

WAYNE STATE UNIVERSITY

**MASTER AGREEMENT AND
CONTRACT FOR PROFESSIONAL SERVICES
AS A
PREFERRED VENDOR-DESIGN AND PROFESSIONAL SERVICES**

Executed as of the _____ day of _____, 2015, by and between:

Board of Governors of Wayne State University (WSU)
Detroit, Michigan 48202
(The University)

and

Name_of_Consultant
Address_of_Consultant
City, State ZIP

regarding

Preferred Vendor
Design and Professional Services
WSU Contract No. 999-268174

Whereas, WSU desires to retain the Consultant to perform professional services on the terms hereinafter set forth, and the Consultant desires to perform said services for the University; and

Whereas, in choosing to retain the Consultant under this agreement, WSU is materially relying upon the reputation of the Consultant and upon the Consultant's representations to WSU that it is fully qualified to perform the services hereunder;

Now, therefore, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

Article 1: Scope of Engagement

- 1.1 The Consultant shall provide professional services under Wayne State University's Preferred Vendor Design and Professional Services Program as defined in the request for proposal dated ~~May 22, 2013~~June 16, 2015, in accordance with this agreement, including the proposal responses dated ~~June 19, 2013~~July 7, 2015, forms ~~#2013-1~~2015-1 and ~~#2013-2~~2015-2 attached here to as Exhibit A and made a part hereof. In the case of conflicts between the contract and the Consultant's proposal, the language of this contract shall prevail. Individual project work will be released under a separate purchase order number accompanied by specific project descriptions and deliverable requirements.
- 1.2 The Consultant shall provide, furnish and perform all necessary labor and services and furnish all necessary supplies, materials and equipment required to complete the work.
- 1.3 The Consultant shall perform all design work in accordance with the Wayne State University Construction Design Standards in effect as of the date of the execution of this contract. Deviations from the Construction Design Standards not authorized by the University in writing will be considered design errors.

Article 2: Term

- 2.1 The Consultant shall commence the work upon receipt of a fully executed Agreement, and individual project purchase order and shall complete the same in accordance with the time schedule set forth therein and shall complete all services pursuant to this agreement.
- 2.2 This Master Agreement for Preferred Vendor-Design and Professional Services shall terminate on September 30, 2018.

Article 3: Compensation and Method of Payment

- 3.1 The University shall pay the Consultant for its services under this agreement in accordance with the fee schedule attached as Exhibit A.
- 3.2 The Consultant shall submit an invoice to the University on a monthly basis. These

invoices shall be in form and detail as required by WSU, but shall at a minimum include the name, position, hours worked, and hourly rate of pay for each person included in the invoice cost. Materials shall be listed by category with supporting documentation as necessary to establish the cost of a nonscheduled item, or the units used in the unit cost of a scheduled item. The Consultant shall maintain, at the office preparing the invoice, sufficient records to fully support each invoice. Such records shall be available for inspection during normal working hours by WSU or its designee.

- 3.3 Within forty-five (45) days of receipt of an invoice, WSU shall pay the full amount of the invoice. Should any part of the invoice be in dispute, WSU shall be entitled to withhold payment of that portion of the invoice until the disputed item is resolved. Any such dispute shall be considered a priority issue for both the Consultant and WSU and every effort shall be used to resolve the dispute expeditiously.

Article 4: Standard of Performance

- 4.1 The services performed by the Consultant under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by Consultants currently practicing under similar circumstances in the State of Michigan.
- 4.2 The Consultant shall exercise usual and customary professional care in its efforts to comply with all applicable federal, state and local laws, regulations, and codes in effect as of the date of the execution of this agreement.
- 4.3 The Consultant shall maintain any and all necessary governmental licenses, certificates, approvals, and permits which are required of the Consultant for the performance of its duties under this Agreement, and all such required licenses, certificates, approvals, and permits are to be maintained in full force and effect throughout the term of this Agreement.
- 4.4 In the event that there is a failure to comply with the standard of performance, as set forth in this Section, upon notice to the Consultant and by mutual agreement between the parties, the Consultant will promptly correct to the satisfaction of WSU those services which are not in compliance with the standard of performance without additional compensation. This will in no way waive any additional remedies WSU might have under Michigan law.

Article 5: Ownership of Documents

- 5.1 All drawings and specifications prepared and furnished by the Consultant shall become the property of WSU upon approval in writing by WSU, or upon the prior termination of the Consultant's services hereunder, and the Consultant shall have no claim for further employment or additional compensation as a result of exercise by WSU and its full rights of ownership of these documents and materials. It is understood and acknowledged that

all drawings and specifications prepared and furnished by the Consultant pursuant to this contract shall be used only for the current project and any future work pertaining to this project at the project site, including but not limited to repair work, renovation, or alteration.

Article 6: Confidentiality

- 6.1 The term "Confidential Information" as used herein means all information and data whether of a technical, engineering, operating or economic nature, supplied to or obtained by the Consultant during the course of this Agreement, whether in writing, in the form of drawings, orally, or by observation.
- 6.2 The Consultant acknowledges and agrees that any information disclosed to it, its employees, agents or other representatives pursuant to this Agreement which is Confidential Information is and shall remain solely the property of WSU and shall be maintained in confidence and not revealed to others and shall be used only for the purposes contemplated by this Agreement.
- 6.3 The obligations of confidentiality stated in this Agreement with respect to confidential information shall survive the termination of this Agreement for any reason whatsoever and shall continue in full force and effect until the earliest of the following should occur: (a) such confidential information has become available to the general public through no fault of the Consultant, or (b) such confidential information is received by the Consultant from third parties who are in lawful possession of such and who by such disclosures are not breaching any obligation owing to WSU, or (c) such confidential information has been revealed under legal compulsion from any governmental/regulatory agency having jurisdiction to request such information; provided, however, that the Consultant will notify WSU that confidential information is being disclosed to the governmental/regulatory agency involved.
- 6.4 The Consultant further agrees to reveal confidential information, only to such of its employees, agents or other representatives as are obligated to maintain and protect the confidentiality thereof in accordance with this Agreement. The Consultant assumes the responsibility that its employees, agents and other representatives will preserve the secrecy of such confidential information with respect to third parties.

Article 7: Safety and Security

- 7.1 The Consultant shall direct all of its subcontractors, employees, and agents performing services in connection with this Agreement to fully comply with all rules, regulations and other requirements imposed by both WSU and any contractor having jurisdiction over construction work performed. To the extent that laws and other governmental regulations pertain to the Consultant concerning the safety of the Consultant's subcontractors, employees and agents, the consultant shall comply with such laws and

governmental regulations.

Article 8: Save Harmless

- 8.1 The Consultant agrees to be responsible for any loss due to damage to property or injury, damage or death to persons resulting from the negligent acts, errors, or omissions of the Consultant in the performance of the services of this Agreement or breach of any provisions in this Agreement, and further agrees to protect and defend WSU against all such claims or demands of every kind, therefrom, and to hold WSU harmless. Such responsibility shall not be construed as liability for damage caused by or resulting from the negligence of WSU, its agents other than the Consultant, or its employees.

Article 9: Insurance

- 9.1 The Consultant, at its cost, shall obtain and maintain the following insurance with respect to its performance under this Agreement:
- 9.1.1 Comprehensive General Liability Insurance, in an amount of not less than One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) annual aggregate.
 - 9.1.2 Comprehensive Automobile Liability Insurance (Owned, Hired, and Non-Owned Vehicles), in an amount of not less than Five Hundred Thousand Dollars (\$500,000) per occurrence for bodily injury and Five Hundred Thousand Dollars (\$500,000) per occurrence for property damage.
 - 9.1.3 Professional Liability Insurance (Errors and Omissions) in an amount of not less than One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) aggregate. Such insurance shall include coverage or amendatory endorsements for bodily injury, death or property damage arising out of the discharge, disposal or escape, whether or not sudden or accidental, of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminates, or pollutants into or upon land, the atmosphere or any water course or body of water.
 - 9.1.4 Worker's Compensation Insurance adequate to meet statutory requirements of all jurisdictions having authority over such claims.
- 9.2 Such insurance shall cover the Consultant and those for whom it may be responsible; shall name WSU as additional insured under the foregoing Comprehensive General Liability and Comprehensive Automobile Liability insurance policies; shall cover claims and losses occurring during or at any time after the term of this Agreement and shall otherwise be to the reasonable satisfaction of WSU. Such liability coverage, where applicable, shall be primary to any insurance maintained by WSU. The Consultant shall provide WSU with documentation sufficient to evidence such insurance coverage, and

shall require its insurers to immediately notify WSU in writing of any proposed change or cancellation of such insurance or if the amount of the aggregate available for claims by WSU falls below the amounts set forth above.

Article 10: Audits and Records

- 10.1 WSU shall have the right to audit the moneys expended or obligations incurred by the Consultant, including all books, records, and all other documents related to services performed under this Agreement. Such information shall be available and open to review, inspection and audit by WSU's personnel and by WSU's designated certified public accountant, at the place or places where such record, books and other documents are kept at all reasonable times until the completion of this project or for a minimum of thirty-six (36) months from the date of the Consultant's invoice covering such costs. The Consultant shall provide in all of its contracts, agreements, retainers, or subcontractors a written statement indicating that WSU shall have the right to audit all source documentation of subcontractor's compensation.

Article 11: Termination

- 11.1 WSU reserves the right to terminate the project at any time. Upon termination, WSU shall reimburse the Consultant for all actual expenses and charges outstanding at the time of termination. In addition, WSU shall pay the Consultant cancellation charges applying to materials and/or equipment on order and/or on rental at the time of termination which cannot be canceled.
- 11.2 The Consultant shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

Article 12: Notices

- 12.1 Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given when hand-delivered or deposited in the U.S. mail, certified or registered, return receipt requested, in a postage prepaid envelope addressed to the Consultant's or WSU's respective addresses. Either party may designate a different address for notices by giving written notice to the other.

Article 13: Nonassignment

- 13.1 WSU has entered into this Agreement in order to receive the professional services of the Consultant. The Consultant will not make any assignment, by operation of law or otherwise, of all or any portion of the services required under this Agreement without first obtaining the written consent of WSU. The rights and obligations of WSU hereunder shall inure to the benefit of, and shall be binding upon, the successors and assigns of WSU.

Article 14: Dispute Resolution

- 14.1 Jurisdiction over all claims, disputes, and other matters in question arising out of or relating to this contract or the breach thereof, shall rest in the Court of Claims of the State of Michigan. No provision of this agreement may be construed as Wayne State University's consent to submit any claim, dispute or other matter in question for dispute resolution pursuant to any arbitration or mediation process, whether or not provisions for dispute resolution are included in a document which has been incorporated by reference into this agreement.
- 14.2 In any claim or dispute by the Consultant against the University, which cannot be resolved by negotiation, the Consultant shall submit the dispute in writing for an administrative decision by the University's Vice President for Finance and Administration, within 30 days of the end of negotiations. Any decision of the Vice President shall be made within 45 days of receipt from the Consultant and is final unless it is challenged by the Consultant by filing a lawsuit in the Court of Claims of the State of Michigan within one year of the issuance of the decision. The Consultant agrees that appeal to the Vice President is a condition precedent to filing suit in the Michigan Court of Claims.
- 14.3 For purposes of this section, the "end of negotiations" shall be deemed to have occurred when:
- 14.3.1 Either party informs the other that pursuant to this section, negotiations are at an impasse; or
- 14.3.2 The Consultant submits the dispute in writing to the Vice President.
- 14.4 Unless otherwise agreed by the University in writing, and notwithstanding any other rights or obligations of either of the parties under any Contract Documents or Agreement, the Consultant shall continue with the performance of its services and duties during the pendency of any negotiations or proceedings to resolve any claim or dispute, and the University shall continue to make payments in accordance with the Contract Documents; however, the University shall not be required or obligated to make payments on or against any such claims or disputes during the pendency of any proceeding to resolve such claims or disputes.

Article 15: Miscellaneous

- 15.1 The terms and provisions of Article 4, entitled "Standard of Performance", Article 5, entitled "Ownership of Documents", Article 6, entitled "Confidentiality", Article 8, entitled "Save Harmless", Article 9, entitled "Insurance", and Article 10, entitled "Audits and Records", shall survive the termination of this Agreement, howsoever brought about.

- 15.2 All written communications from the Consultant shall be addressed to WSU. The Consultant shall only take instructions from the person or persons who from time to time are authorized in writing by WSU to give the same.
- 15.3 The work shall be performed by the Consultant in such a manner and at such a time so as not to interfere with or interrupt the operations of WSU.
- 15.4 This Agreement shall be subject to and governed by the laws of the State of Michigan. The Consultant shall exercise usual and customary professional care in its efforts to comply with all applicable local, county, state, and federal codes, rules, regulations, and orders, in effect as of the date of the execution of this Agreement.
- 15.5 Failure to insist upon strict compliance with any provision hereof shall not be deemed a waiver of such provision or any other provision hereof.
- 15.6 This Agreement may not be modified except by written amendment executed by the parties hereto.
- 15.7 The invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provision.
- 15.8 This Agreement supersedes all previous agreements between WSU and the Consultant concerning this work.
- 15.9 This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and such counterparts shall together constitute and be one and the same Agreement.
- 15.10 In the performance of the services under this Agreement, the Consultant shall be an independent contractor, maintaining complete control of Consultant's personnel, subcontractors, and operations. As such, the Consultant shall pay all salaries, wages, expenses, social security taxes, federal and state unemployment taxes, and any similar taxes relating to the performance of this Agreement. The Consultant, its employees and agents, shall in no way be regarded nor shall they act as agents or employees of WSU.
- 15.11 The Consultant covenants not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or physical handicap, unless pursuant to a bonafide occupational qualification. Breach of this covenant may be considered a material breach of the contract. By acceptance of this order, the Consultant certifies that it will comply with all applicable provisions of Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212) and implementing regulations at 41 CFR Chapter 60.

Preferred Vendor Design and Professional
Services
WSU Project Number 999-268174

15.12 In the event that any term or provision of this Agreement conflicts with any other provision of the attached proposal, this Agreement shall control.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first above written.

CONSULTANTS_NAME

WAYNE STATE UNIVERSITY

By: _____
Signature

By: _____
Signature

Name: _____
Print or type name above

Name: William R. Decatur

Title: _____

Title: Vice President for Finance and
Business Operations

Date: _____

Date: _____

FORM CONTRACT APPROVED BY OGC 11/25/98
Rev9_6_9_2015_RGP (formatting only)