

Rev. 1_11.05.07

WAYNE STATE UNIVERSITY

AGREEMENT BETWEEN THE UNIVERSITY AND CONTRACTOR FOR CONSTRUCTION SERVICES

Executed as of the _____ day of _____, 2011 by and between:

The Board of Governors, Wayne State University
Detroit, Michigan 48202
(The University)

And

CONTRACTOR'S_NAME
CONTRACTOR'S_ADDRESS

Regarding

PROJECT_NAME
PROJECT_LOCATION
PROJECT_NUMBER

In consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

Rev.1_4.28.09

Article 1 - Scope of Work

- 1.1 This Agreement provides for "(Enter a one or two-sentence description of the project)". The documents listed in Article 4 fully define the scope of work.
- 1.2 The Contractor shall furnish all the labor, materials, equipment, services, and supervision to perform all the work shown on the drawings and specifications listed in Article 17, including any addenda issued during the bid phase, and approved change orders issued during the construction phase.
- 1.3 The Contractor shall notify the University in writing within five (5) calendar days when the Contractor discovers any condition that will affect the contract amount or the completion date.

Article 2 - Time of Completion

- 2.1 The work to be performed under this Agreement shall commence upon the Contractor's receipt of a fully-executed Agreement, and substantial completion shall be achieved by Month_Day_Year.

Article 3 - The Contract Sum

- 3.1 The University shall pay the Contractor a "lump sum/not-to-exceed (pick one)" amount of \$\$\$\$\$\$ ("Amount in words 00" /100 dollars) for the performance of all work associated with the Contractor's Base Bid "and Alternates (List)".
- 3.2 The University may, at its sole discretion, during the life of the contract, award the following alternates at the amounts indicated: "(If section 3.2 is not used, delete all text and enter_Deleted"

<u>Description</u>	<u>Amount</u>
Alternate <input type="checkbox"/>	
Alternate <input type="checkbox"/>	
Alternate <input type="checkbox"/>	

- 3.3 In the event additional work becomes necessary, the following unit prices will apply: "(If section 3.3 is not used, delete all text and enter_Deleted"

<u>Work Item</u>	<u>Unit Price</u>
1.	
2.	
3.	

Article 4 - The Contract Documents

- 4.1 The Contract Documents shall consist of this Agreement, the drawings and specifications as listed in Article 17, the General Conditions of the Contract for Construction as defined by AIA Document A201 1970 Edition, except as otherwise provided herein, and Wayne State University's Supplementary General Conditions 1997 Edition.

- 4.2 For any inconsistencies found among or between these Contract Documents, the language contained in this Agreement shall prevail over all other documents and the Supplementary General Conditions shall prevail over the General Conditions. In the event of a conflict between the Drawings and Specifications, the requirement for the higher quantity and/or higher quality shall prevail.

Article 5 – Examination of Premises

- 5.1 The Contractor acknowledges that the University provided the opportunity for a thorough examination of the project site and its surroundings and that the Contractor knows of no conditions preventing accomplishment of the full scope of work within the time and for the amount specified in this Agreement.
- 5.2 The University will deny all claims for additional time and/or cost for conditions that could have been reasonably discovered during such an examination.

Article 6 - The Architect/Engineer

- 6.1 The Architect/Engineer for this project is:
"(List the Architect and Engineer separately if appropriate)"

Architect's/Engineer's_Firm_Name
Street_Number_and_Street_Name
Suite_or_PO_Box
City,_State,_Zip
Phone_No._/FAX_No.

- 6.2 The University will appoint a Project Manager who will be the University's point of contact for all matters of contract administration including, but not limited to, interpretation of documents, defining the scope of work, approving work schedules, and approving contract payments.

Article 7 - Additional Work

- 7.1 The University reserves the right to let other Agreements in connection with this work. The Contractor will afford other Contractors or the University's own workforce reasonable opportunity for the delivery and storage of their material and for the performance of their work and shall properly connect and coordinate its work with theirs.
- 7.2 If any part of the Contractor's work depends for proper execution or results upon the work of another Contractor or the University's own workforce, the Contractor shall inspect and promptly report to the University's Project Manager any defects in such work that render it unsuitable for such proper execution and results. The Contractor's failure to so inspect and report shall constitute an acceptance of the work of others as fit and proper for reception of the Contractor's work and as a waiver of any claim or defense against the University or other contractor which relies in whole or in part upon the contention that such work was unsuitable for proper execution

and resolution.

Article 8 – Dispute Resolution

- 8.1 Jurisdiction over all claims, disputes, and other matters in question arising out of or relating to this contract or the breach thereof, shall rest in the Court of Claims of the State of Michigan. No provision of this agreement may be construed as Wayne State University’s consent to submit any claim, dispute or other matter in question for dispute resolution pursuant to any arbitration or mediation process, whether or not provisions for dispute resolution are included in a document which has been incorporated by reference into this agreement. Specifically, all references to Arbitration contained in the General Conditions are superceded by this Article.
- 8.2 In any claim or dispute by the Contractor against the University, which cannot be resolved by negotiation, the Contractor shall submit the dispute in writing for an administrative decision by the University’s Vice President for Finance and Administration, within 30 days of the end of negotiations. Any decision of the Vice President shall be made within 45 days of receipt from the Contractor and is final unless it is challenged by the Contractor by filing a lawsuit in the Court of Claims of the State of Michigan within one year of the issuance of the decision. The Contractor agrees that appeal to the Vice President is a condition precedent to filing suit in the Michigan Court of Claims.
- 8.3 For purposes of this section, the “end of negotiations” shall be deemed to have occurred when:
- 8.3.1 Either party informs the other that pursuant to this section, negotiations are at an impasse;
or
- 8.3.2 The Contractor submits the dispute in writing to the Vice President.
- 8.4 Unless otherwise agreed by the University in writing, and notwithstanding any other rights or obligations of either of the parties under any Contract Documents or Agreement, the Contractor shall continue with the performance of its services and duties during the pendency of any negotiations or proceedings to resolve any claim or dispute, and the University shall continue to make payments in accordance with the Contract Documents; however, the University shall not be required or obligated to make payments on or against any such claims or disputes during the pendency of any proceeding to resolve such claims or disputes.

Article 9 - Termination for Convenience

- 9.1 Upon thirty days written notice to the Contractor, the University may, without cause and without prejudice to any other right or remedy of the University, elect to terminate the contract. In such case, the Contractor shall only be paid (without duplication of any items), using a Close out Change Order, for the following:
- 9.1.1 For completed and acceptable work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums

for overhead and profit on such Work;

9.1.2 For expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted work, including fair and reasonable sums for overhead and profit on such expenses.

9.2 The Contractor shall not be paid on account of loss of anticipated profits or revenue, delay or disruption, or other economic loss arising out of or resulting from such termination. For purposes of this section, "fair and reasonable sums for overhead and profit" shall be determined by reference to Michigan law, without reference to principles used for such determinations in arbitration.

Article 10 - Progress Payments

10.1 On or before the 20th day of each month, the Contractor shall submit a written application for payment, using form AIA G702, to the Architect/Engineer and the University's Project Manager for review. The Architect/Engineer shall have ten (10) calendar days to accept or reject the Contractor's application for payment. Acceptable applications for payment shall then be submitted to the University for Payment of authorized amount(s) within thirty (30) calendar days of receipt by the University's Project Manager.

10.2 The application for payment shall contain a full schedule of values organized and sorted by subcontractor, by Construction Specifications Institute standard work categories, or in another format acceptable to the University.

10.3 Monthly progress payments shall show the percentage of work installed as of the date of the application, less amount previously installed and the amount due for the application period. The Contractor shall deduct a 10% retainage from the balance due for each progress payment and indicate the net amount due on each application.

10.4 When 50% of the work associated with this Agreement is installed, the Contractor shall not deduct additional retainage from the balance due from the University. When substantial completion is achieved and acknowledged by the Architect/Engineer, the Contractor and the University in writing, the University shall remit to the Contractor all but 2% of the retainage. The remaining 2% shall be retained by the University until the final payment is authorized and remitted to the Contractor.

Article 11 - Acceptance and Final Payments

11.1 Final payment shall be due thirty (30) days after the completion of the work, including all punch list items, provided the work is fully completed and the Agreement fully performed.

11.2 Upon receipt of written notice that the work is ready for final inspection and acceptance, the Architect/Engineer shall promptly inspect the work. When the Architect/Engineer concludes that the work is acceptable and the Agreement to be fully performed, the Architect/Engineer shall promptly issue a final certificate with an original signature, stating that the work provided is

complete and acceptable and that the entire remaining balance found to be due the Contractor shall be remitted by the University once the final application for payment is received.

- 11.3 If, after the work has been substantially completed, full completion thereof is materially delayed through no fault of the Contractor, and the Architect/Engineer so certifies, the University shall, upon certificate of the Architect/Engineer, and without terminating the Contract, make payments of the balance due for that portion of the work fully completed and accepted. Such payments shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

Article 12 - Non-Discrimination

- 12.1 The Contractor agrees that it will not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, age, national origin, or ancestry. Breach of this covenant may be regarded as material breach of this Agreement.
- 12.2 The Contractor further agrees that it will, in all subcontracts relating to the performance of the work under this Agreement, provide in its subcontracts that the subcontractor will not discriminate against any employee or applicant for employment, to be employed in the performance of such contract, with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of race, sex, age, color, religion, national origin or ancestry. Breach of this covenant may also be regarded as a material breach of this Agreement.

Article 13 - Prevailing Wages

- 13.1 The Contractor and each subcontractor shall pay to each class of mechanics and laborers not less than the wage and fringe benefit rates prevailing in the Detroit Metropolitan Area, as determined by the United States Department of Labor. The Contractor shall post on site, in a conspicuous place, a copy of all applicable wage and benefit rates, and shall provide the University with a copy of the applicable wage and benefit rates.
- 13.2 The Contractor and each subcontractor shall keep an accurate record showing the name and occupation of and the actual benefits and wages paid to each laborer and mechanic employed in connection with this contract. The Contractor and each subcontractor shall make certified payroll records available to the University's representatives upon request.
- 13.3 If a Contractor or subcontractor fails to pay the prevailing rates of wages and fringe benefits and does not cure such failure within ten (10) days after notice to do so by the University, the University shall have the right, at its option, to do any or all of the following:
- 13.3.1 Withhold all or any portion of payments due the Contractor as may be considered necessary by the University to pay laborers and mechanics the difference between the rates of wages and fringe benefits required by this Agreement and the actual wage and fringe benefits paid.

- 13.3.2 Terminate part or all of this Agreement or any subagreement and proceed to complete the Agreement or subagreement by separate agreement with another Contractor or otherwise, in which case the Contractor and its sureties shall be liable to the University for any excess costs incurred by the University.
- 13.4 The Contractor shall include terms identical or substantially similar to this section in any Agreement or subagreement pertaining to the project.

Article 14 - Save Harmless

- 14.1 The Contractor shall indemnify, defend and hold harmless the University, its agents and employees from any and all loss, damage, claims, and causes of action whatsoever, including all costs, expenses and attorneys' fees arising out of Contractor's performance of obligations under the terms and conditions of this agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the negligence of the University, its agents other than the Contractor, or its employees.

Article 15 - Liquidated Damages

- 15.1 It is understood and agreed that, if the project is not completed within the time specified in the Agreement plus any extension of time allowed pursuant thereto, the actual damages sustained by the University because of any such delay will be uncertain and difficult to ascertain, and it is agreed that the reasonable foreseeable value of the use of said project by the University would be the sum of \$\$\$\$\$\$ ("Amount in words 00"/100 dollars) per day. Therefore, the Contractor shall pay as liquidated damages to the University the sum of \$\$\$\$\$\$ ("Amount in words 00"/100 dollars) per day for each day's delay in substantially completing said project beyond the time specified in this Agreement and any extensions of time allowed thereunder.

"ENTER N/A FOR ABOVE AMOUNT IF NO LIQUIDATED DAMAGES"

Article 16- Interpretation

- 16.1 This Agreement shall be interpreted and construed according to the laws of the State of Michigan.
- 16.2 If one part of this Agreement is found to be void by legal or legislative action, the remainder of the contract remains in full effect.

Article 17 - Drawings and Specifications

17.1 The Technical Specifications and the Project Manual dated **SPECIFY_DATES**, and the following List of Drawings represents the scope of work as defined in the Contract Documents from Article 4.

<u>Drawing No.</u>	<u>Description</u>	<u>Dated</u>
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Project_Name
WSU_Project_Number

00500-9

IN WITNESS WHEREOF the parties to these presents have hereunto set their hands as of the day and year first written above.

Signed, sealed and delivered
In the presence of:

CONTRACTOR'S NAME GOES HERE

By _____
Signature

Please print name here

Date signed

Title

Witness

**THE BOARD OF GOVERNORS of
WAYNE STATE UNIVERSITY**

By _____
Richard J. Nork, Vice President for
Finance and Business Operations

Date signed

Form Contract Approved by OGC 5/98
File_reference_here