

WAYNE STATE UNIVERSITY

AGREEMENT BETWEEN THE UNIVERSITY AND PREFERRED VENDOR CONTRACTOR FOR CONSTRUCTION SERVICES

Executed as of the _____ day of _____, 20____ by and between:

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

and

Vendor Name
Vendor Address
Phone No:
Fax No:

regarding

Time and Materials (Trade Name) Services
Miscellaneous Campus Locations
TM-FY19

In consideration of the mutual covenants and conditions contained herein, the Parties agree as follows:

Article 1 - Scope of Work

- 1.1 This Agreement provides for **(Trade Name) services** at Miscellaneous Campus Locations, in accordance with the University Request For Proposal (“RFP”) for Time and Materials Work dated **June 3, 2019** which is incorporated by reference and made a part hereof. The documents listed in Article 4 are incorporated herein by reference and define the scope of work.
- 1.2 The Contractor shall furnish all the labor, materials, equipment, services, and supervision to perform all the work shown on the drawings and specifications listed in Article 18, including any addenda issued during the bid phase, and approved change orders issued during the construction phase.

Article 2 - Time of Completion

- 2.1 The work to be performed under this Agreement shall commence upon the Contractor’s receipt of a fully-executed Agreement, and substantial completion shall be achieved by September 30, 2022.
- 2.2 The Contractor shall notify the University in writing within five (5) calendar days when the Contractor discovers any condition that will affect the contract amount or the completion date.

Article 3 - The Contract Sum

- 3.1 The University shall pay the Contractor via a “Time and Materials” remuneration agreement for the performance of all work associated with the blanket Purchase Order issued ~~Contractor’s Base Bid~~, which is incorporated by reference and made a part hereof; invoiced on a per work order assignment in accordance with the RFP.

Labor and Wage Breakdown Rates

Hourly Charge Rate:	\$XX.00
Hourly Charge Rate for Apprentice	\$00.00
Overtime Rate Increase:	\$XX.00
Double-time Rate Increase:	\$XX.00
Bonds:	COST
Equipment	COST
Disposal/Dumping	COST
Mark-up on Materials	5.00%

WSU will only compensate for overtime and double-time rate increases with prior approval of WSU Project Manager and customer.

Article 4 - The Contract Documents

- 4.1 The Contract Documents shall consist of this Agreement, the drawings and specifications as listed in Article 18, Wayne State University's General Conditions of Construction in effect as of the date of this Agreement, Wayne State University's Supplementary General Conditions of Construction in effect as of the date of this Agreement, and the University RFP for Time and Materials Work dated June 3, 2019.
- 4.2 For any inconsistencies found among or between these Contract Documents, the language contained in this Agreement shall prevail over all other documents and the Supplementary General Conditions shall prevail over the General Conditions. In the event of a conflict between the Drawings and Specifications, the requirement for the higher quantity and/or higher quality shall prevail.

Article 5 – Examination of Premises

- 5.1 The Contractor acknowledges that the University provided the opportunity for a thorough examination of the project site and its surroundings and that the Contractor knows of no conditions preventing accomplishment of the full scope of work within the time and for the amount specified in this Agreement.
- 5.2 The University will deny all claims for additional time and/or cost for conditions that could have been reasonably discovered during such an examination.

Article 6 - The Architect/Engineer

- 6.1 The Architect/Engineer for this project is: N/A
- 6.2 The University will appoint a Project Manager who will be the University's point of contact for all matters of contract administration including, but not limited to, interpretation of documents, defining the scope of work, approving work schedules, and approving contract payments.

Article 7 - Additional Work

- 7.1 The University reserves the right to let other Agreements in connection with this work. The Contractor will afford other contractors or the University's own workforce reasonable opportunity for the delivery and storage of their material and for the performance of their

work and shall properly connect and coordinate its work with theirs.

- 7.2 If any part of the Contractor’s work depends for proper execution or results upon the work of another contractor or the University’s own workforce, the Contractor shall inspect and promptly report to the University’s Project Manager any defects in such work that render it unsuitable for such proper execution and results. The Contractor’s failure to so inspect and report shall constitute an acceptance of the work of others as fit and proper for reception of the Contractor’s work and as a waiver of any claim or defense against the University or other contractor which relies in whole or in part upon the contention that such work was unsuitable for proper execution and resolution.

Article 8 – Dispute Resolution

- 8.1 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.
- 8.2 In any claim or dispute by the Contractor against the University, which cannot be resolved by negotiation, the Contractor shall submit the dispute in writing for an administrative decision by the University’s Vice President for Finance and Business Operations, within 30 days of the end of negotiations. Any decision of the Vice President shall be made within 45 days of receipt from the Contractor and is final unless it is challenged by the Contractor by filing a lawsuit in the Court of Claims of the State of Michigan within one year of the issuance of the decision. The Contractor agrees that appeal to the Vice President is a condition precedent to filing suit in the Michigan Court of Claims.
- 8.3 For purposes of this section, the “end of negotiations” shall be deemed to have occurred when:
- 8.3.1 Either party informs the other that pursuant to this section, negotiations are at an impasse; or
- 8.3.2 The Contractor submits the dispute in writing to the Vice President.
- 8.4 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 Contractor 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 9 - Termination for Convenience

- 9.1 Upon thirty days written notice to the Contractor, the University may, without cause and without prejudice to any other right or remedy of the University, elect to terminate this Agreement. In such case, the Contractor shall only be paid (without duplication of any items), using a Close out Change Order, for the following:
- 9.1.1 For completed and acceptable work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
- 9.1.2 For expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted work, including fair and reasonable sums for overhead and profit on such expenses.
- 9.2 The Contractor shall not be paid on account of loss of anticipated profits or revenue, delay or disruption, or other economic loss arising out of or resulting from such termination. For purposes of this section, "fair and reasonable sums for overhead and profit" shall be determined by reference to Michigan law, without reference to principles used for such determinations in arbitration.

Article 10 – Remuneration, Invoicing, and Payment

- 10.1 Remuneration will be based on the actual cost of time and materials or on fixed, lump sum pricing, whichever is applicable. Most work will be based on time and materials, there may be occasion when the University chooses to assign work based on lump-sum, but such assignments will require the execution of separate Contracts for Construction that specifically define the contract sum as being based on a proposed lump-sum price. All assignments shall be based on estimated costs proposals associated with a defined scope of work provided by the University's project manager. All proposals shall summarize the project scope.
- 10.2 Invoices shall be submitted on a project by project basis, and represent the cost exclusive to a project specific time and materials purchase order or a single work order associated with the incremental use purchase order. Invoices must include a listing of all applicable construction labor by name, the quantity of hours being billed, the hourly charge-out rate, and the extended cost. Materials must be billed at cost plus the mark-up.
- 10.3 Supporting documentation required with each invoice shall include certified payroll forms showing the same construction mechanics listed on the invoice, the job classification code for each, as established by the Prevailing wage schedule, and other pertinent data required of the form. Copies of material and equipment rental invoices from suppliers shall also accompany payment requests. Invoices for the cost of materials and supplies drawn from the bidder's warehoused inventory must be accompanied by current supplier invoices.

Supplier invoices or a preapproved notarized materials catalogue listing the exact purchase price of materials to the vendor for a specified duration of time shall be used to evidence material costs, in combination with the daily summary time sheets that are field signed by the customer. Appropriate waivers with each work assignment, a sworn statement for work assignments that involve a subcontractor “with value and/or materials in excess of \$10,000.00”. All payment application requirements and contract conditions apply to the subcontractor as well

- 10.4 Inventory carrying costs shall be disallowed. Supporting documentation for the cost of labor, the cost of materials, and the costs of equipment must reconcile with invoice summaries. If not, invoices will be rejected until such time as acceptable supporting documentation is provided.
- 10.5 When a work order assignment leads to a desire by the contractor for partial payments, the invoice format must coincide with information similar to an AIA G701 and G702 Application for Payment. All substantially complete work order assignments must be invoiced in 30 days or less, and accompanied by the work order close out documents explained herein. All work orders and PO’s will be closed after 90 days of substantial completion, after which any additional invoices will be rejected.
~~rejected.~~

Article 11 - Acceptance and Final Payments

- 11.1 Final payment on a properly submitted invoice shall be due thirty (30) days after submission, provided the work is fully completed and the work order is fully performed. Contractor invoices will not be considered properly submitted until all listed certified payroll documents are received.

Article 12 - Non-Discrimination

- 12.1 The Contractor agrees that it will not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, age, national origin, or ancestry. Breach of this covenant may be regarded as material breach of this Agreement.
- 12.2 The Contractor further agrees that it will, in all subcontracts relating to the performance of the work under this Agreement, provide in its subcontracts that the subcontractor will not discriminate against any employee or applicant for employment, to be employed in the performance of such contract, with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because of race, sex, age, color, religion, national origin or ancestry. Breach of this covenant may also be regarded as a material breach of this Agreement.

Article 13 – Laborers and Mechanics

- 13.1 All laborers and mechanics must be covered by Worker’s Compensation and Employer’s Liability Insurance as required by Federal and Michigan law. The Contractor shall also require all of its Subcontractors to maintain this insurance coverage.
- 13.2 The Contractor acknowledges and shall abide by the University’s prohibition on use of 1099 independent contractors and owner / operator business entities. The Contractor shall ensure that all classifications of laborers and construction mechanics performing Work on the Project job site are employees of the Contractor or any Trade Contractor for any tier thereof, and that each worker is covered by workers compensation insurance

Article 14 - Prevailing Wages

- 14.1 For this project, it is a University requirement that the Contractor and all Subcontractors and sub-Subcontractors who provide labor on this project shall compensate each worker, regardless of their employment status, not less than the wage and fringe benefit rates prevailing in the locality in which the work is to be performed, as more particularly set forth at <https://procurement.wayne.edu/vendors/wage-rates>. At the time of advertising for bids on the project, the University shall provide the prevailing rates of wages and fringe benefits for all classes of labor called for in this Agreement. A schedule of these rates shall be made a part of the specifications for the Work to be performed and shall be printed on the bidding forms where the Work is to be done by contract. Contractor shall also post on site, in a conspicuous place, a copy of all applicable wage and benefit rates, and shall provide the University with a copy of the applicable wage and benefit rates posted.
- 14.2 The Contractor and each Subcontractor shall keep an accurate record showing the name and occupation of and the actual benefits and wages paid to each laborer and mechanic working in connection with this contract and shall be submitted with each invoice submitted in accordance with Article 10. Contractor shall be required to (a) collect all certified payroll records from Contractor and Subcontractors and sub-Subcontractors; (b) provide and require Subcontractors and sub-Subcontractors to provide the University access to supporting documentation, and (c) shall provide this information, records, and/or access to documentation to the University or its agent(s) or auditors for review or audit promptly on request. Contractor shall, and shall also require all Subcontractors and sub-Subcontractors to, promptly provide information relating to payroll and job classification and work duties to University upon request. The University reserves the right to audit Contractor, Subcontractors, and sub-Subcontractors for compliance with wage and hour requirements, prevailing wage, employee classifications and other applicable requirements.

Article 15 - Indemnification

- 15.1 To the fullest extent permitted by law, the Contractor shall hold harmless, defend, and indemnify the Board of Governors of Wayne State University, the University, and officers, employees, representatives and agents of each of them, from and against any and all claims

or losses arising out of or are alleged to be resulting from, or relating to (1) the failure of the Contractor to perform its obligations under the Contract or the performance of its obligation in a willful or negligent manner; (2) the inaccuracy of any representation or warranty by the Contractor given in accordance with or contained in the Contract Documents; and (3) any claim of damage or loss by any Subcontractor, or supplier, or laborer against the University arising out of any alleged act or omission of the Contractor or any other Subcontractor, or anyone directly or indirectly employed by the Contractor or any Subcontractor.

- 15.2 To the fullest extent permitted by law, the Contractor shall be liable for and hereby agrees to defend, discharge, fully indemnify and hold the University harmless from and against any and all claims, demands, damages, liability, actions, causes of action, losses, judgments, costs and expenses of every nature (including investigation costs and/or expenses, settlement costs, and attorney fees and expenses incident thereto) sustained by or asserted against the University arising out of, resulting from, or attributable to the performance or nonperformance of any Work and/or obligation covered by the Contract or to be undertaken in connection with the construction of the Project contemplated by the Contract (collectively, "Claim"), including, but not limited to, any Claim for: (a) any personal or bodily injury, illness or disease, including death at any time resulting therefrom of any person, (including, but not limited to, employees of the University, the Contractor, any Subcontractor, and any materialman and the general public); (b) any loss, damage or destruction of any property; (c) any loss or damage to the University's operations, arising out of, resulting from, or attributable in whole or in part to (i) any negligence or other act or omission of the Contractor, and any Subcontractor, any materialman and/or any other person or any of the directors, officers, employees or agents of any of them or (ii) any defects in material or equipment furnished hereunder; (d) any payments allegedly owed to Subcontractors, sub-Subcontractors or materialmen; (e) any acts or omissions relative to conditions of safety and protection of persons on the Project site; and/or (f) any act or omission relative to the Contractor's breach of obligations and regarding non-discrimination as set forth in these General Conditions. The Contractor shall not be liable hereunder to indemnify the University against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence or willful misconduct of the University, its agents or employees. The Contractor, at its own cost and expense, shall take out and maintain at all times during the effective period of the Contract, contractual liability insurance insuring the performance by the Contractor of its contractual duties and obligations under this Article, which insurance shall name the University as additional insured and shall be in form and amount and from an insurance company satisfactory to the University. The Contractor's duty to fully indemnify the University shall not be limited in any way by the existence of this insurance coverage.
- 15.3 The Contractor shall also be liable for and hereby agrees to pay, reimburse, fully indemnify and hold the University harmless from and against all costs and expenses of every nature (including attorney fees and expenses incident thereto) incurred by the University in collecting the amounts due from the Contractor, or otherwise enforcing its rights, under the indemnifications described in this Article.

- 15.4 In claims against any person or entity indemnified under this Article made by an employee of the Contractor or a Subcontractor, supplier or indirectly employed by any of them, or anyone for whose acts is made liable, the indemnification obligation under this Article shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor, Subcontractor or supplier under workers compensation laws, disability benefit laws, or other laws providing employee benefits.
- 15.5 The indemnification obligations under this Article shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.
- 15.6 The Contractor shall hold harmless, defend, and indemnify the University from and against losses resulting from any claim of damage made by any separate contractor of the University against the University arising out of any alleged acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by either the Contractor or Subcontractor, or anyone for whose acts either the Contractor or Subcontractor may be liable.
- 15.7 The Contractor shall hold harmless, defend, and indemnify the separate Contractors of the University from and against losses arising out of the negligent acts or omissions or willful misconduct of the Contractor, a Subcontractor, anyone directly or indirectly employed by the Contractor or Subcontractor, or anyone for whose acts the Contractor or Subcontractor may be liable.

Article 16 - Liquidated Damages

- 16.1 N/A

Article 17 - Interpretation

- 17.1 This Agreement shall be interpreted and construed according to the laws of the State of Michigan.
- 17.2 If one part of this Agreement is found to be void by legal or legislative action, the remainder of the contract remains in full effect.

Article 18 - Drawings and Specifications

- 18.1 The Technical Specifications are specific to each time and materials work order assignment, and represent the scope of work as defined in the Contract Documents from Article 4.

Time and Materials for name

WSU Project Number TM-FY2019-Contract No.

00500-10

IN WITNESS WHEREOF the parties to these presents have hereunto set their hands as of the day and year first written above.

Signed, sealed and delivered
In the presence of:

Vendor Name

By _____
Signature

Please print name here

Date signed

Title

Witness

**THE BOARD OF GOVERNORS of
WAYNE STATE UNIVERSITY**

By _____
William R. Decatur, Vice President for
Finance and Business Operations

Date signed

Form Contract Approved by OGC 06/13 - LG
Rev. 5-6.30.2014 formatting only RGP