



**CONSTRUCTION, MAINTENANCE, AND REPAIR
SUPPLEMENTAL TERMS: AD-02
ADDENDUM TO WSU TERMS AND CONDITIONS
OF PURCHASES - SERVICES AND GOODS**

1. DEFINITIONS

A term with its initial letter(s) capitalized is a defined term and will have the meaning ascribed to it in these CM&R Terms; provided, however, that if not defined in these CM&R Terms, it will have the meaning ascribed to in the Standard Terms.

- 1.1 "Capital Improvement Project" means a construction project for new construction, building additions, remodeling, demolition of existing structures, or rehabilitation and repair.
- 1.2 "CM&R Services" means Services as defined under the Standard Terms that involve Construction, Maintenance, or Repair Services as defined herein.
- 1.3 "CM&R Project" means any project where CM&R Services are provided.
- 1.4 "CM&R Terms" means these Construction, Maintenance and Repair Supplemental Terms.
- 1.5 "Construction Services" means the services performed to carry out Capital Improvement Projects, including labor, materials, equipment, and other construction related services or Goods.
- 1.6 "Contract" is defined in the Standard Terms, and for purposes of these CM&R Terms is formed by the Contract Documents as defined herein.
- 1.7 "Contract Documents" means the Order, any attachments to the Order, Drawings, Specifications, any WSU bid solicitation documents, and any addenda, amendments, or change orders, if signed by the Parties.
- 1.8 "Contractor" means the "Seller" as defined in the Standard Terms and, for purposes of these CM&R Terms, shall also mean the person, firm, organization, governmental entity, or company identified on the Order supplying the CM&R Services.
- 1.9 "Drawings" means the the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.
- 1.10 "Maintenance Services" means the provision of services and any related Goods to preserve the condition of an existing facility, structure, or equipment.
- 1.11 "Repair Services" means the provision of services and any related Goods to restore the condition of an existing facility, structure, or equipment.
- 1.12 "Specifications" means that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
- 1.13 "Standard Terms" means the WSU Standard Terms and Conditions of Purchases – Services and Goods.
- 1.14 "Terms" means these CM&R Terms and the Standard Terms, and any other applicable Supplemental Terms that govern the CM&R Project.
- 1.15 "Work" means the CM&R Services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment, services, and related Goods provided or to be provided

by the Contractor to fulfill the Contractor's obligations under the Contract. The Work may constitute the whole or a part of the CM&R Project.

2. APPLICABILITY OF TERMS

- 2.1 These CM&R Terms constitute Supplemental Terms, as that phrase is defined in the Standard Terms, which shall supplement the Standard Terms, as hereby incorporated by reference herein.
- 2.2 To the extent that these CM&R Terms conflict with the Terms, these CM&R Terms shall apply.
- 2.3 These CM&R Terms shall apply to CM&R Services that are not subject to a separate written agreement, duly executed by both Contractor and WSU (referred to individually as "Party" and collectively as "Parties"). If there is such an agreement, then those terms shall be the terms that govern the transaction between the Parties. In the absence of such a written agreement, then these CM&R Terms shall govern.
- 2.4 The Standard Terms and CM&R Terms are available for download on the Website. WSU may change the Standard Terms and these CM&R Terms at any time in its sole discretion. Such changes shall be effective upon posting of such updates on the Website. Contractor is responsible for periodically visiting the Website to review changes to the Terms, if any.
- 2.5 Contractor warrants it has fully reviewed, understands, and can fulfill its obligations under these Terms and agrees to be bound by these Terms and any further changes to them.

3. LICENSES

Contractor and all subcontractors shall be lawfully licensed to perform the Work, if such license is required in the jurisdiction where the Project is located.

4. REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

5. OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

- 5.1 **Work Product.** All Drawings, Specifications, other documents, including those in electronic form, and the architectural works (as defined by 17 U.S.C. Section 101) embodied thereby, prepared in connection with the CM&R Project by the Architect, WSU, Contractor, subcontractor, any sub-subcontractor, consultant, supplier, materialman, or other contractor and copies thereof furnished by any of them are and shall remain WSU's property upon creation, and WSU shall hold all common law, statutory and other rights in them, including all copyright rights (collectively "**Work Product**"); provided, however, that Work Product shall



not include (a) administrative information developed by the Contractor, its subcontractors, sub-subcontractors, consultants, suppliers, materialmen, or other contractors in the ordinary course of business (e.g., accounting records, internal memorandums and the like), (b) means or methods of Contractor, its subcontractors, sub-subcontractors, consultants, suppliers, materialmen, or other contractors which relate to its general services and which are not specifically related to the CM&R Project or the CM&R Services provided under this Contract, or (c) pre-existing proprietary information of the Contractor, its subcontractors, sub-subcontractors, consultants, suppliers, materialmen, or other contractors (the foregoing (b) and (c) collectively being "Contractor Proprietary Information").

- 5.2 **Assignment, Grant, Transfer and Conveyance.** Contractor agrees and does hereby assign, grant, transfer and convey to WSU, its successors and assigns, Contractor's entire right, title, interest and ownership in and to such Work Product, including, without limitation, all rights relating to copyright arising under 17 U.S.C. Section 101 et. seq. and any and all successors and assigns shall own Contractor's right, title and interest in and to, including the right to use, reproduce, make derivative works, distribute by sale, rental, lease or lending or by other transfer of ownership, to perform publicly, and to display, all such Work Product whether or not such Work Product constitutes a "work made for hire" as defined in 17 U.S.C. Section 201 (b). In addition, Contractor hereby grants WSU a fully paid-up, royalty free, perpetual, assignable, non-exclusive license to use, copy, modify, create derivative works from, and distribute to third parties Contractor Proprietary Information in connection with the exercise of WSU's rights in the Work Product and in the operation, maintenance, repair, renovation, expansion, replacement and modification of the buildings and other Work which are the subject matter of the Project (whether by WSU or a third party). Contractor shall use diligent efforts to obtain similar assignments, confirmations and licenses from all of its subcontractors, sub-subcontractors, materialmen and suppliers, and Contractor shall promptly inform WSU of any inability to obtain the assignments, confirmations and licenses required by this Section 5. The Work Product is to be used only by the Contractor, its subcontractors, sub-subcontractors, suppliers and materialmen with respect to this CM&R Project and is not to be used on any other project. The Contractor, subcontractors, sub-subcontractors, and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Work Product prepared by the architect appropriate to and for use in the execution of their Work under the Contract Documents. Submission or distribution to meet official regulatory requirements or for other purposes in connection with the CM&R

Project is not to be construed as publication in derogation of WSU's copyright or other reserved right. Contractor shall deliver all copies of the Work Product to WSU upon the earlier to occur of WSU's request, completion of the Work, or termination of the Contract.

- 5.3 **Limited Authorization for Use and Reproduction.** The Contractor, subcontractors, sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, subcontractors, sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of WSU, Architect and the Architect's consultants.
- 5.4 **Retention of Rights.** WSU may provide the Contractor with pre-existing drawings, documents, designs, and other information which the Contractor may use in connection with performance of the Work under this Contract. The Contractor confirms and agrees that WSU, or, where applicable, the Architect, has and shall retain all rights, title, and interest in and to such drawings, documents, designs and information, including, without limitation, any copyright or other Intellectual Property rights, and that by use of such drawings, documents, designs and information, the Contractor shall not acquire any right, title, or interest in such drawings, documents, designs and information, including, without limitation, any copyright or other Intellectual Property rights.

6. DIGITAL DATA USE AND TRANSMISSION

The Parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

7. WSU'S RIGHT TO STOP THE WORK

7.1 Suspension for Cause.

- a. If Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents; or fails to carry out the Work in accordance with the Contract Documents; or fails or refuses to provide a sufficient amount of properly supervised and coordinated labor materials or equipment so as to be able to complete the Work within the Contract time; or fails to remove and discharge within seven (7) days, any lien filed upon the CM&R Project property by anyone claiming by, through, or under Contractor; or disregards the instructions of WSU or its architects or engineers when based upon the requirements of the Contract



Documents, WSU may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; provided, however, the right of WSU to stop the Work shall not give rise to a duty on the part of WSU to exercise this right for the benefit of Contractor or any other person or entity, and any delay resulting from such work stoppage shall not extend the Contract time or any milestone date in the Work on the Project.

- b. If suspension of the Work is warranted by reason of unforeseen conditions which may adversely affect the Work if such Work were continued, WSU may suspend the Work by written notice to the Contractor. In such event, the time for delivery of the Contract may be adjusted accordingly, and the Contract sum may be adjusted to the extent, if any, that additional costs are incurred by reason of such suspension. If the Contractor, in its reasonable judgment, believes a suspension is warranted by unforeseen circumstances which may adversely affect the Work if the Work were continued, the Contractor shall immediately notify WSU of such belief and describe in detail the particular reasons therefore.

7.2 Suspension for Convenience.

- a. WSU may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as WSU may determine.
- b. The Contract sum and Contract time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 7.2. Adjustment of the Contract sum shall include profit. No adjustment shall be made to the extent that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible.

8. WSU'S RIGHT TO CARRY OUT THE WORK

If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from WSU to commence and continue correction of such default or neglect with diligence and promptness, WSU may, without prejudice to other remedies WSU may have, correct such default or neglect. Such action by WSU may be charged to the Contractor. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to WSU. If the Contractor disagrees with the actions of WSU, or the amounts claimed as costs to WSU, the Contractor may submit a claim pursuant to the Alternative Dispute Resolution process set forth in these CM&R Terms.

9. ALTERNATIVE DISPUTE RESOLUTION.

- 9.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, may be resolved

through alternative dispute resolution as set forth in this section.

- 9.2 The Parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be administered by a third party mutually selected by the parties who has demonstrated experience in construction matters.
- 9.3 A request for mediation shall be made in writing, delivered to the other party to the Contract, and submitted to the person or entity administering the mediation.
- 9.4 The request may be made concurrently with the filing of binding legal proceedings but, in such event, mediation shall proceed in advance of legal proceedings, which the Parties agree to seek a stay of pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.
- 9.5 The parties shall share the mediator's fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

10. MOST FAVORED CUSTOMER

WSU and Contractor agree that Section 7 ("Most Favored Customer") of the Standard Terms does not apply to CM&R Services.

11. PAYMENT

In addition to the requirements under Section 10 ("Payment") of the Standard Terms, Contractor agrees to the following:

- 11.1 Unless otherwise provided in the Contract Documents, 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 WSU, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to WSU to establish WSU's title to such materials and equipment, free and clear of any liens or encumbrances, or otherwise protect WSU's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.
- 11.2 The Contractor warrants that title to all Work covered by a request for payment will pass to WSU upon incorporation in the Work or at the time of payment, whichever occurs first. The Contractor further warrants that upon submittal of a request for payment all Work that has been previously approved for payment and payments have been received from WSU shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security



interests, or encumbrances, in favor of the Contractor or entities that provided labor, materials, and equipment relating to the Work.

- 11.3 If requested by WSU, or if the Project is bid to exceed \$100,000, each request for payment shall be accompanied by a duly executed, conditional waiver of liens from the Contractor, or from subcontractor if Work was performed by a subcontractor, for all amounts included in such request for payment unconditional waivers of liens from the Contractor, or from subcontractor if Work was performed by a subcontractor, for any amounts previously.

12. TERMINATION

WSU and Contractor agree that Section 14 (“Termination”) of the Standard Terms does not apply to CM&R Services. Instead, the following clauses regarding termination apply to CM&R Services:

12.1 Termination by WSU for Cause.

- a. WSU may terminate the Work for Cause if the Contractor: (a) repeatedly refuses or fails to supply proper materials or enough properly skilled workers; (b) fails to make payment to suppliers or Subcontractors in accordance with the respective agreements between the Contractor and the subcontractors or suppliers; (c) repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or (d) otherwise is guilty of substantial breach of a provision of the Contract Documents.
- b. When any of the reasons described in Section 12.1(a) exist in WSU’s discretion, and as certified by the Vice President for Finance and Administration, WSU may, without prejudice to any other rights or remedies of WSU and after giving Contractor seven days’ notice, terminate employment of Contractor and may: (a) exclude Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor; (b) accept assignment of subcontracts; and (c) finish the Work by whatever reasonable method WSU may deem expedient. WSU shall furnish to Contractor a detailed accounting of the costs incurred by WSU in finishing the Work, if requested by Contractor.
- c. When WSU terminates the Contract for Cause, Contractor shall not be entitled to receive further payment until the Work is finished.
- d. When WSU terminates the Contract for Cause, if the unpaid balance of Contractor’s final invoice exceeds WSU’s costs of finishing the Work, including costs and damages incurred by WSU, such excess shall be paid to Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to WSU.

12.2 Termination by WSU for Convenience.

- a. WSU may terminate the Work for WSU’s convenience and without cause. Upon receipt of notice from WSU of such termination for WSU’s convenience, the Contractor

shall cease all operations, take all actions necessary for the protection and preservation of the Work, and, except for the Work directed to be performed prior to the effective date of the termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

- b. When WSU terminates for convenience, WSU shall pay the Contractor for Work properly executed and costs incurred by reason of the termination, including costs attributable to termination of Subcontracts.

13. CONTRACTOR’S WARRANTIES

In addition to the requirements under Section 15 (“Seller’s Warranties”) of the Standard Terms, Contractor warrants that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor’s warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

14. FORCE MAJEURE

WSU and Contractor agree that Section 17 (“Force Majeure”) of the Standard Terms apply to CM&R Services, but further agree, for the purposes of CM&R Services only, a Force Majeure Event, as that term is defined in Section 17 of the Standard Terms will not include Seller’s economic hardship, changes in market conditions, or instances where Contractor breaches any project labor or “no strike” agreement.

15. ASSIGNMENT AND SUBCONTRACTING

WSU and Contractor agree that Section 30 (“Assignment and Subcontracting”) of the Standard Terms does not apply to CM&R Services. Instead, the following clauses apply:

- 15.1 Contractor shall not be entitled to assign the Contract without the prior written consent of WSU.
- 15.2 Contractor may subcontract the provision of any Goods, CM&R Services or portion thereof, including any ancillary or related services, to any person or entity.
- 15.3 Contractor must notify WSU of any such subcontract.
- 15.4 Any subcontract shall be between Contractor and the subcontractor and shall be subject to these CM&R Terms and the Standard Terms.
- 15.5 Contractor is responsible for the performance or non-performance of any subcontractor and will indemnify, defend, and hold harmless WSU from and against all claims, actions, losses, damages, costs, and expenses (including reasonable attorneys’ fees) arising from any



subcontractor's acts or omissions and against all claims, actions, losses, damages, costs, and expenses (including reasonable attorneys' fees) brought by subcontractor for nonpayment by Contractor.

16. SUBSTANTIAL COMPLETION

- 16.1 Notwithstanding any contrary provisions in the Contract Documents, the term "Substantial Completion" or "Date of Substantial Completion" relating to the completion of the entire Work shall mean the date when (i) construction of all of the Work is sufficiently complete in accordance with the Contract Documents, so that WSU can occupy or use the Project for its intended purpose, (ii) the Contractor and architect, if any, have prepared and WSU has approved a punch list of Work remaining to be performed, and (iii) a Temporary Certificate of Occupancy or equivalent document, if required, has been issued by appropriate authorities.
- 16.2 To the extent that a Temporary Certificate of Occupancy has not been obtained due to no fault of the Contractor, the Date of Substantial Completion will be determined without reference to item (iii) under Section 16.1.
- 16.3 Except to the extent constituting punch list Work, other conditions precedent to Substantial Completion include, but are not limited to: (a) completion of the exterior elements (site cleanup and removal, paving parking); interior spaces; mechanical, electrical and plumbing systems; common areas; and fire and life safety systems; (b) Project must be move-in clean; and (c) verification that Contractor has complied with all other requirements of the Contract Documents and all reasonable requirements of WSU in regards to achieving Substantial Completion.
- 16.4 When the Contractor considers that the Work, or a portion thereof which WSU agrees in writing to accept separately, is substantially complete, the Contractor shall prepare and submit to WSU, or its designated representative, a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.
- 16.5 Upon receipt of the Contractor's list, WSU, or its designated representative, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the WSU can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by WSU, or its designated representative. In such case, the Contractor shall then submit a request for

another inspection to determine Substantial Completion.

- 16.6 When the Work or a designated portion thereof is substantially complete, WSU, or its designated representative, will prepare a Certificate of Substantial Completion, including the punch list of items to be corrected, that will establish the date of Final Completion; establish responsibilities of WSU and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and 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 Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.
- 16.7 The Certificate of Substantial Completion shall not be effective unless and until signed by WSU and Contractor, which shall represent their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, WSU shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

17. MECHANIC'S LIENS

- 17.1 If, at any time, any liens are recorded or established for labor performed or materials or equipment furnished or delivered to or for the Work by Contractor, or subcontractor if Work is performed by a subcontractor, (each, a "Mechanic's Lien"), the Contractor, within fifteen (15) business days after the date of the recording or establishment of such Mechanic's Lien shall post a bond with the court or file the necessary paperwork to obtain the discharge and release of record thereof. The Contractor also shall indemnify, defend and hold WSU and its lender, if any, harmless from and against all claims, damages, fines, penalties, losses and expenses, including reasonable attorney's fees and expert witness fees, arising out of the Mechanic's Lien and any suit to enforce it. The Contractor's obligations under this Section 17, however, do not apply to the extent that the Mechanic's Lien is the result of WSU's nonpayment of an amount contained in a previously submitted request for payment over which no good-faith dispute exists between WSU and the Contractor. The obligations of the Contractor under this Section 17 shall survive the completion of the Work.
- 17.2 The Contractor shall promptly advise WSU of any action, administrative or legal proceeding to which this Section 17 may apply, and the Contractor, at the Contractor's expense, shall assume on behalf of WSU and WSU's lender, if any, and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to WSU and its lender, if any, provided that WSU, and



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WSU's lender, if any, shall have the right to be represented therein by advisory counsel of their own selection and at their own expense. In the event of failure by the Contractor to fully perform in accordance with this paragraph, WSU or its lender, if any, at the option of either of them, and without relieving the Contractor of its obligations hereunder, may so perform, but all costs and expenses including actual attorneys' fees and expert fees so incurred by WSU or its lender, if any, in that event shall be reimbursed by the Contractor to WSU or its lender, if any, together with interest on the same from the date that any such expense was paid by WSU or its lender, if any, until reimbursed by the Contractor, at the rate of interest as provided in the Contract Documents. The obligations of the Contractor under this Section 17 shall survive the completion of the Work and the expiration or termination of the Contract.