

**Division of Finance and Business Operations**

**Request for Proposal and Specifications for  
Construction Management Services for the  
Wayne State University  
Student Center Building Renovation  
WSU Project No. 034-216815**

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Wayne State University

**Wayne State University  
Procurement & Strategic Sourcing**

**May 24, 2013**



**Student Center Building Renovation  
Pre- Proposal Meeting**

**AGENDA**

**June 4, 2013 at 2:00 pm**

- |   |  |
|---|--|
| <b>1. Welcome to Wayne State University<br/>Sign in Sheets (Purchasing)</b>   | <b>Kimberly Tomaszewski</b>                      |
| <b>2. Student Center Building Renovation Overview</b>   | <b>Timothy Michael</b>                           |
| <b>3. Project Description</b>   | <b>Chrystal Camilleri</b>                        |
| <b>4. RFP Details</b>   | <b>Fran Ahern / Chrystal Camilleri</b>           |
| <ul style="list-style-type: none"><li>• Level of effort</li><li>• Contract</li><li>• M/WBE participation</li><li>• Fee Proposal Forms</li></ul> |  |
| <b>5. Reiteration of Instructions</b>   | <b>Kimberly Tomaszewski</b>                      |
| <b>6. Q/A</b>   | <b>Chrystal Camilleri / Kimberly Tomaszewski</b> |

**All future questions to be directed to Purchasing by noon on June 10, 2013.** to: Kimberly Tomaszewski, ac9934 copy to Kenneth Doherty, ac0578

- 7. Site Tour**



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I. Appendices:	
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I. **Instructions for Construction Management Services:**

Wayne State University invites firms to submit proposals to provide complete Construction Management services for the construction and occupancy of the **Student Center Building Renovation**.

This Request for Proposal (RFP) defines the requirements and expectations for the construction management services, and provides information to define the project, the expected contract environment, and guidelines for preparation of proposal for the University's use in selecting a construction manager for the project. **Enclosed in this fax is the Registration, which is the confirmation of your intent to participate. This form MUST be faxed to (313) 577-3747 Attn: Ms. Pat Milewski, WSU Purchasing Department by May 31, 2013 by 4:30 p.m..**

**Proposals are due before 2:00 p.m., local time, on June 13, 2013.** Proposals received after this time will be rejected. **Three (3) copies** of the proposal are to be submitted in a sealed envelope or box at the University's Purchasing Department.

In addition, an electronic version is required, which should be submitted to our secure mailbox at **rfp@wayne.edu** and be sure your subject line reads **"(company name) RFP Student Center Building Renovation Response"**. The electronic submission should be limited to no more than one of each of the following file types: 1 Word Document and/or 1 Excel Workbook, with a total file size less than **20 megabytes**. If your submission was sent correctly, you will receive an auto-reply message acknowledging receipt of your Proposal. If you do not receive an auto-reply message, check the address you used and resubmit your Proposal. However, in the event a discrepancy exists between the electronic submission and the original copy of the Vendor's Response Proposal, the original copy will prevail.

Proposals shall be addressed to:

**Wayne State University  
Student Center Building Renovation  
Project No. 034-216815**

**Kimberly Tomaszewski, Senior Buyer**  
Academic/Administration Building  
Wayne State University (Purchasing Department)  
5700 Cass Avenue, 4<sup>th</sup> Floor - Suite 4200  
Detroit, Michigan 48202

And: E-mail a copy to **RFP@wayne.edu** /  
subject line: **"(company name) RFP Student Center Building Renovation Response"**.

All inquiries regarding this Request for Proposal and these two projects shall be made in writing and submitted by e-mail to **Kimberly Tomaszewski** at **ac9934@wayne.edu** and copied to **Kenneth Doherty** at **Ac0578@wayne.edu**, per the project schedule. Inquires directed to other University personnel may result in disqualification.

The University's Purchasing and Facilities Planning and Management departments will evaluate all inquiries and will determine whether an addendum is required, and issue responses according to the following schedule. The proposals will be utilized to develop a short-list of qualified firms. The short-listed firms will be required to make presentations to the University's Project Selection Committee. The selection of the successful Construction Management team will be based on the proposal and presentation.



## **II. Project Scope:**

Wayne State University's (WSU) Student Center Building (SCB) provides key functions to serve both academic and social needs for the campus population, including students, faculty, staff, visitors, and the neighboring community. As a core building on campus, the SCB must respond to the evolving needs of the campus population, and support WSU's mission enhance community life. This project will be a large scale, phased renovation to the existing SCB to respond to this need.

The Student Center Building Renovation project will be phased and may include improvements to the existing mechanical and electrical infrastructure, updates to the exterior envelope, and new or enhanced interior spaces to respond to current needs. The Construction Management services requested in this proposal will include complete pre-construction services and full construction services to deliver the completed project.

## **III. Student Center Building Background:**

WSU's main campus is situated on 210 acres in Detroit's Midtown neighborhood. The campus includes more than 120 buildings, which provide approximately 11 million gross square feet. The existing SCB is centrally located on the main campus, surrounded by residential facilities, libraries, a recreation and fitness center, classroom buildings and administrative offices.

Constructed in 1969 as the University Center Building, the SCB includes a basement plus four stories for the south half, with the north half extending to a full seven stories above grade, providing approximately 200,000 gross square feet. The steel framed structure is clad in masonry and textured plaster on lathe, with fenestration provided through ribbon windows and punched openings, and a newer built up roof, replaced in 2010. The building currently supports a food court, game rooms, student lounges, retail spaces, banquet/meeting facilities, and general office space to support student life.

Despite the campus' considerable growth over the last 40 years, improvements to the SCB's infrastructure, functions, and finishes have been limited. The current building no longer effectively meets the demands of the current campus population.

## **IV. Proposed Project Description:**

Wayne State University is currently seeking proposals for complete Construction Management Services for the Student Center Building Renovation project. The selected Construction Management firm will complete the project team which also includes University representatives, Neumann Smith Architecture as the architect of record and WTW Architects as the student center design consultant.

Pre-construction and construction services will include assisting in the team effort to develop a program, estimates, and phased project scope to respond to a project budget. The University does not intend to vacate the building in its entirety to complete this project. The Construction Manager will assist the project team in coordinating work scopes to minimize the impacts and disruptions associated with working within an occupied facility.



To better define the goals of this project, WSU conducted a feasibility study using an outside vendor.

General improvements to quality, variety, and way finding were identified to assist in determining the programming effort. It is anticipated that the project will focus on improvements to the public spaces located on the ground through third floor, with minimal work in the office tower. The scope of work will include architectural, mechanical and electrical improvements, and improvements to the exterior envelope and site as the budget permits. Suggested improvements are as follows. Proposed new additions include enclosing the north and east colonnade, The introduction of pronounced glazing features on the north and east facades, incorporating a new southeast atrium and elevator, and associated site work. Lower level improvements include the renovation of the space for the Info/Admin Center, Grille and dining area, gaming lounge, dance rooms, reflection room, public and back of the house circulation. First level improvements include reconfiguring the food server, north and south commons, convenience store, public and back of house circulation. Second level improvements include renovating the ballroom, auditorium, conference and meeting rooms, north and south lounge, administrative offices, and public circulation. Third level improvements include relocating and renovating dean of students, student lounge, student orgs, meeting rooms, hallway lounges, and public circulation.

The design team will develop a master plan for the building to be phased as funding permits the CM will be expected to support the planning and estimating of this effort. The construction project will implement improvements which will encompass approximately 95,000 gross square feet, or about half of the exiting building footprint. The total budget for the Student Center Building Renovation project is \$23,000,000, of which \$14,000,000 is allocated to construction costs and CM fees.

#### V. Project Schedule:

It is the University's intent to complete the design and construction of the Student Center Building Renovation in accordance with the following schedules: Phasing will be a collaborative effort amongst the Construction Manager, Designer / Architect, Consultants, and WSU, which will comply with the schedule identified below in Section V., Project Schedule. Schedule and cost impacts associated with the actual schedule determined during the pre-construction phase which deviate from the schedules identified in Section V., will be negotiated at the time of GMP:

#### RFP Schedule:

Release of the RFP	<b>May 24, 2013</b>
Registration	<b>May 31, 2013</b> by 5:00 p.m. Fax Registration Form to: 313-577-3747
<b>Mandatory</b> Pre-proposal Meeting	<b>June 4, 2013 at 2:00 pm</b> at the <b>Student Center Building, 2nd Floor Auditorium Room 289</b> , located at <b>5221 Gullen Mall</b>
Final day / Deadline for Questions	<b>June 10, 2013</b> by 12:00 p.m. to: <b>Kimberly Tomaszewski, ac9934</b> Copy to <b>Kenneth Doherty, Ac0578</b>
Delivery of Proposals (3 Copies)	<b>June 13, 2013 by 12:00 noon</b> in the Purchasing Dept., Academic/Administration Bldg., 5700 Cass Avenue, 4 <sup>th</sup> Floor – Suite 4200, Detroit, MI 48202
Short List Announced	Week of <b>June 20, 2013</b>
Post Bid Interviews	* <b>June 27, 2013</b>
Selection	Week of <b>July 8, 2013</b>
Contract Negotiations and Execution	Week of <b>July 15, 2013</b>



Conduct and Complete Project Deliverables	As Stated in Final Contract
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\* The University reserves the right to adjust this date at its own discretion.

**Project Schedule:**

Schematic Design Development Completion	September 15, 2013
Design Development Completion	November 15, 2013
GMP Date	December 15, 2013
Construction Document Completion	March 15, 2014
Construction Beginning (no later than)	May 01, 2014
Final Completion	<b>August 01, 2015</b>

No work shall commence until the contract is fully executed.

For the purposes of this proposal, a total construction budget of \$14 million has been presumed. Firms shall base their fees, general conditions, and project management costs on this budget and proposed schedule.

The new Wayne State University contracts are provided with this Request for Proposal. The Construction Managers and contractors are required to review the new contract in its entirety for both the CM and the A/E. In order to meet the required schedule, time will be of the essence in terms of executing the contract. Firms are required to completely define language amendment requests to the contract documents within their proposals to prevent contract execution delays. Contract language modifications shall include exact language proposed to be added or deleted. Proposals that are silent on this issue will leave the University to understand that no amendments are requested and the contract documents are acceptable as released herein. Steps taken to negotiate amendments that are not in the proposals may result in the University choosing to contract with another candidate partner.

**VI. Project Delivery Method:**

The University is inviting proposals from Construction Managers for completion of pre-construction and complete project construction services. The University has contracted with Neumann / Smith Architecture to provide design and construction administration services for the project.

The allocation of roles, responsibilities and risk as defined by this RFP and the attached contract documents is according to Construction Management. The University intends that remuneration to be cost of work plus fees with a guaranteed maximum price (GMP). The Construction Manager and the University's design consultants will work cooperatively and be jointly responsible for the successful completion of the project, within budget and on schedule.

**VII. Construction Manager Deliverables and Services**

The Construction Manager will:

- A. Provide complete project management, superintendence and administrative support as required to completely deliver pre-construction services and construction phase services associated with the project.



- B. Provide cost estimating, scheduling, constructability review and value engineering services leading to the provision of a GMP within the available budget. The GMP will be established and be based on the design development documents. The GMP shall include a list of allowances, clarifications, assumptions and exclusions. Prepare itemized cost estimates as required until the construction documents are finalized to validate that the scope of work and its estimate cost are within the allowances, clarifications, assumptions, and exclusions of the GMP.
- C. Prepare a CPM schedule in sufficient detail to define the entire project duration. Activities shall include all pre-construction phase efforts, the preparation of construction documents, submittals and bidding for each work package, and punch-list activities.
- D. Assist the University and design consultants in optimizing the scope of work and develop value engineering options as required to maintain a scope of work that is within the University's budget and schedule. At a minimum, this shall be done by participating and attending weekly design review meetings, actively participating in review of constructability and material selection, and shall include cost and schedule impact analysis. The Construction Manager will be responsible for reviewing bid documents provided by NORR, LLC at 50%, 85% and 100% to assure documents are consistent with the GMP scope. Provide advice and value engineering options regarding materials, methods, systems, schedules, labor and other conditions affecting construction and contracting.
- E. The University may elect to submit for LEED Certification. Identify the cost separately to assist the University and design consultants in developing and submitting formal LEED certification for the project. (see level of effort table for LEED Certification breakout cost)
- F. Provide construction management services to execute the construction of the projects on-time and within budget. Conduct post-construction activities and commissioning. Coordinate commissioning efforts with the University and the independently contracted commissioning agent retained by the university.
- G. Construct the work. Provide full-time, on-site staff to plan, manage, and coordinate on-site trade contractor activities. Self-performed work must be competitively bid, unless justified and approved in advance of the work being performed. Coordinate cooperatively with the University's other prime trade contractors for the installation of technology, controls, security systems, or other scope as may be required by the University.
- H. Maintain, update and submit the CPM schedule, budget summary, change log, and waiver matrix with each payment application. Clearly define adjustments made to maintain substantial and final completion dates.
- I. Provide a complete list of each bid work package, showing its GMP allowance, and provide bid-tab results that include at least three responses per bid work package, that compare results with respect to the GMP allowances. Define any variance from the previous estimate.
- J. Submit procurement plans for trade contractors. Recommend a minimum of five qualified subcontractors for each work package for approval by the University prior to bidding. **Include M/WBE representation. Report on M/WBE participation as awards are being recommended.**
- K. Provide bidding services to solicit, receive, and award trade contracts. The University reserves the right to reject trade contractor bids if it is in the best interest of University to do so.
- L. Issue reports and minutes of project meetings during construction phase. The design consultant will perform this task during design phase. Conduct weekly job meetings and prepare written progress reports monthly that address project budget, schedule, and performance with progress photos, and submit with each pay application. Conduct project meetings for planning, coordination and payments.



- M. Institute and administer procedures for Request for Information (RFI's), shop drawings and sample submittals for processing. Review trade contractor submittals to ensure compliance with design before presentation to the University and/or design consultant. Submit for review shop drawing and submittal list by trade. All items requiring color selections shall be clearly identified.
- N. Monitor, evaluate and administer change order requests and coordinate University and design consultant approvals. When conducting or considering the submission of change orders, assume agency alliance position with the University and not with the trade contractors of the project. Provide detail labor, material, equipment breakdown as required by the University.
- O. Prepare and administer payment and cost control procedures, including preparing trade contractor lien waivers and ensure certified payroll documentation is provided as required by the State of Michigan.
- P. The construction manager and design consultant will be required to develop and implement a project commissioning plan. Commissioning activities will include appropriate reviews, tests, and inspections of constructed work at the critical points of the design and construction process to ensure, to the extent possible, that a fully functional and trouble free project is delivered to the University at project completion, as well as permit design review input during the development of the design. If the University elects to do so, work with the University commissioning agents to provide enhanced commissioning services to support the LEED submission.
- Q. Promptly resolve deficient trade contractor work whenever observed. Prepare incomplete work lists at the substantial completion of each work package, coordinate final inspections and commissioning of completed work with the University, design consultant and regulatory authorities. Assist the University during occupancy including the coordination and probable connection of University purchased equipment and furniture installations to electrical, plumbing and mechanical systems if needed.
- R. Provide project close-out documents, including contractor record-field set drawings, as-built drawings and specifications, O&M manuals, RFI's, submittals, bulletins, shop drawings, field logs, warranties and other project correspondence requested by the University. In addition to specified manufacturers special warranty/guarantee, a standard two (2) year labor & material warranty applies to the project.
- S. Coordinate, document and sign-off on training of University maintenance personnel on systems and equipment. Provide two copies of the Video tape training sessions for the University to use for training purposes.
- T. Provide post construction follow-up for the duration of the longest warranty period by a trade contractor on the project. Review and submit warranty claims for all systems and equipment.
- U. When requested and authorized, consult, advise and assist the University with special and/or additional services beyond the scope of construction management services.
- V. Bidders are directed to the Agreement, General Conditions and Supplementary General Conditions for additional contracting details. This RFP shall be incorporated within the agreement by reference.

#### **VIII. Proposal Requirements:**

All firms responding to this RFP must submit complete responses to the information requested in this section and **clearly note any exceptions to any information contained in the RFP and contract documents**. Proposals are limited to 30 pages, one sided, in length, and not less than eleven (11) point font. (This is inclusive of all required documents and schedules. Tab sheets and the cover pages do not



count in the overall document count.) Proposals will be evaluated based upon the selection criteria presented in section 7. Proposals should present information in a clear and concise manner, following the format indicated below:

A. Executive Summary:

Provide a one page narrative describing your understanding of the project, and what unique qualities differentiate your team from others responding to this Request for Proposal. Briefly describe your team's qualifications, experience and ability to successfully manage this project. List team members by firm name and define their roles for this project. Describe in summary fashion the experience your team has working together, identifying similar projects and contractual relationships between the parties.

B. Firm Overview:

1. Clearly identify the name, address, e-mail and fax numbers of the project representative designated to receive all RFP information, addenda or any other official correspondence relating to the project.
2. If a joint venture, list similar information for each firm and the rationale, previous similar experience, and a summary of the agreement indicating the roles and responsibilities of each party.
3. Furnish your experience modification factors for the past five years.

C. Experience

1. List three projects for which your firm has provided/is providing construction management services that are most closely related to this project. This should include projects that contain similar types of educational space. Provide an owner's and architect's contact information for each referenced project. In determining which projects are most related, consider: related size and complexity; how many members of the proposed team worked on the referenced project, how recently the project was constructed and the project's budget and schedule performance.
2. For each of the referenced projects, provide the following information: construction cost (original GMP and final construction cost), current phase of development, completion date (planned and actual), and type of construction services provided (CM at risk with GMP, CM-agency, Design/Build, Low Bid General Contract, Negotiated General Contract).
3. Provide information regarding your firm's experience in executing LEED certified projects. Note certified projects and the level achieved.

D. Construction Manager's Personnel

1. Name the key personnel (project director, manager, superintendent, engineer, and estimator) who will be part of the proposed construction management team for this project. Discuss the proposed individuals and your firm's commitment to maintaining the integrity of the assigned staff throughout the project. Complete the attached Level of Effort Table for all on-site project staff.
2. Discuss your plans to involve M/W/DBE firms in the project. Indicate if M/W/DBE firms will be as a joint venture or as a trade contractor. Also indicate your firm's commitment to M/W/DBE trade contractors as a percentage of the GMP.



E. Project Management, Scheduling, Changes In The Work

1. Describe your cost control methods for the preconstruction and construction phases. Include a description of how estimates are developed and how often are they updated. Construction projects have changes and additional work during the design and construction phase. Be sure to include how the team will manage change. Provide examples from the referenced projects.
2. Describe the way your team maintains quality control during the preconstruction and construction phases. Provide examples of how these techniques were used in the projects referenced in this RFP.
3. Describe the way the team develops, manages, and maintains project schedules. Explain how the team manages subcontractor schedule performance.
4. Describe the challenges anticipated in performing the requested services, the impact these challenges will have on quality, cost and/or schedule and your proposed solution to address these issues. Present a detailed schedule that will explain how you will complete the construction within the specified schedule.

F. Proposed Fee Basis and Fee Proposal

The form of proposal provided, indicate proposed fees for construction management services including on-site project management staff, general conditions and overhead and profit. Include billing rates of all personnel who will work on this project, along with estimated hours of each for each phase as indicated on the level of effort work tables C.2 and C.3 provided. In addition, provide a fee for the cost estimating services that you would provide if your firm is short listed for this project. Provide a proposed fee structure associated with changes in the work, including markups for your services, and all tiered sub-contractors. (Schedule C.1)

At a minimum, on-site project management staff, general conditions, and overhead and profit shall be comprised of the following cost elements. If the list presented below excludes a cost element that is important to the project, proposals shall include missed items and draw attention to their inclusion.

- On-Site Project Management Staff (CM)
  - Project Manager
  - Project Engineer (if recommended)
  - Superintendent
  - Onsite Clerical Staff
- General Conditions Costs (CM) – Costs for all items listed below shall be included in the construction manager general conditions costs. These items **cannot** be assigned to subcontractor bid packages. Items that are allowable only as rental charges or monthly fee and may not be purchased expressly for use on this project are identified below.
  - Job-site Trailer
  - Trailer Building
  - Office Supplies (no food or beverage costs allowed)
  - Copy Machine – rental only
  - Fax Machine– rental only
  - Reproduction Costs
  - Snow removal
  - Site Security & Fencing
  - Expedited Delivery/Postage
  - Emergency Repairs
  - Special Equipment
  - Medical Supply cabinet
  - Temporary Fire Extinguishers



- Unidentifiable Debris Removal
- Construction Clean-up
- Project Temporary Utilities phones, 2-way radios)
- Temporary power and lighting equipment costs
- Temporary heat equipment costs to maintain construction schedule
- Computers and any other Data Processing Equipment – rental or monthly fee
- Office Furniture – rental or monthly fee
- Temporary Toilets
- Safety & Barricades
- Insurance
- Project Signage
- **Performance & Payment Bonds**
- Monthly reports, Progress Photos
- Builder's Risk Insurance
- Onsite CM Staff Parking
- Labor costs for general clean up, not assigned to subcontractor trades
- Final Cleaning
- Mileage expenses (No onsite staff)
- Project Close Out-documentation

**\*Temporary utilities (heat, power, & water) by Owner.**

- Overhead and Profit (CM)
  - Home Office Personnel/Administration
  - Job Accounting, Payroll, Personnel/HR
  - Procurement not performed by On-Site personnel
  - Project Director or Executive
  - Profit Margin

Include with your response to this RFP, a detailed list of all general conditions and the associated costs. List and define any other general conditions assumed by the construction manager, and identify other general conditions not identified above that will be transferred to the subcontractors or University. All home office and administrative expenses shall be included in the O&P rate.

Specify whether the fee covers all services outlined in this RFP and the contract forms and indicate fees for any additional services to be provided for the project. Describe and estimate any costs not included in the fee. Proposals should list any items excluded from the services proposed. Proposals should also list those services that should be made a part of this scope of work, but were not requested by the University. In the latter case, provide a proposed fee for those services.

Any exceptions taken to the RFP or the contract documents shall be specifically discussed in the proposal. The University reserves the right to request additional information from the construction manager at any time during the selection process.

## **IX. Construction Manager Selection Process and Evaluation Criteria**

The University will develop a short list of the firms determined to be most qualified, based on the responses to this RFP. The short listed firms will be required to do a presentation of their team and work plan with the selection committee.

The University will select the Construction Manager that best meets the needs of the University for completing the project. The selection will be based on the details contained in the response to the RFP, presentations and reference checks.

Specifically, the selection committee will review and consider the following:

1. Proposals received in response to this RFP and all RFI's associated with this RFP.



2. The quality and comprehensiveness of the plans provided to deliver the project on-time and within budget, included in the response to this RFP and presentations.
3. The qualifications of the proposed project team and personnel to successfully deliver the project.
4. A check of references provided by the firms.
5. Fees will be considered to determine the best value for the University.

**Note:** These criteria are not listed in any particular order.

The Construction Manager is directed to the contracts, general conditions of construction, and supplemental general conditions of construction for a comprehensive understanding of the services, roles, responsibilities, and risks that will be assigned to each team member. The University reserves the right to contract with any project finalist if terms are not reached with initially selected firm, and the contract is not executed by the selected Construction Manager, within 10 days of announcement.

The University reserves the right to request additional information at any time during the selection process.

Expenses for developing and presenting proposals shall be the entire responsibility of the Construction Management team and shall not be chargeable to the University. All supporting documentation submitted with this proposal will become the property of the University unless otherwise requested by the Design Profession, in writing, at the time of submission, and agreed to, in writing, by the University.

**X. Schedules to be Submitted with Vendor Proposal:**

<u>Schedule A:</u>	Proposal Certification, Non- Collusion Affidavit and Vendor Acknowledgement
<u>Schedule B:</u>	Insurance Requirements
<u>Schedule C1:</u>	Proposal Form of Proposal - Construction Management Services
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**RESPONSE TO WAYNE STATE UNIVERSITY  
REQUEST FOR PROPOSAL  
RFP: STUDENT CENTER BUILDING RENOVATION**

**WSU PROJECT NO. 034-216815  
DATED: May 24, 2013  
AND TO ANY AMENDMENTS, THERETO**

**PROPOSAL CERTIFICATION, ACKNOWLEDGEMENTS,  
and NON\_COLLUSION AFFIDAVIT**

VENDOR is to certify its proposal as to its compliance with the Request for Proposal specifications using the language as stated hereon.

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**ACKNOWLEDGEMENTS**

By virtue of submittal of a Proposal, VENDOR acknowledges and agrees that:

- All of the requirements in the Scope of Work of this RFP have been read, understood and accepted.
- The University's General Requirements and Guidelines have been read, understood and accepted.
- Compliance with the Requirements and/or Specifications, General Requirements and Guidelines, and any applicable Supplemental Terms and Conditions will be assumed acceptable to the VENDOR if not otherwise noted in the submittal in an Exhibit I, Restricted Services.
- The Supplier is presently not debarred, suspended, proposed for debarment, declared ineligible, nor voluntarily excluded from covered transactions by any Federal or State of Michigan department or agency.
- Wayne State University is a constitutionally autonomous public university within Michigan's system of public colleges and universities, and as such, is subject to the State of Michigan Freedom of Information Act 442 of 1976. Any Responses Proposals, materials, correspondence, or documents provided to the University are subject to the State of Michigan Freedom of Information Act, and may be released to third parties in compliance with that Act, regardless of notations in the VENDOR's Proposal to the contrary.
- All of the Terms and Conditions of this RFP and Vendor's Response Proposal become part of any ensuing agreement.
- The individual signing below has authority to make these commitments on behalf of Supplier.
- This proposal remains in effect for **[120]** days.

VENDOR, through the signature of its agent below, hereby offers to provide the requested products/services at the prices specified, and under the terms and conditions stated and incorporated into this RFP.

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**PROPOSAL CERTIFICATION**

The undersigned, duly authorized to represent the persons, firms and corporations joining and participating in the submission of this Proposal states that the Proposal contained herein is complete and is in strict compliance with the requirements of the subject Request for Proposal dated **May 24, 2013**, except as noted in Exhibit 1, the "**Restricted Services/Exceptions to RFP**" section of the Proposal. If there are no modifications, deviations or exceptions, indicate "None" in the box below:

- NONE** – There are no exceptions to the University's requirements or terms
- YES** – Exceptions exist as shown in Exhibit 1, Restricted Services.

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**NON-COLLUSION AFFIDAVIT**

The undersigned, duly authorized to represent the persons, firms and corporations joining and participating in the submission of the foregoing Proposal, states that to the best of his or her belief and knowledge no person, firm or



corporation, nor any person duly representing the same joining and participating in the submission of the foregoing Proposal, has directly or indirectly entered into any agreement or arrangement with any other VENDORS, or with any official of the UNIVERSITY or any employee thereof, or any person, firm or corporation under contract with the UNIVERSITY whereby the VENDOR, in order to induce acceptance of the foregoing Proposal by said UNIVERSITY, has paid or is to pay to any other VENDOR or to any of the aforementioned persons anything of value whatever, and that the VENDOR has not, directly or indirectly entered into any arrangement or agreement with any other VENDOR or VENDORS which tends to or does lessen or destroy free competition in the letting of the contract sought for by the foregoing Proposal.

The VENDOR hereby certifies that neither it, its officers, partners, owners, providers, representatives, employees and parties in interest, including the affiant, have in any way colluded, conspired, connived or agreed, directly or indirectly, with any other proposer, potential proposer, firm or person, in connection with this solicitation, to submit a collusive or sham bid, to refrain from bidding, to manipulate or ascertain the price(s) of other proposers or potential proposers, or to obtain through any unlawful act an advantage over other proposers or the college.

The prices submitted herein have been arrived at in an entirely independent and lawful manner by the proposer without consultation with other proposers or potential proposers or foreknowledge of the prices to be submitted in response to this solicitation by other proposers or potential proposers on the part of the proposer, its officers, partners, owners, providers, representatives, employees or parties in interest, including the affiant.

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**CONFLICT OF INTEREST**

The undersigned proposer and each person signing on behalf of the proposer certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no member of the UNIVERSITY, nor any employee, or person, whose salary is payable in whole or in part by the UNIVERSITY, has a direct or indirect financial interest in the award of this Proposal, or in the services to which this Proposal relates, or in any of the profits, real or potential, thereof, except as noted otherwise herein.

Any notice required under the Agreement shall be personally delivered or mailed by first class or certified mail, with proper postage, prepaid, to the Subject VENDOR at the following address:

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_  
 \_\_\_\_\_

Telephone: (\_\_\_\_\_) \_\_\_\_\_

Fax: (\_\_\_\_\_) \_\_\_\_\_

ATTN: \_\_\_\_\_

Tax Payer ID: \_\_\_\_\_

Submitted by: \_\_\_\_\_

Signature \_\_\_\_\_

Typed Name \_\_\_\_\_

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

The Internal Revenue Code requires recipients of payments which must be reported on Form 1099 to provide their taxpayer identification number (TIN).

T.I.N. (Taxpayer Identification Number, Federal Identification Number, or Social Security Number).

## Schedule B - INSURANCE REQUIREMENTS *(Revised 3-12-2012)*

\_\_\_\_\_, at its sole expense, shall cause to be issued and maintained in full effect for the term of this agreement, insurance as set forth hereunder:

### General Requirements

<u>Type of Insurance</u>		<u>Minimum Requirement</u>
1. Comprehensive General Liability	Bodily Injury	\$ 500,000 each person \$1,000,000 aggregate
	Property Damage	\$ 500,000 each occurrence \$1,000,000 aggregate or \$2,000,000 Combined Single Limit (CSL)
2. Comprehensive Automobile Liability (including hired and non-owned vehicles)	Bodily Injury	\$ 500,000 each person \$1,000,000 each accident
	Property Damage	\$ 500,000 each accident or \$2,000,000 Combined Single Limit (CSL)
3. Workers' Compensation (Employers' Liability)	Statutory-Michigan	\$ 100,000

### Maximum Acceptable Deductibles

<u>Type of Insurance</u>	<u>Deductible</u>
Comprehensive General Liability	\$5,000
Comprehensive Automobile Liability	0
Workers' Compensation	0

### Coverages

1. All liability policies must be written on an occurrence form of coverage.
2. Comprehensive general liability includes, but is not limited to: consumption or use of products, existence of equipment or machines on location, and contractual obligations to customers.
3. The Board of Governors, Wayne State University, shall be named as an additional insured, but only with respect to accidents arising out of said contract.

### Certificates of Insurance

1. Certificates of Insurance naming Wayne State University / Office of Risk Management as the certificate holder and stating the minimum required coverages must be forwarded to the Office of Risk Management to be verified and authenticated with the agent and/or insurance company.
2. Certificates shall contain a statement from the insurer that, for this contract, the care, custody or control exclusion is waived.
3. Certificates shall be issued on a ACORD form or one containing the equivalent wording, and require giving WSU a thirty (30) day written notice of cancellation or material change prior to the normal expiration of coverage.
4. Insurance must be issued by a bond/insurance company with an "A rating as denoted in the AM Best Key Rating Guide"
5. Revised certificates must be forwarded to the Office of Risk Management thirty (30) days prior to the expiration of any insurance coverage listed on the original certificate, as follows:

Wayne State University  
Office of Risk Management  
5700 Cass Avenue, Suite 4622 AAB  
Detroit, MI 48202





## **Schedule C.1 Form of Proposal**

(download separately from the Website)

[http://www.forms.purchasing.wayne.edu/Building\\_Design.html](http://www.forms.purchasing.wayne.edu/Building_Design.html)



**SCHEDULE C.1**

**FORM OF PROPOSAL  
CONSTRUCTION MANAGEMENT SERVICES**

**WAYNE STATE UNIVERSITY  
Student Center Building Renovation**

WSU Project **034-216815**

- Preconstruction Services \$ \_\_\_\_\_
  
- Project Management Services: \$ \_\_\_\_\_
  - General Conditions, including* \$ \_\_\_\_\_
  
  - On-Site Project Management Personnel* \$ \_\_\_\_\_
  
  - LEED documentation and submission for formal Certification* \$ \_\_\_\_\_
  
- CM Overhead and Profit (% or \$) on Cost of work \_\_\_\_\_ %
  
- **Cost of Work, Including all CM costs, GC's, OH&P in accordance with noted schedule.** **\$14 million**
  
- Change Order Mark –Up allowances: Based on Cost of Work above the Established GMP Amount, and per the contract.
  - (Proposed CM % on Cost of Work Above Established GMP)* \_\_\_\_\_ %
  
  - (Proposed trade contractors & self-performed work % on Cost of Work Above Established GMP)* \_\_\_\_\_ %
  
- M/WBE Participation: \_\_\_\_\_ %



## **Schedule C.2**

### **Level of Effort Table for Construction Management Staffing**

#### **Cost Schedule**

**Download the spread sheet from the web site at**

**[http://www.forms.purchasing.wayne.edu/Adv\\_bid/Adv\\_bid.html](http://www.forms.purchasing.wayne.edu/Adv_bid/Adv_bid.html)**



**Schedule C.3**  
Level of Effort Table for Construction Management  
General Conditions

**Cost Schedule**

**Download the spread sheet from the web site at**

[http://www.forms.purchasing.wayne.edu/Adv\\_bid/Adv\\_bid.html](http://www.forms.purchasing.wayne.edu/Adv_bid/Adv_bid.html)



### SCHEDULE D - SUMMARY QUESTIONNAIRE

YES                      ALTERNATIVE

- |     |  |                                 |       |
|-----|--|---------------------------------|-------|
| 1.  | Can your company complete all services on or before August 1, 2015?  | _____                           | _____ |
| 2.  | Does your company agree to provide a minimum of <b>3 references</b> to the University <b>upon request</b> , with specific contact names and phone numbers? | _____                           | _____ |
| 3.  | Did you attend <b>the mandatory Pre-Proposal meeting on June 4, 2013?</b>  | _____                           | _____ |
| 4.  | Did your company provide a certificate of insurance to meet or exceed all our minimum requirements?  | _____                           | _____ |
| 5.  | Did your company provide the required Proposal Certification, Non- Collusion Affidavit and Vendor Acknowledgement, <b>Schedule A?</b>                      | _____                           | _____ |
| 6.  | Did your company complete and provide the Summary Price Schedule C.1, C,2, C.3, and submit it electronically to rfp@wayne.edu?                             | _____                           | _____ |
| 7.  | Please complete the following questions:   |                                 |       |
|     | Total number of employees in your company  | _____                           |       |
|     | Total years in business with this company name   | _____                           |       |
| 8.  | Does your company agree to provide financial reports to the University <b>upon request?</b>  | _____                           | _____ |
| 9.  | Does your company agree to allow the UNIVERSITY to audit your books pertaining to the UNIVERSITY account?  | _____                           | _____ |
| 10. | Are there any conflicts of interest in doing business with the University?   | ___ <b>Yes</b><br>___ <b>No</b> |       |



## APPENDICES

- Appendix 1** WSU Campus Map / Available Parking
- Appendix 2** Registration/ Intent Form
- Appendix 3** Contract for Construction Management Services  
Contract Template
- Appendix 4** General Conditions of Construction
- Appendix 5** Supplementary General Conditions of Construction
- Appendix 6** Contract For Design Professional Services for Projects  
Oriented According to Construction Management  
(Sample Contract)
- Appendix 7** Existing Drawings (if any)
- Appendix 8** Schematic Drawings (none)

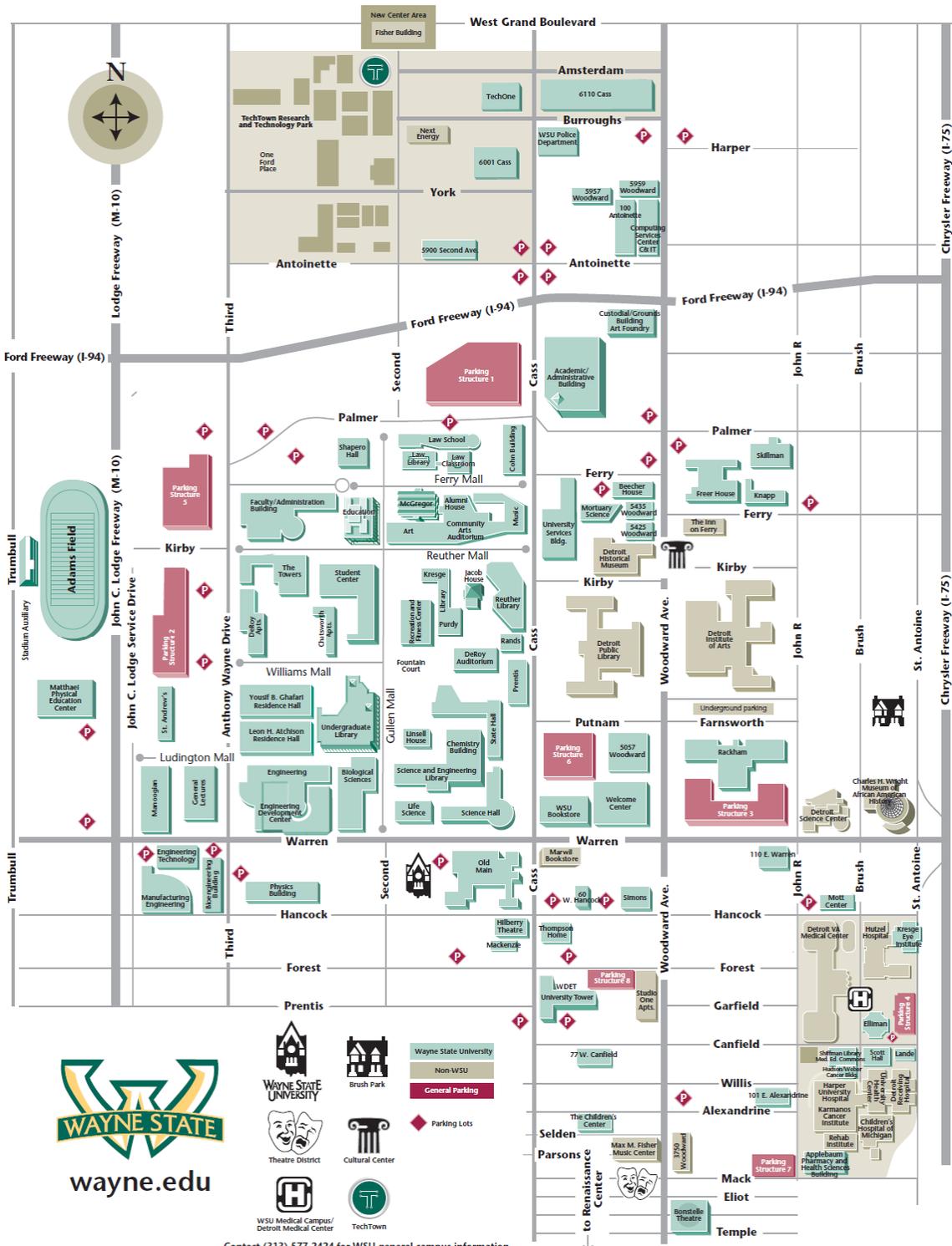
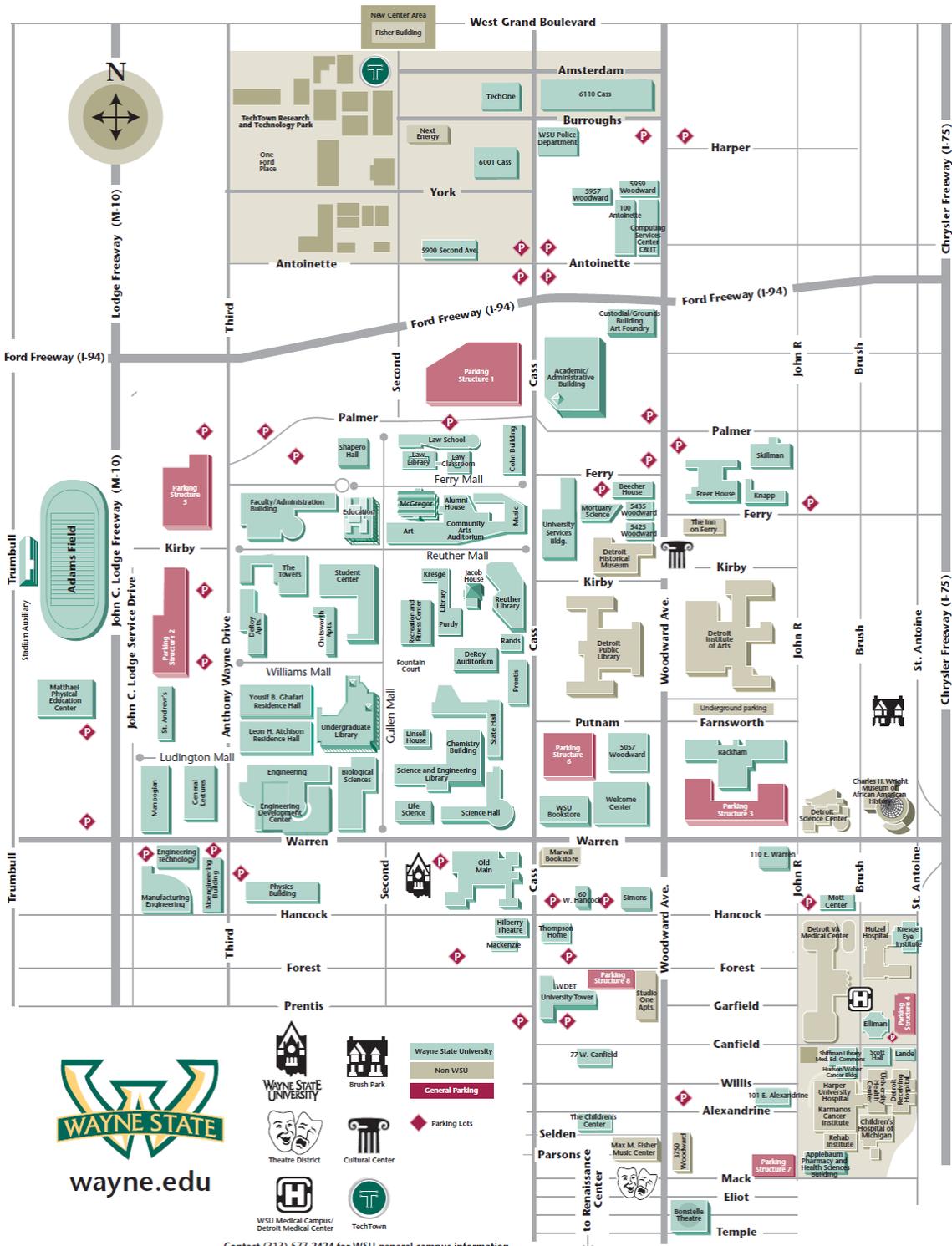
## **APPENDIX 1**

**(Wayne State University Campus Map)**

**See web site:**

**<http://campusmap.wayne.edu/>**

**A detailed list of Cash & Coin operated lots can be viewed at  
[http://purchasing.wayne.edu/cash and credit card lots.php](http://purchasing.wayne.edu/cash_and_credit_card_lots.php)**



Contact (313) 577-2424 for WSU general campus information  
or (313) 577-9973 for assistance with accessibility at WSU

**REGISTRATION/INTENT FORM**

**RFP: Student Center Building Renovation / Kimberly Tomaszewski**

Please use this form to indicate your attendance at our mandatory Pre-proposal meeting to be held on, **June 4, 2013 at 2:00 pm** and your intent to submit a proposal for the services listed. Please type or print the information requested below, then **fax to attention Ms. Pat Milewski at (313) 577-3747 by, May 31, 2013, 12:00 noon.**

**VENDOR Name:** \_\_\_\_\_

**VENDOR Address:** \_\_\_\_\_

\_\_\_\_\_

**Contact Person:** \_\_\_\_\_

**Telephone:** ( \_\_\_\_\_ ) \_\_\_\_\_

**Fax:** ( \_\_\_\_\_ ) \_\_\_\_\_

**E-mail** \_\_\_\_\_

**YES** \_\_\_\_\_ **I will be attending the mandatory Pre-proposal meeting on June 4, 2013**

**Location:** Student Center Building  
5221 Gullen Mall,  
2nd Floor Auditorium Room 289  
**Detroit, MI 48202**

**Time:** 2:00 pm

**NO** \_\_\_\_\_ **I will not participate in the Request for Proposal and will not be present at the meeting.**

I understand that this will not affect our status as a potential supplier to Wayne State University.

Thank you for interest shown in working with Wayne State University.

**Kimberly Tomaszewski**  
**Senior Buyer**

## **APPENDIX 3**

### **Contract for Construction Management Services**

#### **Contract Template**

CONTRACT FOR CONSTRUCTION MANAGEMENT SERVICES  
THE BOARD OF GOVERNORS, WAYNE STATE UNIVERSITY  
DETROIT, MI 48202

With

INSERT CM FIRM NAME  
INSERT CM ADDRESS

For

Wayne State University  
INSERT PROJECT NAME  
WSU Project No. INSERT NUMBER

THIS AGREEMENT, entered into on \_\_\_\_\_, 20\_\_, is by and between Board of Governors, WAYNE STATE UNIVERSITY, hereinafter called "University" and Barton Malow / L.S. Brinker, a Joint Venture, hereinafter known as "Construction Manager", to provide preconstruction and construction phase services as outlined in the proposal accepted January 11, 2012, attached hereto as Exhibit A for the Project as set forth below.

The Construction Manager shall provide all necessary pre-construction and construction services necessary to develop the INSERT PROJECT NAME as described in the University's Request For Proposal dated INSERT DATE and the resultant response attached hereto as Exhibit A, dated INSERT DATE.

## 1.00 CONTRACT DOCUMENTS

The Contract Documents shall consist of this Agreement, the Construction Manager's Guaranteed Maximum Price (GMP) Proposal attached hereto as Exhibit A, the General Conditions of Construction, the Supplementary General Conditions and other documents listed in the Definitions. In the case of conflicts between the Construction Manager's GMP Proposal and any of the Contract Documents, the language of the other Contract Documents shall prevail.

## 2.00 DESIGN PROFESSIONAL

The Design Professional for this Project is:

Design Professional Name and Address

The University intends that the relationship between the Construction Manager, Design Professional and University function in the spirit of mutual cooperation and respect in order to promote efficiency and cooperation between all the parties.

## 3.00 CONSTRUCTION MANAGER'S RESPONSIBILITIES

### 3.01 Scope of Work

The Construction Manager shall provide various preconstruction services, leading to the development of an acceptable GMP and shall furnish all labor, materials, equipment, project management and construction superintendent services to construct the Work in accordance with the limits of the GMP, approved Contract and Construction Documents and executed Change Orders.

### 3.02 Trust and Cooperation

The Construction Manager accepts the relationship of trust and confidence bestowed by the University under the terms of this Agreement. In performing duties hereunder, the Construction Manager covenants with the University to furnish its best skill and judgment in furthering the interests of the University as defined in the Contract Documents. The Construction Manager agrees to perform all obligations hereunder using efficient business administration, superintendence and best efforts to facilitate the expeditious and timely completion of the Project consistent with the interests of the University as expressed in the Contract Documents. The Construction Manager acknowledges that significant effort will be invested in complying with the GMP, Master Project Schedule, and maintaining construction quality. Accordingly, it is further acknowledged that the greatest degree of professionalism is expected from the Construction Manager, Design Professional and the University in accomplishing these contractual obligations and that when potential conflicts

exist, each shall demonstrate appropriate respect, professionalism and cooperation with each other in resolving such conflicts.

### **3.03 Preconstruction Services**

#### **3.03.1 Review of Schematic and Design Development Documents**

The Construction Manager shall review the schematic and design development documents prepared by the Design Professional for means, methods, sequences, safety, constructability, completeness, adequacy and sufficiency, including any particular requirements unique to the Project. The Construction Manager shall attend meetings with the University and Design Professional, as may be required to fully and completely acquaint himself with all Project details. The Construction Manager shall perform such reviews to allow for his participation and leadership in value engineering, the development of the GMP, and preparation of the Schedules as set forth below.

#### **3.03.2 Value Engineering**

The Construction Manager shall provide value engineering services to the University and Design Professional during schematic and design development activities to assist and facilitate the development of a scope of work definition that is within the limitations of the GMP budget allowance established by the University. Such value engineering services shall include the provision of cost estimating services that quantify the probable Cost of Work and other GMP inclusions according to Construction Specifications Institute division designation or other work breakdown structure as may be accepted by the University and Design Professional. The intention of the cost estimating service shall be to provide cost details at a sufficiently defined level, to ascertain where the designed scope of Work is being invested and to facilitate decision making. Under circumstances where the Construction Manager's cost estimates exceed the defined GMP budget allowance, or when, in the Construction Manager's judgment, the design intent can be better satisfied by an alternative solution, means, method, or sequence without sacrificing the quality requirements associated with the Project, the Construction Manager shall submit revision recommendations to the University and Design Professional for consideration. The Construction Manager shall provide iterative value engineering services to find an optimal balance between budget, schedule and quality objectives for the Project, until the limits of the GMP budget allowance are satisfied or the University allocates additional funding.

#### **3.03.3 Scheduling**

The Construction Manager shall develop a Contractor's Construction Schedule and Master Project Schedule that clearly indicates the interrelationship of activities and defines the critical path of the entire Project, including preconstruction activities and milestones. The Construction Manager shall submit a preliminary Master Project Schedule, including preconstruction activities and milestones,

reflecting the design details and intent by the earlier of fifteen (15) days from the Notice to Proceed or following execution of this Agreement. The Construction Manager shall provide iterative updates to the entire Master Project Schedule at each cost re-estimate during value engineering, specifically noting schedule impacts on activities, total project duration, any corresponding impacts on general conditions costs and project management costs that may affect the GMP and scope of work decisions. During preconstruction, the Construction Manager will not be required to provide a resource loaded Master Project Schedule. However, within five (5) days of acceptance of the GMP by the University the Construction Manager shall prepare and submit a resource loaded Master Project Schedule to the University and Design Professional for approval. The requirements of this Agreement shall be in addition to the Scheduling requirements in Section 4.09 of the General Conditions.

#### **3.03.4 Guaranteed Maximum Price (GMP)**

Upon completion of the Design Development Documents by Design Professional, the Construction Manager shall establish a GMP for the Project, guaranteeing the maximum price to the University for the total cost to construct the Project.

**The Construction Manager shall provide a Guaranteed Maximum Price report in a format acceptable to the University. The GMP shall be inclusive of all Project Costs, including taxes upon the Work which Construction Manager is legally obligated to pay, and all costs for Trade Contracts, labor, materials, equipment, supervision, fees and costs of whatever nature, necessary to complete the Project in accordance with the approved Design Development Documents.**

The GMP shall include the preconstruction services cost, the construction Cost of Work, general conditions, general requirements, reimbursable expenses, construction contingencies, overhead and profit, and shall be subject to the written approval and acceptance by the University. The GMP may be subject to modification to reflect changes in the Project only through issuance of written Change Orders executed by the Construction Manager and the University. The Construction Manager shall be responsible for all costs exceeding the GMP.

##### **3.03.4.1 Cost of the Work**

The University agrees to pay the Construction Manager for the following costs. Such payment shall be in addition to the Construction Manager's fees.

##### **3.03.4.1.1 Allowable Costs**

- a) Wages paid for labor in the direct employ of the Construction Manager in the performance of the Work shall be those prevailing in the area, including benefits as may be payable with respect thereto.
- b) Salaries of Construction Manager's on-site project management staff, including Project Manager, Project Engineer (if recommended) and Superintendent, when stationed at the field office in whatever capacity employed, at the billing rates set forth in the Construction Manager's proposal. Personnel engaged at shop locations or on the road in expediting the production or transportation of materials or equipment shall be considered as stationed at the field office and their salaries paid only for that portion of their time spent in support of this Project.
- c) Cost of contributions, assessments, or taxes incurred during the performance of the Work for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries or other remuneration paid to employees of the Construction Manager and included in the Cost of the Work as defined above, and shall be included in the billing rates set forth in the Construction Manager's GMP Proposal.
- d) The portion of reasonable travel and subsistence expenses of the Construction Manager or of its office or employees incurred while traveling in discharge of its duties connected with the Work, but such costs shall not include normal daily travel to the work site or Construction Manager's home office.
- e) Cost of all materials, supplies and equipment incorporated in the Work, including costs of transportation thereof.
- f) Payments made by the Construction Manager to Trade Contractors for work performed pursuant to Subcontracts under this Agreement.
- g) Cost, including transportation and maintenance, of all material supplies, equipment, temporary facilities and hand tools not owned by the worker, which are consumed in the performance of the Work and cost less salvage value on such items used but not consumed which remain the property of the Construction Manager.
- h) Rental charges of all necessary machinery and equipment, exclusive of hand tools used at the site of this Work, whether rented from the Construction Manager or others, including installation, minor repairs, replacements, dismantling, removal, transportation and delivery costs thereof, at rental charges consistent with those prevailing in the area. The Blue Book rates shall not be used or accepted as prevailing charges unless the University specifically approves that use in writing.
- i) Cost of Construction Manager's premiums for all bonds and insurance which the Construction

Manager is required by the Contract Documents to purchase and maintain.

- j) Sales, use or similar taxes related to the Work and for which the Construction Manager is liable, imposed by any governmental agency.
- k) Permit fees, royalties, and deposits lost for causes other than the Construction Manager's negligence.
- l) Expenses associated with the jobsite trailer, including the trailer building, office supplies, copy machine, fax machine, computers, temporary power, office furniture and water. Such expenses shall also include any charges for expedited delivery and postage.
- m) Expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage, progress photos, reproduction costs and similar cash items in connection with the Work.
- n) Expenses for temporary utilities at the project site, including electrical, heat, enclosure, water and temporary toilets.
- o) Other costs associated with maintaining the jobsite, including site security, fencing, barricades and project signage.
- p) Cost of removal of all debris, construction cleanup and final cleaning.
- q) Cost incurred due to an emergency affecting the safety of persons and property.
- r) Other costs incurred in the performance of the Work only if approved in advance in writing by the University.
- s) The construction contingency included in the GMP shall be available for the Construction Manager's use for the following reasons.
  - Items of Work within the GMP scope and Contract Documents but not included in a Trade Contractor's scope due to bidding or buy-out omissions.
  - Omissions of the Contract Documents for reasonably inferable scope of work.
  - Differences, variances or negative buy-out performance between GMP line item estimates and final actual cost results for that line item. However, amounts accumulated due to savings from buy-out performance shall then become added to the construction contingency included in the GMP.
  - Changes in the market, local labor costs, or market conditions.
  - Repair or replacement of damaged Work to the extent not reimbursed by Trade

- Contractors, third parties or Builder's Risk or other insurance applicable to the Work; Construction Manager to take all commercially reasonable efforts to avoid charging these costs to the construction contingency.
- Overtime or acceleration costs for which no allowances are included in the GMP, to expedite work to maintain project schedule performance or completion dates. Use of the construction contingency for overtime or acceleration shall require the prior written authorization of the University.

The construction contingency shall not be used for expenses associated with conditions not reasonably inferable, design errors, or scope of work changes that are subject to the change order provisions of the Contract Documents. However, the Construction Manager acknowledges that the University intends to spend and invest the construction contingency in its entirety. As a result, the Construction Manager shall work and protect the University interests in timely releasing and applying the construction contingency to additional work not included in the Contract Documents. The University and the Construction Manager shall jointly determine when the construction risks are sufficiently diminished to allow unspent construction contingency to be released to the University for additional Work.

The Construction Manager shall report construction contingency performance to the University on a monthly basis. All contingency use shall be reviewed with and approved by the University in advance, and such approval shall not be unreasonably withheld or delayed.

#### **3.03.4.2 Costs Included in the Overhead and Profit Fee**

- a) Salaries or other compensation of the Construction Manager's employees at the Construction Manager's principal office and branch offices, including home office personnel, administration, Project Director or Executive.
- b) Expenses of the Construction Manager's principal and branch offices other than the field office, including job accounting, payroll and personnel/human resource expenses or costs for procurement not performed by on-site personnel.
- c) Any part of the Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the work.
- d) Profit margin, overhead or general administrative expenses of any kind.

#### **3.03.4.3 Costs Not Allowed**

- a) With the sole exception of the charges allowed to the construction contingency in paragraph 3.03.4.1.1(s) above, cost due to negligence of the Construction Manager, any Subcontractor,

Trade Contractor, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to the correction of defective or nonconforming work, disposal of materials and equipment wrongly supplied, or making good any property damage not covered by insurance.

- b) The cost of any item not specifically and expressly included in the items described in Article 3.03.4.1.1
- c) Costs in excess of the GMP.

### **3.03.5 Further Review of Design and Construction Documents and GMP Protection**

Once accepted by the University and Design Professional, and during the Construction Document development phase, the GMP shall be used as a primary cost control tool. When the Construction Documents are complete for each work package, the Construction Manager shall evaluate the Scope of Work of the construction documents to ensure compliance with the GMP prior to bidding and its various applicable qualifications, clarifications and exceptions. The Construction Manager shall advise the University and Design Professional in writing if, at any time, it appears that the designed scope of Work will exceed the GMP, and make recommendation and/or take corrective action at the direction and approval of the University. In recognition of the Design Professional's risk and obligation to redesign the Project at his expense for developing a scope of Work which exceeds the GMP after the acceptance and approval of the design at the previous or most recent design iteration, the Construction Manager shall endeavor to provide accurate and detailed cost re-estimates to best ensure the avoidance of the Design Professional's redesign costs. If such a situation develops, and it is demonstrated that the Construction Manager's cost estimates were inaccurate and caused the need to redesign any portion of the Work, the Construction Manager shall reimburse the Design Professional for the direct costs of all such incremental design effort. The Construction Manager shall indemnify and hold the University harmless from any redesign costs caused by Construction Manager errors, omissions or negligence.

### **3.03.6. Discounts, Rebates and Refunds**

All cash discounts shall accrue to the Construction Manager unless the University deposits funds with the Construction Manager with which to make payments, in which case the cash discount shall accrue to the University. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment shall accrue first to the construction contingency, and then to the University if construction contingency is released to the University at any time during the project, and the Construction Manager shall make provisions so that they can be secured.

#### **3.03.6.1 Shared Savings – SECTION DELETED**

### 3.03.7 Subcontractor and Vendor Qualification

Prior to conducting any bidding, the Construction Manager will screen and pre-qualify, utilizing appropriate industry standards, potential principal Trade Contractors for the Work keeping in mind the goal for Minority/Women Business Enterprise participation. The Construction Manager shall secure University approval of all Trade Contractors. Such approval shall not be unreasonably withheld.

The Construction Manager shall develop Trade Contractor and vendor interest in the Project, establish bidding schedules, and conduct pre-bid conferences to familiarize bidders with the bidding documents, and management techniques to be employed on the Project and with any special systems, materials or methods to be incorporated in the Project.

### 3.03.8 Prepare Bidding-Packages

The Construction Manager, with the assistance of the Design Professional, shall prepare bidding packages to facilitate the bidding and awarding of Trade Contracts, subject to the University's approval. In preparing bid packages, the Construction Manager shall take into consideration such factors as cost, time for performance, project schedule, availability of labor and material, scope of Work, University standards for construction and other University requirements and any other pertinent criteria.

### 3.03.9 Conduct Competitive Trade Contractor Bidding

The Construction Manager shall conduct competitive Trade Contractor bidding in accordance with University criteria and solicit at least three (3) bids from pre-approved Trade Contractors acceptable to the University. Self-performed work by the Contractor may be included as one of the three bids required. For Work the Construction Manager wishes to perform, the University shall participate in review and acceptance of the Trade Contractor bids. Construction Manager shall assist in determining responsiveness and qualifications of the bids received. The Construction Manager's method for procurement shall be reviewed and approved by the University prior to implementation. The University, at its sole option and request, shall be entitled to participate in the bid openings. Upon receiving bids, the Construction Manager shall prepare a bid analysis, review the responsiveness and responsibility of each bid received, and make recommendations to accept or reject bids. The University shall participate in authorizing all awards, and the Construction Manager shall submit a bid tabulation with each authorization request and indicate the GMP allowance for the subject award. Following the University's approval, the Construction Manager shall award Trade Contracts consistent with all obligations and conditions defined in the Contract Documents.

### 3.03.10 Purchase of Long Lead Items

The Construction Manager shall, with the University's written approval, purchase long-lead construction items, in compliance with requirements established by the University. Early bidding and awards for Trade Contractors shall be subject to receipt of written authorization from the University and shall be pursued as appropriate to achieve Substantial Completion.

### **3.04 Construction Phase**

#### **3.04.1 Trade Contracts and Purchase Agreements**

All portions of the work shall be performed under Trade Contracts, except those items which may be customarily performed by the Construction Manager's self-performing trades subject to University's approval. The Construction Manager shall award Trade Contracts after competitive bidding as required by this Agreement, and after the proposals are reviewed by the Construction Manager, the Design Professional and the University. If the University refuses to accept a Trade Contractor recommended by the Construction Manager, the Construction Manager shall recommend an acceptable substitute. An appropriate adjustment to the GMP may be made only if the price of the approved substitute Trade Contractor is more than the recommended Trade Contractor and exceeds the allowances of the GMP.

The Trade Contracts shall be solely between the Construction Manager and the Trade Contractors. Nothing in any Trade Contract shall establish any contractual relationship between the University and any Trade Contractor. Since the University is an intended third-party beneficiary of all Trade Contracts and subcontracts, purchase orders and other agreements, the Construction Manager shall incorporate the obligations of this Agreement as well as the General Conditions of Construction and Supplementary Conditions into its respective Trade Contracts, subcontracts, supply agreements and purchase orders.

The Construction Manager shall obtain appropriate guarantees and warranties from the Trade Contractors running directly to the University.

#### **3.04.2 Construction Supervision**

- a) The Construction Manager shall establish sufficient on-site organization, staffing and support as well as clear lines of authority in order to expeditiously complete the Project in accordance with the Contract Documents, in every aspect, on a totally coordinated basis.

- b) The Construction Manager shall maintain a competent full-time staff at the site to supervise, schedule and coordinate the Work of all Trade Contractors in accordance with the University's objectives including cost, time for completion and quality of the Work.
- c) The Construction Manager shall conduct preconstruction conferences with Trade Contractors and schedule and conduct regular progress meetings to be attended by all parties in interest to discuss such matters as procedures, progress, job problems, scheduling, changes, and related matters.
- d) The Construction Manager shall take, transcribe and promptly distribute to all parties, including the University, minutes of such progress meetings with the Trade Contractors, weekly job meetings and monthly management meetings.
- e) The Construction Manager shall maintain an on-site daily log of construction progress, problems and items of special interest. The Construction Manager shall provide film and developing for all photographs, videotapes or other means of recording Project status or progress. Such logs, records, photographs and videotapes shall be immediately available to the University upon request.
- f) The Construction Manager shall furnish monthly written progress reports on the Trade Contractors' work in a form acceptable to the University and assist the Design Professional and the University with periodic and final inspections of the Work. At all inspections preceding the final inspection, the Construction Manager shall furnish a detailed report to the University of observed discrepancies, deficiencies, and omissions in the Work performed by any Trade Contractor.
- g) The Construction Manager shall provide and maintain a correct layout of the structures and monitor the Work to verify that all lines and levels are adhered to by the Trade Contractors. The Construction Manager shall immediately report in writing all discrepancies with respect to design details for prompt disposition by the Design Professional.
- h) The Construction Manager shall supervise and direct the Work using the Construction Manager's best skill and attention. The Construction Manager shall be solely responsible for and have control over construction means, methods, techniques, sequences, procedures and safety, and for coordinating all portions of the Work under the Contract Documents or that which is reasonably inferable for the completion of the Project.
- i) The Construction Manager shall be responsible to the University for acts and omissions of the Construction Manager's employees, Trade Contractors, Subcontractors and their agents and employees, and other persons performing any portion of the Work under a contract with the Construction Manager.

- j) The Construction Manager shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities of the University, Design Professional, or by tests, inspections or approvals required or performed by persons other than the Construction Manager, except where such relief is authorized by the Design Professional or the University in writing in accordance with this Agreement.
- k) The Construction Manager shall be responsible for inspection of portions of Work performed or portions of existing facilities being renovated in this Project to determine that such portions are in proper condition to receive subsequent Work. Further, the Construction Manager shall plan for and call for the review of the Work by the University's commissioning agents as required. The Master Project Schedule shall include activities that recognize this coordination responsibility.

### 3.04.3 Trade Contract Management

The Construction Manager shall maintain at the job site, on a current basis, all Project documents including plans, specifications, shop drawings, samples, submittal, purchase orders, Trade Contracts, material specifications, and any other related documents, and revisions thereto, which arise out of or relate to the Project, this Agreement or the Work. Prior to final payment, copies of all such records will be provided to the University.

The Construction Manager shall be responsible for reviewing, processing and paying applications by Trade Contractors for progress and final payment. The University will compensate the Construction Manager monthly based on the requirements of Article 4.02, Application For Payment. Sworn statements and lien waivers certifying previous payments made to each Trade Contractor, and properly completed Certified Payroll Form WH-347 shall be required with each new requisition for payment. The University reserves the right to require other supporting documentation to evidence prior payments made to Trade Contractors and those under them.

The Construction Manager shall prepare and submit to the University every three months a report of the total M/WBE participation in the Project, together with a projection of M/WBE participation through Final Completion.

### 3.04.4 Cash Flow Estimates and Cost Control

The Construction Manager shall prepare a Cash Flow Estimate indicating the anticipated schedule of payment application amounts as soon as the Project Budget has been approved and Project requirements have been identified no later than the date the GMP is accepted. The Cash Flow Estimate shall be revised periodically no less frequently than every three months unless significant deviations are expected to reflect actual job conditions or as requested by the University.

The Construction Manager shall use its best skill, judgment, expertise and knowledge of the construction industry to control actual Project costs and to maintain compliance with the GMP. The Construction Manager shall revise and refine the actual Project cost and cash flow estimates, as may be required or requested by the University, while construction proceeds. All recommendations and communications by the Construction Manager to the University relating to issues that will or could affect the Project cost, or the time of completion of the Project shall be made and confirmed in writing. The University may also require other recommendations and communications by the Construction Manager to be made or confirmed in writing.

The Construction Manager shall review requests for changes with the University, and with the University's approval, obtain quotations from affected Trade Contractors. Bulletins to Trade Contractors shall define the scope of the change and require pricing using either lump sum, time and materials or cost of Work for all items of Work, including overhead and profit as may be defined in the Proposal and this Agreement. Where both additions and deductions are involved, each should be calculated separately. Construction Manager shall be responsible for reviewing the pricing submitted by Trade Contractors for accuracy, completeness, and reasonableness.

#### **3.04.5 Prohibition Against Undisclosed Bidding**

Neither the Construction Manager nor any firm of which any officer, director, supervisory employee or stockholder of the Construction Manager is an officer, director, supervisory employee or stockholder or owner, or of which the Construction Manager is a stockholder or owner, shall, during the term of this contract, and until final payment for the services provided for herein is made by the University, make or cause to be made any bid on this Project unless otherwise expressly authorized in writing by the University. However, the Construction Manager shall not be prohibited from performing Trade Work where a Trade Contractor has failed to perform.

#### **3.04.6 Minority/Women Business Enterprise Participation - SECTION DELETED**

#### **3.04.7 Time of Completion**

The Construction Manager understands and acknowledges that time is of the essence in performing and completing the Project. Accordingly, Construction Manager shall comply with the activity and milestone completion dates as defined in the Master Project Schedule as mutually agreed by the Construction Manager, University and Design Professional. The Construction Manager shall provide, prepare and/or participate in developing cost estimates, schedules, design details, submittals, shop drawings, construction schedules, close out documents, or other activities consistent with the conditions of the Contract Documents and as set forth below:

A. Program Statement: [ENTER COMPLETION DATE]

B. **Schematic Design and Outline Specifications:** [ENTER COMPLETION DATE]

C. Design Development: [ENTER COMPLETION DATE]

D. Construction Documents [LIST AND ENTER COMPLETION DATES FOR EACH WORKPACKAGE]

1. Bid Pack No. 1:
2. Bid Pack No. 2:
3. Bid Pack No. 3:
4. Bid Pack No. 4:
5. Bid Pack No. 5:

E. The GMP: [ENTER COMPLETION DATE]

F. Substantial Completion: [ENTER COMPLETION DATE]

G. Punchlist Completion: [ENTER COMPLETION DATE]

H. Final Completion: [ENTER COMPLETION DATE]

### 3.04.8 Liquidated Damages and Early Completion Bonus

Should the Construction Manager fail, neglect, or refuse to complete the Work on or before the Substantial Completion date or any proper extension thereof documented in a duly executed written Change Order, then the Construction Manager does hereby agree, as a part of the consideration for the awarding of this contract, to pay the University as liquidated damages, and not as a penalty, the sum of [ENTER DOLLAR VALUE] dollars (\$ [ENTER DOLLAR VALUE]) per day for each and every calendar day or partial day that the Construction Manager may be in default of Substantial Completion of the Work embraced under this contract.

The University shall be entitled to retain from the Construction Manager those liquidated damages incurred upon the Construction Manager's default of Substantial Completion, as provided above.

Should the Construction Manager achieve and receive certification for Substantial Completion ahead of the Substantial Completion date, then the Construction Manager shall receive an early completion bonus of [ENTER DOLLAR AMOUNT] per calendar day for each day of early completion. Such early completion bonus shall be capped and not exceed [ENTER DOLLAR VALUE] and such payment shall only be from GMP contingency reserves, if any, remaining at final completion.

The Construction Manager further agrees to complete 100% of all punchlist items, documented on the Substantial Completion certificate, within forty-five (45) days of the date of Substantial Completion. The Construction Manager's failure to complete all punchlist items within 45 days of Substantial Completion may, at the University discretion, result in the imposition of liquidated damages and/or nullify any eligibility for early completion bonus.

**LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES** Except for damages mutually agreed as liquidated damages in paragraph 3.04.8 and claims covered by insurance policies and programs required in the Contract Documents, the University and Construction Manager agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement. The University agrees to waive consequential and indirect damages for loss of use of the Project, any rental expenses incurred, loss of income, profit or financing related to the Project, as well as the loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of reputation, or insolvency. The Construction Manager agrees to waive consequential and indirect damages including but not limited to loss of business, income, profit, financing, principal office overhead and expenses, and/or loss of profits not related to this Project, loss of or damage to reputation, or insolvency. The provision of this Paragraph shall also apply to the termination of this Agreement and shall survive such termination.

Sample

## 4.00 CONSTRUCTION MANAGER'S COMPENSATION

### 4.01 Construction Manager's Fee and Compensation

In consideration of the performance of this Agreement, the University shall compensate the Construction Manager in current funds for its services as follows:

#### 4.01.1 Preconstruction Services Fees

The Construction Manager shall perform certain preconstruction services as defined in its Proposal dated [ENTER DATE]. As compensation for this service, the University shall pay the Construction Manager the amount of [ENTER DOLLAR AMOUNT]. This amount is to be included in the GMP.

#### 4.01.2 Project Management Services

The Construction Manager shall perform various project management services during preconstruction and construction phase. Such services are normally conducted by a Project Manager and Site Superintendent to manage and coordinate the direct activities associated with the Project, and are defined in the Contract Documents. As compensation for this service, the University shall pay the Construction Manager the amount of [ENTER DOLLAR AMOUNT] to be paid in proportion to the Work completed over the entire Project duration. This amount is to be included in the GMP.

#### 4.01.3 Construction Manager's Overhead and Profit

The University shall compensate the Construction Manager an overhead and profit fee of [ENTER PERCENTAGE AND/OR DOLLAR AMOUNT] for performance of the Work plus Indirect Cost of Work and services under this Agreement. This fee shall address the Construction Manager's costs associated with home office personnel/administration, job accounting, payroll, personnel/human resource, procurement not performed by on-site personnel, the Project Director/Executive and profit margin; all of which are specifically prohibited from being included in the Cost of Work or General Requirements. Unless specifically noted elsewhere in the Contract Documents, this fee shall be applied to the Cost of Work including change orders that result in an adjusted GMP, and including other accepted general requirements, Preconstruction Services, Project Management Services, and the construction contingency, and shall be included in the GMP.

#### 4.01.4 Guaranteed Maximum Price

The Guaranteed Maximum Price for this project is dollars [ENTER DOLLAR AMOUNT] and includes the costs for the Construction Manager to provide preconstruction services, project management services, overhead and profit, and the scope of Work associated with this Agreement.

#### 4.01.5 Change Order Markup Allowances

For scope of work increases that result in change orders increasing the GMP, Trade Contractors, or the Construction Manager if self-performing, shall be entitled to a mark-up of no more than [ENTER PERCENTAGE] on the Cost of Work for the change. This mark-up shall include all overhead, profit, impact, lost productivity due to the change or any other costs relating to the change. The Construction Manager shall be entitled to a marked-up of no more than [ENTER PERCENTAGE] on the Cost of Work for scope of work increases that result in change orders increasing the GMP. All lump sum Change Orders shall include any mark-up. These same mark-up percentages shall be applied to deductive change orders.

#### 4.01.6 Shared Savings Allowance – SECTION DELETED

#### 4.02 Applications for Payment

The Construction Manager shall prepare and deliver to the University an itemized Application for Payment on a monthly basis. The University shall pay the Construction Manager within thirty (30) days of receipt of a properly submitted, complete and correct Application for Payment. The Applications for Payment shall include a Schedule of Values or work breakdown structure detailing every Trade Contractor and material or equipment supplier describing the services included and Work completed in the Application for Payment. No interest shall accrue on any unpaid portion of the Applications for Payment or any other sums that the Construction Manager or any Trade Contractor or supplier claim are or may be due under this Agreement.

The Application for Payment shall constitute a representation by the Construction Manager to the University that the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Construction Manager is entitled to payment. No progress payment, partial use or entire use of the Project by the University shall constitute acceptance of work not in conformity with the Contract Documents.

The Construction Manager shall keep records of cost and expense to support the Construction Manager's Applications for Payment. Records shall be kept on a generally recognized accounting basis, as approved by the University. Such records shall be available to the University for inspection and audit for a period of five years after the Project Close-out and Final Payment to the Construction Manager.

The Application for Payment shall be accompanied by sworn statements and lien waivers executed by Construction Manager and the Trade Contractors, subcontractors and suppliers whose work is included in the Application for Payment, as well as other documentation that may be required by the University, stating that all have been paid in full for Work performed through the last or most recent progress payment.

These requirements are complementary with the requirements of Article 8.00 Payment and Completion of the General Conditions.

#### **4.03 Retainage**

Payments to the Construction Manager shall be subject to retainage of ten percent (10%) for total Work completed and stored to-date less the cost of general condition and project management services completed to-date for each Application for Payment until the Work is fifty percent (50%) complete; at that time, no further retainage will be deducted from the Applications for Payment. Draws on retainage may only be submitted after Substantial Completion and in the following quantities: (1) at the completion of all punchlist items, the retainage may be reduced to two percent (2%); and (2) at delivery of all Closeout Documents and warranties, the remainder of the retainage may be paid to the Construction Manager. Any release of retainage beyond the above shall be at the sole discretion of the University and will not be unreasonably withheld.

#### **4.04 Final Payment**

Issuance of Final Payment shall be conditional on certification of Substantial Completion, certification of Punchlist completion and written acceptance of closeout documents by the Design Professional and University.

### **5.00 PREVAILING WAGES**

The Contractor acknowledges and shall abide by the University's prohibition on use of 1099 independent contractors and owner / operator business entities wherein such individuals or entities are not able to secure and maintain workers compensation insurance. The Contractor shall ensure that all classifications of laborers and construction mechanics performing Work on the Project job site are employees of the Contractor or any Trade Contractor for any tier thereof, and that each worker is covered by workers compensation insurance

#### **5.01**

The Construction Manager, Trade Contractors 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 Michigan Department of Labor. The Trade Contractor shall post on site, in a conspicuous place, a copy of all applicable wage and benefit rates.

## 5.02

The Construction Manager, Trade Contractors and each subcontractor shall keep an accurate record showing the name and occupation / classification of and the actual benefits and wages paid to each laborer and mechanic who performed work or service at the project job site in connection with this contract. The Construction Manager, Trade Contractors and each subcontractor shall provide a properly completed certified payroll form WH-347 to the University's with each application for payment request.

## 5.03

If the Construction Manager, a Trade Contractor or subcontractor fails to pay the applicable 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:

**5.03.1** Withhold all or any portion of payments due the Trade 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.

**5.03.2** Terminate part or all of this Agreement or any subagreement and proceed to complete the Agreement or subagreement by separate agreement with another Trade Contractor or otherwise, in which case the Trade Contractor and its sureties shall be liable to the University for any excess costs incurred by the University.

## 5.04

The Construction Manager and Trade Contractors shall include terms identical or substantially similar to this section in any Agreement or subagreement pertaining to the project.

## 6.00 OWNERSHIP OF DOCUMENTS

All drawings and specifications prepared and furnished by the University, the Design Professional and/or the Construction Manager shall become the property of the University. The Construction Manager shall have no claim for further employment or additional compensation as a result of exercise by the University of its full rights to ownership of said documents and materials. The Construction Manager shall not use or copy such documents for any purpose other than this Project.

## 7.00 CONFIDENTIALITY

### 7.01 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 Construction Manager during the course of this Agreement, whether in writing, in the form of drawings, orally or by observation.

### 7.02 Maintenance of Confidential Information

The Construction Manager acknowledges that certain of the University's valuable, confidential, and proprietary information may come into the Construction Manager's possession. Since it is difficult to separate confidential and proprietary information from that which may not be, the Construction Manager shall regard all information that it obtains as a result of services rendered under this Agreement as confidential and proprietary. Accordingly, Construction Manager agrees to hold all information it obtains from or about University in strictest confidence, not to use such information other than for the performance of the services and to cause any of its employees or consultants to whom such information is transmitted to be bound to the same obligation of confidentiality to which Construction Manager is bound. Construction Manager shall not communicate University's information in any form to any third party without the University's prior written consent. The Construction Manager shall use reasonable security practices, including administrative, physical and technical safeguards and shall take all security measures necessary to protect the security and confidentiality of University's confidential information. Such practices shall at a minimum include compliance with University's information systems policies and procedures, and compliance with common practices in the information systems industry. The Construction Manager shall promptly disclose to University, in writing, any improper or unauthorized use, disclosure, access or request for access to Confidential Information. In the event of any violation of this provision, the University shall be entitled to preliminary and permanent injunctive relief as well as an equitable accounting of all profits or benefits arising out of such violation, which remedy shall be in addition to any other remedy or right to which University may be entitled.

### 7.03 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 Construction Manager, or (b) such confidential information is received by the Construction Manager from third parties who are in lawful possession of such and who by such disclosures are not breaching any obligation owed to the University, or (c) such confidential information is disclosed by the Construction Manager under legal compulsion from any governmental/regulatory agency having jurisdiction to request such information; provided, however, that the Construction Manager shall notify the University prior to any such disclosure that confidential information is being disclosed to the governmental/regulatory agency involved.

### **8.00 SUCCESSORS AND ASSIGNS**

This contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that none of the parties hereto shall assign this contract without the prior written consent of the other.

### **9.00 GOVERNING LAW**

This contract shall be governed and construed in accordance with the laws of the State of Michigan.

### **10.00 NON-DISCRIMINATION**

#### **10.01 General**

The Construction Manager will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, age, sex, height, weight or marital status. The Construction Manager will ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, national origin, age, sex, height, weight or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

#### **10.02 Solicitation/Advertisements**

The Construction Manager will, in all solicitation or advertisements for employees placed by or on behalf of the Construction Manager, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight or marital status.

### 10.03 Rules/Laws

At the Owner's written request, the Construction Manager will comply with all current published rules, regulations, directives, and orders of the Michigan Civil Rights Commission.

### 10.04 Reports

Provided the Owner has directed the Construction Manager in writing to obtain a Michigan Civil Rights Commission Certificate of Awardability per section 10.03 above, the Construction Manager shall furnish and file compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission; said forms may also elicit information as to the practices, policies, program, and employment statistics of the Construction Manager and of each Trade Contractor. The Construction Manager will permit access to all books, records, and accounts by the Michigan Civil Rights Commission and/or its agents, for purposes of investigation to ascertain compliance with this contract and with rules, regulations, and orders of the Michigan Civil Rights commission.

### 10.05 Persons with Disabilities

The Construction Manager shall also comply with the provisions of M.C.L. 37.1101, et seq., 1976 PA 220, as amended, concerning the civil rights of disabled persons.

### 10.06 Contract Provisions

The Construction Manager will include, or incorporate by reference, the provisions of this Article in every Trade Contract, subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every Trade Contract, subcontract or purchase order that said provisions will be binding upon each Trade Contractor, subcontractor or seller.

## 11.00 INCLUSION BY REFERENCE

This Contract hereby includes, by reference, the Guaranteed Maximum Price Proposal (when approved), the General Conditions of Construction and Supplementary General Conditions, the Request for Proposal by University, Construction Manager's Proposal, the plans and specifications and other Project documents. The Construction Manager acknowledges that it has read the Design Professional's agreement, and that while it is not incorporated herein, the Construction Manager will cooperate and coordinate its activities with the Design Professional and University to enable the successful performance of the Design Professional and University. The Construction Manager, however, does not assume any responsibility for any obligation or service of the Design Professional

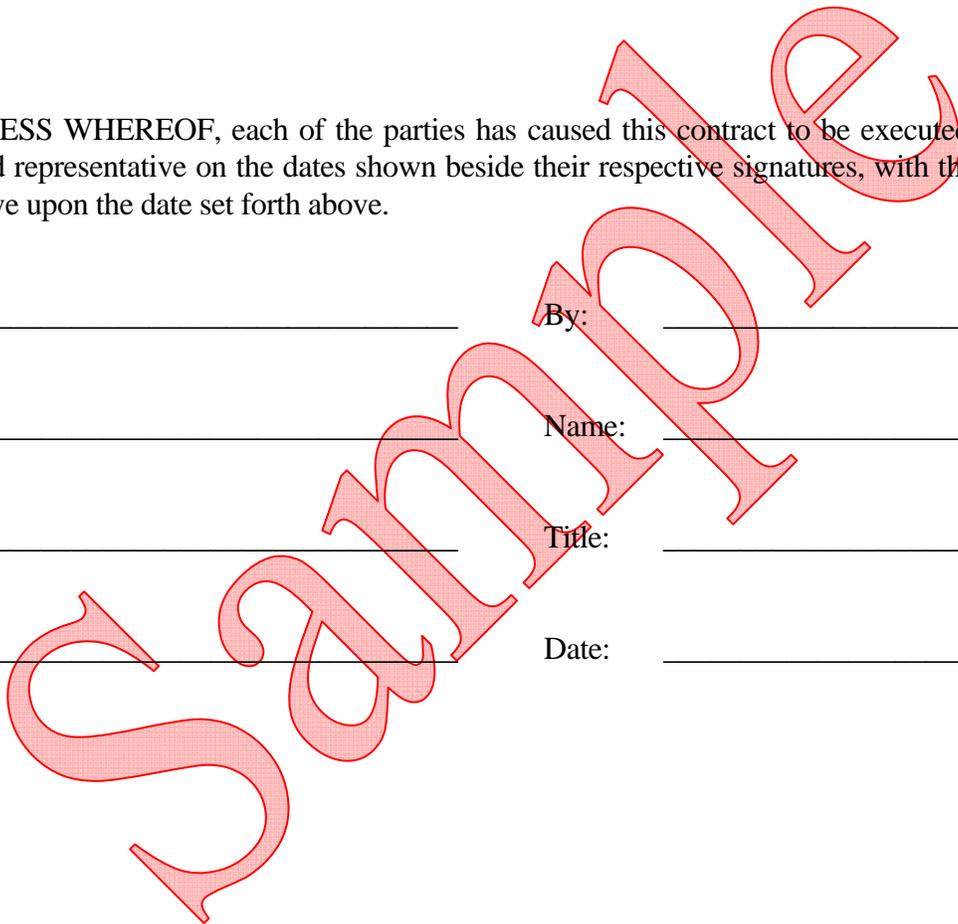
including indemnification arising exclusively from design errors or omissions, as provided in the University's Contract for Professional Design Services.

**12.00 COMPLETE AGREEMENT: MODIFICATION**

The Contract Documents constitute the entire agreement and contract between the parties. Any modification of these Contract Documents must be in writing and signed by the duly authorized representatives of the parties.

IN WITNESS WHEREOF, each of the parties has caused this contract to be executed by its duly authorized representative on the dates shown beside their respective signatures, with the contract to be effective upon the date set forth above.

By: \_\_\_\_\_ By: \_\_\_\_\_  
Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Title: \_\_\_\_\_ Title: \_\_\_\_\_  
Date: \_\_\_\_\_ Date: \_\_\_\_\_



## **APPENDIX 4**

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## GENERAL CONDITIONS OF CONSTRUCTION

### 1.00 DEFINITIONS

**Bulletin** - A bulletin is defined as a compilation of changes to the scope of the work issued by the Design Professional or University which requests that the Contractor to submit a quote for the changes.

**Change Order** - A written agreement entered into after the award of the Contract which alters or amends the executed Contract.

**Claim** - A Claim is a demand or assertion by one of the parties seeking adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the parties arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**Close-out Documents** - Close-out Documents shall include as-built record drawings and specifications, Operations and Maintenance Manuals, Requests for Information (RFIs), submittals, shop drawings, coordination drawings, warranties, lien waivers and governing approvals.

**Cost of Work** - The term Cost of Work, as used herein, is that portion of the Project Cost, that is the estimated or actual labor and material costs of that Work performed (or to be performed) on the Project by the Contractor and all subcontractors, and is inclusive of the cost of construction as described by divisions of the Construction Specifications Institute or other standard format, which constitutes the Direct Cost of Work. However, Cost of Work shall not include the Indirect Cost of Work as herein defined.

**Construction Contingency** – The Construction Contingency is an amount included in the GMP to address Work related requirements that are within the limits of the intended scope of Work, and to address variations between estimated and actual costs of the intended scope of Work during the bidding and buy-out process whose permitted use is further defined in the Contract for Construction Management Services.

**Contract** - The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a duly executed written Change Order.

**Contract Documents** - The Contract Documents consist of the bonds, insurance certificates, plans, specifications, drawings, bulletins, addenda, Agreement, General Conditions of Construction,



**Day** - “Days” means business days unless specifically provided to the contrary herein or in the Construction Agreement; provided, however, if any day falls on a weekend or a holiday, same shall refer to the next business day thereafter.

**Design Professional** - The Design Professional is the person lawfully licensed to practice architecture or engineering or an entity lawfully practicing architecture or engineering identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Design Professional” means the Design Professional or the Design Professional’s authorized representative.

**Final Completion** - “Final Completion” means the completion of all the Work in accordance with the Contract Documents and the acceptance thereof by the University. Completion of the Work includes (1) full performance of all Contract terms; (2) acceptance of the Work by University; (3) resolution of all outstanding Changes of Contract; (4) completion of all “punch-list” items; and (5) delivery of all Close-out Documents.

**Indirect Cost of Work** - The term Indirect Cost of Work, as may be used herein, is that portion of the Project Cost, that is the estimated or actual costs of the Project performed or provided (or to be performed or provided) by the Contractor in the prosecution of the Work including, but not limited to, preconstruction services, on site project management staff, other general conditions, insurances, and bonds. Such costs shall not be inclusive of the Contractor’s fee for overhead and profit.

**Knowledge** - The terms "knowledge," "recognize" or "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows or should know, recognizes or should reasonably recognize and discovers or should reasonably discover in exercising the care, skill and diligence required by the Contract Documents.

**Master Project Schedule** - The Master Project Schedule shall show the sequence, duration in calendar days, interdependence for the complete performance of all Work. The Master Project Schedule shall begin with the date of issuance of the Notice to Proceed and conclude with the date of final completion.

**Notice to Proceed** - A "Notice to Proceed" means written notice given by the University to the Contractor fixing the date on which the Contract Time will commence to run and/or on which Contractor shall start to perform Contractor’s obligations under the Contract Documents. A Notice to Proceed by the University shall authorize all or a portion of the Work for the Costs so defined.

**Persistently fails** - The phrase "persistently fails" and other similar expressions, as used in reference to the Contractor, shall be interpreted to mean any combination of acts and omissions, which cause the University to reasonably conclude that the Contractor will not complete the Work within the Contract Time, or for the Contract Sum or in substantial compliance with the requirements of the Contract Documents.

**Plans** - The drawings prepared by the Design Professional and accepted by the University which include elevations, sections, details, schedules, diagrams, information, notes, or reproductions or any of these, and which show the location, character, dimension, or details of the Work. These include the graphic and pictorial portions of the Contract Documents as listed in the Agreement.

**Project** - The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the University or by separate Contractors.

**Punchlist** - Punchlist items shall include all Work identified and documented by the Design Professional, Contractor and University and issued to the Contractor with a Certificate of Substantial Completion. It is understood and accepted that the Punchlist included with the Certificate of Substantial Completion may not represent all remaining Work for which the Contractor is obligated and that Punchlist may be expanded prior to Final Completion.

**Reasonably inferable** - The phrase "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a Contractor familiar with the Project and exercising the care, skill and diligence required by Contract Documents.

**Vice President of Finance and Business Operations** - The Vice President of Finance and Business Operations shall be the only individual authorized to execute the Agreement or any Change Order associated with the Project.

**Site** - The area specified in the Contract Documents and the area made available for the Contractor's operation.

**Soft Costs** - "Soft Costs" are those costs derived by the University and shall include, but not be limited to, items such as Environmental services, State administration fees, Design Professional fees, moving furniture, fixtures and equipment, and telecommunications, unless otherwise agreed to by the Parties.

**Specifications** - The term Specifications shall mean the written instructions and requirements prepared by the Design Professional which complement the plans and which describe the manner of executing the Work or the qualities and types of materials to be furnished.

**Statement of Probable Cost** - The Statement of Probable Cost, as developed by the Contractor, is essential to the budgetary and management processes of the University. The Statement of Probable Cost, once established and accepted by the University, is relied upon by the University for its subsequent budgetary planning and financial needs for the Project.

The Statement of Probable Cost, applicable to either an estimated or actual cost, is the sum of all costs for a completely constructed, functionally ready-for-use project, in accordance with the scope,

scheme, concept, and statement, as developed, documented and accepted by the University, and as constructed by the accepted contracting method or methods. The Contractor shall provide Statements of Probable Cost as needed during the Project to aid the University and Design Professional in making scope of work selection decisions, especially during design phase and minimally at the end of each design phase of the Project (until the GMP Proposal is finally accepted by the parties) and shall include all costs included in the Contract Sum. The University shall be responsible for the derivation and provision of all Soft Costs that comprise the Project scope and budget.

**Subcontractor** - The term "subcontractor" shall mean any business entity under contract to the Contractor for services on or regarding the Project. The term "Subcontractor" as used in the General Conditions shall be synonymous with the term "Trade Contractor" as used in the Contract for Construction Management Services. Nothing contained in this contract shall create any contractual relationship between the University and any subcontractor. However, the University is the intended third-party beneficiary of all contracts for design, engineering or consulting services, all Trade Contracts, subcontracts, purchase orders and other agreements between the Contractor and third parties. The Contractor shall incorporate the obligations of this Agreement into its respective Trade Contracts, subcontracts, supply agreements and purchase orders.

**Substantial Completion** - "Substantial Completion" shall mean the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the University can occupy or utilize the Work for its intended use. Substantial Completion shall only be determined as described in the Contract Documents.

**Unsafe Persons** – Unsafe persons shall be those individuals that present a safety hazard to themselves or others.

**University** - The University is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "University" means the University or the University's authorized representative. Any reference to "Board of Governors" shall be considered to mean "University."

**University's Representative** - The University's Representative shall include the Associate Vice President for Facilities Planning and Management, the Director of Design and Construction Services and the Project Manager. Any of these individuals may make Project decisions on behalf of the University.

**Work** - The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, licenses, permits, insurance and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

## **2.00 BIDDING**

### **2.01 Duty to Carefully Examine These Instructions**

Prospective bidders for this project shall carefully examine the instructions contained herein and be cognizant of and satisfied with the conditions which must be satisfied prior to submitting a proposal and to the conditions which affect the award of the Contract.

### **2.02 Prequalification of Bidders**

The Contractor shall accept proposals from at least three (3) Subcontractors who must be pre-approved by the University.

### **2.03 Clarification During Bidding**

The Contractor shall examine the plans and specifications in preparing the bid and shall immediately report to the Design Professional any omissions, discrepancies, or apparent errors found in the plans and specifications. Prior to the date of bid opening, bidders shall submit a written request for clarification to the Design Professional who may give such clarification in the form of addenda to all bidders if time permits.

### **2.04 Bidding Documents**

#### **2.04.1 Bid Proposal Package**

Each pre-qualified bidder will receive a bid proposal package containing a standard proposal form which shall be used for bidder's proposal. Each proposal shall give the prices proposed in the manner required by the proposal and shall be signed by the bidder or the bidder's duly authorized representative, with its address and telephone number. If the proposal is made by an individual, the individual's name, postal address, and telephone number must be shown. If made by a partnership, the proposal shall have the signature of all partners or an affidavit signed by all partners empowering one partner as an agent to act in their behalf and the address and telephone number of the partnership. A proposal submitted by a corporation shall show the name of the state in which the corporation is chartered, the name of the corporation, its address and telephone number, and the title of the person who signs on behalf of the corporation.

#### **2.04.2 Listing of Proposed Subcontractors Pre-approved by the University**

The Contractor will require every subcontractor to provide the name and location of the place of business of each Subcontractor and subordinate Subcontractor which will perform work or labor or render services for the Project..

### **2.04.3 Bidder's Security**

All bids shall be presented under sealed cover and have enclosed an amount equal to at least 5 percent of the bid as bid security. The bid security may be a cashier's check, or certified check made payable to Wayne State University or a bidder's bond. No bid shall be considered unless one of these forms of bid security is enclosed therewith.

If the bid security is a bond, it shall be executed by a corporation authorized as an admitted surety to issue surety bonds in the State of Michigan, and it shall be executed on the form prescribed in the Contract Documents. The bid bond expires upon execution of the Contract.

## **2.05 Bid Proposals**

### **2.05.1 Submission of Proposals**

Proposals shall be submitted to the office indicated on the bid proposal. It is the responsibility of the bidder to see that its bid is received in the proper time. Delays in timely receipt of the bid caused by the United States or the University mail system, independent carriers, acts of God, or any other cause shall not excuse late receipt of a bid. Any bid received after the scheduled closing time for receipt of bids shall not be considered and will be returned to the bidder unopened.

### **2.05.2 Withdrawal of Proposals**

Any bid may be withdrawn at any time prior to the time fixed for receiving bids but only by a written request from the bidder or its authorized representative filed with the University. An oral, telegraphic, faxed, or telephonic request to withdraw a bid proposal is not acceptable. The withdrawal of a bid shall not prejudice the right of a bidder to file a new bid. This paragraph does not authorize the withdrawal of any bid after the time fixed for receiving bids.

### **2.05.3 Public Opening of Proposals – SECTION DELETED**

### **2.05.4 Rejection of Irregular Proposals**

Proposals may be rejected if they show any alterations of forms, additions not called for, conditional bids, incomplete bids, erasures, or irregularities of any kind. If the bid amount is changed after the amount has been once inserted, the change shall be initialed.

### **2.05.5 Power of Attorney or Agent**

When proposals are signed by an agent, a power of attorney shall either be on file with the University prior to the opening of bids or be submitted with the proposal. Failure to submit a power of attorney



**The Contractor shall include, or incorporate by reference, the provisions of this Article 2.07 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 and Supplier and Vendor.**

Any breach of the requirements and covenants of this Article 2.07 shall constitute a material breach of the Contract Documents.

### 3.00 AWARD AND EXECUTION OF CONTRACT

#### 3.01 Contract Bonds and Insurance

##### 3.01.1 Payment and Performance

The Contractor shall forward to the University fully executed Payment & Performance Bonds in the amount of 100 percent of the Contract value on the AIA Form 312 or an equivalent form that is acceptable to the University and in compliance with MCL 129.201 et seq. within five (5) days after execution of the Agreement or acceptance of the GMP.

In the same five (5) day period the Contractor shall present to the University, in an acceptable form, evidence of the insurance as required by the Contract Documents. Actual Work shall not commence until the bond and insurance is received by the University. Failure to provide the bond and insurance in the time-frame allowed shall not be cause for an extension of Contract Time.

All alterations, extensions of time, extra and additional work, and other changes authorized by any part of the Contract, including determinations made under Article 7.00, Claims and Disputes, shall be made without securing the consent of the surety or sureties on the Contract bonds.

Whenever the University has cause to believe that the surety has become insufficient, the University may demand in writing that the Contractor provide such further bonds or additional surety, not exceeding that originally required, as in the University's opinion is necessary, considering the extent of the work remaining to be done. Thereafter no payment shall be made to the Contractor or any assignee of the Contractor until the further bonds or additional surety have been furnished.

Contract bonds shall remain in full force and effect during the two-year guarantee period, unless a longer bond period is stipulated in the Contract Documents.

##### 3.01.2 Maintenance and Guarantee Bond – SECTION DELETED

#### 3.02 Execution of Contract

The Contract shall be signed by the Contractor in three (3) duplicate counterparts and returned to the University within five days of receipt from the University, not including Saturdays, Sundays, or legal holidays. The Contractor and the University shall each sign three sets of plans, specifications, and addenda (usually at the preconstruction conference) one set for each party to be filed with the Contract. No Contract shall be binding upon the University until it has been executed by the Contractor and the University. Such signatures on the Plans and Specifications are meant to acknowledge that these represent the original contract documents which form the basis of the Contract Sum or GMP.

**3.03 Failure or Refusal to Execute Contract**

Failure or refusal by the Contractor to execute the Contract within the time set in Section 3.02 shall be just cause for the rescission of the award and the forfeiture of bidder's security. Failure or refusal to file acceptable bonds within the time set in Section 3.01 constitutes a failure or refusal to execute the Contract. If the Contractor fails or refuses to execute the Contract, the University may award the Contract to another contractor and the Contractor shall forfeit his bid bond.

## **4.00 RESPONSIBILITIES OF THE PARTIES**

### **4.01 University**

#### **4.01.1 Information and Services Required of the University**

The University shall furnish available surveys describing physical characteristics, legal limitations and utility locations for the site of the Project. The University does not warrant or guarantee the accuracy of the information provided.

Unless otherwise agreed to, the University shall be responsible for the abatement of asbestos containing materials and/or site related environmental hazards. The University will provide documentation regarding the presence of asbestos containing materials or other possible environmental hazards to the Contractor. Second opinions on previously documented clean conditions shall be provided at the Contractor's expense. Positive results regarding environmental hazards shall become the University's obligation. If, during the execution of the Work, previously unknown environmental hazards are encountered, the University shall be allowed a reasonable amount of time to abate environmental hazards.

The University shall provide available information regarding requirements for the Project including plans and specifications for the buildings and a topographic survey of the site where required. The Contractor shall review the plans and specifications and topographic survey, if provided, for errors, inconsistencies, ambiguities or omissions as required by Article 4.02.2, Review of Contract Documents and Field Conditions by Contractor. In the event errors, inconsistencies, ambiguities or omissions in the plans, drawings, and specifications were not reasonably identifiable in the Contractor's review as specified in Article 4.02.2, Review of Contract Documents and Field Conditions by Contractor, and such errors, inconsistencies, ambiguities or omissions result in changes in time and cost, the University may make reasonable adjustment in the Contract Sum or GMP in accordance with Article 6.00, CHANGES IN THE WORK of the General Conditions.

Except for permits and fees, which are the responsibility of the Contractor under the Contract Documents, the University shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

Information or services under the University's control shall be furnished by the University with reasonable promptness to avoid delay in orderly progress of the Work.

Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, three sets of reproducible documents for construction purposes. All reproduction required for construction is the obligation of the Contractor.

#### **4.01.2 University's Right to Stop the Work**

If, in the University's determination, the Contractor fails to correct work which is not in accordance with the requirements of the Contract Documents as required, or persistently fails to carry out work in accordance with the Contract Documents, the University Representative, by written order may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the University to stop the Work shall not give rise to a duty on the part of the University to exercise this right for the benefit of the Contractor or any other person or entity.

It is understood that while the Contractor is fully responsible for the safety of the jobsite, and for the methods of its execution, if the University deems that the Contractor is failing to provide safe conditions, the University may stop or restrict the Work under such conditions. However, this right shall not create such duty on the University. Under no circumstance shall the Contractor be granted a time extension or Contract Sum increase for conditions resulting by a stop work order occurring as a consequence of the Contractor's failure to maintain safe working conditions.

#### **4.01.3 University's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three (3) day period after receipt of written notice from the University to commence and continue correction of such default or neglect with diligence and promptness, the University may after such three (3) day period, without prejudice to other remedies the University may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Design Professional's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the University.

#### **4.01.4 University's Right to Audit**

**4.01.4.1** Contractor's records, which shall include but not be limited to accounting records (hard copy, as well as computer readable data if it can be made available), written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets, correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other supporting evidence deemed necessary by the University to substantiate changes related to the Agreement (collectively referred to as "Records") shall be maintained in accordance with Generally Accepted Accounting Principles and open to inspection and subject to audit and/or reproduction by University's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of Cost of the Work, and

any invoices, change order, payments or claims submitted by the Contractor or any of his payees pursuant to the execution of the contract that are or have been charged on a basis other than a lump sum approved in writing by the University.

**4.01.4.2** Such audits may require inspection and copying from time to time and at reasonable times and places of any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase order, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in University's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Documents. Such records subject to audit shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Agreement.

**4.01.4.3** The University or its designee shall be afforded access to all of the Contractor's Records, and shall be allowed to interview any of the Contractor's employees, pursuant to the provisions of this article throughout the term of this contract and for a period of five (5) years after Final Payment or longer if required by law. To the extent feasible, the Construction Manager's records shall remain confidential, and the University's third party auditors will enter into a confidentiality agreement between and among the University, the third-party auditor and the Contractor prior to any audits being conducted.

**4.01.4.4** Contractor shall require all Subcontractors and material suppliers (payees) to comply with the provisions of this article by insertion of the requirements hereof in a written contract agreement between Contractor and payee so as to allow the University to verify any amounts charged to the Project by a payee on a basis other than a lump sum approved in writing by the University. Such requirements will also apply to Subcontractors and all lower tier Subcontractors. Contractor shall cooperate fully and shall cause all of Contractor's Subcontractors to cooperate fully by furnishing or making available to University from time to time whenever requested in an expeditious manner any and all such information, materials and data.

**4.01.4.5** University's agent or its authorized representative shall have access to the Contractor's facilities, shall have access to all necessary records; and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

**4.01.4.6** Contractor agrees that University's designee shall have the right to examine the Contractor's records (during the contract period and up to five (5) years after Final Payment is made on the contract) to verify the accuracy and appropriateness of the pricing data used to price change proposals or claims. Contractor agrees that if the University determines the cost and pricing data submitted (whether approved or not) was inaccurate, incomplete, not current or not in compliance with the terms of the contract regarding pricing of change orders, an appropriate contract price reduction will be made. Such post-approval contract price adjustments will apply to all levels of contractors and/or subcontractors and to all types of change order proposals

specifically including lump sum change orders, unit price change orders and cost-plus change orders.

**4.01.4.7** If an audit, inspection or examination in accordance with this article, discloses overcharges (of any nature) by the Contractor to the University in excess of five percent (5%) of the total contract billings, the actual cost of the University's audit shall be reimbursed to the University by the Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of University's findings to Contractor.

## **4.02 Contractor**

The Contractor recognizes the relationship of trust and confidence established between the University and the Contractor by this Contract. The Contractor shall furnish the University with its best skill and judgment and fully cooperate with the University in forwarding its best interests. All the Work is to be done in the best manner by persons skilled in the type of Work to be performed.

### **4.02.1 Contractor's Responsibility for the Work**

The Contractor shall be responsible to the University for all Work performed under this Contract. For purposes of assessing responsibility to the Contractor by the University, all persons engaged in the Work shall be considered employees of the Contractor. The Contractor shall give its personal attention to the fulfillment of the Contract and keep all phases of the Work under its control.

### **4.02.2 Review of Contract Documents and Field Conditions by Contractor**

**The Contractor shall have a continuing duty to read, carefully study and compare the Contract Documents as defined in Article 1.00, DEFINITIONS, and product data with each other and with information furnished by the University. The Contractor shall perform construction coordination and constructability review of the Contract Documents and shall at once report to the Design Professional and the University, any errors, inconsistencies, ambiguities and omissions before proceeding with the affected Work. The Contractor shall be liable to the University for damage resulting from the Contractor's failure to properly perform such reviews or failure to promptly report any errors, inconsistencies, ambiguities or omissions identified in the Contract Documents to the Design Professional and the University. If the Contractor performs any construction activity that involves such error, inconsistency, ambiguity or omission in the Contract Documents without such notice to the Design Professional and the University, the Contractor shall assume responsibility for such performance and shall bear all costs attributable for correction. If the Contractor submits authorized substitutes that cost in excess of the Contract Sum or which cause coordination conflicts, the Contractor shall bear all costs attributable to correction.**

The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Design Professional and University at once.

The Contractor shall perform the Work in accordance with the Contract Documents.

#### **4.02.3 Supervision and Construction Procedures**

The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible to the University for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters.

The Contractor shall be responsible to the University for acts and omissions of the Contractor's employees, subcontractors and their agents and employees, and other persons performing portions of the Work under a Contract with the Contractor.

The Contractor agrees to furnish efficient business administration, coordination, supervision and superintendence of the Work and to furnish at all times a competent and adequate administrative and supervisory staff and an adequate supply of workmen and materials to perform the Work in the best and most sound way in the most expeditious and economical manner consistent with the interests of the University. The Contractor agrees from time to time at the University's request to furnish estimates and technical advice as to construction methods and equipment to the University and Design Professional.

For Projects utilizing Construction Management or Design-Build relationships, the Contractor agrees to review the plans and specifications, shop drawings, landscaping drawings, furniture, fixtures, and equipment plans and specifications, and any other drawings, plans and specifications developed with respect to the Project, as they are being developed and to advise and make recommendations with respect to such factors as construction feasibility, cost saving, availability of material and labor, time requirements for procurement and construction and projected costs. Additionally, the Contractor shall assist in the coordination of all sections of the plans and specifications without, however, assuming the Design Professional's customary responsibilities for design or any liability therefore.

The Contractor agrees to cooperate with the Design Professional, University's Representative, commissioning agents, and all persons or entities retained by the University to provide consultation and advice, and to coordinate the Work with the Work of such parties so that the Project shall be completed in the most efficient and expeditious manner. In the event that Contractor's failure to

efficiently sequence or coordinate the Work results in additional costs to the University, the Contractor shall promptly reimburse the actual costs incurred.

#### **4.02.4 Quality Control**

The Contractor shall be fully responsible for the quality of materials and workers' skill in the Project. The Contractor shall not rely upon the inspection and testing provided by the University or Design Professional other than those special inspections and tests performed by the University's selected laboratories for which there are written reports. Reports issued by the University's commissioning agent are to be considered complementary in nature and in no way relieve the Contractor of its responsibility to deliver Work in compliance with the Contract Documents.

The Contractor shall inspect the Work of the subcontractors on the Project, while the Work is being performed through final completion and acceptance of the Project by the University to assure that the Work performed and the materials furnished are in strict accordance with the drawings and specifications; the Contractor shall also inspect the Work to verify that Work on the Project is progressing on schedule.

The Contractor shall be responsible for inspection of portions of Work performed under this Contract to determine that such portions are in proper condition to receive subsequent Work. In the event that it becomes necessary to interpret the meaning and intent of the plans and specifications during construction and the meaning is not reasonably inferable, the Contractor shall submit as a Request for Information (RFI) to the Design Professional to make the interpretation in writing and transmit same to appropriate Subcontractors and the University in accordance with the procedures established in section 5.02 of these General Conditions.

The Contractor shall not be relieved of obligations to performing the Work in accordance with the Contract Documents either by activities or duties of the Design Professional in the Design Professional's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

#### **4.02.5 Labor and Materials**

The Contractor shall provide an analysis of the types and quantity of labor required for the Project and review the availability of the appropriate categories of labor required for all Work, and the Contractor shall be responsible to provide the necessary and adequate labor needed to complete the Project by the Contract Time. During the course of the Project, the Contractor shall endeavor to maintain harmonious labor relations on the Project.

Unless otherwise provided in the Contract Documents, the Contractor shall provide any pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the



The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect and such taxes are included in the Contract Sum. The Contractor agrees to cooperate with the University in the event that the University seeks the refund or return of such taxes, including but not limited to participating at the University's expense in legal or administrative processes to effect that purpose.

#### **4.02.9 Permits and Notices**

The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work.

#### **4.02.10 Allowances**

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such stated amounts, but the Contractor shall not be required to employ persons or entities against which the Contractor makes reasonable objection. Unless otherwise provided in the Contract Documents:

1. materials and equipment under an allowance shall be selected promptly by the University to avoid delay in the Work;
2. allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
3. the Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the allowances;
4. if allowance assumptions prove inappropriate, the Contract Sum may be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs and the allowances.

#### **4.02.11 Use of Site**

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The site shall be safely maintained and kept clean, orderly and neat.

#### **4.02.12 Safety**

The Contractor shall protect adjoining property and nearby buildings, roads, and other facilities and improvements from dust, dirt, debris and other nuisances arising out of Contractor's operations or storing practices. Dust shall be controlled by sprinkling or other effective methods acceptable to University. An erosion and sedimentation control program shall be initiated, which includes measures addressing erosion caused by wind and water and sediment in runoff from site. A regular watering program shall be initiated to adequately control the amount of fugitive dust.

The Contractor is knowledgeable of and understands that the University intends to maintain occupancy of certain portions of the existing facility. The Contractor shall exercise precaution at all times for the protection of persons and their property. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to: (1) employees on the Work and other persons who may be affected thereby; (2) the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's subcontractors or sub-subcontractors; and (3) other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Contractor shall install adequate safety guards and protective devices for all equipment and machinery, whether used in the Work or permanently installed as part of the Project.

The Contractor shall also provide and adequately maintain all proper temporary walks, roads, guards, railings, lights, and warning signs. The Contractor shall comply with all applicable laws relating to safety precautions. The Contractor shall establish and maintain and update as required a Project Specific Safety Program.

The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the University and Design Professional.

The Contractor shall require each and every one of its subcontractors and Trade Contractors to comply with all of the provisions of this section.

The Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in the Contract.

#### **4.02.13 Hazardous Condition**



The Contractor acknowledges that during the performance of the Work, the affected building and surrounding campus buildings will remain occupied and will require access by the public. The Contractor further acknowledges that other Contractors will be working on or near the Project site to accomplish the University's purposes and projects. To the greatest extent possible, the Contractor shall cooperate fully with the University and its guests, students, employees, invitees, and other Contractors in performing the Work required under the Contract. The Contract Sum includes any and all reasonably necessary costs expended to minimize interference with the University's activities as well as to coordinate schedules with other contractors' projects as required by the University.

#### **4.02.16 Burden for Damage**

From the issuance of the official Notice to Proceed until the formal acceptance of the Project by the University, the Contractor shall have the charge and care of and shall bear all risk of damage to the Project and materials and equipment for the Project other than damage directly caused by the University or the University's other contractors. Unless otherwise noted and subject to the express approval of the University, the Contractor shall be able to charge uninsured or unreimbursed loss and damage to the Construction Contingency as provided in the Agreement at section 3.03.4.1.1.s.

#### **4.02.17 Payments by Contractor**

The Contractor agrees to promptly pay all subcontractors upon receipt of each progress payment, unless otherwise agreed in writing by the parties, the respective amounts allowed Contractor on account of the Work performed by its subcontractors to the extent of each such subcontractor's interest therein.

In the event the University becomes informed that the Contractor has not paid a subcontractor as herein provided, the University shall have the right, but not the duty, to issue future checks in payment to the Contractor of amounts otherwise due hereunder naming the Contractor and such subcontractor as joint payees. Such joint check procedure, if employed by the University, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit or obligate the University to repeat the procedure in the future. This provision shall not supersede the procedures set forth in Article 8.00 of these General Conditions.

#### **4.02.18 Responsibility to Secure and Pay for Permits, Licenses, Utility Connections, Etc.**

The Contractor shall secure all permits and licenses required for any operations required under this Contract and shall pay all costs relating thereto as well as all other fees and charges that are required by the United States, the State, the county, the city, a public utility, telephone company, special district, or quasi-governmental entity. It is the responsibility of the Contractor to ascertain the necessity of such permits and licenses in preparing its bid, Contract Sum or GMP and include in its

bid, Contract Sum or GMP the cost thereof, as well as any time requirements for securing such permits and licenses.

#### **4.02.19 Patented or Copyrighted Materials**

The Contractor shall pay all royalties and license fees for the use of patented or copyrighted processes or materials. The Contractor shall defend suits or claims for infringement of patent rights and shall hold the University and Design Professional harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Design Professional and University in writing.

#### **4.02.20 Property Rights in Materials and Equipment**

Nothing in the Contract shall be construed as vesting in the Contractor any property right in the materials or equipment after the materials or equipment have been attached to or permanently placed in or upon the Work or the soil or after payment has been made for fifty percent or more of the value of the materials or equipment delivered to the site of the Work whether or not they have been so attached or placed. All such materials or equipment shall become the property of University upon being so attached or placed, or upon payment of fifty percent or more of the value of the materials or equipment delivered on the site but not yet installed and the Contractor warrants that all such property shall pass to the University free and clear of all liens, claims, security interests, or encumbrances.

#### **4.02.21 Utilities**

The Contractor shall refer to and abide by the standard Wayne State University Excavation Policy included in the Supplementary General Conditions.

The Contractor shall provide as-built drawings of all utilities encountered and constructed for the University, indicating the size, horizontal location, and vertical location based on the Project bench mark or a stable datum.

Unless otherwise specifically stated, the Contractor shall provide or otherwise make all arrangements for utilities required to deliver the Work. The costs of utility consumption to deliver the Work shall be the responsibility of the University and shall not be included in the Contract Sum. The Contractor shall endeavor to prevent unnecessary waste of utility resources. Willfully wasting utilities shall result in a Contract Sum deduction through a Change Order.

#### **4.02.22 Asbestos and Hazardous Materials**

The Contractor is prohibited from installing any asbestos containing materials or products, and other prohibited and hazardous materials in the Work. The Contractor shall be responsible for removal and replacement costs should it be determined this provision has been violated, regardless of whether the job has been completed.

### **4.03 Design Professional**

#### **4.03.1 Design Professional's Administration of Contract**

The Design Professional will provide one or more Project Representatives to assist in the administration of the Contract as described in the Contract Documents, and to assist the University's Representative (1) during the construction, (2) until final payment is due and (3) with the University's concurrence, from time to time during the correction and warranty period. The Design Professional will advise and consult with the University on issues relating to contract performance and interpretation. The Design Professional will have no authority to act on behalf of the University except as provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

The Design Professional will visit the site at intervals defined in the Design Professional's Proposal to become familiar with the progress and quality of the completed Work and to determine if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents. On the basis of on-site observations as an architect, the Design Professional will keep the University and Contractor informed of progress of the Work by written field reports, and will endeavor to guard the University against defects and deficiencies in the Work.

The Design Professional will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Design Professional will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Design Professional will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, subcontractors, or their agents or employees, or of any other persons performing portions of the Work.

#### **4.03.2 Communications Facilitating Contract Administration**

The Design Professional and Contractor shall communicate directly concerning the Project and shall keep the University advised of their communications. Communications by and with the Design Professional's consultants shall be through the Design Professional. Communications by and with subcontractors and material suppliers shall be through the Contractor. Communications by and with separate Contractors shall be through the University.

#### **4.03.3 Evaluation of Applications for Payment**

Based on the Design Professional's observations and evaluations of the Contractor's Applications for Payment, the Design Professional will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts. , The Design Professional must approve and sign any Contractor Applications for Payment as an express condition precedent to release of any progress or final payment..

The Design Professional will have authority to reject Work which does not conform to the Contract Documents. Whenever the Design Professional considers it necessary or advisable for implementation of the intent of the Contract Documents, the Design Professional will have authority to require additional observation or testing of the Work in accordance with section 5.06, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Design Professional nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Design Professional to the Contractor, subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.

#### **4.03.4 Review of Shop Drawings, Product Data and Samples**

The Design Professional will review and approve or take other appropriate action upon the Contractor's submittal of Shop Drawings, Product Data and Samples. The Design Professional's action will be taken within 10 days from receipt so as not to cause delay in the Work or in the activities of the University, Contractor or separate Contractors, while allowing sufficient time in the Design Professional's professional judgment to permit adequate review. Review of such submittal is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Design Professional's review of the Contractor's submittal shall not relieve the Contractor of the obligations under Article 5.04. The Design Professional's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Design Professional, of any construction means, methods, techniques, sequences or procedures. The Design Professional's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

#### **4.03.5 Site Observations to Determine Substantial and Final Completion**

The Design Professional will conduct observations to determine the date or dates of Substantial Completion and the date of Final Completion, will receive and forward to the University for the University's review and retention all written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

#### **4.03.6 Interpretation of Contract Performance**

The Design Professional will interpret and render an opinion on matters concerning performance under and requirements of the Contract Documents on written request of either the University or Contractor. The Design Professional's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Design Professional shall be furnished, then delay shall not be recognized on account of failure by the Design Professional to furnish such interpretations until 15 days after written request is made for them.

Interpretations and opinions of the Design Professional shall be non-binding and consistent with the intent of and reasonably inferable from the Contract Documents, and in writing or in the form of drawings. When making such interpretations and opinions, the Design Professional will endeavor to secure faithful performance by both the University and Contractor, will not show partiality to either and will not be liable for results of interpretations or opinions so rendered in good faith.

#### **4.04 Delegation of Performance and Assignment of Money Earned**

The performance of all or any part of this Contract may not be delegated by the Contractor or Design Professional without the written consent of the University. Consent will not be given to any proposed delegation which would relieve the Design Professional, the Contractor or its surety of their responsibilities under the Contract.

The Contractor may assign moneys due or to become due under the Contract, only upon written consent of the University. Assignments of moneys earned by the Contractor shall be subject to proper retention in favor of the University and to all deductions provided for in the Contract and such moneys shall be subject to being used by the University for the completion of the Work in the event the Contractor is in default.

#### **4.05 Contractor's Insurance**

The Contractor shall not commence Work under this Contract until it has obtained all the insurance required by the Contract Documents and such insurance has been approved by the University; likewise, no subcontractor or subconsultant shall be allowed to commence Work until the insurance required has been obtained. The Contractor shall, at its expense, purchase and maintain in full force and effect such insurance as will protect itself and the University from claims, such as for bodily injury, death, and property damage, which may arise out of or result from the Work required by the Contract Documents, whether such Work is done by the Contractor, by any subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The types of such insurance and any additional insurance requirements are specified herein with the amounts and limits set forth in the Supplementary General Conditions. The parties agree that the Contractor may provide portions of such insurance through a Contractor Controlled Insurance Program (CCIP). The coverage and requirements of such CCIP shall be further described in the

CCIP Insurance Manual, a copy of which shall be provided to the University by the Contractor. The Insurance Manual shall be included in the bid scope documents and shall be binding upon the Subcontractors and their respective sub-subcontractors at all tiers.

#### 4.05.1 Policies and Coverage

The following policies and coverages shall be furnished by the Contractor:

- (1) Comprehensive or Commercial Form General Liability Insurance on an “Occurrence” form covering all Work done by or on behalf of the Contractor and providing insurance for bodily injury, personal injury, property damage, and Contractual liability. Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit shall apply separately to work required of the Contractor by these Contract Documents. This insurance shall include the contractual obligations assumed under the Contract Documents and specifically section 4.06.
- (2) Business Automobile Liability Insurance on an “Occurrence” form covering owned, hired, leased, and non-owned automobiles used by or on behalf of the Contractor and providing insurance for bodily injury, property damage, and Contractual liability.
- (3) Worker’s Compensation and Employer’s Liability Insurance as required by Federal and Michigan law. The Contractor shall also require all of its Subcontractors to maintain this insurance coverage. The Contractor acknowledges and shall abide by the University’s prohibition on the use of 1099 independent contractors and owner / operator business entities wherein such individuals are not able to secure and maintain such insurance. The Contractor shall ensure that all classifications of laborers and construction mechanics performing Work on the Project job site are traditional employees of the Contractor or any Trade Contractor for any tier thereof, and that each is covered by such insurance.
- (4) The Umbrella Excess Liability insurance must be consistent with and follow the form of the primary policies, except that Umbrella Excess Liability insurance shall not be required for the Medical Expense Limit.
- (5) Builder’s Risk Insurance: The Contractor, at his sole expense, shall purchase and maintain property insurance upon the entire Project for the full replacement cost at the time of any loss. This insurance shall include “All Risk” coverage against physical loss or damage including the perils of Fire and Extended Coverage, Theft, Vandalism, and Malicious Mischief, Transit and Collapse. The Contractor will be responsible for any co-insurance penalties and/or deductibles.

#### 4.05.2 Proof of Coverage

Certificates of Insurance, as evidence of the insurance required by these Contract Documents, shall be submitted by the Contractor to the University. The Certificates of Insurance shall state the scope of coverage and deductible, and list the University as an additional insured. Any deductible shall be the Contractor's liability. The Certificates of Insurance shall provide for no cancellation or modification of coverage without thirty (30) days prior written notice to the University. Acceptance of Certificates of Insurance by the University shall not in any way limit the Contractor's liabilities under the Contract Documents. The Contractor shall maintain required insurance for the entire duration of the Contract. In the event the Contractor does not comply with these insurance requirements, the University may, at its option, provide insurance coverage to protect the University; the cost of such insurance shall be deducted from the Contract Sum or otherwise paid by the Contractor. Renewal certifications shall be filed in a timely manner for all coverage until the Project is accepted as complete. Upon the University's request, the Contractor shall provide copies of the policies obtained from the insurers.

#### **4.05.3 Subcontractor's Insurance**

The Contractor shall either require Subcontractors to carry insurance as set forth in the CCIP Insurance Manual and the Subcontract, or the Contractor shall insure the activities of the Subcontractors in the amount, types and form of insurance required under by the Contract Documents. If the Contractor elects to have its Subcontractors purchase individual insurance policies, the Contractor shall cause its trade contracts and subcontracts to include a clause requiring that copies of any insurance policies which provide coverage to the Work shall be furnished to the University upon request. The Contractor shall supply the University with a list of all Subcontractors, including those enrolled in the CCIP coverage, and copies of the enrolled Subcontractors' certificates of insurance evidencing coverage, showing whether or not they have individual insurance policies and certifying that those subcontractors without individual insurance policies are insured by the Contractor.

#### **4.05.4 Scope of Insurance Coverage**

The Contractor's insurance as required by the Contract Documents (including subcontractors' insurance), by endorsement to the policies and the Certificates of Insurance, shall include the following and may be presented in the form of a rider attached to the Certificates of Insurance:

- (1) The Board of Governors of Wayne State University, the University, their officers, employees, representatives and agents including the Design Professional, shall be included as additional insured under the general liability, builder's risk and automobile liability policies for and relating to the Work to be performed by the Contractor and subcontractors. This shall apply to all claims, costs, injuries, or damages.
- (2) A Severability of Interest Clause stating that, "The term 'insured' is hereby used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the insurer's or insurers' liability."



Any insured loss is to be adjusted with the Contractor and made payable jointly to the University and the Contractor. The Contractor shall cooperate with the University in a determination of the actual cash value or replacement value of any insured loss. Any deductible amount shall be the responsibility of the Contractor.

#### **4.05.7 Compensation Distribution**

The University upon the occurrence of an insured loss shall account for any money so received and shall distribute it in accordance with such agreement as the interested parties may reach. Claim payments received shall be distributed proportionately according to the actual percentages of losses to both. If after such loss no other special agreement is made, replacement of damaged work shall be covered by an appropriate contract change order. Any dispute shall be resolved by the University.

#### **4.05.8 Waivers of Subrogation**

The University and Contractor waive all rights against (1) each other and any of their subcontractors, subcontractors, agents and employees, each of the other, and (2) the Design Professional, Design Professional's consultants, separate Contractors if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this paragraph or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the University as fiduciary. The University or Contractor, as appropriate, shall require of the Design Professional, Design Professional's consultants, separate Contractors, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, Contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

### **4.06 Indemnification**

#### **4.06.1**

To the fullest extent permitted by law, the Contractor shall hold harmless, defend, and indemnify the Board of Governors of Wayne State University, the University, and officers, employees, representatives and agents of each of them, from and against any and all claims or losses arising out of or are alleged to be resulting from, or relating to (1) the failure of the Contractor to perform its obligations under the Contract or the performance of its obligation in a willful or negligent manner; (2) the inaccuracy of any representation or warranty by the Contractor given in accordance with or contained in the Contract Documents; and (3) any claim of damage or loss by any subcontractor, or supplier, or laborer against the University arising out of any alleged act or omission of the Contractor

or any other subcontractor, or anyone directly or indirectly employed by the Contractor or any subcontractor.

#### **4.06.2**

To the fullest extent permitted by law, the Contractor shall be liable for and hereby agrees to defend, discharge, fully indemnify and hold the University harmless from and against any and all claims, demands, damages, liability, actions, causes of action, losses, judgments, costs and expenses of every nature (including investigation costs and/or expenses, settlement costs, and attorney fees and expenses incident thereto) sustained by or asserted against the University arising out of, resulting from, or attributable to the performance or nonperformance of any Work and/or obligation covered by the Contract or to be undertaken in connection with the construction of the Project contemplated by the Contract (collectively, "Claim"), including, but not limited to, any Claim for: (a) any personal or bodily injury, illness or disease, including death at any time resulting therefrom of any person, (including, but not limited to, employees of the University, the Contractor, any subcontractor, and any materialman and the general public); (b) any loss, damage or destruction of any property; (c) any loss or damage to the University's operations, arising out of, resulting from, or attributable in whole or in part to (i) any negligence or other act or omission of the Contractor, and any subcontractor, any materialman and/or any other person or any of the directors, officers, employees or agents of any of them or (ii) any defects in material or equipment furnished hereunder; (d) any payments allegedly owed to subcontractors, sub-subcontractors or materialmen; (e) any acts or omissions relative to conditions of safety and protection of persons on the Project site; and/or (f) any act or omission relative to the Contractor's breach of obligations and regarding non-discrimination as set forth in these General Conditions. The Contractor shall not be liable hereunder to indemnify the University against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence or willful misconduct of the University, its agents or employees. The Contractor, at its own cost and expense, shall take out and maintain at all times during the effective period of the Contract, contractual liability insurance insuring the performance by the Contractor of its contractual duties and obligations under this Article, which insurance shall name the University as additional insured and shall be in form and amount and from an insurance company satisfactory to the University. The Contractor's duty to fully indemnify the University shall not be limited in any way by the existence of this insurance coverage.

#### **4.06.3**

The Contractor shall also be liable for and hereby agrees to pay, reimburse, fully indemnify and hold the University harmless from and against all costs and expenses of every nature (including attorney fees and expenses incident thereto) incurred by the University in collecting the amounts due from the Contractor, or otherwise enforcing its rights, under the indemnifications described in this Article.

#### **4.06.4**

In claims against any person or entity indemnified under this Article made by an employee of the Contractor or a subcontractor, or indirectly employed by either of them, or anyone for whose acts either made by liable, the indemnification obligation under this Article shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a subcontractor under workers compensation laws, disability benefit laws, or other laws providing employee benefits.

**4.06.5**

The indemnification obligations under this Article shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.

**4.06.6**

**The Contractor shall hold harmless, defend, and indemnify the University from and against losses resulting from any claim of damage made by any separate Contractor of the University against the University arising out of any alleged acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by either the Contractor or subcontractor, or anyone for whose acts either the Contractor or subcontractor may be liable.**

**4.06.7**

The Contractor shall hold harmless, defend and indemnify the Design Professional and the separate Contractors of the University from and against losses to the extent they arise from the negligent acts or omissions or willful misconduct of the Contractor, a subcontractor, anyone directly or indirectly employed by the Contractor or subcontractor, or anyone for whose acts the Contractor or subcontractor may be liable.

**4.07 Occupancy by University Prior to Acceptance**

The University may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the University and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a description of the area substantially complete to the Design Professional. Consent of the Contractor to partial occupancy or

use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the University and Contractor or, if no agreement is reached, by decision of the Design Professional.

Immediately prior to such partial occupancy or use, the University together with the Contractor and Design Professional shall jointly observe and/or inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents. Likewise, partial occupancy or use of a portion or portions of the Work shall not alter, change or modify the requirements for Substantial or Final Completion within Contract Time.

#### **4.08 Contract Time**

##### **4.08.1 Time of the Essence**

All time limits specified in this Contract are of the essence of the Contract.

##### **4.08.2 Starting and Completion Date**

The University shall designate in the Notice to Proceed the starting date of the Contract on which the Contractor shall immediately begin and thereafter diligently prosecute the Work to completion. The Contractor agrees to complete the Work on the date specified for completion of the Contractor's performance in the Contract unless such time is adjusted, in writing, by change order issued by the University. The Contractor may complete the Work before the completion date if it will not interfere with the University or their other Contractors engaged in related or adjacent Work. The date of Substantial Completion shall be used as the commencement date of the guarantee.

##### **4.08.3 Delay**

Within ten (10) days from the commencement of a delay, Contractor shall submit to the University's Representative a written notice of the delay. Such notice of delay shall describe the nature and cause of the delay, provide a preliminary estimate of the impact of said delay on the construction schedule and provide a recovery plan to mitigate the delay. The Contractor's failure to give such notice to the University shall constitute a waiver by the Contractor of its ability to request an extension of time. In the case of a continuing cause of delay, only one claim shall be necessary. The giving of such notice shall not of itself establish the validity of the cause of delay or of the extension of the time for completion. Submission of reports and/or updates required at regularly scheduled meetings or as a part of a regularly submitted report shall not constitute such required notice.

The Contractor expressly agrees that delays to construction activities which do not affect the overall time of completion of the Work shall not entitle the Contractor to an extension of the Contract Time

or provide a basis for additional cost or damages. No delay, obstruction, interference, hindrance, or disruption, from whatever source or cause in the progress of the Contractor's Work shall be a basis for an extension of time unless the delay, obstruction, interference, hindrance, or disruption is without the fault and not the responsibility of the Contractor and directly affects the overall completion of the Work as reflected in the Contractor's updated and accepted Project schedule.

**Within fifteen (15) days from the submittal to the University of the notice of delay detailed in the previous paragraphs, Contractor shall submit to the University's Representative a request for an extension of time which shall include all documentation supporting the request. Such submittal shall include a detailed description of all changes in activity duration, logic, sequence, or otherwise in the Project schedule. The filing of such a request for an extension of time shall not of itself establish the validity of the cause of delay or of the extension of time for completion. Submission of construction reports and/or updates required by these General and Supplementary Conditions shall not constitute such a request.**

#### **4.08.4 Adjustment of Contract Time and Cost**

**If the Contractor is delayed, obstructed or hindered at any time in the progress of the Work by any act or neglect of the University or by any contractor employed by the University, or by changes ordered in the scope of the Work, or by fire, adverse weather conditions not reasonably anticipated, or any other causes beyond the control of the Contractor with the exception of labor disputes or strikes of the Contractor's or a Subcontractor's own personnel, then the duration set forth in the Master Project Schedule, and established for Substantial and Final Completion may be extended as agreed to by the University, Contractor and Design Professional. When such delays result in an agreement to adjust the Time of Completion, then the Contractor may also request, and the University may make a reasonable adjustment to the Contract Sum for Project costs directly attributable to the delay pursuant to Article 6.00, CHANGES IN THE WORK. It will be the Contractor's obligation to demonstrate to the complete satisfaction of the University, that the direct Project costs associated with such delays are justified, fair, and reasonable.**

The University will not recognize labor disputes, strikes, work stoppages, picketing or boycotting by employees of or under the control or direction of the Contractor or its subcontractors, to be cause for extending the Construction Project Schedule or the Contract Time or adjusting the Contract Sum or GMP. The University may recognize labor disputes, strikes, work stoppages, picketing or boycotting that are not within the Contractor's or its subcontractors' control as cause for extending the Construction Project Schedule or Contract Time. Pursuant to section 9.01.1 such labor disputes, strikes, work stoppages, picketing or boycotts may constitute grounds for termination of the Contractor.

#### **4.08.5 Contractor to Fully Prosecute Work**

No extension of time will be granted unless the Contractor demonstrates to the satisfaction of the University that the Contractor has made every reasonable effort to complete all Work under the Contract not later than the date prescribed.

#### **4.08.6 University's Adjustment of Contract Time**

Even though the Contractor has no right to an extension of time for completion, the University may in the exercise of its sole discretion extend the time at the request of the Contractor if it determines it to be in the best interest of the University. .

#### **4.08.7 Adjustment of Contract Time and Cost Due to Reasons Beyond University Control**

**Should the University be prevented or enjoined from proceeding with Work either before or after the start of construction by reason of any litigation or other reason beyond its control, the Contractor may request an adjustment in the Time of Completion and/or Contract Sum or GMP by reason of said delay. The University may make a reasonable adjustment in the Time of Completion and/or Contract Sum or GMP for time and costs directly attributable to the delay. It will be the Contractor's obligation to demonstrate to the complete satisfaction of the University, that all Time of Completion and Contract Sum or GMP adjustments associated with such delays are justified, fair, and reasonable.**

### **4.09 Progress Schedule**

#### **4.09.1**

The Contractor shall prepare and submit to the University the Contractor's Construction Schedule within ten (10) days after starting date on the Notice to Proceed. It shall be the Contractor's responsibility to use its best efforts and to act with due diligence to maintain the progress of the Work in accordance with the schedule. The time for completion may be extended only by a written Change Order executed by the University and the Contractor. The work activities making up the schedule shall be of sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that, in the sole judgment of the University, it provides an appropriate basis for monitoring and evaluating the progress of the Work. The Contractor shall also submit a separate progress schedule listing all submittals required under the Contract and the date by which each submittal will be submitted allowing 15 days for the Design Professional's review.

#### **4.09.2**

For projects involving value engineering prior to commencement of the Work, the Contractor shall show the period allowed for value engineering as part of the construction schedule. The Contractor shall perform an analysis of schedule effects as part of any value engineering proposal.

#### **4.09.3**

For Projects involving preconstruction services, the Contractor shall develop a Master Project Schedule which shall coordinate and integrate project planning activities, design reviews and approvals, bidding and related preconstruction services with the proposed construction schedule. The Master Project Schedule shall show the interrelationship of activities and clearly indicate the activities on the Critical Path for completion of the Project. The Master Project Schedule shall be prepared and submitted to the University for approval within 15 days of the Notice to Proceed. The Master Project Schedule shall provide for Substantial Completion of the Project within the Contract Time. Once established and approved by the University, the Contractor shall revise and update the schedule regularly as requested by the University and on no less than a monthly basis, to incorporate the effects of actual job conditions, performance and changes. Failure of Contractor to provide the schedules requested by University shall constitute a material breach of this Agreement.

#### **4.09.4**

Float, slack time, or contingency within the schedule at the activity level and total float within the overall schedule, is not for the exclusive use of either the University or the Contractor, but is jointly owned by both and is a resource available to and shared by both parties as needed to meet Contract milestones and the Contract completion date.

#### **4.09.5**

The Contractor shall not sequester shared float through such strategies as extending activity duration estimates to consume available float, using preferential logic, or using extensive crew/resource sequencing, etc. Since float time within the construction schedule is jointly owned, it is acknowledged that University caused delays on the Project may be offset by University caused time savings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests which result in a savings of time to the Contractor, etc.). In such an event, the Contractor shall not be entitled to receive a time extension until all University caused time savings are exceeded and the Contract completion date is also exceeded.

#### **4.09.6**

Regardless of which schedule method the Contractor elects to use in formulating the Master Project Schedule or Contractor's Construction Schedule, an updated construction schedule shall be submitted

to the University five (5) days prior to the submittal of the Contractor's monthly payment request. The submission of the updated construction schedule satisfying the requirements of this Article, accurately reflects the status of the Work, and incorporates all changes into the schedule, including actual dates, shall be a condition precedent to the processing of monthly payment applications. Updated schedules shall also be submitted at such other times as the University may direct. Upon approval of a change order or issuance of a direction to proceed with a change, the approved change shall be reflected in the next schedule update submitted by the Contractor.

#### **4.09.7**

If completion of any part of the Work, the delivery of equipment or materials, or issuance of the Contractor submittals is behind the updated Construction Schedule and will cause the end date of the Work to be later than the Contract completion date, the Contractor shall submit in writing a plan acceptable to the University for completing the Work on or before the current Contract completion date.

#### **4.09.8**

No time extensions shall be granted unless the delay can be clearly demonstrated by the Contractor on the basis of the updated Construction Schedule current as of the month the change is issued or the delay occurred, and the delay cannot be mitigated, offset, or eliminated through such actions as revising the intended sequence of Work or other means.

#### **4.09.9**

As a condition precedent to the release of retained funds, the Contractor shall, after completion of the Work has been achieved, submit a final Construction Schedule or Master Project Schedule which accurately reflects the manner in which the Project was constructed and includes actual start and completion dates for all Work activities on the Project schedule.

### **4.10 Coordination With Other Work**

The University reserves the right to do other Work in connection with the Project or adjacent thereto and the Contractor shall at all times conduct the Work so as to impose no hardship on the University or others engaged in the University's Work nor to cause any unreasonable delay or hindrance thereto.

Where two or more Contractors are employed on related or adjacent work, each shall conduct their operation in such a manner as not to cause delay or additional expense to the other.

The Contractor shall be responsible to others engaged in the related or adjacent work for all damage to Work, to persons and to property, and for loss caused by failure to complete the Work within the specified time for completion. The Contractor shall coordinate its Work with the Work of others so that no discrepancies shall result in the Project.

#### **4.11 As-built Drawings Reflecting Actual Construction**

During the course of construction, the Contractor shall maintain drawings kept up each day to show the Project as it is actually constructed. Every sheet of the plans and specifications which differs from the actual construction shall be marked and sheets so changed shall be noted on the title sheets of the plans and specifications. All change orders shall be shown by reference to sketch drawings, and any supplementary drawings or change order drawings shall be included. The Contractor shall review the “As-built” drawings with the University at least once a month to demonstrate that all changes that have occurred are being fully and accurately recorded. The altered Contract drawings shall be sufficiently detailed so that future Work on the Project or in adjacent areas may be conducted with a minimum of difficulty. Prior to the completion of the Project, and prior to release of the final retention payments, the “As-built” drawings and specifications shall be transmitted to the Design Professional for further handling. A copy of the transmittal shall be sent to the University and included in the formal closeout documents.

#### **4.12 Cleanup of Project and Site**

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor’s tools, construction equipment, machinery and surplus materials.

If the Contractor fails to clean up as provided in the Contract Documents, the University may do so and the cost thereof shall be charged to the Contractor. Any additional cleaning requirements are as stated in the Supplementary General Conditions.

Upon completion of the Work, the Contractor shall promptly remove from the premises construction equipment and any waste materials not previously disposed of, leaving the premises thoroughly clean and ready for occupancy.

When two or more Contractors are engaged in work at or near the site, each shall be responsible for cleanup and removal of its own rubbish, equipment, and any waste materials not previously disposed.

In the event the Contractor does not maintain the Project or the site clear of debris and rubbish in a manner acceptable to the Design Professional or University, the University may, at its option, cause the Project or site to be properly cleaned and may withhold the incurred expense from payments due the Contractor or otherwise receive reimbursement from the Contractor.

#### **4.14 Project Sign, Advertising**

The Contractor shall furnish and install a project sign as designed by the Design Professional and accepted by the University as part of the Work under the Contract. As a minimum, the sign shall be

four feet by eight feet, made from three-quarter inch plywood. The sign shall identify the Project name, the University including the individual members of the Board of Governors, the Design Professional, and the Contractor. No advertising is permitted on the Project or site without written permission from the University. If the Project is funded by a State of Michigan capital appropriation, the Contractor shall also provide a project sign which satisfies the requirements of the State of Michigan as stipulated in the Department of Management and Budget's Major Project Design Manual, October 2008 or later edition.

## 5.00 INTERPRETATION OF AND ADHERENCE TO CONTRACT REQUIREMENTS

### 5.01 Interpretation of Contract Requirements

#### 5.01.1 Conflicts

In the event of conflict in the Contract Documents, the priorities stated below shall govern:

- (1) Addenda shall govern over all other Contract Documents and subsequent addenda shall govern over prior addenda only to the extent that they modify prior addenda. Such addenda shall only govern the scope of Work, Contract Sum, and Time of Completion, and shall not be deemed to amend the Contract, General Conditions of Construction, or Supplementary General Conditions of Construction.
- (2) In case of conflict between plans and specifications, the specifications take precedence over drawings for the specific type or quality of materials or the quality of installation; the drawings take precedence over the specifications with regard to quantities, locations or detail of installation.
- (3) Conflicts within the plans:
  - (a) Schedules, when identified as such, shall govern over all other portions of the plans.
  - (b) Specific notes shall govern over all other notes and all other portions of the plans except the schedules described in Article 5.01.1, above.
  - (c) Larger scale drawings shall govern over smaller scale drawings.
  - (d) Figured or numerical dimensions shall govern over dimensions obtained by scaling. Scaling the drawings is prohibited.
- (4) Conflicts within the specifications:
 

“General Conditions for Construction” shall govern over all sections of the specifications except for specific modifications thereto that may be stated in Supplementary General Conditions or addenda. No other section of the specifications shall modify the General Conditions for Construction.
- (5) In the event provisions of codes, safety orders, Contract Documents, referenced manufacturer's specifications or industry standards are in conflict, the more restrictive or higher quality shall govern.

#### 5.01.2 Omissions

If the Contract Documents are not complete as to any minor detail of a required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists an accepted trade standard for good and skillful construction, such detail shall be deemed to be an implied requirement of the Contract Documents in accordance with such standard. "Minor Detail" shall include the concept of substantially identical components, where the price of each such component is small even though the aggregate cost or importance is substantial, and shall include a single component which is incidental, even though its cost or importance may be substantial.

The quality and quantity of the parts or material so supplied shall conform to trade standards and be compatible with the type, composition, strength, size, and profile of the parts of materials otherwise set forth in the Contract Documents.

### **5.01.3 Miscellaneous**

Portions of the Work which can be best illustrated by the Drawings may not be included in the Specifications and portions best described by the Specifications may not be depicted on the Drawings.

If an item or system is either shown or specified, all material and equipment normally furnished with such items and needed to make a complete operating installation shall be provided whether mentioned or not, even though such materials and equipment are not shown on the drawings or described in the specifications, omitting only such parts as are specifically excepted. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings.

The General Conditions and Supplementary General Conditions are a part of each and every section of the Specifications.

All drawings, Project Plans and Specifications, renderings and models or other documentation, and copies thereof, furnished by the University or any agent, employee or consultant of the University, or Design Professional, are and shall remain the property of the University. They are to be used only with respect to this Project and are not to be used on any other project.

### **5.01.4 Interpreter of Documents**

The University's Representative shall be the Interpreter, with the advice of the Design Professional, of the Contract Documents and shall be the judge of the performance of the Contractor and subcontractors. Subject to the provisions Article 7, claims, disputes and other matters of controversy relating to the Contract Documents or the Work shall be decided by the University's Representative. The decision of the University's Representative shall be final if consistent with the Contract Documents. The authority of the University's Representative contained in this section shall be deemed to be an independent covenant of the Contract Documents.

## **5.02 Issuance of Interpretations, Clarifications, Additional Instructions (Requests for Information)**

Should the Contractor discover any conflicts, omissions, or errors in the Contract or have any question concerning interpretation or clarification of the Contract Documents, the Contractor shall request in writing an interpretation, clarification, or additional detailed instructions before proceeding with the Work affected. The written request shall be given to the Design Professional and University within 5 days of discovery.

The Design Professional, with review as required by the University, shall, within 10 days or other reasonable time, issue in writing the interpretation, clarification, or additional detailed instructions requested. In the event that the Contractor believes that the progress of the Work is being delayed by a Request for Information or a response to a Request for Information, Contractor shall comply with the procedures stated in section 4.08 of these General Conditions for an extension of time.

Should the Contractor proceed with the Work affected before receipt of the interpretation, clarification, or instructions from the Design Professional, the Contractor shall replace or adjust any Work not in conformance therewith and shall be responsible for any resultant damage or added cost.

Should any interpretation, clarification, or additional detailed instructions, in the opinion of the Contractor, constitute Work beyond the scope of the Contract, the Contractor must submit written notice thereof to the Design Professional and University within five (5) calendar days following receipt of such interpretation, clarification, or additional detailed instructions and in any event prior to commencement of Work thereon. The Contractor shall submit an explanation of how the interpretation, clarification, or additional detailed instruction constitutes work beyond the scope of the Contract, along with a detailed cost breakdown and an explanation of any delay impacts. The Design Professional shall consider such notice and make a recommendation to the University. If, in the judgment of the University, the notice is justified, the interpretation, clarification or additional detailed instructions shall either be revised or the extra work authorized by Contract change order or by field instruction with a change order to follow. If the University decides that the request is not justified and the Contractor does not agree, the Contractor shall nevertheless perform such Work upon receipt from the University of written authorization to do so. In such case, the Contractor shall have the right to have the Claim later determined only pursuant to the requirements of this Contract. However, any such Claim for additional compensation because of such interpretation, clarification, or additional detailed instruction is waived, unless the Contractor gives written notice to the Design Professional and University within five (5) calendar days as specified above.

## **5.03 Product and Reference Standards**

### **5.03.1 Product Designation**

When descriptive catalog designations, including the manufacturer's name, product brand name, or model number are referred to in the Contract Documents, such designations shall be considered as being those found in industry publications of current issue at the date of Contract execution.

### **5.03.2 Reference Standards**

When standards of the federal government, trade societies, or trade associations are referred to in the Contract Documents by specific date of issue, these shall be considered a part of this Contract. When such references do not bear a date of issue, the current and most recently published edition at the date of Contract execution shall be considered a part of this Contract.

## **5.04 Shop Drawings, Samples, Alternatives or Equals, Substitutions**

### **5.04.1 Submittal Procedure**

Shop drawings include drawings, diagrams, illustrations, schedules, performance charts, brochures and catalogs and other data prepared by the Contractor or any subcontractor, manufacturer, supplier or distributor, and which illustrate some portion of the Work. The Contractor shall promptly review and mark all shop drawings as approved and then submit the shop drawings to the Design Professional so as to cause no delay in the Work together with samples as required by the Contract Documents and shall also submit any offers of alternatives or substitutions. The Design Professional shall have 10 days to respond with an acknowledgement of approval, clearly defined exceptions, or rejections. Rejections shall be cause for re-submission and no contract time adjustments will be granted for such requirements. At least six copies of brochures, one copy of shop drawings and one reproducible copy of shop drawings shall be submitted as well as additional copies as required by Design Professional. All such submittals shall be sent to Design Professional at the address given in the instructions to the Contractor at the job start meeting. A letter shall accompany the submitted items which shall contain a list of all matters submitted and shall identify all deviations shown in the shop drawings and samples from the requirements of the Contract Documents. Failure by the Contractor to identify all deviations may render void any action taken by the Design Professional on the materials submitted. Whether to void such action shall be in the discretion of the Design Professional. The letter and all items accompanying it shall be fully identified as to project name and location, the Contractor's name, and the University's Project number. By submitting the approved shop drawings and samples, the Contractor warrants and represents that the data contained therein have been verified with conditions as they actually exist and that the shop drawings and samples have been checked and coordinated with the Contract Documents.

### **5.04.2 Samples**

Samples are physical examples furnished by the Contractor to illustrate materials, equipment, color, texture, or worker ship, and to establish standards by which the Work will be judged. Unless

otherwise approved, at least four samples will be submitted for each item requiring samples to be submitted.

**The Work shall be in accordance with the samples and reviewed by Design Professional. Samples shall be removed by the Contractor from the site when directed. Samples not removed by the Contractor, will become the property of the University and will be removed or disposed of by the University at the Contractor's expense.**

### **5.04.3 Alternatives or Equals**

For convenience in designation on the plans or in the specifications, certain materials or equipment may be designated by a brand or trade name or the name of the manufacturer together with catalog designation or other identifying information, hereinafter referred to generically as "designated by brand name." Alternative material or equipment which is of equal quality and of the required characteristics for the purpose intended may be proposed for use provided the Contractor complies with the requirements stated in this section.

#### **5.04.3.1**

The Contractor shall submit its proposal to Design Professional for an alternative in writing within the time limit designated in the Contract, or if not so designated, then within a period which will cause no delay in the Work. In exceptional cases where the best interests of the University so requires, the Design Professional may give written consent to a submittal or resubmittal received after the expiration of the time limit designated.

#### **5.04.3.2**

No proposal will be considered unless accompanied by information necessary to permit a determination of the equality of the offered materials or equipment. Samples shall be provided when requested by the Design Professional and/or the University.

#### **5.04.3.3**

The burden of proving the comparative quality and suitability of the offered materials or equipment shall be upon the Contractor. Where the material is specified by capacity or performance, the burden of proof shall be on the Contractor to show that any particular equipment or materials meet the minimum capacities or the performance requirements specified. The Contractor shall furnish at its own expense all information necessary for a determination as to whether the minimum capacities or performance requirements will be met. Such information shall be submitted so as to not cause a delay in delivery and/or progress of the Work. The Design Professional and University shall be the judge of such matters. If the Design Professional or University rejects the use of any alternative materials or equipment, then one of the products designated by brand name shall be furnished.

#### 5.04.3.4

If changes or delays are required for proper installation or fit of alternative materials, articles, or equipment, or because of deviations from Contract Documents, such changes or delays shall be made at the Contractor's expense without recourse for reimbursement from the University.

#### 5.04.4 Substitutions

If the Contractor proposes a product that is of lesser or greater quality or performance than the specified material or equipment, Contractor must both comply with the provisions of section 5.04 and submit any cost impact. By submitting a substitute, the Contractor waives any rights to claim a delay due to the processing of this substitution.

The Contractor may offer a substitution of a specified or indicated item if it presents complete information concerning the substitution and the benefits thereof to the University by reason of lower cost or improved performance, or both, over the specified or indicated item. However, such submission of a proposed substitution does not relieve the Contractor from its obligations under the Contract. In proposing a substitution, the Contractor warrants that the substitution is, at a minimum, equivalent in performance to the specified or indicated item. A substitution shall not be effective unless accepted in writing by the University.

Any additional costs and changes to the Work (including, but not limited to the Work of other Contractors and additional design costs which may be affected thereby) which may result from the proposed substitution shall be disclosed at the time the substitution is proposed to the University. Changes to the Work and any additional costs therefrom shall be the sole responsibility of the Contractor and shall not increase the Contract Sum or GMP.

The Contractor's substitution proposals shall include written descriptions of the items to be substituted (including drawings and/or specifications) and referenced information of the proposed substitution. The Design Professional and University's Representative's signature on this proposal is required for acceptance. Shop Drawings will not be considered a substitution proposal pursuant to this section. Verbal approvals or approved Shop Drawings will not be considered as acceptance of proposed substitutions.

### 5.05 Quality of Materials, Articles and Equipment

Materials, articles and equipment furnished by the Contractor for incorporation into the Work shall be new. When the Contract requires that materials, articles or equipment be furnished, but the quality or kind thereof is not specified, the Contractor shall furnish materials, articles or equipment at least equal to the kind or quality or both of materials, articles or equipment which are specified.

### 5.06 Testing Materials, Articles, Equipment and Work

Materials, articles, equipment or other Work requiring tests are specified in the Contract Documents. Materials, articles and equipment requiring tests shall be delivered to the site in ample time before intended use to allow for testing and shall not be used prior to testing and receipt of written approval. The Contractor shall be solely responsible for notifying the University where and when materials, articles, equipment and Work are ready for testing. Should any such materials, articles, equipment or Work be covered without testing and approval, if required, they shall be uncovered at the Contractor's expense. The University has the right to order the testing of any other materials, articles, equipment or Work at any time during the progress of the Work. Unless otherwise directed, all samples for testing shall be taken by the University from materials, articles or equipment to be used on the project or from Work performed. All tests will be under the supervision of, and at locations convenient to, the University. The University shall select the laboratories for all tests. Decisions regarding the adequacy of materials, articles, equipment or Work shall be issued to the University in writing. The University may decide to take further samples and tests, and if the results show that the Work was not defective, the University shall bear the costs of such samples and tests. In the event the results of such additional samples and tests show that the Work was defective, the Contractor shall bear the cost of such samples and tests. Samples that are of value after testing shall remain the property of the Contractor. All retesting and reinspection costs may be back charged to the Contractor by the University.

### **5.07 Rejection**

Should any portion of the Work or any materials, articles or equipment delivered to the Project fail to comply with the requirements of the Contract Documents, such Work, materials, articles or equipment shall be rejected in writing and the Contractor shall immediately correct the deficiency to the satisfaction of the Design Professional and the University at no additional expense to the University. Any Work, materials, articles or equipment which is rejected shall immediately be removed from the premises at the expense of the Contractor. The University may retain one and one-fourth times the cost of the rejected materials, articles, equipment, and Work from any payments due the Contractor until such time as the deficiency is made acceptable to the Design Professional and University.

### **5.08 Responsibility for Quality**

The testing and inspection provided by the University shall not relieve the Contractor of its responsibility for the quality of materials and workmanship provided by the Contractor, and the Contractor shall make good all defective Work discovered during or after completion of the Project.

## **6.00 CHANGES IN THE WORK**

### **6.01 Change Orders**

#### **6.01.1 Generally**

The University reserves the right to issue written orders whether through a formal Change Order or Construction Change Directive, directing changes in the Contract at any time prior to the acceptance of the Project without voiding the Contract, and Contractor shall promptly comply with such order. The Contractor may request changes in the Work, but shall not act on the changes until approved in writing by the University. Any change made without authority in writing from the University shall be the responsibility of the Contractor.

Any such changes in the Work that have a cost impact shall only be authorized by Change Orders approved by the University. No action, conduct, omission, prior failure or course of dealing by the University shall act to waive, modify, change or alter the requirement that Change Orders must be in writing and signed by the University and Contractor and that such written Change Orders are the exclusive method for changing or altering the Contract Sum/GMP or Contract Time. The University and Contractor understand and agree that the Contract Sum/GMP and Contract Time cannot be changed by implication, oral agreements, actions, inactions, course of conduct or construction change directive.

On the basis set forth herein, the Contract Sum/GMP may be adjusted for any Change Order requiring a different quantity or quality of labor, materials or equipment from that originally required, and the partial payments to the Contractor, set forth in section 8.01, may be adjusted to reflect the change. Whenever the necessity for a change arises, and when so ordered by the University in writing, the Contractor shall take all necessary steps to mitigate the affect of the ultimate change on the other Work in the area of the change. Changed Work shall be performed in accordance with the original Contract requirements except as modified by the Change Order. Except as herein provided, the Contractor shall have no claim for any other compensation including lost productivity or increased overhead expenses due to changes in the Work.

#### **6.01.2 Proposed Change Orders**

The Design Professional, with approval of the University, shall issue to the Contractor a cost request Bulletin for a proposed change order describing the intended change and shall require the Contractor to indicate thereon a proposed amount to be added to or subtracted from the Contract Sum due to the change supported by a detailed estimate of cost. Upon request by the University, the Contractor shall permit inspection of the original Contract estimate, Trade Contract agreements, or purchase orders relating to the change. Any request for adjustment in Contract Time which is directly attributable to the changed Work shall be included with substantiating detailed explanation by the Contractor in its response to the cost request bulletin. Failure by Contractor to request adjustment of Contract Time on the response to the cost request Bulletin shall waive any right to subsequently claim an adjustment of

the Contract Time based on the changed Work. The Contractor shall submit the response to the cost request Bulletin with detailed estimates and any time extension request thereon to the Design Professional within ten (10) days after issuance of the cost request Bulletin. Upon its submission, the Design Professional will review it and advise the University who will make the decision regarding the request. The University retains sole discretion to accept, reject, or modify the proposed change. If the Contractor fails to submit the response within the required ten (10) days, and the Contractor has not obtained the Design Professional's and the University's permission for a delay in submission, the University may order the Contractor in writing to begin the Work immediately, and the Contract Sum/GMP shall be adjusted in accordance with the University's estimate of cost. In that event, the Contractor, within fifteen days following completion of the changed Work, may present information to the University that the University's estimate was in error; the University, in its sole discretion, may adjust the Contract Sum/GMP. The Contractor must keep and submit to the University time and materials records verified by the University to substantiate its costs. The University may require the Contractor to proceed immediately with the changed Work in accordance with section 6.01.4, "Failure to Agree as to Cost" or section 6.02 "Emergency Changes."

When the University and the Contractor agree on the amount to be added to or deducted from the Contract Sum/GMP and the time to be added to or deducted from the Contract Time and a Contract Change Order is signed by the University and the Contractor, the Contractor shall proceed with the changed Work. If agreement is reached as to the adjustment in compensation for the performance of changed Work but agreement is not reached as to the time adjustment for such Work, the Contractor shall proceed with the Work at the agreed price, reserving the right to further pursue its Claim for a time adjustment. Any costs incurred to acquire information relative to a proposed Change Order shall not be borne by the University.

### **6.01.3 Allowable Costs Upon Change Orders**

The identification of and manner in which costs will be allowed because of changed Work shall be computed as described by this section.

#### **6.01.3.1 Labor**

Costs are allowed for the actual payroll cost to the Contractor for direct labor, engineering or technical services directly required for the performance of the changed Work, (but not site management such as field office estimating, clerical, project engineering, management or supervision) including payments, assessments, or benefits required by lawful labor union collective bargaining agreements, compensation insurance payments, contributions made to the State pursuant to the Unemployment Insurance Code, and for taxes paid to the federal government required by the Social Security Act of August 14, 1935, as amended, unless the time of completion adjustments affect the general condition inclusion of the Contract Sum/GMP.

No labor cost will be recognized at a rate in excess of the prevailing wages in the locality at the time the Work is performed as published by the State of Michigan Department of Wage and Hour for



For Change Order scope whose cost is derived according to the Cost of Work plus a Fee as defined in 6.01.3.1 through 6.01.3.3, the mark-up allowance shall be as defined in the Contract. Lump-sum conditions shall include the mark-up allowance. When agreement as to cost cannot be reached, the Contractor shall execute the Work according to time and materials with the Contractor and University acknowledging such costs by signature on a daily basis, and as set forth below.

#### **6.01.3.5 Credit for Deleted Work**

For proposed change orders which involve both added and deleted Work, the Contractor shall separately estimate the cost of the added Work before mark-ups, and separately estimate the cost of the deleted Work before allowance of a credit. If the difference between the costs results in an increase to the Contract Sum, the mark-up for added Work shall be applied to the difference, and if the difference in the costs results in a decrease, then the mark-up for deleted Work shall be applied to the difference.

#### **6.01.3.6 Market Values**

Cost for added Work shall be no more than market values prevailing at the time of the change, unless the Contractor can establish to the satisfaction of the University that it investigated all possible means of obtaining Work at prevailing market values and that the excess cost could not be avoided.

When a change order deletes Work from the Contract, the computation of the cost thereof shall be the values which prevailed at the time bids for the Work were opened or the Contract Sum/GMP established.

#### **6.01.4 Failure to Agree as to Cost**

##### **6.01.4.1 For Added Work**

Notwithstanding the failure of the University and the Contractor to agree as to the cost of the proposed Change Order, the Contractor, upon written order from the University, shall proceed immediately with the changed Work. A Construction Change Directive or letter signed by the University shall be used for this written order. At the start of each day's Work on the change, the Contractor shall notify the University in writing as to the size of the labor force to be used for the changed Work and its location. Failure to so notify may result in the non-acceptance of the costs for that day. At the completion of each day's Work, the Contractor shall furnish to the University a detailed summary of all labor, materials, and equipment employed in the changed Work. The University will compare his/her records with Contractor's daily summary and may make any necessary adjustments to the summary. After the University and the Contractor agree upon and sign the daily summary, the summary shall become the basis for determining costs for the additional Work. The sum of these costs when added to an appropriate mark-up will constitute the payment for the changed Work. Subsequent adjustments, however, may be made based on later audits by the

University. When changed Work is performed at locations away from the job site, the Contractor shall furnish in lieu of the daily summary, a summary submitted at the completion of the Work containing a detailed statement of labor, material, and equipment used in the Work. This latter summary shall be signed by the Contractor who shall certify thereon that the information is true.

The Contractor shall maintain and furnish on demand of the University itemized statements of cost from all vendors and subcontractors who perform changed Work or furnish materials and equipment for such Work. All statements must be signed by the vendors and the subcontractors.

#### **6.01.4.2 For Deleted Work**

When a proposed Change Order contains a deletion of any Work, and the University and the Contractor are unable to agree upon the cost thereof, the University's estimate shall be deducted from the Contract Sum/GMP and may be withheld from any payment due the Contractor until the Contractor presents adequate substantial information to the University that the University's estimate was in error. The amount to be deducted shall be the actual costs to the Contractor for labor, materials, and equipment which would have been used on the deleted Work together with an amount for mark-up as defined in the Contract Documents.

#### **6.01.5 Allowable Time Extensions**

For any change in the Work, the Contractor shall only be entitled to such adjustments in Contract Time due solely to performance of the changed Work. The procedure for obtaining an extension of time is set forth in Section 4.08 of these General Conditions. No extension of time shall be granted for a change in the Work unless the Contractor demonstrates to the satisfaction of the University that the Work is on the critical path and submits an updated CPM schedule showing that an extension of time is required and that the Contractor is making, or has made, every reasonable effort to guarantee completion of the additional Work called for by the change within the time originally allotted for the Contract. Failure by the Contractor to make the required submission or showing constitutes a waiver of any possible adjustment in Contract Time.

Any adjustment in Contract time shall specify the exact impact on the date of Substantial Completion and Final Completion.

### **6.02 Emergency Changes**

Changes in the Work made necessary due to unforeseen site conditions, discovery of errors in plans or specifications requiring immediate clarification in order to avoid a serious Work stoppage, changes of a kind where the extent cannot be determined until completed, or under any circumstances whatsoever when deemed necessary by the University are kinds of emergency changes which may be authorized by the University in writing to the Contractor. The Contractor shall commence performance of the emergency change immediately upon receipt of written direction from the University.

If agreement is reached as to compensation adjustment for the purpose of any emergency change, then compensation will be as provided in this section relating to ordinary changes. If agreement is not reached as to compensation at the time of commencing the emergency change, then compensation will be as provided in section 6.01.4, that is, time and materials records and summaries shall be witnessed and maintained until either a lump sum payment is agreed upon, or the changed Work is completed.

## **7.00 CLAIMS AND DISPUTES**

### **7.01 Policy of Cooperation**

The parties shall endeavor to resolve all of their claims and disputes amicably and informally through open communication and discussion of all issues relating to the Project. To the greatest extent possible, the parties shall avoid invoking the formal dispute resolution procedures contained in the Contract Documents.

### **7.02 Recommendation of Design Professional**

Claims, including those alleging an error or omission by the Design Professional, must be referred initially to the Design Professional for action as provided in paragraph 7.09 as an express condition precedent to proceeding further in resolving any claim.

### **7.03 Time Limits on Claims**

Claims must be made within 10 days after occurrence of the event giving rise to such Claim or within 10 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be made by written notice. An additional Claim made after the initial Claim has been resolved by Change Order will not be valid.

### **7.04 Continuing Contact Performance**

Pending final resolution of a Claim, unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the University shall continue to make payments in accordance with the Contract Documents subject to the University's rights relative to payments, withholding of payments, termination, or all other rights afforded it in the Contract Documents.

### **7.05 Claims for Concealed or Unknown Conditions**

If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then written notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 48 hours after first observance of the conditions. The Design Professional will promptly investigate such conditions and, if the conditions differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, the Design Professional will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Design Professional determines that the conditions at the site are not materially

different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Design Professional shall so notify the University and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 10 days after the Design Professional has issued such determination. If the University and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Design Professional for initial determination, subject to further proceedings pursuant to Paragraph 7.09.

#### **7.06 Claims for Additional Cost**

Any Claim by the Contractor for an increase in the Contract Sum shall be submitted in writing as required by the Contract Documents before proceeding to execute the Work. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Design Professional, (2) an order by the University to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Design Professional, (4) failure of payment by the University, (5) termination of the Contract by the University, (6) University's suspension or (7) changes in the scope of Work, the Contractor's claim shall be filed in strict accordance with the procedure established herein.

#### **7.07 Claims for Additional Time**

Any Claim by Contractor for an increase in the Contract Time shall be submitted in writing as required by the Contract Documents. The Contractor's Claim shall include an estimate of the probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on the scheduled construction.

#### **7.08 Injury or Damage to Person or Property**

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 5 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in the Contract Documents.

## **7.09 Resolution of Claims and Disputes**

### **7.09.1 Review by Design Professional**

Design Professional will review all Claims and take one or more of the following preliminary actions within 10 days of receipt of a Claim: (1) request additional supporting data from the Claimant, (2) submit a schedule to the parties indicating when the Design Professional expects take action, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or (5) suggest a compromise. The Design Professional may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

If a Claim has been resolved, the Design Professional will prepare or obtain appropriate documentation. If a Claim has not been resolved, the party making the Claim shall, within 10 days after the Design Professional's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Design Professional, (2) modify the initial Claim or (3) notify the Design Professional that the initial Claim stands.

If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Design Professional, the Design Professional will notify the parties in writing that the Design Professional's opinion will be rendered within 5 days. Upon expiration of such time period, the Design Professional will render to the parties the Design Professional's written opinion relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Design Professional may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy. The opinion of the Design Professional shall be subject to the review and approval of the Associate Vice President of Facilities Planning and Management at Wayne State University.

### **7.09.2 Review by Vice-President of Finance and Business Operations**

If the opinion of the Design Professional and the decision of the Associate Vice President does not resolve the Claim, the claimant may appeal to the Vice President of Finance and Business Operations who shall review such opinion and the supporting information submitted by the parties for the purpose of upholding the opinion, modifying the opinion, or rejecting the opinion. The Vice President of Finance and Business Operations shall render a decision within forty-five days of the completion of any submissions by the parties. The decision of the Vice President of Finance and Business Operations is final unless it is challenged by either party by filing a lawsuit in the Court of Claims of the State of Michigan within one year of the issuance of the decision.

### **7.09.3 Jurisdiction**

Sole and exclusive 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 the 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.

**7.09.4 Condition Precedent**

The process and procedures described in Article 7.09 are an express condition precedent to the Contractor filing or pursuing any legal remedy, including litigation. Pursuing litigation by the Contractor prior to exhaustion of the Dispute Resolution process set forth herein shall be premature and a material breach of this Agreement.

## **8.00 PAYMENT AND COMPLETION**

### **8.01 Progress Payments**

To assist in computing partial payments, the Contractor shall submit to the Design Professional and University a “Schedule of Values” or detailed outline of the Work identifying each Subcontractor, Trade Contractor and material or equipment supplier of the Contract Sum costs, describing the services included and Work completed in the Application for Payment. The cost breakdowns shall be in sufficient detail for use in estimating the Work to be completed each month and shall be submitted within 15 days after the date of commencement of Work given in the Notice to Proceed.

Once each month during the progress of the Work, the Contractor shall submit to the Design Professional a partial payment request for review and approval. The partial payment request shall be based on the approved bid packages for the cost of the Work completed plus the acceptable materials delivered to the site or stored subject to the control of the Contractor and not yet installed. The Design Professional and University shall review and certify by signature as to the validity of the request, and approving payment. No partial payment shall be made without the certification of the Design Professional. Partial payments shall not be construed as acceptance of any Work which is not in accordance with the requirements of the Contract. Once the partial payment request has been certified by the Design Professional, it shall be submitted to the University for approval and processing.

The Contractor warrants that title to the Work, materials and equipment covered by an Application for Payment shall pass to the University upon the earlier of either incorporation in construction or receipt of payment by Contractor; that Work, materials and equipment covered by previous Applications for Payment are free and clear of liens, claims, security interests or encumbrances; and that no Work, materials or equipment covered by an Application for Payment will have been acquired by Contractor or by any other person performing Work at the Project or furnishing materials or equipment for the Project subject to an agreement under which an interest or encumbrance is retained by the seller or otherwise imposed on the Contractor or buyer.

All Applications for Payment shall be accompanied by sworn statements and lien waivers executed by Construction Manager and the Trade Contractors, subcontractors and suppliers whose work is included in the Application for Payment, as well as other documentation that may be required by the University, stating that all have been paid in full for Work performed through the last or most recent progress payment. The Construction Manager, Trade Contractors and each subcontractor shall also provide properly completed certified payroll form WH-347 to the University’s with each application for payment request.

### **8.02 Format of Application for Payment**

In addition to a schedule of values or detailed outline for the Cost of Work that is acceptable to the Contractor and University, other specific requirements for Application for Payment format and calculations include.

- Applications for Payment shall first present the itemized Cost of Work.
  - Work being performed according to unit pricing or time and material, invoicing and Applications for Payment must be accompanied by acceptable supporting documentation to evidence accurate quantities of actual labor, materials and equipment. Mark-ups to the actual cost of work performed will be additive to these items. Refer further to Article 6.00.
  - Change Orders executed between the Contractor and University shall be reported as separate line items within the Application for Payment and directly under applicable Trade Contractor Cost of Work items. Change Orders affecting multiple Trade Contractor Cost of Work items shall be similarly numbered to permit ease of tracking. These requirements shall run through Trade Contractor Applications for Payment to the Contractor to permit ease of tracking. Change Orders within a Trade Contractor Application for Payment shall be appropriately labeled as being initiated by the Contractor or Owner to permit ease of tracking.
- Following the itemized Cost of Work, Applications for Payment shall next present itemized Indirect Cost of Work components.
- Following itemized Indirect Cost of Work, Applications for Payment shall next present the remaining Construction Contingency included in the Contract Sum or GMP. Applications for progress payments may show a value of the remaining construction contingency that differs from the original construction contingency included in the GMP due to positive or negative Trade Contractor bid / buy-out performance, or due to allocations of construction contingency to Work scope within the intent of the GMP. The Contractor and University Representative will mutually develop a separate construction contingency tracking report that readily reconciles to monthly progress payments showing additive and deductive changes to itemized Cost of Work or Indirect Cost of Work components.
- The above cost components shall next be presented as a sub-total of the total Direct and Indirect Costs of construction.
- The Contractor's fee shall next be presented as a percentage of the total Direct and Indirect Costs of construction and shall include the calculation of its derivation.

### 8.03 Substantial Completion and Punchlist

When the Contractor considers that the Work, or a portion thereof which the University agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Design Professional a comprehensive punchlist of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the punchlist. Failure to include an item on such punchlist does not alter the responsibility of the Contractor to complete all Work in accordance with

the Contract Documents. Upon receipt of the Contractor's punchlist, the Design Professional will make an observation to determine whether the Work or designated portion thereof is substantially complete. If the Design Professional's observation discloses any item, whether or not included on the Contractor's punchlist, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item, upon notification by the Design Professional.

The Contractor shall then submit a request for another observation by the Design Professional to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Design Professional will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the University and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time, generally 45 days, within which the Contractor shall finish all punchlist items accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the University and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

The punchlist and acceptance procedure shall be as defined by the University.

### **8.03.1 Partial Completion**

From time to time, as portions of the Work are completed by the Contractor, the University shall have the right, upon giving the Contractor prior written notice, to accept any portion of the Work that the University desires to use and occupy. Such partial acceptance shall be made in writing and thereafter the Contractor shall have no further obligation with respect to the Work accepted, except to correct the Work subsequently found to have been improperly done, to replace defective materials or equipment, or as defined by Substantial Completion and Punchlist requirements.

## **8.04 Completion and Final Payment**

Upon the Final Completion of the Work by the Contractor, the acceptance of the Work by the University, and the release of all claims against the University and the Work by the Contractor and its subcontractors and suppliers (which releases shall be evidenced by final waivers and releases, properly recorded releases of liens, or other documents acceptable to the University), the Contractor shall file a request for Final Payment.

### **8.04.1 Final Application for Payment**

Upon the receipt of the Contractor's Final Application for Payment, including any and all waivers required by the University and the Contractor's provision of all Close-out Documents, the University shall promptly make a final inspection, and if the University finds the Work acceptable and complete



this guarantee and to complete the Work in accordance with the requirements of the Contract with sufficient manpower and material to complete the repairs as expeditiously as possible. The Contractor, in the event of failure to so comply, does hereby authorize the University to proceed to have the Work done at the Contractor's expense, and it agrees to pay the cost thereof upon demand. The University shall be entitled to all costs necessarily incurred upon the Contractor's or Subcontractor's refusal to pay the above cost.

Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to health, safety or damage of the University's employees, property, or licenses, the University may undertake at the Contractor's or Subcontractor's respective expense, without prior notice, all Work necessary to correct such hazardous conditions caused by the Work of the Contractor not being in accordance with the requirements of this Contract.

The Contractor and Subcontractor shall require a similar guarantee in all subcontracts, including the requirement that the University be reimbursed for any damage or loss to the Work or to other Work resulting from such defects.

## 9.00 TERMINATION

### 9.01 Termination by the University for Cause

#### 9.01.1

The University may terminate the Contract if the Contractor: (a) becomes insolvent; (b) files or has filed against it any Petition in Bankruptcy or makes a general assignment for the benefit of its creditors; (c) fails to pay, when due, for materials, supplies, labor, or other items purchased or used in connection with the Work; (d) refuses or fails to prosecute the Work, or any separable part thereof, with such diligence as will ensure the completion of the Work in accordance with the Master Project Schedule; (e) in the University's opinion, persistently fails, refuses or neglects to supply sufficient labor, material or supervision in the prosecution of the Work; (f) interferes with or disrupts, or threatens to interfere with or disrupt the operations of the University, or any other Contractor, supplier, subcontractor, or other person working on the Project, whether by reason of any labor dispute, picketing, boycotting or by any other reason; (g) for conditions when an agreement regarding an acceptable GMP cannot be reached for whatever reason, or (h) commits any other breach of this Contract.

When any of the above reasons exist, the University may, without prejudice to any other rights or remedies of the University and after giving the Contractor and the Contractor's surety, if any, three days written notice and a reasonable opportunity to cure, terminate employment of the Contractor and may, subject to any prior rights of the surety: (1) take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor; (2) accept assignment of subcontracts; and (3) finish the Work by whatever reasonable method the University may deem expedient.

#### 9.01.2

If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Design Professional's services and expenses made necessary thereby, the remaining balance shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the University. The amount to be paid to the Contractor or University, as the case may be, shall be certified by the Design Professional, upon application, and this obligation for payment shall survive termination of the Contract. The Contractor 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. However, the University shall be entitled to retain whatever amount is remaining unpaid to the Contractor in order to correct the cause for termination; such action is in addition to any other right or remedy which the University may have.

## **9.02 Suspension by the University for Convenience**

### **9.02.1**

The University may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the University may determine.

### **9.02.2**

An adjustment shall be made for increases in the Contract Sum and/or Time of Completion of the Contract, including profit on the increased cost of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent: (1) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or (2) that an equitable adjustment is made or denied under another provision of this Contract. The Contractor 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.

Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

## **9.03 Termination By The University For Convenience**

### **9.03.1**

The University, with or without cause, may terminate all or any portion of the services by the Contractor under this Agreement, upon giving the Contractor 30 days written notice of such termination. In the event of termination, the Contractor shall deliver to the University all reports, estimates, schedules, subcontracts, Contract assignments, purchase order assignments, and other documents and data prepared by it, or for it, pursuant to this Agreement.

### **9.03.2**

Unless the termination is for cause, the Contractor shall be entitled to receive only the payments provided for in Article 8, pro-rated to the date of termination (including payment for the period of the 30 day notice) plus reimbursement for approved and actual costs and expenses incurred by the Contractor to the date of termination. Prior to payment, the Contractor shall furnish the University with a release of all claims against the University. The Contractor 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.

## **9.04 Termination By The Contractor**

### **9.04.1**

The Contractor may terminate the Contract if the Work is stopped for a period of 60 days through no act or fault of the Contractor or a subcontractor, sub-subcontractor or their agents or employees or any other persons performing portions of the Work under Contract with the Contractor, for any of the following reasons: (1) issuance of an order of a court or other public authority having jurisdiction; (2) an act of government, such as a declaration of national emergency, making material unavailable; (3) because the Design Professional has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification, or because the University has not made payment on a Certificate for Payment within the time stated in the Contract Documents; (4) if repeated suspensions, delays or interruptions by the University constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

If one of the above reasons exists, the Contractor may, upon seven additional days' written notice to the University and Design Professional, terminate the Contract and recover from the University payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead and profit.

#### **9.04.2**

If the Work is stopped for a period of 60 days through no act or fault of the Contractor or a subcontractor or their agents or employees or any other persons performing portions of the Work under Contract with the Contractor because the University has persistently failed to fulfill the University's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the University and the Design Professional, terminate the Contract and recover from the University as provided in Subparagraph 9.03.2

**10.00 MISCELLANEOUS**

**10.01**

These Contract Documents supersede all previous agreements between the University and the Contractor concerning this Work.

**10.02**

No action or failure to act by the University shall constitute a waiver of a right afforded it under these General Conditions, nor shall such action or failure to act constitute approval or acquiescence of a breach of these General Conditions, except as may be specifically agreed in writing.

**10.03**

The invalidity or unenforceability of any provision of these General Conditions shall not affect the validity or enforceability of any other provision.

**-End of General Conditions for Construction-**

## **APPENDIX 5**

### **Supplementary General Conditions of Construction**

## SUPPLEMENTARY GENERAL CONDITIONS OF CONSTRUCTION

Rev. 1\_11.05.07

Where any article of the General Conditions of the Contract for Construction is supplemented in these Supplementary General Conditions, the original article shall remain in full force and effect and all supplementary provisions shall be considered as added thereto. Where any such article is modified, superseded or deleted here, provisions of such article not so specifically modified, superseded or deleted shall remain in full force and effect.

### 1.00 DEFINITIONS

Add the following

**Construction Manager** - Whenever the term "Contractor" is stated or referenced it shall mean the same as "Construction Manager".

**Contract Sum** - Whenever the term "Contract Sum" is stated or referenced it shall mean the same as "Guaranteed Maximum Price".

**Trade Contractor** - Whenever the term "Subcontractor" is stated or referenced it shall mean the same as "Trade Contractor".

**Guaranteed Maximum Price** - The term Guaranteed Maximum Price (GMP) shall be the maximum price to the University for the Project and shall include the Cost of Work, overhead and profit, construction contingency, the preconstruction services cost, and the cost incurred under the general conditions. The GMP shall be reviewed, approved and agreed to by University, Design Professional and Contractor. Under GMP agreements, a GMP Change Order will be executed following the provision of most preconstruction services.

### 4.00 RESPONSIBILITIES OF THE PARTIES

Add the following to 4.02.3

#### **.1 Temporary Facilities**

.a The Construction Manager shall be responsible for arranging and providing general services and temporary facilities as specified herein and as required for the Design Professional, the University, all Trade Contractors, Separate Construction Managers and Construction Manager's staff for the proper and expeditious prosecution of the Work, including, but not limited to, temporary offices and toilets; temporary storage; temporary electrical lighting and power; temporary voice and data communications, temporary water; temporary enclosures; temporary heating and ventilation; temporary openings; material hoists; temporary ladders, ramps and runways; temporary fire protection, protective coverings; ramps and runways; temporary fire protection, protective coverings; and construction sign(s). The Construction Manager shall, at its own expense but included within the Cost of the Work, make all temporary connections to utilities and services in locations acceptable to the University, Design Professional and local authorities having jurisdiction thereof; furnish all necessary labor and materials, and make all installations in a manner subject to the acceptance of such authorities and the Design Professional; maintain such connections; remove the temporary installation and connections when

no longer required; and restore the services and sources of supply to proper operating conditions. All costs of said temporary facilities shall be a Cost of the Work.

.b The Construction Manager shall make all arrangements with the University for temporary electrical service to the Site, shall provide all equipment necessary for temporary power and lighting, and shall pay all charges for this equipment and installation thereof. The electrical service shall be of adequate capacity for all construction tools and equipment without overloading the temporary facilities and shall be made available to all trades. The Construction Manager shall furnish, install and maintain a temporary lighting system to satisfy minimum requirements of safety and security.

.c Temporary weathertight enclosures and temporary heating shall be provided by the Construction Manager as required pursuant to the Construction Schedule or Master Project Schedule to complete the Work on or before the Completion Date, to make the building weathertight and suitable working conditions for the construction operations of all trades. Under no circumstances shall the temperature be allowed to reach a level which will cause damage to any portion of the Work which may be subject to damage by low temperatures. The Construction Manager shall pay for all fuel, maintenance and attendance required in connection with the portable unit heaters without additional cost or expense to University. Any surface, interior or exterior, damaged by the use of these space heaters shall be replaced by new materials or be refinished to the satisfaction of the Design Professional and University without additional cost to the University.

.d All temporary equipment and conduits for same shall be in accordance with the applicable provisions of the governing codes. All temporary wiring and power conduits shall be maintained in a safe manner and utilized so as not to constitute a hazard to persons or property. All temporary equipment, wiring and conduits shall be completely removed after they are no longer necessary and prior to completion.

.e Where temporary facilities and associated utilities, and for utilities used in performance of this Agreement can be provided from existing University services, the University shall bear the cost of such utility consumption, and such costs shall not be included in the GMP. However, for conditions that require the Construction Manager to use electrical generators or equipment fueled by an independent fuel source, the Construction Manager shall bear all such costs which shall be included in the GMP.

Add the following to 4.02.12

### **.1 Safety and Protection**

.a Construction Manager shall provide fences, pedestrian walks, barriers, etc. to ensure safety of the general public and Construction Manager's personnel or as directed by University.

.b Construction Manager will provide perimeter protection at wall and floor openings, elevator shafts, stairwells, and floor perimeters in accordance with OSHA requirements.

.c Combustible rubbish shall be removed daily and shall not be disposed of by burning on site. The entire premises and area adjoining and around the operation shall be kept in a safe and sanitary condition and free of accumulation of trash, rubbish, nuts, bolts, small tools, and other

equipment not in use. Construction Manager is responsible to provide trash containers and fund the removal/disposal of construction debris and general trash.

.d Construction Manager will regularly ensure that 1) excess material/trash are removed from work sites; 2) passageways (e.g., sidewalks, hallways) are cleared of obstructions; 3) equipment is shut down and secured; and 4) lighted barricades are erected where necessary.

.e All existing means of egress, including stairways, egress doors, panic hardware, aisles, corridors, passageways, and similar means of egress shall, at all times, be maintained in a safe condition and shall be available for immediate use and free of all obstructions.

.f The space under the temporary trailer shall not be used for the storage or placement therein of flammable gases, liquids, or gas and liquid fuel powered equipment. This area shall be kept free of accumulations of any rubbish or trash.

.g In temporary trailers, all exit doors shall be open for egress whenever the unit is occupied. Draw bolts, hooks and other similar locking devices shall be prohibited on all egress doors.

.h On site storage of combustible or flammable liquids shall be limited to one day supply. Indoor storage of propane containers is prohibited.

.i Prior to working in confined spaces on campus, the Construction Manager must have its written Confined Spaces Program and Permit System reviewed by the University and the documents must meet minimum acceptable standards under the current OSHA/MIOSHA regulation(s). The Construction Manager must provide its own atmospheric testing, personal protection, ventilating and rescue equipment as required. The Construction Manager should seek information from University on any known hazards of the confined spaces to be entered. All manholes and utility tunnels are considered confined spaces.

.j Compressed gas cylinders belonging to Construction Manager must be properly segregated and secured (with chains or similarly reliable restraining devices) to wall or floor mounted support systems, cylinder storage racks etc., when not in transit. Protective caps must be in place during transit or when not in use.

.k Construction Manager must follow all of OSHA's lockout/tagout requirements of 29 CFR 1910.147, provide its own lockout/tagout supplies, and be able to demonstrate that its employees have received formal instruction in "lock-tag-try" procedures. Copies of Construction Manager's written Lockout/Tagout Program should also be available upon request.

.l Construction Manager may not use any University sinks, drains or catch basins for the washing of any equipment, tools or supplies, or the disposal of any liquids, (excluding consumable products and hand-soap/water) without the express permission of University. This restriction applies to all sinks (including water fountains) in laboratories, offices and maintenance areas. Additionally, no polluting or hazardous liquids (such as motor oils, cleaners, solvents, paints, diesel fuels, antifreeze, etc.) may be drained onto roads, parking lots, ditches, wetlands, dirt piles or other soil, or into storm or sanitary sewers.

- .m Construction Manager transporting hazardous materials (e.g. reclaimed materials, chemicals, fuels, oils, concrete) to an from campus must follow all applicable DOT regulations. This includes proper shipping papers, placarding, material segregation and weight limits.
- .n Construction Manager is also responsible for the proper collection, labeling, transporting, manifesting and disposal of polluting or hazardous wastes such as solvents, paints, oil or antifreeze (and rags contaminated with any of these materials), as required by State and Federal laws and regulations. Copies of all manifests should remain available for University review upon request. Under no circumstances may hazardous wastes be disposed of in University-owned dumpsters, waste containers, drains or sewers, or drained onto roads, parking lots, ditches, wetlands, dirt piles or other soil.
- .o Neither the University nor the Design Professional is responsible for conducting safety inspections or observations, but may make recommendations concerning safety to the Construction Manager.
- .p Fire Protection
- (1) All reasonable precautions shall be taken against fire throughout all the Construction Manager's and Trade Contractors' operations. Flammable material shall be kept at an absolute minimum. Any such materials shall be properly handled and stored.
  - (2) Construction practices, including cutting and welding, and protection during construction shall be in accordance with the applicable published standards. During such operations the Construction Manager shall provide a fire watch person. The Construction Manager shall provide a sufficient number of approved portable fire extinguishers, distributed about the Project and in cold weather, non-freeze type portable fire extinguishers shall be used.
  - (3) Gasoline and other flammable liquids shall be stored in and dispensed from Underwriter's Laboratories listed safety containers in conformance with the National Board of Fire Underwriters recommendations and applicable State laws. Storage, however, shall not be within the building.
- 4) The Construction Manager shall schedule the Work so that the permanent standpipe system shall be installed and made operable at the earliest possible date. At such time, the Construction Manager shall furnish sufficient hose to provide adequate coverage.
  - 5) All tarpaulins that may be used for any purpose during construction of the Work shall be made of material which is water and weather resistant and fire retardant treated. All tarpaulins shall be Underwriters' Laboratories labeled with flame spread rating of fifteen (15) or less and shall be approved prior to use by any local fire marshal.

Add the following to 4.02.13

Hazard Communication: University requires the Construction Manager to maintain at its job site(s) the Material Safety Data Sheets (MSDS) for all hazardous materials brought onto campus. Copies of these MSDS must also be provided to the University no less than two weeks prior to the onset of activities. Failure to submit MSDS may result in suspension of Work activities until the MSDS are obtained. If Construction Manager is to work with hazardous products, it shall notify and update the Project Manager of a) proposed work schedules, b) what to expect in terms of noises/odors, and c) how to access MSDS. The Construction Manager must also be able to demonstrate that its employees have

received "Haz Com" (i.e. Michigan Right-to-Know), and thereby possess a broad understanding of "MSDS language." Construction Manager-owned chemical containers must be labeled with the product name and hazards.

**Hazardous Materials:** In addition to complying with the Michigan Right-to-Know Law, the Construction Manager must use and store hazardous materials in accordance with all local, state and federal regulations. Special attention must be paid to the segregation of incompatible materials and the handling/storage of flammable and/or volatile materials. At the end of each work day, hazardous materials must be properly secured, stored in OSHA approved containers, and placed in locations authorized by the University or removed from University's property.

Add the following to 4.02.21

### **.1 Excavation Policy**

**The policy prescribed herein shall be adhered to for all earth excavation, manual or power, on the University campus that penetrates the surface of the soil by a depth of 6 inches or greater.**

#### **.a Non-emergency Situation**

- (1) In non-emergency situations (i.e., scheduled maintenance or construction) the Construction Manager shall contact the University a minimum of three weeks in advance of the scheduled excavation.
  - (2) The Construction Manager shall contact Miss Dig five days prior to the scheduled excavation, to ascertain and stake the actual location for all utilities within 50 feet of the limits of the proposed excavation. Actual staking shall be performed not more than three (3) days prior to the excavation.
- (3) Excavation shall commence only with the approval of the University after a complete examination of the site utility drawings and a field observation of the staked site.

#### **.b Emergency Situation**

- (1) In an emergency situation (i.e., loss of services on campus or to a building), the Construction Manager shall immediately contact the University Representative, examine the site utility drawings to determine the potential interferences, and contact Miss Dig and private stakers, if appropriate, to ascertain and stake the actual location of all utilities within 50 feet of the limits of the proposed excavation. The Construction Manger shall also immediately contact Consumers Power Company, in addition to Miss Dig, upon a natural gas line failure.
- (2) Contact the University's Public Safety Department at 577-2222.
- (3) No attempt shall be made to repair a gas line leak or break. Wait for the Consumers Energy or Co-Energy crew. However, flexible gas line may be folded over to reduce gas leakage, or bent upward to prevent gas from following pipe into building.
- (4) Excavation shall commence only with the approval of the University who will grant approval only after a complete examination of the site utility drawings and a field observation of the staked site.

.c Pumping and Draining

**The Construction Manager shall provide and maintain a temporary drainage system and pumping equipment as required to keep all excavation areas within the Site free from water from any source. As the Work progresses, all water shall be removed from basement areas, tunnels, pits, trenches and similar areas as required for proper performance of the Work and to prevent damage to any part of the construction utility. Permanent sump pumps shall not be used for this purpose; however, the Construction Manager may install temporary pumps in the sump pits until the permanent pumps are installed, providing that it cleans sump pits and drain lines satisfactorily after temporary use. The Construction Manager shall provide and maintain all pumping and draining equipment as required for the installation of all underground piping and utility conduit systems. Pumping and draining shall be performed in a manner to avoid endangering concrete footings or any adjacent construction or property. Such methods shall be subject to the review of the Design Professional.**

.d Post-Excavation

(1) Provide appropriate pipe protection (wraps, and/or cathodic protection) as originally installed.

(2) Provide backfill material and compaction in 12-inch lifts to a 95% MDD.

(3) Backfill material shall be free of all rocks in excess of five inches and deleterious materials and rubbish of any type.

(4) Provide plastic tape trace 24" (12" for shallow trenches) above all utilities indicating utility type by MISS DIG color code and name defined as follows:

<u>Utility</u>	<u>Color</u>	<u>Lettering</u>
Electric	Red	Elect
Oil/Natural Gas	Yellow	Gas
Telephone	Orange	Tele
Cable TV	Brown	TV
Water	Blue	Water
Steam	Yellow	Steam
Sewer	Green	Sewer

(5) Return grade to pre-excavation condition.

Add the following to 4.05.1

**The insurance furnished by the Construction Manager under this Article 4.05.1 shall provide coverage not less than the following:**

.1 Workers compensation:

- (a) State: Statutory
  - (b) Applicable Federal Statutory
  - (c) Employer's Liability
    - \$1,000,000 per Accident
    - \$1,000,000 Disease, Policy Limit
    - \$1,000,000 Disease, Each Employee
- .2 Commercial General Liability (including Premises-Operations; Independent Construction Managers' Protective; Products and Completed Operations; Broad Form Property Damage):
- (a) Bodily Injury:
    - \$1,000,000 Each Occurrence
    - \$2,000,000 Aggregate
  - (b) Property Damage:
    - \$1,000,000 Each Occurrence
    - \$2,000,000 Aggregate
  - (c) Product and Completed Operations to be maintained for three (3) years after final payment
    - \$2,000,000 Aggregate
  - (d) Property Damage Liability Insurance shall provide X,C and U coverage.
  - (e) Broad Form Property Damage Coverage shall include Completed Operations.
- .3 Contractual Liability:
- (a) Bodily Injury:
    - \$1,000,000 Each Occurrence
    - \$1,000,000 Aggregate
  - (b) Property Damage:
    - \$1,000,000 Each Occurrence
    - \$1,000,000 Aggregate
- .4 Personal Injury, with Employment Exclusion deleted:  
\$1,000,000 Aggregate
- .5 Business Auto Liability (including owned, non-owned and hired vehicles):
- (a) Bodily Injury
    - \$1,000,000 Aggregate
    - \$1,000,000 Each Occurrence
  - (b) Property Damage
    - \$1,000,000 Each Occurrence

- .6 If the General Liability coverages are provided by a Commercial Liability policy, the:
- (a) General Aggregate shall be not less than \$1,000,000 and it shall apply, in total, to this Project only.
  - (b) Fire Damage Limit shall be not less than \$1,000,000 on any one Fire.
  - (c) Medical Expense Limit shall be not less than \$1,000,000 on any one person.
- .7 Umbrella Excess Liability:
- \$5,000,000 over primary insurance
  - \$10,000 retention for self-insured hazards each occurrence
- .8 Builder's Risk Insurance in the amount equal to the Contract Sum.

Add the following to 4.12

**Elevator shafts, electrical closets, pipe and duct shafts, chases, furred spaces and similar spaces which are generally unfinished, shall be cleaned by the Construction Manager and left free from rubbish, loose plaster, mortar drippings, extraneous construction materials, dirt and dust before preliminary inspection of the Work.**

**All areas of the Project in which painting and finishing work is to be performed shall be cleaned throughout just prior to the start of this work, and these areas shall be maintained in satisfactory condition for painting and finishing. This cleaning shall include the removal of trash and rubbish from these areas; broom cleaning of floors; the removal of any plaster, mortar, dust and other extraneous materials from all finished surfaces, including but not limited to, all exposed structural steel, miscellaneous metal, woodwork, plaster, masonry, concrete, mechanical and electrical equipment, piping, duct work, conduit, and also all surfaces visible after all permanent fixtures, induction unit covers, convector covers, covers for finned tube radiation, grilles, registers, and other such fixtures or devices are in place.**

**In addition to all cleaning specified above and the more specific cleaning which may be required, the Project shall be prepared for occupancy by a thorough final cleaning throughout including washing or cleaning of all surfaces on which dirt or dust has collected. The glass and curtain wall shall be washed and cleaned on both sides by a window cleaning subcontractor specializing in such work. Construction Manager shall, at University's request, delay such washing of exterior surfaces to such time as requested by University. All equipment shall be new, in an undamaged, bright clean condition. Recleaning will not be required after the Work has been inspected and accepted unless later operations of the Construction**

**Manager, in the opinion of the University, make re-cleaning of certain portions necessary.**

## **5.00 INTERPRETATION OF AND ADHERENCE TO CONTRACT REQUIREMENT**

Add the following to 5.04.1

### **.1 Construction Manager Requirements**

- .a Signature: Each item submitted shall be thoroughly reviewed by the Construction Manager and have a stamp or note describing the Construction Manager's action, signed by the person authorized by the Construction Manager to do the checking with that person's name clearly printed.
- .b Construction Manager Responsibility: Construction Manager shall review each submittal for completeness, conformance to the Contract Documents and coordination with other parts of the Work and the Construction or Master Project Schedule. By providing and submitting to the Design Professional shop drawings, product data, warranties and samples, the Construction Manager is representing that he has determined and verified (a) the availability of all materials, and (b) field measurements and field construction criteria related thereto, and (c) that he has checked and coordinated the information contained within such submittals with the requirements of the Work, the Contract Documents and the Construction or Master Project Schedule and that such shop drawings, samples, warranties and data conform to the Contract Documents.
- .c Limited Acceptance by University and Design Professional: Acceptance is for general design only. Quantities, size, field dimensions and locations are some of the required characteristics which are not part of the acceptance and will not be checked. Accordingly, the limited acceptance shall in no way relieve the Construction Manager from his obligation to conform his work to required characteristics and to the requirements of the Contract Documents.
- .d Delays: The Design Professional may return incomplete submittals with no action taken. The Construction Manager shall have no claim for any damages or for an extension of time due to delay in the Work resulting from the rejection of materials or from the rejection, correction, and resubmittal of Shop Drawings, samples and other data, or from the untimely submission thereof.

### **.2 Approvals**

The Design Professional's approval shall not indicate approval of dimensions, quantities or fabrication processes unless specific notations are made by the Design Professional regarding same. The Design Professional will check one of the following notations on the Shop Drawing and Sample Review Stamp:

- .a "REVIEWED-NO EXCEPTIONS NOTED", indicating final action by the Design Professional. When reviewing resubmitted shop drawings the Design Professional assumes that there are no revisions from the previous submittal, except as provided by 5.04.1 and his review of resubmittals is only for the corrections requested with the approval of the balance of the shop drawing being based on the original submission. Where the Construction Manager directs specific action to revisions, as provided by 5.04.1 the approval includes these also.

- .b "REVIEWED WITH CORRECTIONS NOTED", indicating final action by the Design Professional with the same conditions as "REVIEWED-NO EXCEPTIONS NOTED". Unless he takes exception to the corrections noted, the Construction Manager may begin that portion of the Work for which the shop drawing was required.
- .c "REVISE AND SEND RECORD COPY", requiring that the Design Professional be sent a copy of the revised shop drawing in accordance with the noted corrections, at the same time it is issued for the Work.
- .d "NOT APPROVED-RESUBMIT", indicating that the Construction Manager shall not begin that portion of the Work until the reason indicated for disapproval has been corrected and the revised shop drawing submitted, reviewed and approved by the Design Professional.
- .e "NO ACTION REQUIRED", indicating that CONTRACT DOCUMENTS do not require the Design Professional to review or take any action with this submittal.
- .f Where more than one action has been checked, each shall apply to that portion of the shop drawing for which the action is indicated.

## **8.00 PAYMENT AND COMPLETION**

Add the following to 8.01

### **8.01.1 Monthly Payment Applications**

Each month at the first scheduled meeting the Construction Manager shall distribute, in triplicate, draft copies of the proposed Payment Application for review and comment. The review, comment and mutual concurrence will be an agenda item at that meeting. The Construction Manager will prepare the formal Application for submission from the comments made on the Draft and will present the formal application as provided for herein.

### **8.01.2 Offsite Materials**

If an Application for Payment is made for materials not installed in the Work, but suitably stored off-site at a location acceptable to the University's Representative, such application shall be accompanied by legally acceptable paid invoices or bills of sale and copies of delivery tickets, signed by the Construction Manager, indicating the Construction Manager verified that the materials shown on the delivery tickets are at the location accepted by the University and are adequately insured. Failure of the Construction Manager to furnish paid invoices, bills of sale or proof of insurance shall be cause for withholding such amounts from payment until such paid invoices or bills of sale have been received by the University. The University reserves the right to examine the stored items prior to payment.

## **Add the following to subparagraph 8.03**

The following submittals shall be bound in 7 sets:

### **.1 Project Closeout Documents**

- .a The Construction Manager shall submit to the Design Professional, a written guarantee, which shall be in accordance with Section 8.04 and such additional guarantees, in writing, as are required by the Specifications.
- .b The Construction Manager shall submit complete instruction for the care and maintenance of all finish materials under the contract, including, but not limited to floor finishes and coverings, wainscot and wall finishes, acoustical treatment, metal finishes, painted surfaces, flooring, hardware, and finishes on mechanical and electrical equipment. Instructions shall contain the manufacturer's or supplier's recommendations with respect to cleaning agents, preservative treatment and such other instructions as may be beneficial to the maintenance, usage, appearance and durability of the product. The recommendations shall further contain cautions on the use of certain cleaners and coatings which may be detrimental to the product.
- .c The Construction Manager shall prepare and submit operating and maintenance instructions, coordination drawings, and shop drawings for all mechanical and electrical equipment, and other special items, as called for in the specifications.
- .d All of the above described documents shall be checked by Construction Manager for conformance with the specifications and shall be submitted in uniform size, bound and indexed for cross-reference.
- .e The Construction Manager shall also submit "As-Built" drawings as specified in Section 4.11.
- .f Copies of all "Attic Stock" transmittals signed by appropriate University personnel accepting the attic stock material.

## **10.00 MISCELLENEOUS**



## **APPENDIX 6**

**CONTRACT FOR DESIGN PROFESSIONAL SERVICES  
FOR PROJECTS ORIENTED ACCORDING TO  
CONSTRUCTION MANAGEMENT**

**CONTRACT FOR DESIGN PROFESSIONAL SERVICES  
FOR PROJECTS ORIENTED ACCORDING TO  
CONSTRUCTION MANAGEMENT**

Executed as of the \_\_\_\_ day of \_\_\_\_\_, 2013, by and between Board of Governors of  
Wayne State University (University) Detroit, Michigan 48202

and

**CM FIRM NAME**  
**CM ADDRESS**

regarding

**WSU PROJECT NAME**  
**WSU Project No.**

**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 **INSERT BRIEF PROJECT SCOPE DESCRIPTION**

### 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 exercise its professional standard of care to ensure that all designs developed comply with applicable laws, statutes, codes, ordinances, orders, rules and regulations in effect as of the execution of this Agreement. 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. 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 herein defined.**

- A. Program Statement by: **INSERT DATE**
- B. Schematic Design and Outline Specifications by: **INSERT DATE**
- C. Design Development by: April 26, 2013
- D. 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: **INSERT DATE**
- E. Construction Documents:
  - Bid Package No. 1: **INSERT DESCRIPTION AND DATE**
  - Bid Package No. 2: **INSERT DESCRIPTION AND DATE**
  - Bid Package No. 3: **INSERT DESCRIPTION AND DATE**

- Bid Package No. 4: **INSERT DESCRIPTION AND DATE**
- F. Substantial Completion by: **INSERT DATE**
- G. Punchlist Completion by: **INSERT DATE**
- H. Final Completion by: **INSERT DATE**

#### 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 Guaranteed Maximum Price

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 construction budget and 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 construction budget and GMP.

#### 1.07 Schematic Design, Design Development, Construction Documents, Construction Budget Development and Getting to GMP

The Design Professional shall provide plans, drawings and specifications to the Construction Manager and the University according to the schedule requirements of Article 1.03 – Time of Completion. Using the Schematic Design documents, the Construction Manager will review the documents as to practicality and constructability, and will develop a construction cost estimate that will become the basis of the Project budget. Unless adjusted by the University, the construction cost allowance shall be fixed at **INSERT DOLLAR VALUE OF ALLOWANCE**. Once the construction budget is established, the Design Professional shall continue to generate

**Design Development documents which the Construction Manager shall use to validate its consistency with the construction budget and to finalize the GMP to construct the Project. After acceptance and approval of the GMP by the University, the Design Professional shall develop all necessary construction documents for the Construction Manager's use to build the Project.**

**As design phase activities progress the Construction Manager shall iteratively estimate the construction costs as described, and shall report its findings and recommendations to the University. If, during this process, the Construction Manager reports that the evolving designed scope exceeds the allowance of the construction budget or the GMP, and the University does not authorize an increase in the construction budget or the GMP, the University may at its sole discretion order revisions to the plans, drawings and specification, and the Design Professional shall make such revisions as may be necessary for no additional compensation to keep the Project within the limits of the construction budget or GMP. 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. The term "direct incremental cost" for the purpose of this paragraph shall mean only those personnel costs associated with salaries or wages paid to persons performing work on the Project, and does not include fringe benefits, bonuses, mark-up, burden or any element of overhead and profit.**

#### **1.08 Consultation**

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

#### **1.09 Certification of Construction Manager's Application 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.**

## 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 **INSERT DOLLAR VALUE IN WORDS** dollars (**INSERT DOLLAR VALUE IN NUMBERS**) and an amount for reimbursables not to exceed **INSERT DOLLAR VALUE IN WORDS** dollars (**INSERT DOLLAR VAULE IN NUMBERS**). Any amounts previously invoiced by the Design Professional for this Project under the interim purchase order shall be applied toward this fee.

**IN THE EVENT COMPENSATION IS TO BE A PERCENTAGE OF THE FINAL ADJUSTED COST OF CONSTRUCTION, PROPOSE ALTERATE LANGUAGE AND DELETE THIS NOTE**

### 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, certifying payments made through the most recent invoice. 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 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 first to the Associate Vice President of Facilities Planning and Management, and if thereafter unresolved, to the Vice President of Finance and Business Operations 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.

## 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 skill and care ordinarily provided by Design Professionals practicing in the same or similar locality 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 parties 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 shall indemnify, hold harmless, protect and defend the University as well as its agents, representatives, employees, and subcontractors, against any and all claims, loss, liability, damages, costs, and expenses, including reasonable attorney's fees, to the extent they are caused by the willful or negligent acts, errors or omissions of the Design Professional, and its agents, consultants, employees, representatives or anyone for whom the Design Professional is responsible.

## 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) Comprehensive General Liability Insurance, in an amount of not less than One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) 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) Comprehensive Automobile Liability Insurance (Owned, Hired, and Non-Owned Vehicles), in an amount of not less than Five Hundred Thousand Dollars (\$500,000) per occurrence for bodily injury and Five Hundred Thousand Dollars (\$500,000) per occurrence 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 One Million Dollars (\$1,000,000) per claims made and One Million Dollars (\$1,000,000) aggregate. Tail-coverage shall be provided for claims made after final completion.
- (4) Worker's Compensation Insurance adequate to meet statutory requirements of all jurisdictions having authority over such claims.

### 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 coverages 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 sixty (60) 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.

The Design Professional may terminate this agreement if the Work is stopped for a period of 60 days through no act or fault of the Design Professional or its sub-consultants or their agents or employees or any other persons performing portions of Design Professional's responsibility under contract with the Design Professional, for any of the following reasons: (1) issuance of an order of a court or other public authority having jurisdiction; (2) an act of government, such as a declaration of national emergency, making material unavailable; (3) if repeated suspensions, delays or interruptions by the University constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

If one of the above reasons exists, the Design Professional may, upon seven additional days' written notice to the University, terminate this Agreement and recover from the University payment for services rendered to-date in accordance with section 10.02.

## 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 first submit the dispute in writing for an administrative decision by the University's Associate Vice President of Facilities Planning and Management, and if thereafter still unresolved, to the Vice President for Finance and Business Operations, within 30 days of the end of negotiations. Any decision of the 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 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, entitled "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 the skill and care ordinarily provided by a design professional practicing in the same or similar locality on projects of similar size, scope and complexity 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 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.

### **15.00 NONDISCRIMINATION**

The Design Professional covenants not to discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges or employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or physical handicap, unless pursuant to a bonafide occupational qualifications. Breach of this covenant shall be considered a material breach of the contract. By acceptance of this order, the Design Professional certifies that it will comply with all applicable provisions of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212) the Elliott Larsen Civil Rights Act, being 1976 PA 453, as amended, the Persons with Disabilities Act being 1976 PA 220, as amended and implementing regulations at 41 CFR Chapter 60.

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

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

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

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

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

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

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

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

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

Sample



## **APPENDIX 7**

### **Existing Drawings**

**Download the existing drawings from the web site at**

**[http://www.forms.purchasing.wayne.edu/Adv\\_bid/Adv\\_bid.html](http://www.forms.purchasing.wayne.edu/Adv_bid/Adv_bid.html)**

## **APPENDIX 8**

### **Schematic Drawings**

**Download the existing drawings from the web site at**

**[http://www.forms.purchasing.wayne.edu/Adv\\_bid/Adv\\_bid.html](http://www.forms.purchasing.wayne.edu/Adv_bid/Adv_bid.html)**