

WAYNE STATE UNIVERSITY

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

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

and

Professional_name/address

Regarding

Project_Name/Description
WSU Contract Number

Recitals

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

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

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1.00 DESIGN PROFESSIONAL RESPONSIBILITIES

1.01 Scope of Work

The Design Professional shall provide all necessary architectural, engineering and design services normally and customarily furnished and reasonably necessary for the (ENTER_SHORT_PROJECT_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 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 set forth in the Proposal and herein defined.

- A. Program Statement by: (ENTER_COMPLETION_DATE)
- B. Schematic Design and Outline Specifications by: (ENTER_COMPLETION_DATE)
- C. Design Development by: (ENTER_COMPLETION_DATE)
- D. Construction Documents:
(ENTER_COMPLETION_DATE_FOR_EACH_WORK_PACKAGE)
- E. 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:
(ENTER_COMPLETION_DATE)
- F. Substantial Completion by: (ENTER_COMPLETION_DATE)

- G. Punchlist Completion by: (ENTER_COMPLETION_DATE)
- H. Final Completion by: (ENTER_COMPLETION_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 GMP for the Project. The Design Professional agrees to provide the necessary and required professional services under this Agreement in order to generate and comply with the GMP. The Design Professional shall supply information as needed in order that the Construction Manager may accurately price and construct the Work within the limits of the Project budget.

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

The Design Professional shall timely submit the plans, drawings and specifications to the Construction Manager and the University for Review and approval as to practicality and constructability within the limits of the GMP when the Construction Documents are fifty percent (50%), eighty-five percent (85%), and one hundred percent (100%) completed. The Construction Manager shall complete its review and iteratively re-estimate the Cost of Work within five (5) days of receipt of the plans, drawings or specifications. The Construction Manager shall report its findings and recommendations to the University; if, prior to iterative approval of the documents, the University orders revisions in the plans, drawings or specifications in order to make the plans practical or constructible, the Design Professional shall, for no additional compensation, make such revisions as may be necessary. If Work defined in the design drawings or specifications

exceeds the GMP, the Design Professional will redesign the scope to meet budget requirements, without additional compensation. It is understood and accepted that the University, Design Professional, and Construction Manager will sign-off acknowledging the acceptability of the various iterations of scope defined and probable cost throughout the duration of the Project. The Design Professional shall be compensated for the direct incremental cost associated with required revisions after design details had been previously accepted and approved by the University and Construction Manager.

1.08 Consultation

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

1.09 Certification for Payment

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

1.10 Other Provisions of the Agreement

While the General Conditions of Construction and Supplementary General Conditions for Construction of the Contract deal principally with the responsibilities and obligations of the Construction Manager, it is understood and acknowledged that they also define requirements for the Design Professional's performance. As a result the General Conditions of Construction and Supplementary General Conditions for Construction of the Contract pertaining to this Project are expressly incorporated into this Agreement. It is expressly understood that the Design Professional is not responsible for the construction of the Work.

2.00 COMPENSATION AND METHOD OF PAYMENT

2.01 Fee

"Choose 1 of the following three and fill in amounts-delete other two and these instructions:"

The University shall pay the Design Professional for its services under this agreement a lump sum amount of (\$\$\$\$\$\$) including reimbursables.

OR

The University shall pay the Design Professional for its services under this agreement a lump sum

amount of (\$\$\$\$\$\$) and an amount for reimbursables not to exceed (\$\$\$\$\$\$) without prior approval of the University.

OR

The University shall pay the Design Professional for its services under this agreement on a time and materials basis pursuant to the fee schedule provided in Exhibit A, subject to an amount, including reimbursables, not to exceed (\$\$\$\$\$\$) without prior approval of the University.

2.02 Invoices

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

2.03 Payment

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

3.00 PERFORMANCE

3.01 Scope of Services

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

3.02 Governmental Licenses

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

3.03 Failure to Comply with Agreement

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

3.04 Rejection of Design Professional's Work

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

4.00 OWNERSHIP OF DOCUMENTS

4.01 Property of University

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

4.02 Modifications to Documents after Completion of Project

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

5.00 CONFIDENTIALITY

5.01 Definition

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

5.02 Disclosure to Employees

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

5.03 Period of Confidentiality

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

6.00 SAFETY AND SECURITY

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

7.00 INDEMNIFICATION

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

8.00 INSURANCE

8.01 Coverage

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

- (1) 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 coverage's as defined in Article 8.01.

9.00 AUDITS AND RECORDS

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

10.00 TERMINATION

10.01 Termination with/without Cause

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

10.02 Payment upon Termination

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

11.00 NOTICES

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

12.00 NONASSIGNMENT

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

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

13.00 DISPUTE RESOLUTION

13.01 Jurisdiction

Jurisdiction over all claims, disputes, and other matters in question arising out of or relating to this contract or the breach thereof, shall rest in the Court of Claims of the State of Michigan. No provision of this agreement may be construed as Wayne State University's consent to submit any claim dispute or other matter in question for dispute resolution pursuant to any arbitration or mediation process, whether or not provisions for dispute resolution are included in a document which has been incorporated by reference into this agreement.

13.02 Review

In any claim or dispute by the Design Professional against the University, which cannot be resolved by negotiation, the Design Professional shall submit the dispute in writing for an administrative decision by the University's Senior Vice President for Finance and Administration, within 30 days of the end of negotiations. Any decision of the Senior Vice President shall be made within 45 days of receipt from the Design Professional and is final unless it is challenged by the Design

Professional by filing a lawsuit in the Court of Claims of the State of Michigan within one year of the issuance of the decision. The Design Professional agrees that appeal to the Senior Vice President is a condition precedent to filing suit in the Michigan Court of Claims. The parties may mutually agree at any point in the dispute resolution process to participate in non-binding mediation.

13.03 Continuation of Services During Dispute Resolution

Unless otherwise agreed by the University in writing, and notwithstanding any other rights or obligations of either of the parties under any Contract Documents or Agreement, the Design Professional shall continue with the performance of its services and duties during the pendency of any negotiations or proceedings to resolve any claim or dispute, and the University shall continue to make payments in accordance with the Contract Documents; however, the University shall not be required or obligated to make payments on or against any such claims or disputes during the pendency of any proceeding to resolve such claims or disputes.

14.00 MISCELLANEOUS

14.01 Provisions Surviving Termination of Agreement

The terms and provisions of Article 4, entitled "Ownership of Documents", Article 5, entitled "Confidentiality", Article 7, 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 usual and customary professional care in its efforts to comply with all applicable local, county, state, and federal codes, rules, regulations, and orders, in effect as of the date of the execution of this Agreement.

14.05 Waiver of Compliance

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

14.06 Modification of Agreement

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

14.07 Contract Provisions

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

14.08 Independent Contractor

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

14.09 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.

CONTRACTOR_NAME

WAYNE STATE UNIVERSITY

By: _____

By: _____

William R. Decatur, Vice President
Finance & Business Operations

Name: _____

Date: _____

Title: _____

Date: _____

Rev.1_4.28.09

Rev.2_1.16.2015 Formatting Only-RGP

Rev.3_7-1-2015 Signatory Change