**Washington State University**

**AGREEMENT FOR GIFT IN PLACE**

**AND RIGHT OF ENTRY**

THIS AGREEMENT is made by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (DONOR) and Washington State University (UNIVERSITY) for the donation and acceptance of a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to be constructed by DONOR as a Gift in Place.

WHEREAS, DONOR has agreed to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as a gift to the UNIVERSITY, and

WHEREAS, DONOR is a private \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ who is interested in providing \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to benefit the UNIVERSITY, and

WHEREAS, the UNIVERSITY is in need of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WHEREAS, DONOR has agreed to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WHEREAS, the UNIVERSITY has agreed to accept the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

**1. INTRODUCTION.** This AGREEMENT sets forth the terms and conditions to facilitate a Gift in Place to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (PROJECT). The PROJECT will be constructed by DONOR as a Gift in Place.

**2. RIGHT OF ENTRY.** The UNIVERSITY hereby grants to DONOR a nonexclusive, limited, terminable right and license to enter and use the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as provided herein to construct the PROJECT pursuant to the terms and conditions set forth in this AGREEMENT. This right of entry shall commence when construction commences and terminate when the PROJECT is complete and the UNIVERSITY issues a certificate of final acceptance.

**3. SCOPE OF PROJECT.** The Scope of the PROJECT and its design, plans and specifications are described in the attached Exhibit A (DESIGN).

**4. PERMITS.** DONOR shall obtain and pay for all permits required for and/or related to the PROJECT. Any and all plans, specifications, or applications submitted in the permit process shall be reviewed and approved in writing by the UNIVERSITY prior to submittal. Prior to the UNIVERSITY’s final acceptance of the PROJECT, DONOR shall remit to the UNIVERSITY signed inspection cards and record drawings.

**5. DONOR RESPONSIBILITIES.**

A. Design. DONOR at its sole cost and expense shall design the PROJECT. All design work shall be prepared by professional architects, engineers, or other qualified professionals licensed in the state of Washington, and bear the licensed professional’s stamp of approval. DONOR shall develop and pay for all plans and specifications necessary for completion of the PROJECT. The UNIVERSITY shall review and approve the DESIGN for compliance with the UNIVERSITY’s needs at appropriate phases. The DESIGN must be approved by the UNIVERSITY’s Vice President for Finance and Administration or his designee and the DONOR before construction. Any UNIVERSITY or other governmental agency comments shall be incorporated into the DESIGN.

B. Construction. DONOR shall be responsible, at its sole cost and expense, for construction of the PROJECT. The UNIVERSITY, through its project managers, shall monitor and review the construction of the PROJECT to ensure the PROJECT is completed in accordance with this AGREEMENT. If DONOR fails to complete the PROJECT in accordance with this AGREEMENT, the UNIVERSITY may complete the PROJECT and charge the DONOR for any costs.

C. Coordination. DONOR is aware that all utility outages must be scheduled at least two (2) weeks in advance with the UNIVERSITY, and that only the UNIVERSITY’s personnel will shut down and restart service utilities, at no cost to DONOR. DONOR acknowledges that the UNIVERSITY may be working in areas adjacent to the PROJECT and DONOR agrees to coordinate its work with appropriate UNIVERSITY personnel or any UNIVERSITY contractor.

D. Compliance with Laws. DONOR and any contractors engaged by DONOR shall comply with state and federal law and local ordinances, including those governing construction, safety, and health requirements, and RCW 39.12, Prevailing Wages on Public Works.

E. Contractors. All contractors engaged by DONOR to perform work on the PROJECT shall be licensed to engage in the type of work being performed as required by the Washington State Contractor Registration Statute, RCW 18.27.

F. Contractor Parking/Laydown. Onsite parking and laydown accommodations shall be arranged with the UNIVERSITY through the UNIVERSITY’s Capital Planning and Development department and included in the DESIGN. If DONOR’s onsite parking or laydown requires restoration, such restoration will be at the sole cost and expense of the DONOR. DONOR will ensure that all contractors and contractor employees at any tier acquire permits to park in lots or areas designated by the UNIVERSITY’s Department of Parking and Transportation.

G. Notice to Subcontractors. Whenever any bids are sought for work on the PROJECT, all prospective bidders shall be advised that the PROJECT is not a public works project and that, therefore, the retainage requirements and bonding requirements otherwise applicable to a public work may not apply. Prevailing wages published by the Department of Labor and Industries, however, shall apply.

H. Bonds. DONOR shall require all contractors performing work on the PROJECT to post a performance and payment bond in the full amount of the value of that contractor’s work. Said performance bond will run jointly in favor of UNIVERSITY and DONOR. The performance bond also shall be available for any claims by laborers and materialmen who timely notify DONOR of their claims. Copies of the bonds shall be supplied to UNIVERSITY and DONOR before construction on the PROJECT.

1. Warranties. At the time the UNIVERSITY issues a certificate of final acceptance to DONOR, DONOR shall make arrangements for the transfer of all warranties applicable to the work to the UNIVERSITY, including normal equipment and product guarantees. DONOR shall ensure that all warranties are for the minimum of one (1) year, parts and labor, for any defects in materials and workmanship.

K. Delivery of Drawings, Plans, and Manuals. Before the UNIVERSITY accepts the PROJECT and issues DONOR a certificate of final acceptance, DONOR shall deliver to the UNIVERSITY all original tracings, drawings, plans, specifications, changes, and other blueprints or drawings of the PROJECT, and all operating manuals, instructions, equipment operation manuals, and all things necessary for the normal operation and maintenance of the PROJECT.

L. Conduct of Activities. DONOR shall at all times conduct the construction of the PROJECT in conformance with this AGREEMENT and so as to not interfere with, obstruct, or endanger the UNIVERSITY’s operations, facilities or property.

M. Compliance with University Standards. DONOR shall construct the PROJECT in accordance with UNIVERSITY standards, as provided by the UNIVERSITY’s Capital Planning and Development.

N. Transfer of Ownership. Upon completion and final acceptance of the PROJECT, Donor shall donate the PROJECT, by deed, to the University. The conveyance of the PROJECT to the University shall be free and clear of any and all liens and encumbrances, except those already existing before construction, or otherwise approved by the University. DONOR shall not retain any ownership in the PROJECT once it is accepted by the UNIVERSITY and DONOR is issued a certificate of final acceptance.

**6. UNIVERSITY RESPONSIBILITES**

A. Project Manager. The UNIVERSITY shall designate a project manager as its principal representative to the DONOR. DONOR agrees to reimburse UNIVERSITY for project manager’s time at cost of $\_\_\_\_\_\_/hour. An estimate of probable total costs will be provided to DONOR when the scope of the PROJECT is defined.

B. Maintenance. Upon acceptance of the PROJECT, the UNIVERSITY shall own the PROJECT and be responsible for its maintenance.

C. Inspection of Work. The UNIVERSITY shall have the right to observe all work performed by DONOR or its contractors and direct such work in accordance with the approved DESIGN and the terms of this AGREEMENT. The UNIVERSITY also shall have the right to review and approve all change orders if they affect the approved DESIGN.

**7. INSURANCE**

A. General. Before any work is commenced (including design, construction, or administration), DONOR and/or its contractor(s) shall obtain all the insurance required by this AGREEMENT and provide evidence satisfactory to the UNIVERSITY that such insurance has been procured. Review of this insurance by the UNIVERSITY shall not relieve or decrease the liability of DONOR. Companies writing the insurance to be obtained by this part shall be licensed to do business under RCW Title 48 or comply with the Surplus Lines Law of the state of Washington. DONOR shall pay all costs related to insurance and bonds. Insurance carriers providing insurance in accordance with this AGREEMENT shall be rated “A + VII” or better by A.M. Best and ratings shall be indicated on the insurance certificates.

B. Types of Coverage. DONOR and/or its contractor(s) shall maintain the following insurance coverage during the construction of the PROJECT and during the performance of any corrective work.

1. General liability on the ISO 1986 New Occurrence Form or its equivalent, which will include:

a. Completed operations/products liability;

b. Explosion, collapse, and underground; and

c. Employer’s liability coverage.

2. Automobile liability.

3. Contractual liability, oral and written.

C. Washington Insurance Law. DONOR and/or its contractor(s) shall comply with the Washington State Industrial Insurance Act and, if applicable, the Federal Longshoremen’s and Harbor Workers’ Act and the Jones Act.

D. Personal Injury and Property Damage. All insurance coverages shall protect against claims for damages for personal and bodily injury and death, as well as claims for property damage, which may arise from acts in connection with the PROJECT (including design, construction and administration) whether such acts are by DONOR, contractor or any subcontractor.

E. Additional Insured. All insurance coverages shall name Washington State University as additional insured with respect to liability arising out of work performed by DONOR and/or its contractor(s), be endorsed to be primary and non-contributory with any insurance maintained by the UNIVERSITY, provide a waiver of any rights of subrogation against the UNIVERSITY, and contain a severability of interest provision in favor of the UNIVERSITY, and all insurance certificates shall evidence full compliance with the above enumerated requirements.

F. Certificate Holder. The certificate holder shall be:

Washington State University

Office of Finance and Administration

432 French Admin Bldg.

P.O. Box 641045

Pullman, WA 99164-1045

G. Liability Insurance Coverage Limits. The coverage limits shall be as follows:

1. Limits of Liability shall not be less than $1,000,000 Combined Single Limit for Bodily Injury and Property Damage (other than Automobile liability) Each Occurrence; Personal Injury and Advertising Liability Each Occurrence.

2. $2,000,000 Combined Single Limit Annual General Aggregate.

3. $2,000,000 Annual Aggregate for Products and Completed Operations Liability.

4. $1,000,000 Combined Single Limit for Automobile Bodily Injury and Property Damage Liability, Each Accident or Loss.

5. Worker’s Compensation Coverage in statutorily required amounts.

H. Insurance Coverage Certificates.

1. Before construction of the PROJECT, DONOR shall furnish to UNIVERSITY a completed certificate(s) of insurance coverage.

2. All insurance certificates shall name the PROJECT as the “\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_”

3. All insurance certificates shall specifically require forty-five (45) days prior written notice to UNIVERSITY of cancellation or any material change, except thirty (30) days for surplus line insurance.

I. Builder’s Risk.

1. DONOR and/or its contractor(s) shall purchase and maintain property insurance in the amount of the Cost of Construction of the PROJECT until the UNIVERSITY issues DONOR a certificate of final acceptance. The insurance shall cover the interest of UNIVERSITY, DONOR, contractor, and any subcontractors, as their interest may appear.

2. The insurance required in paragraph 7.A shall be placed on an “all risk” basis and insure against the perils of fire and extended coverage and physical loss or damage including theft, vandalism, malicious mischief, collapse, false work, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for A/E’s services and expenses required as a result of an insured loss.

3. UNIVERSITY, DONOR, and its contractor waive all subrogation rights against each other, any subcontractors, A/E, A/E’s subconsultants, separate contractors if any, and any of their subcontractors, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the work, except such rights as they have to proceeds of such insurance held by UNIVERSITY as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**8. HOLD HARMLESS AND INDEMNIFICATION.** DONOR and its contractors shall protect, indemnify, and save the UNIVERSITY harmless from and against any damage, cost, or liability for injury or death to persons, or damage or destruction of property, or liens filed against property, or whatever kind or nature caused by or resulting from: (i) The sole negligence of DONOR, its officers, employees, agents, contractors, subcontractors or subconsultants; (ii) the concurrent negligence of DONOR, its officers, employees, agents, contractors, subcontractors or subconsultants, but only to the extent of the negligence of DONOR, its officers, employees, agents, contractors, subcontractors or subconsultants, in connection with or incident to DONOR’s obligations under this AGREEMENT or the design and construction of the PROJECT. DONOR shall ensure that this provision is included in all subcontractor contracts.

**9. TERMINATION.** This AGREEMENT is terminable upon any one of the following events:

A. By either party without cause upon one hundred eighty (180) days prior written notice.

B. If DONOR breaches or fails to perform or observe any of the terms and conditions of this AGREEMENT, and fails to cure the breach or default within fifteen (15) calendar days after written notice from the UNIVERSITY, the UNIVERSITY may terminate this AGREEMENT in addition to and not in limitation of any other remedy of the UNIVERSITY at law or in equity, and the failure of the UNIVERSITY to exercise such right at any time shall not waive its right to terminate for any future breach or default.

C. No termination of this AGREEMENT shall release DONOR from any liability or obligation with respect to any matter occurring before termination, including, but not limited to, the responsibility to pay all costs incurred through the date of termination.

DONOR shall have the right to withdraw from the PROJECT with notice to UNIVERSITY before any work is commenced without suffering any costs or damages.

**10. FAILURE TO TIMELY COMPLETE THE PROJECT.** DONOR understands that time is of the essence, and the PROJECT must be completed by\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

If construction of the PROJECT is delayed or disrupted by circumstances under which the UNIVERSITY reasonably determines that it will not receive a completed PROJECT by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (except to the extent such delays or disruptions are caused by the UNIVERSITY), the UNIVERSITY reserves the right to terminate the right of entry and: a) to require DONOR to, at no cost, expense, or obligation to UNIVERSITY, restore the premises to the extent possible to the condition which existed prior to the commencement of construction, or b) to re-enter the premises and take over the PROJECT and have it completed through either the current contractor, a subsequent contractor, or a UNIVERSITY-designated contractor based upon the performance bond, or other financing necessary to complete the PROJECT.

**11. TITLE AND LIENS.** Title to materials for the PROJECT shall pass to the UNIVERSITY after issuance of the certificate of final acceptance. Title shall pass free and clear of all liens, claims, security interests, and encumbrances. Passage of title shall not, however, relieve the DONOR or its contractors from any duties or responsibilities for the construction or materials, or waive any rights of the UNIVERSITY to insist on full compliance with this AGREEMENT and other contract documents, if any.

**12. AMENDMENT AND ASSIGNMENT.** This AGREEMENT shall not be amended except in writing, executed by both parties. The provisions of this AGREEMENT cannot be assigned or waived except by written consent of both parties, such consent not reasonably withheld.

**13. DISPUTE RESOLUTION.** Before seeking to adjudicate a dispute in a court of law or other tribunal, the parties will use their best efforts to resolve the dispute through discussions between DONOR and the UNIVERSITY. Any PROJECT dispute that cannot be resolved by WSU Capital Planning and Development, shall be reviewed by the UNIVERSITY Vice President for Finance and Administration or his designee and the DONOR’s designee.

**14. GOVERNING LAW.** This AGREEMENT shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be the Superior Court for Whitman County.

**15. ACCEPTANCE.** Upon completion of the PROJECT to the satisfaction of the UNIVERSITY, and receipt of all of the documents and materials described in this AGREEMENT, the UNIVERSITY will issue a certificate of final acceptance. This certificate will indicate the agreed upon final value of the PROJECT.

**16. BINDING UPON SUCCESSORS.** This AGREEMENT shall inure to the benefit of, and be binding upon the successors and assigns of both DONOR and the UNIVERSITY.

**17. NO THIRD PARTY BENEFICIARIES.** This AGREEMENT is not entered into with the intent that it shall benefit any other party and no other such party shall be entitled to be treated as a third-party beneficiary of this AGREEMENT.

**18. NONDISCRIMINATION.** During the performance of work, the DONOR shall ensure that any contractor agrees as follows:

A. The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, religion, national origin, gender, sexual orientation, age, the presence of any physical, sensory, or mental disability, honorably discharged veteran or military status, or the use of a trained dog guide or service animal by a person with a disability, nor shall the contractor commit any of the other unfair practices defined in RCW 49.60, the Washington State Law Against Discrimination.

B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will be considered for employment, without regard to race, creed, color, religion, national origin, gender, sexual orientation, age, or the presence of any physical, sensory, or mental handicap.

C. The contractor will send to each labor union, employment agency, or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the labor union, employment agency, or worker’s representative of the contractor’s commitments under this section and RCW 49.60, the Washington State Law Against Discrimination.

D. The contractor will include the provisions of clauses A through C above in every subcontract or purchase order, so that such provisions will be binding upon each subcontractor or vendor.

**19. AUDIT.** During the progress of the PROJECT, records pertaining to the PROJECT shall be kept available and subject to audit by either party. Before Final Acceptance by the UNIVERSITY, the DONOR will turn all PROJECT records over to UNIVERSITY, who will maintain such records according to the UNIVERSITY document retention policy.

**20. RISK OF LOSS.** DONOR shall retain the risk of loss or damage to the PROJECT until the UNIVERSITY provides the DONOR with written final notice of acceptance.

**21. Use of Name Prohibited.** DONOR shall prohibit the contractor, and any subcontractors, from using in any respect the name or trademarks/logos of Washington State University in any advertisement, designation, notice, or activity to increase its business unless such use is expressly approved in writing by the UNIVERSITY.

**22. ENVIRONMENTAL MATTERS.**

A. Compliance with Environmental Laws. DONOR shall comply with all federal, state, and local laws, ordinances, regulations, orders and any other requirements (collectively, “Hazardous Substances Laws”) relating to industrial hygiene, environmental protection, or the use, analysis, generation, manufacture, storage, treatment, disposal, handling, release, other usage or transportation of any Hazardous Substances.

B. Donor’s Obligations. DONOR and DONOR’s agents, employees, contractors, licensees, and invitees shall not manufacture, store, treat, dispose, handle, release or otherwise use any Hazardous Substances, as defined below, in, on, under or about the PROPERTY. Notwithstanding the preceding sentence, DONOR, its agents, employees, contractors, licensees, and invitees may store, handle, or otherwise use any such Hazardous Substances in, on or about the PROPERTY as long as (i) such storage, handling or use is in compliance with all Hazardous Substances Laws, and (ii) such Hazardous Substances are disposed of off the PROPERTY in compliance with such laws, and (iii) the storage, handling or use of such Hazardous Substances by any of the aforementioned parties is considered to be normal and customary for its particular industry or activities associated with its business on the PROPERTY.

C. Environmental Notices. If at any time DONOR or the UNIVERSITY shall become aware, or have reasonable cause to believe, that any Hazardous Substance has come to be located in, on, under or about the PROPERTY, DONOR or the UNIVERSITY, as the case may be, shall, immediately upon discovering such presence or suspected presence of the Hazardous Substance, give notice of that condition to the other party. In addition, DONOR or the UNIVERSITY, as the case may be, shall immediately give notice to the other party of (a) any enforcement, cleanup, removal, or other governmental or regulatory action instituted, completed, or threatened pursuant to any Hazardous Substances Laws, (b) any claim made or threatened by any person against the DONOR or the UNIVERSITY, as the case may be, or PROPERTY, relating to damage, contribution, cost recovery, compensation, loss, or injury resulting from or claimed to result from any Hazardous Substances, and (c) any reports made by or to any local, state, or federal environmental agency arising out of or in connection with any Hazardous Substances located below, in, on, under or about the Leased Premises or removed from the PROPERTYs including any complaints, notices, warnings, or asserted violations in connection therewith. DONOR or the UNIVERSITY, as the case may be, shall also supply to the other party as promptly as possible, and in any event within twenty (20) business days after the DONOR or the UNIVERSITY, as the case may be, first receives or sends the same, copies of all action documents, claims, reports, complaints, notices, warnings, or asserted violations relating in any way to the Leased Premises or the use thereof. DONOR shall promptly deliver to the University copies of hazardous waste manifests reflecting the legal and proper disposal of all Hazardous Substances removed from the PROPERTY.

D. Definition of Hazardous Substances. As used in this AGREEMENT, the term “Hazardous Substance” means any hazardous or toxic substances, chemical materials or wastes, hydrocarbons, petroleum or petroleum containing substances, explosives, fertilizers, insecticides, asbestos, including, but not limited to, those substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.10 1) or by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and amendments thereto, or by the Washington State Department of Ecology under Washington’s Model Toxic Control Act (RCW 70.105D) or such substances, materials and wastes which are now or which hereafter become subject to regulation, investigation or remediation under any applicable local, state or federal law, including any statute, regulation, ordinance, order, action, policy, or common law.

**23. EFFECTIVE DATE.** This AGREEMENT shall take effect on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

### 24. NOTICES

Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered (a) in person, (b) by certified mail, postage prepaid, return receipt requested, (c) by facsimile, or (d) by a commercial overnight courier that guarantees next day delivery and provides a receipt, and such notices shall be addressed as follows:

 **To UNIVERSITY:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**With copy to:**

Amanda Owen, Contracts Manager

 Office of Finance and Administration

 P.O. Box 641045, Pullman, WA 99164-1045

 Telephone: 509-335-7739

 Fax Number: 509-335-3930

 **To DONOR:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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or to such other address as either party may from time to time specify in writing to the other party. Any notice shall be effective only upon delivery, which for any notice given by facsimile shall mean notice that has been received by the party to whom it is sent as evidenced by confirmation slip.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the dates indicated below.

FOR UNIVERSITY FOR DONOR

By: By:

Name: Roger Patterson Name:

Title: VP for Finance and Administration Title:

Date: Date:

Approved as to Form:

Assistant Attorney General

Date:

Exhibit A – Scope of Project