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| wsu-primary-horz-color-600-10-2017-small  **Division of Finance and Business Operations** |  | **Procurement & Strategic Sourcing**  **5700 Cass Avenue, suite 4200**  **Detroit, Michigan 48202**  **(313) 577-3734**  **FAX (313) 577-3747** |

**February 28, 2025**

**Addendum 1**

**RFP Law School Classroom Building**

**dated February 14, 2025**

Questions have been raised regarding the University's RFP for Design Services for **Law School Classroom Building** for **Facilities Planning & Management.** A summary of the questions asked and the University's responses are as follows:

**Question:**

Appendix 2 lists the Professional Liability Insurance coverage at $10 million per occurrence and $20 million in aggregate. Is the coverage amount listed in Appendix 2 required and if not, what is the required coverage amount?

**Answer:**

Appendix 2 shows the correct minimum requirements for Professional Liability Insurance. Additional information is provided below relative to insurance requirements and is hereby incorporated into the RFP as Appendix 2 – Supplemental Information.

**Question:**

Under section G.A.6 of the RFP, it states that E-Builder is required to be used for the construction project management software. Will WSU or the CM host / hold the licensing and allow the A/E as users or with the A/E be required to pay for subscriptions to E-Builder?

**Answer:**

E-Builder (or a similar Project Management Information System) licenses will be provided by either WSU or the CM. The A/E will not be required to host E-Builder.

**Question:**

What is the anticipated scope and site limit for work along Gilmore Mall?

**Answer:**

Wayne State University is flexible on the projection into Gilmour Mall.

**Question:**

Please confirm if the following professional services are required as part of basic services and if so, will they be by WSU or under the A/E:

Audio / Visual system design

Telecom / Data systems and structured cabling design

Security / card access

Acoustic engineering

**Answer:**

These services will be provided by the A/E team with Wayne State input. Acoustic engineering should be provided by the A/E team if required.

**Question:**

The “Proposal Requirements” section of the RFP states the response is limited to a total of six A3 pages (including title and closing pages but excluding resumes). Should we also include exhibits A and C in our RFP response as a separate A3 page, or would you like us to submit them separately?

**Answer:**

All required documents in the RFP should be submitted with the RFP response as one PDF. Exhibits A and C are excluded from the page count limit.

**Question:**

The RFP states that the first task will be program validation, is WSU staff planning on completing the programming with the user groups and the consultant team will only be validating this document with key staff. If this is true, will WSU be issuing the Program Document via RFP addenda prior to the RFP due date, if not prior to the RFP due date, prior to the interviews?

**Answer:**

WSU staff is continuing to work on the programming. The draft program will be issued to the successful A/E team upon award to start the program validation process.

**Question:**

Please clarify if the AE firm is to provide IT/AV/Security services as the RFP is not clear; Page 15, Section B: Design Development, Statement #2, items b-f are stated to be by WSU. Statements #7 and #8 imply that the services for items b-f are to be provided by the AE?

**Answer:**

These services will be provided by the A/E team with Wayne State input. Acoustic engineering should be provided by the A/E team if required.

**Question:**

In Section 3, we are asked to include qualifications, biographies, and role descriptions for our team members. Does this include subconsultants, or are subconsultants only to be included in the organization chart?

**Answer:**

Please provide this information for all key members of the proposed A/E team, including subconsultants.

**Question:**

Are there specific targets for M/W/DBVE participation on proposed teams?

**Answer:**

WSU does not have specific participation targets. Please refer to the Supplier Diversity Program linked within the RFP for additional details.

**Question:**

On the online submission form, references are made to Schedule A, B, C, D, and Exhibit 1. Could you clarify what these items are and where they can be located? Additionally, are the insurance requirements in Schedule B different from those in Appendix 2 in the RFP?

**Answer:**

The items shown on the online submission form are mismatched with the labeling of these items within the RFP. Please use the mapping shown below to align the submission form (the first of each pairing shown below) with the RFP:

* Schedule A refers to Exhibit A
* Schedule B refers to Appendix 2
* Schedule C refers to Exhibit B
* Schedule D refers to Exhibit C

For Exhibit 1 (Restricted Services/Exceptions to the RFP), please create your own file that lists exceptions and provide it with your proposal. Exhibit 1 will be excluded from the page count. The insurance requirements are outlined in Appendix 2 and added Appendix 2 – Supplemental Information. Appendix 2 – Supplemental Information has been added to this Addendum.

**Question:**

What project representatives do you expect to attend the interview?

**Answer:**

WSU is not prescribing the exact makeup of the interview team. However, general guidance is that key members of your team should attend, and all attendees should be participating members of the discussion. As noted in the RFP, ‘Bring the appropriate people to the meeting that can participate in the presentation and can answer anticipated questions from the selection committee.’

**Question:**

What level of existing conditions documents will be provided by the university at the beginning of the project? Survey of existing buildings, site conditions, etc.?

**Answer:**

WSU will provide all available documents to the selected A/E team. Additional field verification is likely required.

**Question:**

Will existing plans of the Law School be provided as reference for the shortlisted teams?

**Answer:**

WSU will provide all available documents to the selected A/E team. Additional field verification is likely required.

**Question:**

The RFP provides dates by which each design phase must be complete. If the A/E contract is finalized, as planned, by March 28, 2025, the phase durations would be as follows:

Program Confirmation and Conceptual Design: 1 month

Schematic Design: 4 months

Design Development: 9 months

Construction Documents: 8 months

May we propose alternative durations for the phases that will meet or improve on the goal of December 11, 2026 for completion of CDs? Is there significance associated with the interim dates provided for each phase?

**Answer:**

The interim phase dates as provided in the RFP are dates that have been communicated to the DTMB. Please prepare your proposal with the intent to meet these dates. DTMB review periods must be included and those durations are currently unknown. Proposals may include alternative dates and a discussion about the viability of the target dates. Multiple bid packages will be established upon CM selection.

**Question:**

Additionally, please specify the year and semester in which the target Substantial Completion is expected to occur.

**Answer:**

Our expectation is that the building will be ready for occupancy in March 2029.

**Question:**

The RFP requests an A3 format. Is 11x17 acceptable?

**Answer:**

Yes, 11x17 is acceptable.

**Question:**

Should geotechnical consulting be provided by the design team, or will this be through Wayne State University?

**Answer:**

WSU will hire a consultant to provide geotechnical consulting.

**Question:**

Is demolition scope to remove the existing classroom building included in the project scope and construction cost?

**Answer:**

Existing building demolition is included in the project scope and cost.

**Question:**

Under Section V.1.A.5, the RFP states "Conduct an in-depth study, INCLUDING AN ON-SITE VERIFICATION OF EXISTING CONDITIONS." Will a hazardous material assessment be provided by Wayne State University?

**Answer:**

WSU will provide the available hazardous material assessment reports.

**Question:**

Will the project be responsible for any hazardous material abatement prior to demolition?

**Answer:**

The project will include abatement as required for demolition.

**Question:**

There was a question about potential changes to the final contract documents.

**Answer:**

Please replace Appendix 3 – Contract for Professional Services with the below Contract for Design Professional Services for Projects Oriented According to Construction Management. Provide exceptions to this contract in your proposal in Exhibit 1. Exceptions will be a part of the proposal evaluation criteria.

Should you have any questions or concerns about this Addendum or on any other aspects of the Request for Proposal, please send them by email to **Valerie Kreher**, **Senior Buyer**, Email; **rfpteam2@wayne.edu**.

Thank you,

**Valerie Kreher**

**Senior Buyer**

**Appendix 2 – Supplemental Information**

**Wayne State Insurance Requirements**

Vendor shall carry and maintain, at all times during the term of this Agreement, and thereafter if so designated hereinafter, at no cost to Wayne State University, the following insurance coverages in amounts not less than those shown below, and shall comply with all of the provisions in this Exhibit A, unless Wayne State University ERM approves otherwise:

|  |  |  |
| --- | --- | --- |
|  | 1. TYPE OF INSURANCE | MINIMUM LIMITS |
|  | I. Workers’ Compensation. | Statutory |
| II. Employers Liability on an “occurrence” basis. | $1,000,000 each bodily injury by accident  $1,000,000 each bodily injury by disease/employee  $1,000,000 policy limit for bodily injury by disease |
|  | III. Commercial General Liability written on the 00 01 04 13 ISO Commercial General Liability occurrence form policy or its equivalent and must include an Additional insured endorsement scheduled as follows: “The Board of Governors of Wayne State University shall be named as an additional insured, but only with respect to accidents arising out of said contract” | $1,000,000 per occurrence for bodily injury, personal injury and property damage &  $2,000,000 general aggregate limit with aggregates applying separately to products/completed operations and all other general liability coverages combined |
|  | IV. Commercial Automobile Liability on an “occurrence” basis (all owned, non-owned, hired and borrowed), including contractual liability, and must include an Additional insured endorsement scheduled as follows: “The Board of Governors of Wayne State University shall be named as an additional insured, but only with respect to accidents arising out of said contract” | $1,000,000 combined single limit per accident for bodily injury and property damage |
|  | V. Excess/Umbrella Liability coverage on a follow form basis no more restrictive than the underlying insurance. Underlying policies include; Commercial General Liability, Auto Liability, and Employers Liability | $10,000,000 each occurrence and in the aggregate |
|  | VI. Professional Liability (Errors and Omissions) to be carried and maintained during the term of the Agreement and for the longer of (a) six (6) years following final completion of the Project or (b) the expiration of the statute of repose. Each renewal or replacement of the Professional Liability insurance shall have retroactive coverage for the entire prior period in which the Architect provides services in connection with the Agreement. Such insurance shall cover liability to Company imposed by law or contract arising out of a negligent error, omission or act in the performance, or lack thereof, of professional services and any physical property damage, bodily injury or death resulting therefrom | $10,000,000 per claim and $20,000,000 annual aggregate with a deductible not to exceed $100,000 unless otherwise approved by Wayne State ERM |

B. Verification of Coverage. Prior to the commencement of the Services hereunder, and continuously throughout the period the Services are provided, Vendor shall furnish to WSU certificates (and, not less than fifteen (15) days prior to expiration of any insurance policies required hereunder, renewal certificates) of insurance evidencing compliance with the obligations under this Exhibit A, including, without limitation, evidence of the endorsements required hereunder. Each certificate shall provide for thirty (30) days’ prior written notice to WSU in the event of cancellation or change in any of the insurance coverages (ten (10) days for cancellation due to non-payment of premium). The certificate and evidence of endorsements for each policy shall be signed by a person authorized by each insurer to bind coverage on its behalf. WSU reserves the right at any time to require that Vendor made available for company’s review WSU with redacted copies of any or all insurance policies.

C. Acceptability of Insurers. All insurance carried in accordance with this Exhibit A shall be provided through insurers authorized to conduct business in the state where the Services are to be performed and with an A.M. Best & Co. rating of no less than A VII.

D. Primary Coverages. All policies shall provide for the coverage to be primary and not contributory with any insurance carried or maintained by Client Parties.

E. Deductibles and Self-Insured Retention. Any deductibles or self-insured retentions under the above policies must be declared to and approved in advance by WSU ERM. At Wayne State University’s option, WSU may require any of Vendors insurers to reduce or eliminate any or all such deductibles or self-insured retentions or require Vendor to post a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

F. Waiver of Subrogation. All insurance policies maintained by the Vendor and its consultants shall contain a prior release clause and provide that each insurer thereunder waives its right of subrogation against or contribution from WSU Parties or any of their insurers; provided, however, this waiver shall not apply to the professional liability insurance if, by the express terms of the policy, a waiver of subrogation is prohibited and the insured uses commercially reasonable efforts to except this Project from such prohibition. Vendor hereby waives all rights of recovery against WSU Parties for a loss or liability covered by insurance maintained by Vendor. WSU or Vendor, as appropriate, shall require of the contractors, consultants, agents, and employees of any of them, similar waivers in favor of the other parties enumerated herein.

G. Pollution. Where applicable

****

**CONTRACT FOR DESIGN PROFESSIONAL SERVICES**

**FOR PROJECTS ORIENTED ACCORDING TO**

**CONSTRUCTION MANAGEMENT**

Executed as of the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_, by and between

Board of Governors of Wayne State University (“University” and “WSU”) Detroit, Michigan 48202

and

Regarding

WSU Contract Number

Recitals

The University desires to retain the Design Professional to perform professional services on the terms hereinafter set forth, and the Design Professional desires to perform said services for the University. In choosing to retain the Design Professional under this Agreement, the University is relying upon the reputation of the Design Professional and upon the Design Professional's material representations to the University that it is fully qualified and has the expertise, experience, qualifications and fitness to perform the services hereunder.

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

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**1.00 DESIGN PROFESSIONAL RESPONSIBILITIES**

**1.01** **Scope of Work**

The Design Professional shall provide all necessary architectural, engineering and design services normally and customarily furnished and reasonably necessary for the

**1.02 Labor and Services**

The Design Professional shall provide, furnish and perform all necessary services and furnish all necessary supplies, materials and equipment required to design the Work in accordance with this Agreement. The Design Professional shall ensure that all designs developed strictly comply with applicable laws, statutes, codes, ordinances, orders, rules and regulations in effect as of the time the latest construction and building permit is issued. The Design Professional shall utilize and employ consultants to prepare the program, design, and construction documents, and provide construction administration service as defined in the Proposal attached hereto as Exhibit A and the University’s Request for Proposal (ENTER DATE HERE) (including all subsequent addenda to the Request for Proposal). In the case of conflicts between this Agreement and the Design Professional’s Proposal, the language of this Agreement shall prevail. All consultants to be utilized by the Design Professional shall be subject to the approval of the University.

**1.03 Time of Completion**

The Design Professional shall endeavor to comply with the mutually agreed upon Master Project Schedules prepared by the Construction Manager, University, and Design Professional, and shall produce and submit programs, design and construction documents accordingly. The Design Professional shall perform all of its obligations and responsibilities expeditiously and so as not to cause delay in the completion of the Master Project Schedule. The Design Professional shall not be responsible for delays resulting from actions of the Construction Manager or the University.

The Design Professional shall commence the Scope of Work upon receipt of a fully executed Agreement, and shall complete the Scope of Work in accordance with the time schedule set forth in the Proposal and herein defined.

A. Program Statement, Schematic Design, Outline Specifications by:

C. Design Development by:

1. Construction Documents:
2. The Design Professional acknowledges the responsibility it has to work cooperatively with the Construction Manager to generate the Guaranteed Maximum Price ("GMP"). Toward that end, all parties will endeavor to develop the GMP by:
3. Substantial Completion by:
4. Punchlist Completion by:
5. Final Completion by:

Completion dates will be reviewed once the Construction Manager is selected to determine if any changes need to be made.

**1.04 Drawings, Plans and Specifications**

The Design Professional shall advise the Construction Manager of the development of the plans, specifications and other documents by the Design Professional, and shall permit the Construction Manager to make such recommendations as may be appropriate in order to conform to the GMP Scope of Work and the University's interests. The Design Professional shall furnish the drawings and details in an appropriate scale, or as defined by the University.

**1.05 Cooperation with Construction Manager**

The Design Professional shall perform all services required under this Agreement in cooperation with and in conjunction with the Construction Manager. The Design Professional acknowledges that it has read and understands the roles, responsibilities, risks and obligations of the Construction Manager’s Agreement, and that while it is not incorporated herein, the Design Professional will do everything within its power to ensure the successful performance of the Construction Manager and the University. The parties intend that the relationships between the Construction Manager, the Design Professional and the University function in the spirit of mutual cooperation and respect in order to promote efficiency and cooperation between all the parties.

**1.06 Budget and Guaranteed Maximum Price**

The Project’s total project budget, inclusive of the Cost of the Work, soft costs, contingencies and permits is $(ENTER VALUE HERE) (the Total Project Budget).

The Design Professional understands and agrees that it shall cooperate with the Construction Manager and shall provide necessary information to assist the Construction Manager in establishing the GMP for the Project. The Design Professional agrees to provide the necessary and required professional services under this Agreement in order to generate and comply with the GMP. The Design Professional shall supply information as needed in order that the Construction Manager may accurately price and construct the Work within the limits of the Project budget.

The Design Professional shall take all reasonable steps to conform its Project design to the Total Project Budget. If at any time the Project is estimated to exceed the Total Project Budget or the GMP, the Design Professional shall notify the Owner and present remedies or alternatives that are anticipated to bring the Project within Budget.

**1.07 Design Development, Construction Documents and Iterative Probable Construction Cost Estimates**

The Design Professional shall timely submit the plans, drawings and specifications to the Construction Manager and the University for Review and approval as to practicality and constructability within the limits of the GMP and Total Project Budget when the Construction Documents are fifty percent (50%), eighty-five percent (85%), and one hundred percent (100%) completed. The Construction Manager shall complete its review and iteratively re-estimate the Cost of Work within five (5) days of receipt of the plans, drawings or specifications. The Construction Manager shall report its findings and recommendations to the University; if, prior to iterative approval of the documents, the University orders revisions in the plans, drawings or specifications in order to make the plans practical or constructible, the Design Professional shall, for no additional compensation, make such revisions as may be necessary. If Work defined in the design drawings or specifications exceeds the GMP or the Total Project Budget, the Design Professional will redesign the scope to meet budget requirements, without additional compensation. It is understood and accepted that the University, Design Professional, and Construction Manager will sign-off acknowledging the acceptability of the various iterations of scope defined and probable cost throughout the duration of the Project. The Design Professional shall be compensated for the direct incremental cost associated with required revisions after design details had been previously accepted and approved by the University and Construction Manager.

**1.08 Consultation**

The Design Professional and the Construction Manager shall advise and consult with the University during the Construction Phase.

**1.09 Certification for Payment**

The issuance of a Certified Application for Payment shall constitute a representation by the Design Professional to the University that, based on the Design Professional's observations at the site and on the data comprising the Construction Manager's Application for Payment, Work has progressed to the point indicated; to the best of the Design Professional's knowledge, information and belief, the quality of Work is in accordance with the Contract Documents; and the Construction Manager and Trade Contractors are entitled to payment in the amount certified.

**1.10 Other Provisions of the Agreement**

While the General Conditions of Construction and Supplementary General Conditions for Construction of the Contract deal principally with the responsibilities and obligations of the Construction Manager, it is understood and acknowledged that they also define requirements for the Design Professional’s performance. As a result the General Conditions of Construction and Supplementary General Conditions for Construction of the Contract pertaining to this Project are expressly incorporated into this Agreement. It is expressly understood that the Design Professional is not responsible for the construction of the Work. Further, Exhibit A to this Agreement (the Design Professional’s proposal) and the University’s Request For Proposal, dated as of ENTER DATE HERE (including all attachments, exhibits and addendum) are expressly incorporated into this Agreement.

**1.11 Sub-Consultants**

The Design Professional shall bind its consultants and sub-consultants to the terms stated herein and shall require that all persons rendering services under this Agreement are properly licensed to provide such services in in the locale in which the Project is located.

**1.12 Coordination of Services**

The Design Professional shall coordinate its services, and the services provided by the Design Professional’s consultants, with the services and obligations of the University and the University’s consultants, contractors, construction managers, and vendors.

**1.13 Approvals by the University**

Notwithstanding anything to the contrary contained in this Agreement, the University’s review and approval of any documents, or other matters, shall be for sole the purpose of providing the Design Professional with information as to the University’s objectives and goals with respect to the Project and not for the purpose of determining the accuracy of completeness of such document or deliverable. Any review or approval by the University shall in no way alter the Design Professional’s responsibilities hereunder.

**1.14 Errors and Omissions**

The Design Professional agrees that if as a result of any errors, omissions and/or negligent acts, for which the Design Professional has responsibility and/or liability, and that the University incurs an accumulation of excess cost over two percent (2%) of the Cost of Work established at the time of award of the Construction Contract or at the establishment of the Guaranteed Maximum Price (“Standard of Care Amount”), the Design Professional shall pay for the Design Professional’s errors, omissions and/or negligent acts in excess of the Standard of Care Amount, including applicable delay expenses but excluding betterment costs.

**2.00 COMPENSATION AND METHOD OF PAYMENT**

**2.01 Fee**

The University shall pay the Design Professional for its services under this agreement a lump sum amount of (amount in words) Dollars ($XXX,XXX) for the Program Statement and Schematic Design pursuant to the fee schedule provided in Exhibit A.

The University at its sole discretion reserves the right to contract with this firm for Project Completion – Design Development through Construction Administration required to provide all necessary services for a complete project pursuant to the fee schedule provided in Exhibit A at a rate of XXX% of the Cost of Work for an amount of (value in words) Dollars ($XXX,XXX) based upon a $XX,XXX,XXX Cost of Work.

**2.02 Invoices**

The Design Professional shall submit invoices to the University on a monthly basis. These invoices shall be in the form and detail as required by the University and shall be based on a percentage of completion of the services provided. The Design Professional shall not be entitled to payment until the Design Professional has provided a sworn statement and lien waivers from the Design Professional and any of the Design Professional’s consultants. Reimbursables shall be listed by category The Design Professional shall maintain at its office sufficient records to fully support each invoice. Such records shall be available for inspection during normal working hours by the University or its designee.

**2.03 Payment**

Within thirty (30) days of receipt of an invoice with all required supporting documentation, including lien waivers and sworn statements, the University shall pay the invoice. The amount of Design Professional’s invoices shall be in accordance with the value for each portion of service set forth in the Design Professional’s Proposal. The University shall be entitled to withhold payment of any portion of an invoice that is in dispute until the disputed item is resolved. The Design Professional shall continue rendering any services required or necessary under this Agreement during the pendency of any dispute. All disputes shall be submitted to the Senior Vice President of Finance and Administration of the University for Resolution; any decision shall be binding and final unless objected to within thirty (30) days of the decision as provided in Section 13 of this Agreement.

**2.04 Reimbursables**

Reimbursables include expenses incurred by the Design Professional and the Design Professional’s consultants and subconsultants directly related to the Project, as follows:

1. Transportation and authorized out-of-town travel and subsistence costs not exceeding the University’s Published limits and restrictions;
2. Printing and Reproductions; Excluding items for the Architect’s internal use, printing, reproductions, plots, and standard form documents;
3. Postage, handling and delivery; and
4. Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner; and

The Design Professional’s compensation for Reimbursable shall be the expenses incurred by the Design Professionals, or its consultants and subconsultants, without markup. The total Reimbursable Expenses authorized under this Agreement shall not exceed (ENTER VALUE IN WORDS HERE) Dollars ($0.00).

**3.00 PERFORMANCE**

**3.01 Scope of Services**

All services provided by the Design Professional shall be performed in a reasonably prompt manner and shall be in accordance with the professional standards applicable to such services on the type of Project contemplated by this Agreement, and the Design Professional shall be responsible for all services provided pursuant to this Agreement whether such services are provided directly by the Design Professional or by any consultants hired by the Design Professional. The Design Professional shall perform all duties and services and make all decisions called for in this Agreement promptly and without unreasonable delay and will give this Project such priority in its office as is necessary to timely and properly perform the services required in this Agreement.

**3.02 Governmental Licenses**

The Design Professional shall maintain any and all necessary governmental licenses, certificates, and approvals which are required of the Design Professional for the performance of its duties under this Agreement, and all such required licenses, certificates, and approvals shall be maintained in full force and effect throughout the term of this Agreement.

**3.03 Failure to Comply with Agreement**

In the event that the Design Professional fails to comply with any portion of this Agreement, the Design Professional shall, without additional compensation, promptly correct to the satisfaction of the University those services which are not in compliance. This will in no way waive any additional rights or remedies the University may have under Michigan and Federal law.

**3.04 Rejection of Design Professional's Work**

The University shall have the right to disapprove or reject any portion of the Design Professional's Work on the Project on any reasonable basis including, but not limited to, aesthetics, or that the likely construction cost of the design may render all or any part of the Project infeasible, or that the construction will likely exceed the GMP. The University shall provide such notice promptly. In the event that any portion of the Design Professional's Work is not approved by the University, the Design Professional shall, at the request of the University, revise such work in order to satisfy the University's objections. Any such revisions shall be made without adjustment to the compensation defined herein. Any revisions ordered by the University which had been previously approved by the University and the Construction Manager may result in a negotiated adjustment to the compensation as additional service.

**4.00** **OWNERSHIP OF DOCUMENTS**

**4.01 Property of University**

All drawings and specifications prepared and furnished by the Design Professional shall become the property of the University upon their approval and payment therefore by the University, or upon the prior termination of the Design Professional's services hereunder, and the Design Professional shall have no claim for further employment or additional compensation as a result of exercise by the University of its full rights of ownership of these documents and materials. It is understood and acknowledged that all drawings and specifications prepared and furnished by the Design Professional pursuant to this contract shall be used only for the current Project and any future work pertaining to this Project at the Project site, including but not limited to repair work, renovations or alterations.

**4.02 Modifications to Documents after Completion of Project**

The University agrees to indemnify and hold harmless the Design Professional from any claim, liability or cost (including reasonable attorneys' fees) which results from modifications of the construction documents prepared by the Design Professional by the University after completion of the Project, provided that the Design Professional gives the University immediate notice of any such claims, liability, or cost, is represented by counsel approved by the University, agrees to fully cooperate with the University in defense of such claims, and gives the University full and exclusive control over the defense or settlement of such claims.

**5.00** **CONFIDENTIALITY**

**5.01 Definition**

The term Confidential Information as used herein means all information and data whether of a technical, engineering, operating or economic nature, supplied to or obtained by the Design Professional during the course of this Agreement, whether in writing, in the form of drawings, orally or by observation.

**5.02 Disclosure to Employees**

The Design Professional acknowledges and agrees that any information disclosed to it, its employees, agents or other representatives pursuant to this Agreement which is Confidential Information is and shall remain solely the property of the University and shall be maintained in confidence and not revealed to others and shall be used only for the purposes contemplated by this Agreement. The Design Professional further agrees to take all necessary measures to limit disclosure or use of any such confidential information only to such of its employees, agents or other representatives as are essential; any employee, agent or other representative to whom disclosure is made shall likewise maintain and protect the confidentiality thereof in accordance with this Agreement. The Design Professional shall be responsible to ensure that its employees, agents and other representatives preserve the secrecy of such confidential information.

**5.03 Period of Confidentiality**

The obligations of confidentiality stated in this Agreement with respect to confidential information shall survive the termination of this Agreement for any reason whatsoever and shall continue in full force and effect until the earliest of the following should occur: (a) such confidential information has become available to the general public through no fault of the Design Professional, or (b) such confidential information is received by the Design Professional from third parties who are in lawful possession of such and who by such disclosures are not breaching any obligation owing to WSU, or (c) such confidential information is disclosed by the Design Professional under legal compulsion from any governmental/regulatory agency having jurisdiction to request such information; provided, however, that the Design Professional shall notify the University prior to any such disclosure that confidential information is being disclosed to the governmental/regulatory agency involved.

**6.00 SAFETY AND SECURITY**

The Design Professional and all of its consultants, employees, and agents performing services in connection with this Agreement shall fully comply with all laws, rules, regulations and other requirements pertaining to safety and security imposed by the University, the Construction Manager, and/or any governmental authority.

**7.00 INDEMNIFICATION**

To the fullest extent permissible by law, the Design Professional agrees to indemnify, hold harmless, protect and defend the University and the Construction Manager as well as their agents, representatives, employees, and subcontractors, against any and all claims, loss, liability, damages, costs, and expenses, including reasonable attorney's fees, that are caused, in whole or in part, by the negligent acts, errors or omissions, including but not limited to the professional negligence of the Design Professional, its agents, consultants, employees or representatives.

**8.00 INSURANCE**

**8.01 Coverage**

The Design Professional, at its cost, shall obtain and maintain the following insurance with respect to its performance under this Agreement:

(1) Commercial General Liability Insurance, in an amount of not less than One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) annual aggregate. Such coverage shall include contractual liability insurance applicable to the Design Professional's obligations contained in Article 7. Any policy shall name the University as an additional insured.

(2) Automobile Liability Insurance (Owned, Hired, and Non-Owned Vehicles), in an amount of not less than One Million Dollars ($1,000,000) combined single limit for property damage. Any policy shall name the University an additional insured.

(3) Professional Liability Insurance (Errors and Omissions) in an amount of not less than Five Million Dollars ($5,000,000) per claim (claims made) and Ten Million Dollars ($10,000,000) aggregate. Tail-coverage shall be provided for claims made after final completion. Coverage shall be for the benefit of the Contracting or Design-Build entity, its principles, employees, affiliates, agents, and partners – whether joint or several.  It is presumed that this insurance will be Claims Made, and therefore must have a Retro-active date prior to the performance of any work for the Owner, whether or not such work is under contract or purchase order.

(4) Worker's Compensation Insurance with Employers Liability-Worker’s Compensation statutory limits & Employers Liability $1,000,000.

**8.02 Design Professional Insurance Primary**

Such insurance shall include coverage for the Design Professional and those, for whom the Design Professional may be responsible, shall cover claims and losses occurring during or at any time after the term of this Agreement and shall otherwise be to the reasonable satisfaction of the University. Such liability coverage, where applicable, shall be primary to any insurance maintained by the University. The Design Professional shall provide the University with documentation sufficient to evidence such insurance coverage, and shall require its insurers to immediately notify the University in writing of any proposed change, non-renewal or cancellation of such insurance or if the amount of the aggregate available for claims by the University falls below the amounts set forth above.

**8.03 Consultant Insurance**

The Design Professional shall require that any and all consultants engaged or employed by the Design Professional carry and maintain similar insurance and coverage’s as defined in Article 8.01.

**9.00 AUDITS AND RECORDS**

The University shall have the right to audit the monies expended or obligations incurred by the Design Professional, including all books, records, and all other documents related to services performed under this Agreement. Such information shall be available and open to review, inspection and audit by the University's personnel and by the University's designated certified public accountant, at the place or places where such records, books and other documents are kept at all reasonable times for a minimum of thirty-six (36) months from the date of Substantial Completion. The Design Professional shall provide in all of its contracts, agreements, or retainers with consultants that the University shall have the right to audit all source documentation of consultant's compensation.

**10.00 TERMINATION**

**10.01 Termination with/without Cause**

The University reserves the right to terminate this Agreement at any time, with or without cause. In the event that this Agreement is terminated without cause and for the convenience of the University, the Design Professional shall be compensated in accordance with Paragraph 10.02. In the event that this Agreement is terminated with cause, the University shall be entitled to retain whatever amount is remaining unpaid to the Design Professional under this Agreement in order to correct the cause for termination; such action is in addition to any other right or remedy which the University may have.

**10.02 Payment upon Termination**

Upon termination, the University shall reimburse the Design Professional for all actual expenses and charges outstanding at the time of termination. In addition, the University shall pay the Design Professional cancellation charges applying to materials and/or equipment on order and/or rental at the time of termination which cannot be cancelled. The University shall have no further liability to the Design Professional for any fees, costs or expenses. The Design Professional shall not be paid on account of loss of anticipated profits or revenue or other economic loss or consequential damages arising out of or resulting from such termination.

**11.00 NOTICES**

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given when hand-delivered or deposited in the U.S. mail, certified or registered, return receipt requested, in a postage prepaid envelope addressed to the Design Professional's or the University's respective addresses. Either party may designate a different address for notices by giving written notice to the other.

**12.00 NONASSIGNMENT**

The University has entered into this Agreement in order to receive the professional services of the Design Professional. The Design Professional will not make any assignment, by operation of law or otherwise, of all or any portion of the services required under this Agreement without first obtaining the written consent of the University.

The rights and obligations of the University hereunder shall inure to the benefit of, and shall be binding upon, the successors and assigns of the University.

**13.00 DISPUTE RESOLUTION**

**13.01 Jurisdiction**

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.

**13.02 Review**

In any claim or dispute by the Design Professional against the University, which cannot be resolved by negotiation, the Design Professional shall submit the dispute in writing for an administrative decision by the University's Senior Vice President for Finance and Administration, within 30 days of the end of negotiations. Any decision of the Senior Vice President shall be made within 45 days of receipt from the Design Professional and is final unless it is challenged by the Design Professional by filing a lawsuit in the Court of Claims of the State of Michigan within one year of the issuance of the decision. The Design Professional agrees that appeal to the Senior Vice President is a condition precedent to filing suit in the Michigan Court of Claims. The parties may mutually agree at any point in the dispute resolution process to participate in non-binding mediation.

**13.03 Continuation of Services During Dispute Resolution**

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 Design Professional 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.

**14.00 MISCELLANEOUS**

**14.01 Provisions Surviving Termination of Agreement**

The terms and provisions of Article 4, entitled "Ownership of Documents", Article 5, entitled "Confidentiality", Article 7, entitles “Indemnification”, Article 8, entitled “Insurance”, and Article 9, entitled "Audits and Records", shall survive the termination of this Agreement, howsoever brought about.

**14.02 Written Communications**

All written communications from the Design Professional shall be addressed to the University. The Design Professional shall only take instructions from the person or persons who from time to time are authorized in writing by the University to give the same.

**14.03 Interference/Interruption of University Operations**

The services shall be performed by the Design Professional in such a manner and at such a time so as not to interfere with or interrupt the operations of the University.

**14.04 Choice of Law/Standard of Care**

This Agreement shall be subject to and governed by the laws of the State of Michigan. The Design Professional shall exercise usual and customary professional care in its efforts to comply with all applicable local, county, state, and federal codes, rules, regulations, and orders, in effect as of the date of the execution of this Agreement.

**14.05 Waiver of Compliance**

Failure to insist upon strict compliance with any provision hereof shall not be deemed a waiver of such provision or any other provision hereof.

**14.06 Modification of Agreement**

This Agreement may not be modified except by written amendment executed by the parties hereto.

**14.07 Contract Provisions**

The invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision.This Agreement supersedes all previous agreements between the University and the Design Professional concerning this work.This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and such counterparts shall together constitute and be one and the same Agreement.

**14.08 Independent Contractor**

In the performance of the services under this Agreement, the Design Professional shall be an independent contractor, maintaining complete control of Design Professional's personnel, subcontractors, and operations. As such, the Design Professional shall pay all salaries, wages, expenses, social security taxes, federal and state unemployment taxes, and any similar taxes relating to the performance of this Agreement. The Design Professional, its employees and agents, shall in no way be regarded nor shall they act as agents or employees of the University.

**14.09 Interpretation of the Agreement**

The parties to this Agreement acknowledge that they have participated fully in the Agreement’s negotiation and preparation. Accordingly, this Agreement shall not be more strictly construed against either of the parties hereto.

**14.10 Conflicts with Proposal**

In the event that any term or provision of this Agreement conflicts with any other provision of the attached proposal, this Agreement shall control.

**14.11 Third Parties Beneficiary**

This Agreement is intended solely for the benefit of each party hereto. Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, any third party against either the University or the Design Professional.

**15.00 NONDISCRIMINATION**

Wayne State University is an equal opportunity/affirmative action employer. All qualified applicants will receive consideration for employment without regard to sex, gender identity, sexual orientation, race, color, religion, national origin, disability, protected Veteran status, age, or any other characteristic protected by law.

The University, its suppliers, vendors, service providers, contractors and subcontractors shall abide by the requirements of 41 CFR 60–1.4(a), 60–300.5(a) and 60–741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or for inquiring about, discussing, or disclosing information about compensation. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Design Professional shall, in all solicitation or advertisements for employees placed by or on behalf of the Design Professional, state that all qualified applicants will receive consideration in employment without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.

The University, its suppliers, vendors, service providers, contractors and subcontractors shall also comply with all requirements of the Elliott-Larsen Civil Rights Act being 1976 PA 453, as amended, as well as the Persons with Disabilities Civil Rights Act being 1976 PA 220, as amended.

The Design Professional shall include, or incorporate by reference, the provisions of this Article 15.00 in each and every subcontract or purchase order and shall provide in each and every subcontract or purchase order that said provisions will be binding upon each and every subcontractor, supplier, and vendor.

Any breach of the requirements and covenants of this Article 15.00 by Design Professional shall constitute a material breach of the Contract Documents.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first above written.

DESIGN\_PROFESSIONAL NAME **WAYNE STATE UNIVERSITY**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Bethany Gielczyk, Senior VP for

Finance & Business Affairs; Chief Financial Officer; Treasurer

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Rev.1\_4.28.09

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