates of insurance that evidence the insurance required to be maintained by Ingleside and its general contractor under this Agreement. At

Carnegie's request, Ingleside shall provide Carnegie with copies of the Insurance Policies. If any insurance required by this Section 15 is not maintained (or Ingleside fails to timely provide certificates of insurance required by this Section 15), in addition to any other rights and remedies of Carnegie hereunder, Carnegie shall have the right (but not the obligation), after at least five (5) days' written notice to Ingleside and at any time and from time to time until Ingleside provides evidence of the required insurance, to acquire such insurance for and in the name of the party responsible for such insurance as identified above, and Ingleside shall furnish all information necessary to acquire and maintain such insurance and be obligated to pay Carnegie the amount of the premium and all sums incurred by Carnegie applicable thereto within five (5) business days following notice from Carnegie.

- f. By requiring insurance herein, Carnegie does not represent that coverage and limits will necessarily be adequate to protect Ingleside, Carnegie and/or the Indemnitees, and such coverage and limits shall not be deemed a limitation on or transfer of Ingleside's liability under this Agreement. In the event that Ingleside, or any other parties have or obtain insurance coverage in amounts in excess of those listed above, such additional coverage shall also inure to the benefit of the Indemnitees.
 - g. All indemnification rights that inure to the benefit of the Indemnitees shall not be prejudiced by the termination of this Agreement.
 - h. Ingleside may satisfy the limits of liability required herein with a combination of umbrella and/or excess policies of insurance where applicable, provided that such policies comply with all of the provisions hereof (including, without limitation, with respect to scope of coverage and naming of the Insured Parties as additional insureds) and reserve the limits specified herein to the Expansion Project and Work.
- 16) Restoration. Carnegie shall use all commercially reasonable efforts to promptly notify Ingleside in writing of any physical damage to the Carnegie Property of which it becomes aware caused by Ingleside or otherwise resulting from the Work and/or the Expansion Project; provided the failure to do so shall not relieve Ingleside of its obligations hereunder. If any portion of the Work results in any damage to the Carnegie Property or Carnegie Equipment, then Carnegie, at its option, may (a) require Ingleside, at Ingleside's expense, to promptly and diligently repair such damage, or (b) repair such damage, at Ingleside's expense, as described in this Section 16. If Carnegie elects to perform the work itself, it must provide Ingleside with a description of the scope of the work to be performed or Carnegie Equipment to be replaced (if necessary) and an estimate of such costs. Ingleside shall reimburse Carnegie for any repair or replacement expense reasonably and actually incurred by Carnegie within thirty (30) days following Carnegie's delivery of an invoice therefor with reasonable supporting documentation. If any portion of the Work damages any Carnegie Work, then, provided Carnegie was not conducting experiments during the times specified pursuant to Section 6 (unless either vibrations exceeded the Vibration Threshold (or, in the case of blasting, the Blasting Vibration Threshold) or Ingleside did not reasonably cooperate with Carnegie to schedule

such Work), Ingleside will reimburse Carnegie for the reasonable and actual direct cost to repeat such Carnegie Work.

- 17) Dust. Ingleside recognizes that certain levels of dust will interfere with Carnegie's Equipment and Carnegie's Work, and that Carnegie has air filters to control dust levels within Carnegie's facilities. During the twelve month period following the date hereof (or such shorter period between the date hereof and commencement of the Work), Carnegie will log the frequency with which it replaces air filters in accordance with its standards and procedures (the "Base Line Filter Changes"). If, in accordance with Carnegie's standards and procedures, Carnegie replaces the air filters more frequently during the Work than the Base Line Filter Changes, Ingleside will reimburse Carnegie for the cost of the increased number of filters used. If, in accordance with Carnegie's standards and procedures, Carnegie replaces the filters more than 2 times per month during the Work, Ingleside will implement enhanced dust control procedures to reduce the number of filter changes to less than 2 per month.
- 18) Internal Resolution. Prior to a party's commencement of any legal or equitable proceedings with respect to any claim, dispute or other matter in question arising out of or related to this Agreement, such party shall endeavor to resolve the same with the other party by a meeting between the parties. The meeting shall occur at the management office for the Carnegie Property, the Ingleside Property or telephonically, and each party shall be represented at the meeting by an officer with management authority. Each party's legal counsel also may join the meeting. The meeting shall occur at a mutually agreeable day and time, within five (5) business days following a party's written request therefor. If a party fails to attend or to agree to a meeting time within such 5 day period, the other party may commence such legal or equitable proceeding without holding such meeting.
- 19) Remedies. The rights and remedies given to Carnegie herein are distinct, cumulative and separate. None of such rights, whether or not exercised by Carnegie, shall be deemed to be in exclusion of any of the others and none of the rights and remedies expressly provided herein shall prevent Carnegie from exercising any other right or remedy available at law or in equity. Failure by Carnegie to complain of any action, non-action or breach of Ingleside shall not constitute a waiver of Carnegie's rights hereunder. Waiver by Carnegie of any right arising from any breach by Ingleside shall not constitute a waiver of any other right arising from a subsequent breach of the same obligation or for any other default, past, present or future. Any waiver must be in writing signed by the waving party.
- 20) Reports. Ingleside will provide Carnegie with a monthly (or more frequently if reasonably requested by Carnegie) written report regarding the status of the Work and the Expansion Project.
- 21) Contact Person. Ingleside shall provide to Carnegie a name and telephone number of a person designated by Ingleside to contact in case of emergency, including during hours in which no construction activity is occurring, including cell phone numbers as appropriate.

22) Modifications; Waivers. Modifications, waivers and consents regarding this Agreement shall be binding only if in writing and signed by the party against whom such modification, waiver or consent is sought to be enforced.

23) Notices. All notices and other communications hereunder shall be in writing and personally delivered, delivered by a nationally recognized overnight courier service (such as UPS or Federal Express), or delivered by electronically by email, as follows:

If to Ingleside: Ingleside
3050 Military Road, NW
Washington, DC
Attention: Thomas W. Seybold
Email: tseybold@westminsteringleside.org
Telephone: (202) 596-3114

with copy to: Goulston & Storrs, PC
1999 K Street, NW, 5th Floor
Washington, DC 20006
Attention: Allison Prince
Email: aprince@goulstonstorrs.com
Telephone: (202) 721-1106

If to Carnegie: Carnegie Institution of Washington
1530 P Street, NW
Washington, DC 20005
Attention: Cynthia Allen
Email: callen@carnegiescience.edu
Telephone: (202) 939-1118

with copy to: Carnegie Institution of Washington
5241 Broad Branch Road, NW
Washington, DC 20015
Attention: Richard W. Carlson
Email: rcarlson@carnegiescience.edu
Telephone: (202) 478-8474

with copy to: Wilmer Cutler Pickering Hale and Dorr LLP
1899 Pennsylvania Avenue NW
Washington, DC 20006
Attention: Justin L. Ochs
Telephone: (202) 663-6000

Notice will be deemed given upon delivery or upon the first refusal to accept delivery, and those given by email shall be deemed given on the date of the email

transmittal (or if not during business hours, the next business day), provided notice by another approved means is sent within one (1) business day after the email transmittal. The parties to this Agreement shall be responsible for notifying each other of any change of address or change in the persons to be notified.

24) Severability; Governing Law; Waiver of Jury Trial; Waiver of Consequential Damages.

The provisions of this Agreement are severable and the invalidity of one or more of the provisions shall not affect the validity or enforceability of any other provisions. This Agreement shall be governed by, construed and enforced according to the laws of the District of Columbia. EACH PARTY HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY A PARTY AGAINST ANOTHER PARTY OR PARTIES HERETO IN CONNECTION WITH ANY MATTER ARISING OUT OF OR CONNECTED WITH THIS AGREEMENT, THE WORK, THE expansion PROJECT, AND/OR CLAIMS OF INJURY OR DAMAGE.

25) Entire Agreement; Time of the Essence. This Agreement constitutes the entire Agreement between parties hereto and no party is liable to the other or bound in any manner by express or implied warranties, guarantees, promises, statements or representations pertaining to the subject matter hereof unless such warranties, guarantees, promises, statements, or representations are expressly and specifically set forth herein. Time is of the essence of this Agreement.

26) Counterparts. This Agreement may be executed simultaneously in any number of counterparts by original or electronic signature, each of which shall be deemed an original, but all of which shall constitute one and the same Agreement. Without limiting the foregoing or the valid, binding nature of this Agreement, at either parties' request, mechanically signed originals will be exchanged.

27) Successors and Assigns. This Agreement shall run with the land and be binding upon and shall inure to the benefit of Ingleside and Carnegie and their respective successors and assigns, including the owner or owners, at any particular time, of the Ingleside Property and the Carnegie Property. The foregoing provisions shall be self-operative. Without limiting the foregoing, however, Ingleside shall cause any successor owner of the Ingleside Property to expressly assume the obligations hereunder in a written instrument running in favor of and reasonably acceptable to Carnegie. At Carnegie's request, the parties will either record this Agreement or a notice hereof sufficient to put successor owners of the Ingleside Property on constructive notice of this Agreement and cause the same to be binding upon such successor owners.

28) No Implied Approvals. No provision of this Agreement shall constitute Carnegie's approval of, or consent to any use or improvement plans for, improvements to be constructed on the Ingleside Property.

29) Mutual Drafting. This Agreement has been carefully reviewed and negotiated by both parties and it shall be given fair and reasonable interpretation in accordance with the

words contained in it without any weight being given as to whether a provision was drafted by one party or its counsel.

- 30) Ingleside Liability. Any provision of this Agreement requiring Ingleside to take an action or to comply with any restriction, covenant, or other matter shall be deemed to include a covenant by Ingleside to take such action or to comply with such restriction, covenant, or other matter, such that the failure of Ingleside to comply or take such action constitutes the failure of Ingleside to perform a covenant of Ingleside hereunder. Notwithstanding anything to the contrary provided in this Agreement, (i) the obligations of Ingleside under this Agreement are the separate obligations of Ingleside, and (ii) Carnegie shall neither assert nor seek to enforce any claim, and hereby waives any and all rights to assert or claim, for breach of this Agreement against any of Ingleside's assets other than the Ingleside Property and proceeds therefrom, and (iii) in no event shall Ingleside ever be liable for consequential, indirect or punitive damages (it being agreed, however, that damage to Carnegie's Work and/or Carnegie's Equipment, including the reasonable and direct cost to repeat any Carnegie Work, shall be deemed to be direct damages rather than consequential, indirect or punitive damages).
- 31) Carnegie Liability. Notwithstanding anything to the contrary provided in this Agreement, (i) the obligations of Carnegie under this Agreement are the separate obligations of Carnegie, and (ii) Ingleside shall neither assert nor seek to enforce any claim, and hereby waives any and all rights to assert or claim, for breach of this Agreement against any of Carnegie's assets other than Carnegie's interest in the Carnegie's Property, and (iii) in no event shall Carnegie ever be liable for consequential, indirect or punitive damages.
- 32) Survival of Obligations. The obligation to perform any action or pay any sums due to a party from another party that would not be capable of being or otherwise are not performed, paid, or are incapable of calculation or otherwise are not calculated, until after the expiration or sooner termination of this Agreement, or which by the terms of this Agreement are intended to survive, shall survive and remain a continuing obligation until performed or paid. All indemnity obligations under this Agreement shall survive the expiration or earlier termination of this Agreement.

[Signatures on the following pages]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written:

Ingleside:

INGLESIDE PRESBYTERIAN COMMUNITY, INC.
a District of Columbia not for profit organization

By: 
Name: LYNN O'CONNOR
Title: President and CEO

Carnegie:

CARNEGIE INSTITUTION OF WASHINGTON
a nonprofit educational and scientific organization
incorporated by Act of Congress approved April 28, 1904

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written:

Ingleside:

INGLESIDE PRESBYTERIAN COMMUNITY, INC.
a District of Columbia not for profit organization

By: _____

Name:

Title:

Carnegie:

CARNEGIE INSTITUTION OF WASHINGTON
a nonprofit educational and scientific organization
incorporated by Act of Congress approved April 28, 1904

By:  _____

Name: Richard Carlson

Title: Director, DTM