****

**AGREEMENT BETWEEN THE UNIVERSITY AND 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

Regarding

Time and Materials \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Services

Miscellaneous Campus Locations

TM-FY2013-\_\_

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

# Article 1 - Scope of Work

1. This Agreement provides for \_\_\_\_\_\_\_\_\_\_\_\_\_\_ construction services at Miscellaneous Campus Locations, in accordance with the University RFP for Time and Materials Work dated October 05, 2012, which is incorporated by reference and made a part hereof. The documents listed in Article 4 fully define the scope of work.
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.
3. 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 2 - Time of Completion**

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, 2015.

**Article 3 - The Contract Sum**

* 1. The University shall pay the Contractor via a “Time and Materials” remuneration agreement for the performance of all work associated with the 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: Form of Proposal Labor and Wage Breakdown dated November 07, 2012, and Summary of Work dated October 05, 2012, which is also incorporated by reference and made a part hereof.

*Labor and Wage Breakdown Rates*

Hourly Charge Rate: $76.00

Bonds: COST

Non-Capitalized Equipment (cost plus mark-up %) 12.00%

Disposal/Dumping (cost plus mark-up %) 12.00%

Mark-up on Materials (%) 12.00%

Estimating Hourly Rate $0.00

Consumables (% of Labor and Material total) 5.00%

(THESE RATES AND PERCENTAGES CHANGE WITH EACH VENDOR ACCORDINGLY)

* 1. DELETED
  2. DELETED

**Article 4 - The Contract Documents**

1. The Contract Documents shall consist of this Agreement, the drawings and specifications as listed in Article 18, the General Conditions of the Contract for Construction as defined by AIA Document A201 1970 Edition, except as otherwise provided herein, Wayne State University’s Supplementary General Conditions 1997 Edition, and the University RFP for Time and Materials Work dated October 05, 2012.
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

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.
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**

1. The Architect/Engineer for this project is: N/A
   1. 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**

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.
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. Specifically, all references to Arbitration contained in the General Conditions are superseded by this Article.

* 1. 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 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 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.
  2. For purposes of this section, the “end of negotiations” shall be deemed to have occurred when:
     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 the contract. In such case, the Contractor shall only be paid (without duplication of any items), using a Close out Change Order, for the following:

* + 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;
    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.
  1. 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, and may, in the case of carpeting, vinyl composition flooring, painting, and concrete be based on unit pricing. Under this contract relationship, no construction will be based on fixed, lump-sum pricing. 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 single work order. A labor wage breakdown should be completed for each classification intended on WSU work order assignments including but not limited to apprentice, journeyman, and foreman. 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 unusual/uncommon 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 shall be used to evidence material costs, and 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 $1,000.00”. 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 unusual/uncommon equipment must reconcile with invoice summaries. If not, invoices will be rejected until such time as acceptable supporting documentation is provided. The bidder should include the time and effort associated with the contractor providing supporting documentation, in the proposed hourly charge-out rate under overhead and profit.

10.5 When the 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.

**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, however, 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.

* 1. 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**

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.
   1. 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**

1. The Contractor and each subcontractor shall pay to each class of mechanics and laborers not less than the wage and fringe benefit rates prevailing in the Detroit Metropolitan Area, as determined by the United States Department of Labor. The Contractor shall 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.

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 employed in connection with this contract. The Contractor and each subcontractor shall make certified payroll records available to the University’s representatives upon request.

14.3 If a Contractor or subcontractor fails to pay the prevailing rates of wages and fringe benefits and does not cure such failure within ten (10) days after notice to do so by the University, the University shall have the right, at its option, to do any or all of the following:

14.3.1 Withhold all or any portion of payments due the Contractor as may be considered necessary by the University to pay laborers and mechanics the difference between the rates of wages and fringe benefits required by this Agreement and the actual wage and fringe benefits paid.

14.3.2 Terminate part or all of this Agreement or any subagreement and proceed to complete the Agreement or subagreement by separate agreement with another Contractor or otherwise, in which case the Contractor and its sureties shall be liable to the University for any excess costs incurred by the University.

14.4 The Contractor shall include terms identical or substantially similar to this section in any Agreement or subagreement pertaining to the project.

**Article 15 - Save Harmless**

15.1 The Contractor shall indemnify, defend and hold harmless the University, its agents and employees from any and all loss, damage, claims, and causes of action whatsoever, including all costs, expenses and attorneys’ fees arising out of Contractor’s performance of obligations under the terms and conditions of this agreement. Such responsibility shall not be construed as liability for damage caused by or resulting from the negligence of the University, its agents other than the Contractor, or its employees.

# 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.

**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:

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 01/13 - LG

Rev. 3\_1.25.2013 RGP

Rev.4\_7-1-2015 format, signatory - RGP