

PROJECT NEUTRAL  
THREE-PARTY AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into between the REGENTS of the UNIVERSITY OF WASHINGTON, hereinafter called the "University"; \_\_\_\_\_, hereinafter called the "Project Neutral," and \_\_\_\_\_, hereinafter called the "Contractor". This Agreement shall be effective on the last date set forth on the signature page.

RECITALS

1. The University is engaged in the construction of the \_\_\_\_\_ project and desires to provide for an expeditious, non-litigious method for informally resolving disputes which arise during the course of construction.

2. The University and the Contractor desire to engage the services of the Project Neutral.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, or attached and incorporated and made a part hereof, the parties hereto agree as follows:

I. DESCRIPTION OF WORK

In order to assist in the resolution of issues and disputes between Contractor and the University, the Contractor and the University agree to the utilization of a Project Neutral. The intent of the utilization of the Project Neutral is to informally consider issues and disputes placed before it in a fair and impartial manner, and provide oral guidance for resolution to both the University and Contractor. The Project Neutral shall perform the services necessary in accordance with the following Scope of Work and the Appendix to this Agreement.

II. SCOPE OF WORK

The Scope of Work of the Project Neutral includes, but is not limited to, the following items of work:

A. Informal Guidance Meetings

The Project Neutral will attend monthly construction progress meetings and be available on relatively short notice to meet with the University and the Contractor (hereinafter both referred to as the "party" or "parties") to provide informal non-binding guidance for the resolution of any issue arising during the project work. The University or the Contractor may request such a meeting through telephonic, facsimile, or electronic communications. The Project Neutral shall contact the other party to obtain approval for any informal procedures requested. Guidance provided during informal meetings is not admissible in a subsequent formal hearing in front of a Disputes Review Board ("DRB") or litigation. These meetings will be very informal discussions with input and comments

encouraged from all parties. Initial impressions and guidance will be provided by the Project Neutral orally. No written recommendations will be made. All communication and materials submitted during this informal process shall be privileged and confidential pursuant to chapter 7.07 RCW.

B. Construction Site Visits

Upon the request of the University and the Contractor, the Project Neutral shall visit the Project site to become familiar with the construction activities and the work in progress.

III. UNIVERSITY'S RESPONSIBILITY

The University shall furnish the following services and items.

A. Contract Related Documents

The University shall furnish the Project Neutral with a copy of the Contract Documents, change orders, written instructions issued by the University to Contractor, or other documents pertinent to the performance of the Work and the issue to be reviewed.

B. Cost Records

The University will maintain complete cost records for the expenses of the Project Neutral and these records will be available for inspection by the Contractor.

IV. CONTRACTOR'S RESPONSIBILITY

The Contractor shall furnish the following services and items.

A. Contractor's Documents

The Contractor shall furnish the Project Neutral with documents that the Contractor believes are pertinent to the issue under review.

V. PERIOD OF PERFORMANCE

The services of the Project Neutral under this Agreement shall terminate upon the date of Final Acceptance as established by the University or at some other date as mutually agreed upon by the University and the Contractor.

VI. PAYMENT

The cost of services provided under this Agreement by the Project Neutral shall be shared equally by the University and the Contractor. Payments made as provided hereinafter shall be full compensation for work performed or services rendered, and for all labor, materials, supplies, equipment and incidentals necessary for provision of services hereunder.

A. All-Inclusive Rate Payment

1. Fee

Payment for services rendered as a Project Neutral shall be at the hourly billing rate not to exceed \$165.00. This hourly rate includes all direct labor costs, overhead and profit.

2. Direct Non-Salary Costs

Direct non-salary costs will be reimbursed at the actual cost to the Project Neutral. Non-salary charges may include, but are not limited to, local travel, printing, long-distance telephone, supplies, etc. Automobile mileage will be reimbursed at the rate in effect at the time the trip is taken and shall be supported by the date and time of each trip with origin and destination of such trips. The current rate is 57.5 cents per mile which will remain in effect until changed in writing by the parties.

Subsistence and lodging expenses, including expenses for high cost cities, will be reimbursed in accordance with UW Travel Office and General Services Administration Per Diem Rates (<http://www.gsa.gov/portal/category/104711>).

The billing for non-salary costs, directly identifiable with the Project, shall be an itemized listing of the charges supported by the original bills, invoices, expense accounts and miscellaneous supporting data retained by the Project Neutral. Copies of the original supporting documents shall be provided to the University when submitting an invoice for payment of these services.

B. Payments

The Project Neutral shall submit invoices to the University for partial payment for work completed not more often than once per month during the progress of the Work. Such invoices shall be on forms provided by the University and accompanied by a general description of activities performed during this billing period, and shall include copies of the original supporting documents for non-salary items. The value of the work accomplished for partial payment shall be established by the billing from the Project Neutral, itemizing direct payroll (fee) and direct non-salary costs. These equally shared expenses shall be billed to and paid by Owner. Contractor's share will be deducted from monies due the Contractor from the Owner by issuance of a Change Order at Final Completion.

C. Inspection

The Project Neutral shall keep available for inspection by representatives of the University and the Contractor, for a period of six years after final payment, the cost records and accounts pertaining to this Agreement. If any litigation, claim or audit arising out of, in connection with, or related to this contract is initiated before the expiration of the six-year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

VII. ASSIGNMENT OF TASKS OR WORK

The Project Neutral shall not assign any of the work of this Agreement.

#### VIII. TERMINATION OF PROJECT NEUTRAL

The Project Neutral may terminate its services by providing fifteen (15) calendar days written notice to the University. The University and the Contractor may terminate the services of the Project Neutral for cause.

#### IX. LEGAL RELATIONS

The Project Neutral performs his/her duties in the capacity of an independent contractor and not as an agent or employee of either the University or Contractor.

#### X. DISPUTES

Any dispute between the parties hereto, arising out of the work of the Project Neutral or other terms of this Agreement, which cannot be resolved by negotiation and mutual concurrence between the parties, shall be referred to the Superior Court of the State of Washington in King County as provided in Section X following.

#### XI. VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, such action shall be initiated in the Superior Court of the State of Washington, situated in King County. This Agreement and the rights of the parties hereunder shall be governed by the laws of the state of Washington. The Project Neutral hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, situated in King County.

#### XII. HOLD HARMLESS

With respect to the performance of services under this Agreement, the Project Neutral is immune from suit by the Owner and by the Contractor and their respective agents, officers, successors, and assigns in any civil action based upon any acts or omissions except in cases of willful or wanton or bad faith misconduct.

To the extent allowed by law, and except in cases involving willful and wanton or bad faith misconduct by the Project Neutral, the Project Neutral shall be indemnified and held harmless by the Owner and by the Contractor for any claims, losses, demands, costs and damages (including reasonable attorney's fees) arising out of or related to the Project Neutral carrying out its services under this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by having their authorized representatives affix their signatures below.

PROJECT NEUTRAL

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CONTRACTOR

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

UNIVERSITY OF WASHINGTON

By: \_\_\_\_\_

Name: \_\_\_\_\_

Director, Capital Planning and Development

Date: \_\_\_\_\_

## APPENDIX

### OBJECTIVE:

The principal objective of the Project Neutral is to assist in the resolution of disputes without resort to litigation. If this objective is achieved, such disputes can be resolved promptly with minimum expense, and with minimum disruption to the administration and performance of the Work. It is not intended for the University or Contractor to abandon their responsibility to amicably and fairly settle their differences without resorting to the services of a Project Neutral.

### RESPONSIBILITY OF THE PROJECT NEUTRAL

The Project Neutral's responsibility is to facilitate the prompt and fair resolution of issues and disputes between Contractor and the University arising from performance of the Project work in an informal manner. The Project Neutral shall strive, whenever possible, to act as a mediator, seeking mutual agreement.

Primarily, the Project Neutral will consider disputes involving interpretation of the Plans, Specifications, delays, acceleration of the Work, scheduling, classification of extra work, changed conditions, design changes and other similar matters.

The Project Neutral will refrain from giving any advice or consultative services to either party. The Project Neutral will act in a completely independent and neutral manner and will have no consultative or business connections with either party during the course of his/her service as the Project Neutral.

If a DRB is convened at any time during the Project, the Project Neutral will serve as Chairperson of the DRB unless the parties otherwise agree.

### INFORMAL GUIDANCE MEETINGS

The Project Neutral will be available on relatively short notice to meet with the parties to provide informal non-binding guidance regarding the dispute. The meeting(s) will be informal discussions with input and comment from the parties. The Project Neutral will provide guidance orally. No written recommendation will be made.

### CONSTRUCTION PROGRESS MEETINGS

The Project Neutral will attend and participate in one construction progress meeting each month at or near the Work site for the duration of the Project during which the Owner and Contractor shall conduct a round table discussion about the project, as described below. The Project Neutral may participate in and ask questions regarding the discussion and, if requested, provide informal guidance for resolution of disputes.

The agenda for each round table discussion will generally be as follows:

- (1) Opening remarks by the University's Representative.

- (2) A description by Contractor of Work accomplished since the last meeting; the current status of the work, and a forecast for the coming period.
- (3) An outline, by Contractor, of potential problems and description of proposed solutions.
- (4) An outline, by the University's Project Architect or Engineer, of the status of the Work.
- (5) A brief description of potential claims or disputes known to the parties.
- (6) A summary of the status of past disputes and claims.

If requested by either the Owner or Contractor, the Contractor and its representatives will attend additional meetings with the Project Neutral, along with representatives from the Owner and the University's Project Architect or Engineer.

The Contractor will record and distribute minutes of all meetings and circulate them for revision and/or approval by all concerned.

The Contractor will provide a site tour to the Project Neutral before or after each monthly construction progress meeting. The site tour will cover all active segments of the Work, the Project Neutral being accompanied by both University and Contractor personnel.