This Agreement is made as of the date set forth below between Wright State University, acting by and through the Contracting Authority, and the Contractor in connection with the Project.

|  |  |  |
| --- | --- | --- |
| **Project Number:** |  | **«insert project number»** |
| **Project Name:** |  | **«insert project name»** |
| Site Address: |  | «insert street address»  «insert city, county» |
|  |  |  |
| **Owner:** |  | **Wright State University** |
| Address: |  | 3640 Colonel Glenn Highway  Dayton, Ohio 45435 |
|  |  |  |
| **Contracting Authority:** |  | **Daniel Papay** |
| Address: |  | 3640 Colonel Glenn Highway  392 University Hall  Dayton, Ohio 45435 |
| **Contractor:** |  | **«insert name»** |
| Contractor’s Principal Contact: |  | «insert name» |
| Address: |  | «insert street address»  «insert city, state zip code» |
|  |  |  |
| **Architect/Engineer (“A/E”):** |  | **«insert name»** |
| A/E’s Principal Contact: |  | «insert name» |
| Address: |  | «insert street address»  «insert city, state zip code» |
|  |  |  |

# - SCOPE OF WORK

## The Contractor shall perform and provide all of the Work described in the Contract Documents. The Contract Documents consist of:

### This Agreement signed by the Owner and the Contractor.

### The Drawings and Specifications prepared by the A/E dated «insert date» and enumerated as follows:

Drawings: «list all drawings with sheet numbers and sheet titles»

Specifications: «list all specification sections with section numbers and section titles»

Addenda: «list all addenda with numbers and issue dates»

Written orders for changes in the Work issued after execution of this Agreement; and other documents, if any, identified as follows: «list other documents and issue dates»

## All Wright State University projects have an EDGE participation goal of **5%**.

# – CONTRACT SUM

## The Owner shall pay the Contractor the Contract Sum for the Contractor’s proper, timely, and complete performance of the Contract. The Contract Sum is **$«insert amount»**, subject to additions and deductions as provided in the Contract Documents. The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work and is comprised of the following:

### Base Bid: $«Insert Base Bid Amount»

### Alternate «Insert Alternates Awarded»: $«Insert Alternate Amount»

### Alternate «Insert Alternates Awarded»: $«Insert Alternate Amount»

### Alternate «Insert Alternates Awarded»: $«Insert Alternate Amount»

### Alternate «Insert Alternates Awarded»: $«Insert Alternate Amount»

### Unit Prices, if any, are as follows:

Portion of Work Units Price

### Allowances, if any, are as follows:

Item Price

# - PAYMENT

## Based on the Contractor’s Application for Payment certified by the A/E, the Owner shall pay the Contractor in accordance with this Agreement as follows:

«Insert timing for payments and provisions for withholding retainage, if any»

## Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate as follows:

«Insert legal prevailing rate at the place of the Project»

# - INSURANCE

## The Contractor shall provide Contractor’s general liability and other insurance as follows:

«Insert specific insurance requirements and limits»

## The Owner shall provide property insurance to cover the value of the Owner’s property, including any Work provided under this Agreement. The Contractor is entitled to receive an increase in Contract Sum equal to the insurance proceeds related to a loss for damage to the Work covered by the Owner’s property insurance.

## The Contractor shall obtain an endorsement to its general liability insurance policy to cover the Contractor’s obligation under this Agreement.

## Each party shall provide certificates of insurance showing their respective coverages prior to commencement of the Work.

## Unless specifically precluded by the Owner's property insurance policy, the Owner and Contractor waive all rights against (1) each other and any of their subcontractors, suppliers, agents and employees, each of the other; and (2) the A/E, A/E's consultants and any of their agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance or other insurance applicable to the Work.

# - CONTRACT TIMES

## The Contract Times are the periods of time established in the following table for the achievement of the associated Milestones:

|  |  |
| --- | --- |
| **Construction Milestone** | **Contract Date** |
| «insert description of interim Milestone – add more rows if necessary – delete if none» | «insert date» |
| Final Acceptance of all Work | «insert date» |

# - KEY PERSONNEL

## The Contractor’s Key Personnel for the Project are:

### «insert name», Project Manager;

### «insert name», General Superintendent.

# - GENERAL PROVISIONS

## The Contract

### The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a written modification in accordance with this Agreement.

## The Work

### The term "Work" means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment, and services provided, or to be provided, by the Contractor to fulfill the Contractor's obligations.

## Intent

### The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

## Ownership and Use of the A/E’s Drawings, Specifications, and Other Documents

### Documents prepared by the A/E are instruments of the A/E's service for use solely with respect to this Project. The A/E shall retain all common law, statutory, and other reserved rights, including the copyright. The Contractor, subcontractors, sub-subcontractors, and material or equipment suppliers are authorized to use and reproduce the instruments of service solely and exclusively for execution of the Work. The instruments of service may not be used for other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the A/E.

## Effectiveness

### It is expressly understood by the Contractor that none of the rights, duties, and obligations described in the Contract Documents shall be valid and enforceable unless the Director of the Office of Budget and Management first certifies that there is a balance in the Owner's appropriation not already encumbered to pay existing obligations.

### Subject to this Agreement, the Contract shall become binding and effective upon execution by the Owner and the Contractor.

### This Agreement may be executed in several counterparts, each of which shall constitute a complete original Agreement, which may be introduced in evidence or used for any other purpose without production of any other counterparts.

## Representations

### The Contractor represents and warrants that it is not subject to an unresolved finding for recovery under Ohio Revised Code (“ORC”) Section 9.24. If this representation and warranty is found to be false, the Contract is void, and the Contractor shall immediately repay to the Owner any funds paid under this Contract.

### The Contractor hereby certifies that neither the Contractor nor any of the Contractor’s partners, officers, directors, shareholders nor the spouses of any such person have made contributions in excess of the limitations specified in ORC Section 3517.13.

### The Contractor, by signature on this Agreement, certifies that it is currently in compliance with, and will continue to adhere to, the requirements of Ohio ethics laws and conflict of interest laws and will take no action inconsistent with those laws.

### The Contractor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Contract. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in this Contract.

# - OWNER

## Information and Services Required of the Owner

### If requested by the Contractor, the Owner shall furnish all necessary surveys and a legal description of the site.

### Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, the Owner shall obtain and pay for other necessary approvals, easements, assessments, and charges.

## Owner’s Right to Stop the Work

### If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made.

## Owner’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 seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, correct such deficiencies. In such case, the Contract Sum shall be adjusted to deduct the cost of correction from payments due the Contractor.

## Owner’s Right to Perform Construction and to Award Separate Contracts

### The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project.

### The Contractor shall coordinate and cooperate with the Owner's own forces and separate contractors employed by the Owner.

### Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

# - CONTRACTOR

## Review of Contract Documents and Field Conditions by Contractor

### Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

### The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies or omissions discovered to the A/E.

## Contractor’s Construction Schedule

### The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and A/E's information a Contractor's construction schedule for the Work.

## 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 for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work.

### The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the A/E the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Owner or A/E have made a timely and reasonable objection.

## Labor and Materials

### Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

### The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

## Warranty

### The Contractor warrants to the Owner and A/E that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents.

## Taxes

### The Contractor shall pay sales, consumer, use, and similar taxes that are legally required when the Contract is executed.

## Prevailing Wages

### The Contractor shall comply with the prevailing wage requirements described under ORC Chapter 4115 that include, without limitation, the requirements described under this Section.

### If the Project is subject to payment of prevailing wage rates, the Contractor shall:

### .1 pay to laborers and mechanics performing Work on the Project the prevailing wage rates of the Project locality, as determined by the Ohio Department of Commerce, Wage and Hour Bureau;

.2 post in a prominent place readily accessible by all workers on the Site, a legible listing of the current classifications of laborers, workers, and mechanics employed under this Contract;

.3 ensure that the rates posted are current and remain posted in legible condition during the period of the Contract; and

.4 not be entitled to an increase in the Contract Sum on account of an increase in prevailing wage rates, except as otherwise provided by Applicable Law.

### 3 The Contractor may access the Ohio Department of Commerce, Wage & Hour Bureau at its website, <http://198.234.41.198/w3/webwh.nsf/pages/PrevailingWageBid>, to obtain the current wage rates.

## Permits, Fees, and Notices

### The Contractor shall obtain and pay for the Building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work.

### The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the A/E in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules and regulations.

## Submittals

### The Contractor shall promptly review, approve in writing and submit to the A/E, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents. Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents.

## Use of Site

### The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents and the Owner.

## Cutting and Patching

### The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

## Cleaning Up

### The Contractor shall keep the premises and surrounding area free from accumulation of debris and t rash related to the Work. At the completion of the Work, the Contractor shall remove its tools, construct ion equipment, machinery, and surplus material; and shall properly dispose of waste materials.

## Indemnification

### To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, A/E, A/E's consultants, agents, and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be Liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

# – A/E

## A/E

### The A/E will provide administration of the Contract as described in the Contract Documents. The A/E will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

### The A/E will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work.

### The A/E 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 A/E will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

### Based on the A/E's observations and evaluations of the Contractor's Application for Payment, the A/E will review and certify the amounts due the Contractor.

### The A/E has authority to reject Work that does not conform to the Contract Documents.

### The A/E will promptly review and approve or take appropriate action upon Contractor's submittals, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

### The A/E will promptly interpret and decide matters concerning performance under and requirements of, the Contract Documents on written request from either the Owner or Contractor.

### Interpretations and decisions of the A/E will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the A/E will endeavor to ensure faithful performance by both Owner and Contractor; will not show partiality to either; and will not be liable for results of Interpretations or decisions rendered in good faith.

### The A/E's duties, responsibilities, and limits of authority as described in the Contract Documents shall not be changed without written consent of the Owner, Contractor, and A/E. Consent shall not be unreasonably withheld.

# – CHANGES IN THE WORK

## The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly in writing. If the Owner and Contractor cannot agree to a change in the Contract Sum, the Owner shall pay the Contractor its actual cost plus reasonable overhead and profit.

## The A/E will have authority to order minor changes in the Work not involving changes in the Contract Sum or the Contract Time and not inconsistent with the intent of the Contract Documents. Such orders shall be in writing and shall be binding on the Owner and Contractor. The Contractor shall carry out such orders promptly.

## If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

# – TIME

## Time limits stated in the Contract Documents are of the essence of the Contract.

## If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, the Contract Time shall be subject to equitable adjustment.

# – PAYMENT AND COMPLETION

## Contract Sum

### The Contract Sum stated in the Agreement, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

## Applications for Payment

### At least ten days before the date established for each progress payment, the Contractor shall submit to the A/E an itemized Application for Payment for Work completed in accordance with the values stated in the Agreement. Such Application shall be supported by data substantiating the Contractor's right to payment as the Owner or A/E may reasonably require. Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

### The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

## Certificates for Payment

### The A/E will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the A/E determines is properly due, or notify the Contractor and Owner in writing of the A/E's reasons for withholding certification in whole or in part.

## Progress Payments

### After the A/E has issued a Certificate for Payment, the Owner shall make payment in the manner provided in the Contract Documents.

### The Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from the Owner, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

### Neither the Owner nor the A/E shall have responsibility for payments to a subcontractor or supplier.

### A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the requirements of the Contract Documents.

## Substantial Completion

### Substantial Completion is 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 Owner can occupy or utilize the Work for its intended use.

### When the Work or designated portion thereof is substantially complete, the A/E will make an inspect ion to determine whether the Work is substantially complete. When the A/E determines that the Work is substantially complete the A/E shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish the responsibilities of the Owner and Contractor, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of the Owner’s acceptance of the Work or designated portion thereof unless otherwise stated in the Contract Documents.

## Final Completion and Final Payment

### Upon receipt of a final Application for Payment, the A/E will inspect the Work. When the A/E finds the Work acceptable and the Contract fully performed, the A/E will promptly issue a final Certificate for Payment.

### Final payment shall not become due until the Contractor submits to the A/E releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests or encumbrances arising out of the Contract.

### Acceptance of final payment by the Contractor, a subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

# – PROTECTION OF PERSONS AND PROPERTY

## The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall take reasonable precautions to prevent damage, injury or loss to employees on the Work, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

# – CORRECTION OF WORK

## The Contractor shall promptly correct Work rejected by the A/e as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected work / including the costs of uncovering, replacement, and additional testing.

## In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Owner’s acceptance of the Work, correct work not conforming to the requirements of the Contract Documents.

## If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with this Agreement.

# – MISCELLANEOUS PROVISIONS

## Assignment of Contract

### Neither party to the Contract shall assign the Contract as a whole without written consent of the other.

## Tests and Inspections

### At the appropriate times, the Contractor shall arrange and bear cost of tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, statutes, ordinances, codes, rules, and regulations, or lawful orders of public authorities.

### If the A/E requires additional testing, the Contractor shall perform those tests.

### The Owner shall bear cost of tests, inspections, or approvals that do not become requirements until after the Contract is executed.

## Governing Law

### The Contract shall be governed by the law of the place where the Project is located.

# – TERMINATION OF THE CONTRACT

## Termination by the Contractor

### If the A/E fails to certify payment as provided in this Agreement for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in this Agreement for a period of 30 days, the Contractor may, upon seven additional days' written notice to the Owner and A/E, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit, and costs incurred by reason of such termination.

## Termination by the Owner for Cause

### The Owner may terminate the Contract if the Contractor

### .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

### .2 fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;

### .3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

### .4 is otherwise guilty of substantial breach of a provision of the Contract Documents.

### When any of the above reasons exist, the Owner, after consultation with the A/E, may without prejudice to any other rights or remedies of the Owner, and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may

### .1 take possession of the site and all materials thereon owned by the Contractor, and

.2 finish the Work by whatever reasonable method the Owner may deem expedient.

### When the Owner terminates the Contract for one of the reasons stated in this Agreement, the Contractor shall not be entitled to receive further payment until the Work is finished.

### If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

## Termination by the Owner for Convenience

### The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

# – OTHER TERMS AND CONDITIONS

«Insert other terms or conditions below»

**SIGNATURES**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  | |  | |
|  |  | |  | |
| **«INSERT CONTRACTOR’S NAME»** | |  | | **Wright State University** | |
|  | |  | |  | |
|  | |  | |  | |
| *Signature* | |  | | *Signature* | |
|  | |  | |  | |
| *Printed Name* | |  | | *Printed Name* | |
|  | |  | |  | |
| *Title* | |  | | *Title* | |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |  | | *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* | |
| *Date* | |  | | *Date* | |

**END OF DOCUMENT**