



**STANDARD FORM OF AGREEMENT BETWEEN
OWNER AND CONTRACTOR**

*Where the basis of payment is a
STIPULATED SUM*

THIS AGREEMENT is made effective as of this _____ day of _____ in the year of 20__.

BETWEEN Owner:

THE WASHINGTON UNIVERSITY
(Insert Applicable Address)

And Contractor:

(Insert Name and address)

For the following Project:

PROJECT NUMBER:
PROJECT TITLE:
ACCOUNT NUMBER:
P.O. NUMBER:

Project Description: *(Include detailed description of Project, Scope of Work, Project location/address.)*

The Contract Sum is: \$ _____

Architect is:

(Name and address)

Owner and Contractor agree as follows:

ARTICLE 1. THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, the Washington University General Conditions of Contract and any supplementary conditions, Drawings, Specifications, addenda issued before execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement. These form the contract for the Work, and are as fully a part of the contract as if attached to this Agreement or repeated herein. Capitalized terms not otherwise defined herein shall have the same meaning as those set forth in the Washington University General Conditions of Contract. The Contract Documents represent the entire integrated agreement between the parties hereto and supersede prior negotiations, representations or agreements, either written or oral.

ARTICLE 2. THE WORK OF THIS CONTRACT

Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, or as follows: *(Insert a description of any limitation on the Work to be performed by Contractor)*

ARTICLE 3. DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1. The date of commencement is the date from which the Contract Time of Paragraph 3.2 is measured, and shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice issued by Owner.

DATE OF COMMENCEMENT: _____.

3.2. Contractor shall achieve Substantial Completion of the entire Work not later than *(Insert the calendar date or number of calendar days after the date of commencement. Also insert any requirements for earlier Substantial Completion of certain portions of the Work, if not stated elsewhere in the Contract Documents.)*

(DATE) or (DAYS) CONSECUTIVE CALENDAR DAYS FROM THE DATE OF COMMENCEMENT ABOVE, subject to adjustments of this Contract Time as provided in the Contract Documents.

(Insert provisions, if any, for liquidated damages relating to failure to complete on time.)

OWNER AND CONTRACTOR AGREE THAT TIMELY COMPLETION OF THE WORK IS OF THE ESSENCE IN THIS AGREEMENT.

ARTICLE 4. BASE BID AND CONTRACT SUM

4.1. Contractor’s base bid was as the sum of _____ Dollars (\$ _____)

4.2. Owner shall pay Contractor in current funds for Contractor’s performance of the Work the sum of _____ Dollars (\$ _____) (“Contract Sum”), subject to additions and deductions as provided in the Contract Documents.

4.3. The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by Owner: *(Insert the alternate number, description and amount of accepted alternates.)*

ALTERNATE NO.	DESCRIPTION	AMOUNT

4.4. Additional alternates which may be accepted following execution of the Agreement are listed below. Any alternate that is accepted will be the subject of a Change Order to be executed by Owner and Contractor *(Insert the alternate number, description, amount and the date until which the alterative amount remains valid)*

ALTERNATE NO.	DESCRIPTION	AMOUNT	AMOUNT REMAINS VALID UNTIL

4.5. Unit prices, if any, are as follows: (Either list the agreed upon rates or attach the unit rates as an exhibit and insert the following language: “Unit rates for additional work are set forth in Exhibit ___ attached hereto and incorporated herein by reference.”)

4.6. The Contract Sum **includes** the following negotiated additional items which are hereby accepted by Owner: *(Insert the item, description and amount.)*

DESCRIPTION	AMOUNT

4.7. Labor rates for purposes of change orders are as follows: (Either list the agreed upon labor rates or attach the labor rates as an exhibit and insert the following language: “Labor rates for additional work are set forth in Exhibit ___ attached hereto and incorporated herein by reference.”)

Labor rates cannot be modified without Owner’s written approval. Failure to provide labor rates in a timely manner will result in Owner utilizing its approved labor rates which may be different than Contractor’s labor rates.

4.8. The percentage for General Conditions allowed to Contractor as part of any change order shall be ___ percent (___%).

ARTICLE 5. PROGRESS PAYMENTS

5.1. Applications for payment and progress payments shall be processed in accordance with Article 26 of the General Conditions. Based upon Applications for Payment submitted to Owner by Contractor in accordance with the Contract Documents and Certificates for Payment issued by Architect, Owner shall make progress payments on account of the Contract Sum to Contractor as provided below and elsewhere in the Contract Documents.

5.2. The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

5.3. Each Application for Payment shall be based upon the schedule of values submitted by Contractor in accordance with the Contract Documents (“Schedule of Values”). The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work, as defined in the Contract Documents and be prepared in such form and supported by such data to substantiate its accuracy as may be required. This Schedule of Values, unless objected to by Owner, shall be used as a basis for reviewing Contractor’s Applications for Payment.

5.4. Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

5.5. Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

5.5.1. Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the total Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of ten percent (10%);

5.5.2. Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by Owner, as defined in the Contract Documents, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10%);

5.5.3. Subtract the portion of the Contract Sum allocable to MBE/WBE subcontractors and paid directly by Owner;

5.5.4. Subtract the aggregate of previous payments made by Owner to Contractor; and

5.5.5. Subtract amounts, if any, which Owner may withhold pursuant to the Contract Documents.

5.6. The progress payment amount determined in accordance with Paragraph 5.5 shall be further modified under the following circumstances:

5.6.1. Reduction or limitation of retainage, if any, shall be as follows: *(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Subparagraphs 5.5.1 and 5.5.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)*

5.7. Owner and Contractor agree that payments due under the Contract Documents shall not bear interest.

5.8. Payment by Owner to Contractor of any monies pursuant to this Paragraph shall not constitute a waiver of any remedies which Owner may otherwise have against Contractor for any failure of Contractor to perform in accordance with the Contract Documents.

ARTICLE 6. FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by Owner to Contractor when (1) the Work has been fully performed by Contractor; (2) Contractor has delivered the required documents set forth in Article 33 of the General Conditions; and (3) a final Certificate of Payment has been issued by Architect. Owner shall make such final payment to Contractor not more than thirty (30) days after the issuance of Architect's final Certificate for Payment.

ARTICLE 7. TERMINATION AND SUSPENSION

7.1. Termination by Owner for Cause. Owner may terminate this Agreement, upon seven (7) days' written notice to Contractor, under any of the following circumstances: (a) Contractor fails or neglects to perform its work or services in accordance with the terms of the Contract Documents and fails to commence, continue and make reasonable progress, as determined by Owner, towards the correction of such nonperformance or breach within such seven (7) days after the date of Owner's notice of intent to terminate, or (b) Contractor files or consents to the filing of a petition or complaint commencing a bankruptcy or other insolvency proceeding filed against it, or fails to have a petition or complaint in bankruptcy or other insolvency proceeding filed against it by a third-party dismissed within forty-five (45) days after it is filed, or makes a general assignment for the benefit of its creditors.

7.2. Owner's Remedies Upon Termination for Cause. In the event of termination of this Agreement pursuant to Section 7.1 above, Contractor shall be entitled to no further payments from Owner and shall be responsible to Owner for all costs, expenses and damages incurred by Owner as a result of Contractor's failure to perform the Work in accordance with the Contract Documents as required by the provisions herein, including the costs associated with completing the Work through a replacement contractor. After all such costs, expenses and damages have been paid to Owner, Contractor shall be entitled only to such amounts as may then still be owing to Contractor pursuant to the Contract Documents (after deduction of such costs, expenses and damages) for the Work actually and properly performed by Contractor as of the date of termination, measured by the percentage of completion achieved by Contractor in connection with each applicable work category as set forth in the Schedule of Values.

7.3. Termination by Owner for Convenience. In addition to the reasons set forth in the Section 7.1 above, Owner may terminate this Agreement without cause (at any time) upon seven (7) days'

written notice to Contractor. In the event Owner so terminates this Agreement, Contractor shall be entitled to payment for the Work actually and properly performed by Contractor as of the date of the written notice of termination, measured by the percentage of completion achieved by Contractor in connection with each applicable work category as set forth in the Schedule of Values. Further, in the event Owner so terminates this Agreement, Owner agrees to pay for services, materials and supplies ordered by Contractor prior to the date of written notice of termination, for use in connection with the Project, and necessary for the reasonable discharge of Contractor's responsibilities under this Agreement, or, if applicable, cancellation charges for such services, materials and supplies, to the extent such services, materials and supplies cannot be discontinued by Contractor without cost or penalty upon notice of termination and for the reasonable value (based on purchase or rental as applicable) of any equipment retained by Owner and the reasonable costs of cleanup, removal of debris and removal of equipment, trailers and machinery used at the site of the Project incurred as a result of the termination. Any termination of this Agreement by Owner for cause that is later determined to be unjustified shall be treated as a termination for convenience.

7.4. Suspension by Owner. Owner may order Contractor to suspend, delay or interrupt the Work, in whole or in part, for any reason and for such period of time as Owner may determine. Upon resumption of the work, an adjustment shall be made for any increases in the cost of performance of the Work, including profit on the increased cost of performance resulting from the suspension, delay or interruption ordered by Owner. However, 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 Contractor is responsible; or (2) that an equitable adjustment is made or denied under another provision of the Contract Documents (except as to costs and expenses paid by Contractor to its Subcontractors and materialmen).

7.5. Suspension by Contractor. Contractor may suspend the performance of the Work under this Agreement if Owner fails to make payment to Contractor of any amounts that are not in dispute, within thirty (30) days after such undisputed payment is due, for Work performed by Contractor and accepted by Owner pursuant to the Contract Documents. In such event, Contractor may, upon seven (7) days written notice to Owner, suspend the performance of the Work under this Agreement. Unless such payment is thereafter received by Contractor within seven (7) days, the suspension shall take effect without further notice to Owner. In the event of a suspension of Work pursuant to this Section 7.5, Contractor shall have no liability to Owner for delay or damage caused to Owner because of suspension of the Work, and upon resuming performance, shall be entitled to a Change Order addressing increases in the cost of performance of the Work including profit on the increased cost of performance resulting from such suspension.

7.6. Termination by Contractor. Contractor may terminate this Agreement if (a) Owner fails to make payment to Contractor of any amounts that are not in dispute, within thirty (30) days after suspension pursuant to Section 7.5; (b) Owner suspends the Work for more than one hundred eighty (180) consecutive days; or (c) Owner breaches any other material obligation of Owner herein and fails to correct such breach within thirty (30) days of notice or if such breach cannot be corrected in such thirty (30) day period, Owner fails to commence, continue and make reasonable progress towards the correction within thirty (30) days after such notice. In such event, Contractor may, upon seven (7) days' written notice to Owner, terminate this Agreement, unless, as applicable, such payment is thereafter received by Contractor, the suspension is lifted, the breach is corrected, or Owner has commenced correction and is making reasonable progress towards correcting, which termination shall take effect without further notice to Owner.

7.7. Contractor Remedies Upon Termination. Upon termination of this Agreement pursuant to Section 7.6 above, Owner shall pay Contractor for all Work performed by Contractor up to and including the date of termination and accepted by Owner pursuant to the Contract Documents, which

amount shall be measured by the percentage of completion achieved by Contractor in connection with each applicable work category as set forth in the Schedule of Values. Further, in the event of such termination, Contractor shall be paid for services, materials and supplies ordered prior to the date of termination by Contractor, for use in connection with the Project and necessary for the reasonable discharge of Contractor’s responsibilities under this Agreement or, if applicable, cancellation charges for such services, materials and supplies, to the extent such services, materials and supplies cannot be discontinued by Contractor without cost or penalty upon notice of termination. Notwithstanding the foregoing, Contractor shall have the duty to mitigate all such damages resulting from such termination. Contractor shall be entitled to no other costs, damages or expenses in connection with the termination of this Agreement except as provided by law.

7.8. Sole Remedy. Contractor’s sole and exclusive rights in the event of termination or suspension shall be those set forth in this Article, and Contractor shall be entitled to no additional compensation and shall have no additional or other rights of any kind, type or nature arising out of or under this Agreement by virtue of such termination or suspension.

7.9. Drawings. Upon termination of this Agreement for any reason, Contractor shall within seven (7) days after the date of the notice of termination, deliver to Owner, at no additional charge, a complete set of all original Drawings, Specifications, operations and maintenance manuals, Coordination Drawings, Submittals, shop drawings, and CAD files prepared for the Project by or through Contractor prior to the date of termination. Upon delivery of such documents, Contractor, for itself and on behalf of its Subcontractors, assigns to Owner any intellectual property rights that Contractor or its Subcontractors may have in such original Drawings and Owner shall have the right to use such documents and the ideas and designs contained therein for the completion of the Project and for information and reference in connection with Owner’s use and occupancy of the Project without compensation to Contractor (except as otherwise provided herein) provided such termination has occurred in accordance with this Article 7.

ARTICLE 8. ENUMERATION OF CONTRACT DOCUMENTS

8.1. The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

8.1.1. This Standard Form of Agreement Between Owner and Contractor.

8.1.2. The Washington University General Conditions of Contract and all exhibits attached thereto (the “General Conditions”).

8.1.3. The Supplementary Conditions of the Contract are those contained in the Project Manual dated _____, and are as follows: *(Either list the Supplementary Conditions here or attach a list of the Supplementary Conditions as an exhibit and insert the following language: “The list of the Supplementary Conditions is forth in Exhibit ___ attached hereto and incorporated herein by reference.”)*

Document	Title	Pages	Date

8.1.4. The Specifications are those contained in the Project Manual referenced in 8.1.3, above and are as follows: *(Either list the Specifications here or attach a list of the Specifications as an exhibit and insert the following language: “The list of the Specifications is set forth in Exhibit ___ attached hereto and incorporated herein by reference.”)*

Section	Title	Pages	Date

8.1.5. The Drawings are as follows, and are dated _____ unless a different date is shown below: *(Either list the Drawings here or attach a list of the Drawings as an exhibit and insert the following language: “The list of the Drawings is set forth in Exhibit ___ attached hereto and incorporated herein by reference.”)*

Number	Title	Date

8.1.6. The addenda, if any, are as follows: *(Either list the addenda here or attach a list of the addenda as an exhibit and insert the following language: “The list of the Addenda is set forth in Exhibit ___ attached hereto and incorporated herein by reference.”)*

Number	Date	Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8.

8.1.7. Other documents, if any, forming part of the Contract Documents are as follows: *(The General Conditions provide that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and Contractor’s bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents. Either list here the additional documents which are intended to form part of the Contract Documents or attach a list of the additional documents as an exhibit and insert the following language: “The list of additional documents intended to form part of the Contract Documents is set forth in Exhibit ___ attached hereto and incorporated herein by reference.”)*

ARTICLE 9. EQUAL EMPLOYMENT OPPORTUNITY/NON-DISCRIMINATION

9.1. Contractor warrants that in any contract for Work or services performed in connection with the Project, Contractor (which term for purposes of this **Article 9** only shall include the Contractor, any transferees, lessees, designees, successors and assigns thereof, including without limitation any entity related to the Contractor by one of the relationships described in Section 267(b) of the United States Internal Revenue Code of 1986, as amended), its employees, contractors, subcontractors, and material

suppliers shall comply with all applicable federal, state and local laws, ordinances or regulations governing equal opportunity and nondiscrimination (the "Laws"). Moreover, Contractor shall contractually require its subcontractors and material suppliers to comply with the Laws. Neither Contractor nor any of its subcontractors shall contract with any party known to have been found in violation of the Laws.

Additionally, Contractor shall use reasonable and good faith efforts to ensure that minority and women business enterprises and qualified ethnic minorities and women have a meaningful opportunity to participate in the Work. Contractor will routinely meet with and report its efforts in these areas to Owner. Contractor will work cooperatively with Owner's Office of Supplier Diversity to document its good faith efforts and to address areas of concern, if any.

ARTICLE 10. MISCELLANEOUS PROVISIONS

10.1. This Agreement represents the entire and integrated agreement between the parties hereto and supersedes all prior negotiations, representations or agreements either written or oral. This Agreement may be amended or modified only by a written instrument executed by Owner and Contractor.

10.2. Contractor shall not assign or transfer any interest in this Agreement without the prior written consent of Owner which may be granted or withheld in its sole discretion. Owner may assign and/or transfer its interest in this Agreement at any time (a) without the consent of Contractor to any affiliate of Owner, and/or to any partnership or joint venture in which Owner or its affiliate shall be a general partner or a venturer, and (b) with the consent of Contractor, which consent shall not be unreasonably withheld or delayed, to any other person or entity; provided, however, that in the event of any assignment or transfer pursuant to (a) or (b) above, Owner shall be liable to Contractor for payments to be made hereunder. The term "affiliate" shall be deemed to refer to all entities in a direct or indirect parent, subsidiary or corporate relationship to Owner."

10.3. The paragraph titles, headings and captions contained in this Agreement are used for convenience and reference only and are not intended and shall not in any way enlarge, define, limit or extend the rights or obligations of the parties or affect the meaning or construction of this Agreement or any provision of the Contract Documents.

10.4. In case any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of all remaining provisions shall be not affected.

10.5. The duties and obligations imposed by this Agreement, and the rights and remedies available hereunder, shall be in addition to and not in limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

10.6. This Agreement shall be governed by the laws of the State of Missouri.

FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF THIS CONTRACT PURSUANT TO CHAPTER 429, RSMO. TO AVOID THIS RESULT YOU MAY ASK THIS CONTRACTOR FOR "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIAL TWICE.

(The remainder of this page is intentionally left blank.)

WHEREFORE, this Agreement is entered into as of the day and year first above written.

OWNER

THE WASHINGTON UNIVERSITY

[Name] _____
[Title] _____

CONTRACTOR

[Name] _____
[Title] _____