

# Washington University in St. Louis

## Construction Terms and Conditions

- A. **AGREEMENT.** The Purchase Order, these Terms and Conditions, any special conditions, Owner's Policies, Design Standards and Insurance Requirements (together, the "Agreement") along with Drawings, Specifications, addenda issued before issuance of the Agreement and any subsequently executed Change Order (together with the Agreement, the "Agreement Documents") shall govern the relationship between the parties for the construction project described in the Agreement.
- B. **EXECUTION OF THE WORK.** Contractor shall furnish all labor, material, services, tools, equipment, and fixtures necessary to perform and complete in a good and workmanlike manner the Work described in the Agreement. All Work shall be done in accordance with, all laws, ordinances, building codes, rules and regulations applying to the Work, including, but not limited to, the Americans with Disabilities Act, environmental regulations and the Occupational Safety and Health Act of 1970, as amended. Contractor shall have control over, and be solely responsible for, all means, methods and sequences for performing the Work.
- C. **SCHEDULE.** Work shall be commenced and completed within the time frames set forth in the Agreement. Time is of the essence.
- D. **TAXES, FEES AND PENALTIES.** Contractor shall pay all applicable local, state and federal taxes, license and permit fees, assessments and charges related to the Work. The tax on the sale of such materials or supplies that is available for exemption pursuant to §144.062 RSMo and other applicable regulations shall not be included as part of the price for any Work performed or included in an application for payment. Owner will provide Contractor with a Project Tax Exemption Certificate for the Project in order to obtain the benefits of §144.062 RSMo. To the extent possible under Applicable Laws, Contractor shall minimize any taxes applicable to the Work, including by the use of the Project Tax Exemption Certificate and/or resale certificates, as appropriate. Owner shall not be responsible for any tax liability due to Contractor's neglect to make timely orders, payments, etc. or Contractor's misuse of (or failure to use) the Project Tax Exemption Certificate or misunderstanding of the applicable laws and regulations relating to sales tax exemption in the State of Missouri. Contractor represents that the Project Tax Exemption Certificate shall be used in accordance with §144.062 RSMo and the terms of the Project Tax Exemption Certificate.
- E. **WARRANTIES.** Contractor warrants to Owner that all labor, materials and equipment furnished under the Agreement are of the type and quality required by the Agreement Documents, new (unless otherwise required or permitted by the Agreement Documents) and installed in a good and workmanlike manner and otherwise in accordance with the Agreement Documents. Contractor further warrants that (i) it shall use sound construction principles and practices in the performance of the Work; (ii) it shall apply to the Work a high degree of skill, care, judgment and supervision to assure that the Work is performed properly and in

accordance with the Agreement Documents; and (iii) the Work will be free from defects not inherent in the quality required or permitted.

- F. **SUPERVISION.** Contractor shall provide a competent manager and a competent superintendent for the Project, approved by Owner, who shall be at the Site and working on the Project for layout, direction, coordination, sequencing and all other required activities, for the entire duration of and until final acceptance of the Work. The approved manager or superintendent shall not be discontinued (except upon Final Completion of the Project or in the event of his or her termination of employment or disability or if Owner requests a replacement to resolve incompatible working relationships) and no new individual shall be designated without prior approval of Owner.
- G. **SAFETY.** Contractor is entirely responsible for security and safety at the Site until it is turned over to Owner. Contractor shall comply with Owner's Safety Guidelines for Contractors and all laws of any governmental authorities for the safety of persons or property. Hazardous Materials may not be used without prior notice to and coordination with Owner. Contractor shall be responsible for any Hazardous Materials brought to the Site by Contractor, Subcontractors, suppliers or anyone else for whom Contractor is responsible. Contractors shall dispose of all Hazardous Materials in accordance with all applicable laws and Owner's Safety Guidelines for Contractors relating to disposal of Hazardous Materials. Notwithstanding anything herein to the contrary, asbestos, asbestos containing products or polychlorinated biphenyl (PCB) shall not be allowed on the Site nor be used in the Work.
- H. **MEETINGS.** If requested by Owner, prior to commencing construction, Contractor shall participate in a kick-off meeting with the Owner's project manager or other representative. Additionally, Contractor shall, if required by Owner, hold progress and/or administrative meetings with Owner and all persons or entities then performing the Work on the Project. Such meetings shall be held at times as agreed upon by Contractor and Owner. Contractor shall prepare minutes of both the progress meetings and the administrative meetings with Owner and shall distribute minutes of such meetings to Owner and all attendees.
- I. **INSPECTION.** Owner and its agent(s) shall at all times, have access or Contractor shall provide facilities for access to the Work whenever and wherever it is in preparation or progress.
- J. **COORDINATION AND ACCESS.** At no time shall Contractor hamper Owner's use of any existing facility or interrupt the operation of existing utility systems. All Work shall be carried out in such a manner as to cause the least interference with Owner's continuous operation and/or the work of other contractors. Corridors, doorways and exits, shall be kept free of all materials at all times. If it becomes necessary to interrupt utility service to make a connection, alteration or relocation to such system, Contractor shall prearrange such Work with Owner.
- K. **SUBMITTALS.** If Submittals are required by the Agreement, Submittals shall comply with the Agreement Documents and shall contain such information as required by Owner or Architect. At the time of submission of the Submittal, Contractor, Architect and Owner shall confer and agree upon a reasonable time for Owner's acceptance or response of the Submittal. No portion of the Work for which a Submittal is required shall be purchased, fabricated, manufactured or constructed until Owner or

its agent has approved the respective Submittal, unless otherwise directed to proceed by Owner. Review and approval of Submittals shall not relieve submitting entities of their responsibility to verify all dimensions, field conditions, quantities, and measurements, to coordinate with contiguous parts of the Work and otherwise comply with the Agreement Documents. Approval of Submittals does not authorize changes to Specification requirements. Contractor shall be responsible for any errors in the Submittals.

- L. **OWNER POLICIES.** Contractor and its employees and Contractor's sub-contractors and their employees shall comply with all policies promulgated by Owner and applicable to the Work as set forth on Exhibit A, attached hereto and incorporated herein by reference, along with those policies set forth on Owner's website which may be accessed through <http://www.wustl.edu/faculty-staff/> and <http://www.wustl.edu/policies/>.
- M. **PAYMENT.** Not later than the first (1<sup>st</sup>) day of a month, Contractor shall submit an Application for Payment and/or Invoice, as applicable, to Owner (or to Architect if directed by Owner) along with all supporting documentation including, but not limited to: (i) all documentation necessary to establish clearly that Contractor is entitled to payment of all amounts applied for, (ii) a list of all suppliers and subcontractors to be paid, and the amount to be paid to each, (iii) a signed and unconditional waiver of Contractor's mechanic's lien rights for all labor and material provided through the current Application/Invoice and (iv) conditional waivers of the mechanic's lien rights of all subcontractors and suppliers for whom payment is sought, waiving their lien rights for all labor and material provided. Owner shall pay amounts due under such Application/ Invoice within thirty (30) days of Owner's approval of such Application/invoice. If Contractor submits the Application for Payment and/or Invoice after the first (1<sup>st</sup>) day of the month, Owner shall make payment on account thereof not later than twenty (20) days after approval of such Application/Invoice. By including any item of work in an Application for Payment and/or invoice, Contractor certifies that such item, or the stage of the Work for which payment is requested, has been properly provided and that Contractor is currently entitled to payment therefor under the Agreement Documents. Additionally, Owner may, in its sole and absolute discretion, attempt to make payment to MBE and WBE firms directly within ten (10) days of receipt of the approved application for payment and MBE/WBE direct pay form from Contractor. The form of Owner's MBE/WBE direct pay form is available from Owner upon request.
- N. **LIENS.** Contractor shall keep the premises free from liens arising out of the Work. If a mechanic's lien is filed, Contractor at its sole cost and expense shall cause the same to be removed of record and/or bonded within ten (10) days following demand by Owner or notice to Contractor from any source disclosing the existence of such lien. Contractor shall indemnify, defend, and hold harmless Owner and its officers, trustees and employees from and against any liens, claims and suits on liens, claims for unjust enrichment and/or quantum meruit, or any other similar claims, damages, losses or expenses, including reasonable attorneys' fees, arising out of the Work or resulting from nonpayment by Contractor or by any Subcontractor at any tier. Contractor's obligation shall include any claim, damages, losses or expenses arising out of any one or more employee(s) of Contractor or any Subcontractor, any

material suppliers, any other person or entity in privity of contract with Contractor or any Subcontractor at any tier who performs work or services or provides materials on the Project, or any other person or entity who claims a right to payment by reason of the Work and/or the Project. Such obligation shall not be construed to negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist as to a party or person described in this clause.

- O. **SUBCONTRACTS.** Contractor shall transmit an updated list of all subcontractors to Owner prior to commencement of the Work. Contractor acknowledges that Owner reserves the right to reject Contractor's proposed subcontractors on any reasonable basis, with no adjustment in the Contract Sum. Contractor shall not employ any subcontractor(s) rejected by Owner in writing. Contractor agrees that it is as fully responsible to Owner for the acts and omissions of Contractor's subcontractors and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by Contractor. Nothing contained in the Agreement Documents is intended to or shall create any contractual relationship between any subcontractors of Contractor and Owner.
- P. **CHANGES IN THE WORK.** The Agreement may only be modified by written change order signed by both Owner and Contractor, and Contractor shall have no claim for any extra or additional work unless such work is clearly authorized in writing by Owner before such extra or additional work is performed. Contractor acknowledges that it waives all claims for extra charges for extra or additional work Contractor performs without prior written authorization from Owner
- Q. **COMPLETION.** The Work shall be deemed complete after it complies in all respects with the Agreement Documents, Contractor has completed all punch list items, properly cleaned up its worksite, provided Owner with all required warranties, manuals, and record documents, and otherwise has completed all acts necessary to allow Owner to obtain occupancy or use permits as a result of the Work. Approval of Contractor's Final Application for Payment shall be conditioned upon performance of all of the foregoing obligations and receipt of the documents set forth in Paragraph M.
- R. **CORRECTION OF WORK.** At Owner's request, Contractor shall, at Contractor's expense, promptly remove from the Site all Work identified by Owner as not in accordance with the Agreement Documents, whether incorporated or not; Contractor shall, at Contractor's expense, promptly replace and re-execute all labor, supplies, materials, equipment and/or other facilities in accordance therewith and restore all Work of other contractors and subcontractors destroyed or damaged as a result of such removal, replacement and re-execution. If, within one year of the date of final completion by Contractor or within any longer period of time prescribed by law or by the terms of any applicable special warranty or guarantee required by the Agreement Documents, any of the Work is found by Owner to be erroneous, defective or not in conformance with the Agreement Documents then, at Owner's request, Contractor shall, at Contractor's expense, promptly remove from the premises all Work determined by the Owner to be erroneous, defective or not in accordance with the Agreement Documents. Contractor shall, at Contractor's expense, promptly replace and re-execute all Work in accordance with the Agreement Documents, and shall restore all Work and work of other contractors and

subcontractors damaged as a result of such removal, replacement and re-execution. Notwithstanding the foregoing, neither Owner's payment to Contractor, nor any repair attempts under any warranty or guarantee, nor any provision in the Agreement Documents, shall relieve the Contractor of its responsibility to complete all Work in accordance with the Agreement Documents and to complete the Work free of any defects in material or workmanship. Owner's rights under any guarantee or warranty are not exclusive and Owner shall continue to have all rights available to it at law or equity for Contractor's failure to complete the Work in accordance with the Agreement Documents or Contractor's breach of the Agreement.

- S. **TERMINATION.** Owner may terminate the Agreement with or without cause at any time on not less than seven (7) days prior written notice to Contractor.
- T. **INDEMNITY.** To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless Owner, and its successors, assignees, agents, representatives, employees, officers and trustees from and against all claims, damages, liabilities, injuries, losses and expenses (including but not limited to attorneys' fees and expenses), arising out of or resulting from (a) the willful misconduct or negligent acts or omissions of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable; (b) breach of the Agreement; or (c) Contractor's or a Subcontractors' violation of any laws governing the Work or the Project. Contractor shall, at the Owner's election, diligently defend any claim or suit brought against the Owner or any assignee of the Owner based upon any such injury, death, loss or damage, and shall pay all cost and expenses (including reasonable attorneys' fees and expenses) in connection with such claim or suit, provided that the Owner or such assignee gives Contractor prompt written notice of such claim or suit and provides such reasonable assistance in connection therewith as Contractor may request. Contractor's obligations under this Paragraph T shall not be construed to negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist as to a party or person described in this clause.
- U. **INSURANCE.** Contractor shall comply with Owner's insurance requirements as set forth on Exhibit B, attached hereto and incorporated herein by reference.
- V. **NOTICES.** All notices shall be made to the parties at their respective addresses as set forth in the Agreement.
- W. **AUDIT RECORDS.** Owner shall have the right to audit all charges made pursuant to the Agreement at any time and in its sole discretion. Contractor and its Subcontractors shall keep and maintain, in a commercially reasonable format acceptable to Owner, full and detailed records ("Audit Records") and shall exercise such controls as may be necessary for proper financial management under the Agreement. Contractor shall produce and shall afford Owner and its representatives, access to inspect or reproduce all Audit Records which Owner may deem necessary to substantiate charges made pursuant to the Agreement. Contractor shall provide information and documents responsive to any request by Owner or its representative under this Section W within ten (10) business days of such request. The Contractor shall preserve these records for a period of three years after completion of the Work of the Agreement, or for such longer period as may be required by law.

- X. **EQUAL OPPORTUNITY.** In carrying out its obligations under the Agreement, Contractor shall comply with all federal, state and local laws, ordinances or regulations governing equal opportunity and nondiscrimination (the "Laws"). Moreover, Contractor shall contractually require its employees and subcontractors to comply with the Laws. 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 that is the subject of the agreement. Contractor shall 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.
- Y. **ATTORNEYS' FEES.** If either party asserts a claim, or commences legal action, under or in connection with the Agreement Documents, the prevailing party in such dispute shall be entitled to recover its reasonable attorneys' fees and costs, including, without limitation, attorneys' fees and court costs incurred at the trial and appellate levels, and in any bankruptcy, reorganization, insolvency, or other similar proceedings.
- Z. **JURISDICTION.** The Agreement shall be governed by, and construed in accordance with, the laws of Missouri. Owner and Contractor agree that any dispute between Owner and Contractor shall be resolved in the Circuit Court of the County of St. Louis, Missouri, and the parties stipulate to the jurisdiction and venue of such court.
- AA. **ASSIGNMENT.** The Agreement shall be binding upon Owner and Contractor, and their respective heirs, successors, executors and administrators. Contractor shall not have the power to assign the Agreement without the prior written consent of Owner. Any assignment without the prior written consent of Owner shall be void. No assignment shall relieve Contractor from any obligations herein unless expressly stated in the assignment and approved in writing by Owner.
- BB. **EXHIBITS.** The following Exhibits are attached hereto and incorporated herein by this reference: Exhibit A – Owner Policies; Exhibit B – Construction Contract Insurance Requirements; Exhibit C – Hazardous Materials.
- A. [Exhibit A – Owner Policies \(PDF\)](#)
  - B. [Exhibit B – Construction Contract Insurance Requirements \(PDF\)](#)
  - C. [Exhibit C – Hazardous Materials \(PDF\)](#)