



# Missouri State UNIVERSITY

## AGREEMENT FOR LIMITED DESIGN SERVICES

### THIS AGREEMENT

MADE THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ IN THE YEAR OF \_\_\_\_\_  
*(In words, indicate day, month and year)*

### BETWEEN

AND: **The Board of Governors for  
Missouri State University  
901 South National Avenue  
Springfield, MO 65897**

HEREINAFTER CALLED THE **CONSULTANT**

HEREINAFTER CALLED THE **OWNER**

### WITNESSETH:

WHEREAS, the Owner and the Consultant intend that this document will set forth the Terms and Conditions and work necessary for this project, more particularly described herein.

It is the Owner's intent to obtain consulting services for:

**PROJECT TITLE:**

**MSU PROJECT NUMBER:**

**MSU CONTRACT NUMBER:**

*(The MSU project number is to appear on all documents produced by the Consultant. The contract number shall appear on this agreement.)*

**PROJECT DESCRIPTION:**

### COMPENSATION:

Compensation for Basic Services shall be a: *(Check One)*

*Fixed Fee*

*Hourly Not-to-Exceed*

*Percentage of Construction Costs*

*Other*

In the Amount of:

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### AVAILABLE FUNDS:

Total allowable Project Budget:

### PLANNING, DESIGN AND CONSTRUCTION

901 South National Avenue • Burgess House  
Springfield, Missouri 65897 • (417) 836-5101

[DesignandConstruction@MissouriState.edu](mailto:DesignandConstruction@MissouriState.edu) • <https://design.missouristate.edu>



**ARTICLE 1 – GENERAL STATEMENT**

**1.0 CONSULTANTS RESPONSIBILITIES**

1.0.1 The Consultant assures the Owner that the Consultant is financially solvent, able to pay its debts and has sufficient working capital to complete the services required herein.

1.0.2 The Consultant agrees to accept the Owner's program and project budget and further agrees to use professional skill and care to accomplish said Project within the intent of the program and established budget. In the event the Consultant determines that the Project cannot be accomplished within the established budget, they shall notify the Owner's Representative of this fact in writing, so that the Project scope can be reviewed and modified if necessary. Consequently, should the lowest acceptable bid(s) exceed the funds available, not due to events of force majeure, the Consultant shall be required to redesign or perform such corrective work as necessary to allow the Project to be successfully rebid and constructed within available funds, without additional cost to the Owner.

1.0.3 The Consultant agrees to observe the job site prior to commencing the Work and shall use reasonable care to verify that all relevant information supplied to them by the Owner is correct and accurate.

1.1 The Consultant shall design and detail all plans to be in compliance with the following building codes:

1.1.1 International Building Code 2012

1.1.2 International Fire Code 2012

1.1.3 International Mechanical Code 2012

1.1.4 International Plumbing Code 2012

1.1.5 International Fuel Gas Code 2012

1.1.6 NEC 2011

1.1.7 In addition, all applicable state and federal laws and regulations including but not limited to:

1.1.7.1 Section 504 of the Federal Rehabilitation Act of 1973

1.1.7.2 The Americans with Disabilities Act (ADA)

1.1.7.3 Missouri State Statutes Chapter 8

1.1.7.4 Section 8.812 Minimum Energy Efficiency Standards

1.1.7.5 Applicable Life Safety Codes shall be incorporated herein by reference.

1.2 The Consultant and its sub consultants shall be currently registered by the State of Missouri. All project drawings and specifications shall bear the seal of the Professional Architect or Engineer.

1.3 If Consultant renders basically architectural services, they hereby agree that all plans, specifications, detail drawings, etc., for engineering work shall be done by a registered professional Engineer in their own organization, or agrees to employ without additional cost to the Owner, and subject to the approval of the Owner's Representative, the services of registered professional Engineers regularly engaged in the work. The Consultant shall enter into contract agreements with such registered professional Engineers which contracts shall bind the Engineers in terms and responsibilities substantially as set forth herein regarding design and construction observation services.

1.4 If the Consultant renders basically engineering services, they hereby agree that all plans, specifications, detailed drawings, etc., for architectural work pertaining to this Project shall be done by a registered professional Architect in their own organization, or agrees to employ without additional cost to the Owner, and subject to the approval of the Owner's Representative the services of a registered professional Architect regularly engaged in the work. The Consultant shall enter into a contract agreement with such registered

professional Architects, which contract shall bind the Architects to terms and responsibilities substantially as set forth herein regarding design and construction observation services.

## **ARTICLE 2 – DEFINITIONS**

- 2.0 Wherever used in this Agreement, the following meanings shall be given the terms as herein defined:
- 2.0.1 “Additional Services” – Professional services that may, if authorized in writing by the Owner, be rendered by the Consultant in addition to the basic services identified in the Owner-Consultant agreement.
  - 2.0.2 “Agreement” – The Contract executed by the Owner and the Consultant.
  - 2.0.3 “Construction Cost” – The total cost or estimated cost to the Owner of all elements of the project designed or specified by the Consultant, including the cost at current market rates of labor and materials furnished by the Owner and equipment specified, selected, designed, or specially provided for by the Consultant (plus reasonable allowance for the Contractor’s overhead and profit). Construction cost also includes a reasonable allowance for contingencies for market conditions at the time of bidding and for changes in the work during construction; however, it does not include compensation of the Consultant and its Subconsultant or the costs of the land, rights-of-way, financing, or other costs that remain the responsibility of the Owner.
  - 2.0.4 “Consultant” – Shall refer to the Architect, Engineer or other design professional when employed by the University, or their duly authorized representative.
  - 2.0.5 “Contractor” – Shall mean the party or parties who are awarded an Agreement to furnish work defined under this agreement.
  - 2.0.6 “Fixed Fee” – Compensation for professional services on a lump-sum basis shall include all incurred reimbursables or other variables except as may be specifically designated by the Owner in advance.
  - 2.0.7 “Hourly Not-to-Exceed” – Compensation for professional services calculated on an hourly basis, and total cost will not be exceeded without prior written approval.
  - 2.0.8 “Owner” – The Board of Governors, Missouri State University, acting by and through its duly authorized representatives.
  - 2.0.9 “Percentage of Construction Costs” – Compensation based on a percentage of actual construction cost.
  - 2.0.10 “Project Budget” – The total funds available to complete a project including, but not limited to, Consulting Fees, Construction Contracts, Project Administration, Construction Contingency, Furniture, Fixtures & Equipment, Telecommunications and Relocation Costs.

## **ARTICLE 3 – BASIC SERVICES**

- 3.0 The Consultant’s Services consist of the phases described as follows and include, but are not limited to the services as detailed in the project description. The Consultant shall obtain written approval of the Owner’s Representative before proceeding with each phase.
- 3.1 The Consultant shall satisfy the requirements for the lawful practice of professional services, architecture, landscape architecture, engineering, and/or land surveying as applicable to the project in the State of Missouri and shall perform its services in a professional manner consistent with a level of care and skill exercised by other practicing consultants performing such services prescribed by the Owner.
- 3.2 The Consultant shall provide services for the Project to comply with all applicable federal, state and local laws, statutes, ordinances, codes, orders, rules and regulations in effect as of the date of services rendered, and shall assist the Owner in obtaining required written approval of all governmental authorities having jurisdiction over the project prior to execution of the contract(s) for construction. Review or approval of the Consultant’s documents by the Owner shall not relieve the Consultant of any obligations for such compliance or for assistance in obtaining governmental approval. The Owner shall be responsible for any additional costs due to subsequent retraction or modification of written approval by a governmental authority, unless such retraction

or modification is the result of a negligent error or omission in the Contract Documents discovered after the original approval.

- 3.3 The Consultant shall document all meetings with minutes provided to the Owner within seven (7) calendar days following the meeting. The minutes should document all those in attendance, document all items of discussion, and record any decisions made. Upon receipt of the written minutes, the Owner shall have seven (7) calendar days to review the minutes and respond back to the Consultant with any required modifications to the minutes.
- 3.4 It is the University's policy to avoid contracting with Consultants who have unacceptable organizational conflicts of interest. An organizational conflict of interest means that because of existing or planned activities, a Consultant is unable or potentially unable to render impartial assistance, or has an unfair competitive advantage, or a firm's objectivity is, or might be, impaired. The Consultant must warrant that, to the best of their knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest.

### PRE-CONSTRUCTION SERVICES

#### 3.5 DESIGN PHASE

- 3.5.1 Missouri State [General Conditions](#) may dictate Administration requirements during the Pre-Construction Services phase. The Consultant shall provide for Administration of the Pre-Construction phase when requested and shall confer with the Owner to ascertain the requirements of the Project and shall confirm the viability of such requirements to the Owner's Representative.
- 3.5.2 The Consultant shall prepare Design Studies consisting of drawings and other documents illustrating the scale and relationship of Project components for approval by the Owner's Representative.
- 3.5.3 The Consultant shall provide a preliminary evaluation of the program and the project budget requirements each in terms of the other.
- 3.5.4 The Consultant shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work.
- 3.5.5 Based on the mutually agreed upon program, design concept, schedule, and project budget requirements, the Consultant shall prepare, for review and approval by the Owner, Design Documents consisting of drawings and other documents illustrating the scale and relationship of project components. Minimum submittal requirements for Design Phase shall include the following:
- 3.5.5.1 Drawings – Architectural and others as applicable to the project including but not limited to site plans, floor plans, and elevations.
- 3.5.5.2 Schedule – Project time line including all design phases and proposed construction phases.
- 3.5.5.3 Preliminary budget estimates based on general scope requirements. Consultant shall be responsible for project design being within established budget. This estimate shall take into account the expected construction start date and any completion deadlines.
- 3.5.5.4 Narrative outlining mechanical, electrical, plumbing, structural, and specialized systems associated with the project.
- 3.5.6 The Consultant shall present the Design Documents at a time and location as specified by the Owner.

#### 3.6 CONSTRUCTION DOCUMENT PHASE

- 3.6.1 The Consultant shall prepare from the Design Submittal approved by the Owner's Representative, including any further adjustments authorized by the Owner, Construction Documents setting forth in detail the requirements for the construction of the entire Project including information necessary to bid the Project.

- 3.6.2 The Consultant shall to the best of their knowledge, information and belief comply with all applicable codes, standards and the Owner's design guidelines in the preparation of project drawings and specifications, unless otherwise authorized by the Owner. The Consultant shall acknowledge such action by sealing the contract documents as required by state statute.
- 3.6.3 The Consultant shall prepare documents to include additive or deductive alternate bids requested by the Owner to keep the project within the approved budget. Compensation for such alternates shall be included as part of the Basic Services fee.
- 3.6.4 The Consultant shall submit appropriate documents to obtain the written approval of the appropriate authority for all proposed connections to private or public utility systems or public and private roads and streets, when such connections are planned as part of the Project.
- 3.6.5 Minimum submittal requirements for Construction Documents Phase shall include five sets of the following:
  - 3.6.5.1 Drawings -- Architectural, structural, mechanical, electrical, plumbing, code review or other as applicable.
  - 3.6.5.2 Schedule -- Updated project time line including all design phases and proposed construction phases.
  - 3.6.5.3 Updated budget based on Construction Documents Phase. Budget shall delineate areas of cost and Consultant shall be responsible for project design being within established budget and completion deadlines. This estimate shall take into account the expected construction start date. The Consultant shall make no provisions for a bidding contingency in this estimate.
  - 3.6.5.4 Structural calculations as applicable.
  - 3.6.5.5 Final specifications.

### 3.7 BIDDING PHASE

- 3.7.1 The Consultant, following the Owner's Representative's approval of the Construction Document submittal and the Final Statement of Estimated Construction Cost, shall assist the Owner as follows:
  - 3.7.1.1 Production -- Provide the construction documents as necessary to the designated Owner's Representative.
  - 3.7.1.2 Distribution -- The Owner's Representative is responsible for distribution of all construction documents as necessary.
  - 3.7.1.3 Pre-Bid Conference -- Consultant Representative is responsible for attending, recording minutes and offering clarification of any outstanding issues.
  - 3.7.1.4 Substitutions -- Consultant must receive and process Requests for Substitutions in a timely manner.
  - 3.7.1.5 Addenda -- Consultant must offer clarifications and answer questions as dictated by the project. Sealed Addenda must be issued by the start of business, no less than three (3) business days prior to bid opening.
  - 3.7.1.6 Bid Opening -- Consultant attendance is optional.
  - 3.7.1.7 Review -- Consultant must review all bids and make a written recommendation for the Contractor within three (3) business days.
  - 3.7.1.8 Contract -- The Owner will prepare the Construction Contract award(s).

## CONSTRUCTION SERVICES

### 3.8 CONSTRUCTION ADMINISTRATION PHASE

- 3.8.1 The Construction Administration Phase will commence with the award of the Construction Contract(s).
- 3.8.2 Missouri State University General Conditions will dictate Administration during the Construction Phase. The Consultant shall provide for Administration of the Construction Phase and shall advise and consult with the Owner's Representative and have authority to act on the behalf of the Owner to the extent provided in the General Conditions unless otherwise modified in writing.
- 3.8.3 The Consultant must recommend in writing approval or disapproval of all Contractor Requests for Substitutions as required in the General Conditions.
- 3.8.4 The Consultant shall act as the initial interpreter of the requirements of the Construction Documents.
- 3.8.5 The Consultant shall at all times have access to the Work.
- 3.8.6 Pre-Construction Kick-Off Meeting – Owner, Consultant and Contractor(s) must attend the pre-construction kick-off meeting. It is Consultants responsibility to present comprehensive meeting minutes to the Owner's Representative within five (5) business days of the pre-construction meeting detailing information as stated to provide an accurate representation of those items held considerable to the Owner's interest.
- 3.8.7 Progress Meetings – Owner, Consultant and Contractor(s) shall schedule no less than one progress meeting per month during the construction period. Consultant shall review the project schedule, budget and address any outstanding issues as necessary. It is Consultants responsibility to present comprehensive meeting minutes to the Owner's Representative within five (5) business days of any scheduled progress meeting detailing information as stated to provide an accurate representation of progress and those items held considerable to the Owner's interest.
- 3.8.8 Site Visits – The Consultant shall visit the site as in intervals appropriate to the stage of construction in order to familiarize themselves generally with the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. The Consultant shall provide to the Owner an anticipated schedule of visits based on construction milestones, appropriate intervals or both. For each site visit made, the Consultant shall submit to the Owner's Representative a written progress and observation report within five (5) business days. This Consultant should summarize each visit and present the current status of the Project with regard to pending changes, design or observed construction problems and schedule variations. Other additional site visits necessitated by the Consultant's error, omission, unauthorized changes or negligence, shall be accomplished without additional cost to the Owner. All observations, including those specified to be performed by the Designer in the Contract Documents and all clarifications required, shall be scheduled, performed and issued in a manner to prevent delay to the Contractor. The Consultant shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and the Consultant shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Construction Documents, nor for the acts or omissions of the Contractor or Subcontractors, or any other person performing work. However, the Consultant shall report observed practices which are not in the best interest of the Owner with regard to cost and schedule to the Owner's Representative of which the Consultant becomes aware of.
- 3.8.9 Based on such observations at the site and on Contractor's written request for payment, the Consultant shall determine the amount owed to the Contractor and shall certify requests for payment in such amounts. The Consultant shall recommend payment on the basis of Work complete to date; and that to the best of the Consultant's knowledge, information and belief, the quality of the Work is in accordance with the Construction Documents. For any request which is seeking payment for stored materials, it is the responsibility of the Consultant to gain verification of its' location, a copy of the Contractors liability insurance for any stored materials not located on Missouri State University property, invoices verifying the purchase of said materials and to verify that Contractor is seeking payment for finished product versus raw materials. Certification of payment shall not be deemed to represent that the Consultant has made any examination to ascertain how and for what purpose the Contractor has used the moneys paid.

- 3.8.10 The Consultant may recommend rejection of Work, which does not conform to the Construction Documents. Whenever the Consultant considers it necessary or advisable to confirm the requirements of the Construction Documents, he may request approval of the Owner's Representative for special inspection and/or testing.
- 3.8.10.1 The Consultant shall review and respond to all Requests for Information generated on the project within ten (10) consecutive calendar days of receipt thereof. The Consultant shall provide any and all information necessary to fully respond to the request.
- 3.8.10.2 The Consultant shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples within ten (10) business days of receipt thereof.
- 3.8.11 The Consultant shall prepare Proposal Requests, Supplemental Instructions and Change Orders in accordance with the form and procedures prescribed by the Owner's Representative. The Consultant shall provide an independent cost estimate for all proposal requests issued. These cost estimates shall be provided to the Owner prior to the receipt of the cost provided by the Contractor(s). Following receipt of the Contractor pricing, the Consultant shall review and make a written recommendation to the Owner regarding acceptance of the Contractor's proposal.
- 3.8.12 Upon notification from the Contractor that the project is complete and ready for review, the Consultant shall prepare a punch list and submit it to the Owner for their review. It is the responsibility of the Consultant to verify completion and notification shall be sent to the Owner and Contractor upon completion of all punch list items. The Consultant shall determine dates of Substantial Completion and shall receive, review, and deliver to the Owner written warranties and documents required by the Contract Documents and supplied by the Contractor.
- 3.8.13 The Consultant shall provide a substantial completion inspection, a final inspection, and a warranty inspection and any other visits required by the construction documents for milestone events.
- 3.8.14 During the warranty period of the Construction Contract(s), the Consultant shall work with the Owner's Representative to secure correction of any defects that become apparent. Services provided by the Consultant during the warranty period shall be provided at no cost to the Owner if said services are necessary to correct defects in the Work resulting from errors or omissions in the design prepared by the Consultant. However, if such services are provided to correct defects resulting from defective material or poor workmanship provided by the Contractor, said services shall be considered Additional Services and the Consultant compensated accordingly provided such services have been previously authorized in writing by the Owner's Representative.
- 3.8.15 The Consultants Representative or one familiar with the Work and their architectural or engineering consultants, as applicable, shall perform an inspection of the project eight to ten months after start of the warranty period. A written report of the specific results shall be submitted to the Owner's Representative within thirty (30) days of the inspection.

### 3.9 POST CONSTRUCTION PHASE

- 3.9.1 As part of the basic services, Consultant shall provide Owner with an electronic set of Record Drawings and two sets of prints that reflect as-built conditions. These plans shall incorporate all changes. Reference to a separate document is not allowed. Each sheet of the plans shall be clearly labeled "Record Drawings" and show the date revised. One example sheet of the Consultant's format is to be submitted for Owner's approval before proceeding with entire set. All drawings and details shall be prepared utilizing AutoCAD application programs and be compatible with the latest version of AutoCAD. The Consultant must deliver files in .dwg format along with Consultant's .ctb file showing standard layers and line weights along with any associated external references. Along with the electronic AutoCAD files, a copy of these documents shall also be provided in .pdf format. The .pdf format files shall be indexed according to the drawing set and shall be named according to the name of the sheet. Reasonable effort shall be made to insure accuracy. The Consultant shall provide these documents within twenty-eight (28) calendar days of the receipt of the marked up drawings from the Contractor.



#### **ARTICLE 4 – CHANGE ORDERS**

- 4.0 The Consultant shall prepare and estimate Change Orders in writing, which shall be considered as part of the Contract Documents, when approved by the Owner. The method and amount of additional compensation, if applicable, shall be agreed upon in writing, by the Owner, before preparing Change Order documents.
- 4.1 The Consultant shall prepare design documents for change orders due to design errors and omissions at no cost to the Owner.
- 4.2 The Consultant will reimburse the Owner for the non-value added cost of change orders due to design errors and omissions when the cumulative total non-value added cost of all such change orders exceeds 0.1% of the total construction cost or \$1,000, whichever is greater. The non-value added cost of each change order will be determined by the additional cost to the Owner less the value added to the project. Value is added to the project if specifying the correct work in the original construction contract would have resulted in a greater contract amount.
- 4.3 The Owner will consider the Consultant's omission of documented Owner instructions, requirements and/or problems from the specified work as a design error or omission.

#### **ARTICLE 5 – ADDITIONAL SERVICE**

- 5.0 Additional Services shall be provided only upon prior written authorization by the Owner's Representative.

#### **ARTICLE 6 – OWNER'S RESPONSIBILITIES**

- 6.0 The Owner shall provide information regarding the requirements for the Project as well as information required in order to promote the orderly progress of the Work.
- 6.1 If the Owner observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, the Owner shall give prompt written notice thereof to the Consultant.
- 6.2 The Owner will allocate a fixed limit for construction cost as hereinafter defined.
- 6.3 The Owners Representative is authorized to act in its behalf with respect to the Project. The Owner or designated representative will examine documents submitted by the Consultant and will render decisions pertaining thereto promptly to avoid unreasonable delays in the progress of the Consultant's work.
- 6.4 All of the above items relating to Owner's responsibilities shall in no way abrogate the Consultant's responsibility.

#### **ARTICLE 7 – COMPETITIVE BIDDING REQUIREMENTS**

- 7.0 Under statutory provisions of the State of Missouri, the Owner is required to competitively bid all construction projects. Further, all costs for any given construction project must be within the funds available for said Project.

#### **ARTICLE 8 – ALTERNATES**

- 8.0 Upon approval of the Owner, the Consultant may include in the Project additive or deductive alternates.
- 8.1 When alternates are included for the purpose of determining cost, or to protect the budget established for the Base Bid(s) or for any other reason, no additional compensation will be allowed the Consultant for alternates without prior written approval by the Owner.
- 8.2 Base bids need to be a usable project. Therefore, the Consultant, in determining their final estimate, must include Base Bid and necessary alternate costs within the funds available for construction, unless otherwise approved by the Owner's Representative.

#### **ARTICLE 9 – DIRECT PERSONNEL EXPENSE**

- 9.0 Direct Personnel Expense is defined as the cost of salaries on an hourly basis and includes mandatory benefits such as payroll taxes and customary benefits such as insurance, sick leave, vacation, holiday, pensions and other such costs that relate to employees engaged on the Project by Consultant.

- 9.1 Employees are those who are engaged on the Project and have specific responsibilities which may aid in its completion.
- 9.2 Should Direct Personnel Expense be selected by way of an Hourly Not-to-Exceed method of compensation, the Consultant will submit a complete list of employees to be engaged on the Project along with a schedule of rates and benefits for those employees. Said rates shall remain valid for the length of contract. Should an employee be reassigned, terminated or replaced during the duration of contract, a written notice shall be given and approved by the Owner prior to payment.

#### **ARTICLE 10 – REIMBURSABLE EXPENSES**

- 10.0 Any and all General and Administrative expenses shall be incorporated into the professional fee determined by the Basic Services Rate. No such costs will be allowed as additional compensation over the Basic Services Rate unless authorized by the Owner in advance.
- 10.1 General and Administrative expenses may include all telephone calls, electronic messages, postage, office supplies, rent, utilities, general clerical and administrative services, depreciation, mileage and/or other travel costs, meals and lodging for out-of-town trips, photocopying costs, and expenses of a similar nature.
- 10.2 If authorized in advance in writing by the Owner, the production and/or reproduction of presentation models, mock-ups, final renderings and reports for the Owner's use are reimbursable direct expenses unless required in this agreement. However, study models, mock-ups, and perspective sketches are considered as necessary to the Consultant's design process and are included in Basic Services.

#### **ARTICLE 11 – CONSULTANT'S ACCOUNTING RECORDS**

- 11.0 Records and receipts of the Consultant's Direct Personnel, Consultant and Reimbursable Expenses pertaining to the Project shall be kept on a generally recognized accounting basis. The Owner reserves the right to request and receive Consultant documentation regarding any taxes, expenses, or other charges that Consultant claims Owner is obligated to pay.

#### **ARTICLE 12 – OWNER'S REPRESENTATIVE**

- 12.0 For the purposes of this Agreement, the before mentioned, or their designee, shall serve as the Owner's Representative. No plans and specifications or changes thereto will be accepted, nor any payments made without approval by the Owner.

#### **ARTICLE 13 – OWNERSHIP OF DOCUMENTS**

- 13.0 Drawings, specifications and other documents, including those in electronic form, prepared by the Consultant and its Subconsultants are Instruments of Service for use solely with respect to the Project. The Consultant and its Subconsultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights. Neither the Owner nor the Consultant or its Subconsultants shall use the documents produced pursuant to the Agreement for any other Project. However, the Owner may use, including copy, modify and amend such Instruments of Service at any time including but not limited to expanding, correcting any deficiencies to, or making any renovations or repairs to the Project. Any such use without written verification or adaptation by the Consultant for the specific purpose intended shall be at the user's sole risk and without liability or legal exposure to the Consultant or its independent Contractors or Consultants.

#### **ARTICLE 14 – INSURANCE**

- 14.0 The Consultant shall provide and maintain, during the life of the Agreement, insurance acceptable to the Owner which will afford protection and coverage in accordance with the requirements set forth below.
- 14.1 Commercial General Liability Coverage comparable to Comprehensive General Liability coverage to protect the Consultant and its Subconsultant performing work covered by this Agreement from claims for damages for personal injury, bodily injury (including wrongful death), and from claims for property damage which may arise from the operation under the Agreement. The coverage will provide protection for all operations by the Consultant or its Subconsultant or by anyone employed by the Consultant or its Subconsultant. In addition, the coverage is to include "Missouri State University, the Board of Governors for Missouri State University, its members, agents and employees" as "additional insureds". The amount of the insurance shall not be less than

a minimum of \$1,000,000 combined single limit, per occurrence and \$2,000,000 aggregate, for both bodily injury and property damage combined.

In lieu of the "Additional Insured", an Owners-Contractors-Protective policy may be provided evidencing "The Board of Governors for Missouri State University, its members, agents and employees" as the Named Insured.

- 14.2 Comprehensive Automobile Liability coverage will be provided by the Consultant for all Owned, Hired, and Non-Owned vehicles. The coverage is to include for protection of the Consultant and its Subconsultant or by anyone employed by either of them. The minimum limit of coverage to be provided is \$1,000,000 combined single limit for bodily injury and property damage, per occurrence and aggregate.
- 14.3 Professional Liability Insurance will be provided by the Consultant to cover claims arising out of the negligent acts, errors and omissions by the Consultant or anyone employed by them. The coverage provided shall not be less than \$1,000,000 per claim or annual aggregate. The Consultant shall require its Subconsultant similarly to provide Professional Liability coverage.
- 14.4 Worker's Compensation Insurance Coverage A: Worker's Compensation Insurance for all the Consultant's employees at the site of the project, and in case any work is sublet, the Consultant shall require its Subconsultant similarly to provide Worker's Compensation Insurance for all of the latter's employees. This coverage shall comply in all respects with the requirement of the Statutes of the State of Missouri. Coverage B: Employer's Liability, in a limit no less than \$500,000.
- 14.5 All insurance shall be procured through agencies and be written by insurance companies which are acceptable to and approved by the Owner. All coverages placed are subject to the Owner's approval as to form and content, as well as Carrier. All required coverages shall be obtained and paid for by the Consultant.
- 14.6 The Consultant shall furnish the Owner with certificates, policies, or binders which indicate the Consultant and/or the Owner and other Consultants (where required) are covered by the required insurance showing type, amount, class of operations covered, effective dates and dates of expiration of policies prior to commencement of the work. All certificates, policies, or binders shall give Missouri State University thirty (30) day's written notice before cancellation.
- 14.7 Upon receipt of any notice of cancellation, the Consultant shall, within ten (10) days, procure other policies of insurance similar in all respects to the policy or policies about to be canceled or altered; and if the Consultant fails to provide, procure and deliver acceptable policies of insurance or satisfactory certificates or other evidence thereof, the Owner may obtain such insurance at the cost and expense of the Consultant without notice to the Consultant.
- 14.8 It is understood and agreed that the insurance required by the provisions of this article is required in the public interest and that the Owner does not assume any liability for acts of the Consultant, its Subconsultant or their employees in the performance of the Agreement.

#### **ARTICLE 15 – SUCCESSORS AND ASSIGNEES**

- 15.0 The Owner and the Consultant each binds themselves, their partners, successors, assignees and legal representatives to the other party to this Agreement and to the partners, successors, assignees and legal representatives of such other party with respect to all covenants of this Agreement. The Consultant shall not assign, sublet or otherwise transfer their interest in this Agreement without the written consent of the Owner.

#### **ARTICLE 16 – DISPUTES AND DISAGREEMENTS**

- 16.0 In order to prevent all disputes or disagreements between the parties to this Agreement in relation to the performance on the part of the Consultant, it is expressly agreed and understood that in case any controversy or difference of opinion shall arise between the parties as to the quality, quantity or value of the Work, the decision of the University Architect shall be final and binding on all parties, unless the Consultant pursues the mediation procedure set forth below by written request within 30 days of the determination of the University Architect. Such disputes shall be decided in the courts unless the parties agree in writing to arbitration. Notwithstanding anything to the contrary contained in the contract documents, in the event a dispute shall arise between the Owner and the Consultant regarding the performance on the part of the Consultant, the Consultant agrees to participate in one mandatory non-binding mediation session prior to filing a lawsuit. The parties involved agree to split the costs of the mediation. The mediation shall be administered

by a mediator appointed by the Missouri Bar Association's alternative dispute resolution committee, unless the parties agree to another mediator. If a resolution of the dispute cannot be reached in the mediation, the parties are free to pursue any other alternative of resolving the dispute which they choose, whether it be arbitration, litigation, or some other means.

- 16.1 Any lawsuit to enforce this Agreement shall be brought in the Circuit Court of Greene County, Missouri. A prevailing party will be entitled to its court costs and expenses, including a reasonable attorney's fee. Nothing in this Agreement shall be construed to waive any sovereign, governmental, or official immunity applicable to any party, its officers or employees.

#### **ARTICLE 17 – INTERRUPTION OF WORK**

- 17.0 Interruption of Work may be necessary, when appropriate, in any fixed-fee, percentage or hourly not-to-exceed contract. In the best interest of any successful project, it may be necessary as result of any cause for the Owner to initiate an Interruption of Work. The Owners Representative will issue a Notice in writing if it is advisable to suspend work pending a decision by the Owner regarding the feasibility of the projects continuance. Notice to the Consultant that Interruption of Work is necessary should include (1) A description of the work to be suspended; (2) Instructions concerning the Owners need for further services; (3) Guidance to the Consultant on what action is to be taken by the Owner; and (4) Other suggestions, if any, to the Consultant for resuming progress.
- 17.1 As soon as feasible, after a Notice for Interruption of Work has been issued, the Owners Representative shall take appropriate action to (1) Terminate the contract; (2) Cancel the Interruption of Work; or (3) Extend the period of the interruption if it is deemed necessary.
- 17.2 Upon written approval of the Owners Representative, the Owner shall pay all payments due to the Consultant for services completed, up until the time of Interruption. Consultant's contract with the Owner shall remain valid through an Interruption of Work until such time that a Termination is necessary. Consultant shall have the right to reasonable compensation for additional services due to the interruption of work and subsequent resumption of work if due to no fault of the Consultant.

#### **ARTICLE 18 – TERMINATION**

- 18.0 This Agreement may be terminated by the Owner's Representative upon mailing notice of termination to the Consultant at least seven (7) days in advance of the date of termination if the Consultant substantially fails to perform according to the terms and conditions of this Agreement in the opinion of the Owner's Representative or funds for the Project are not appropriated or are insufficient to proceed with the Project. The Owner's Representative may also terminate this Agreement by the same procedure at the end of any phase or part thereof as set forth in this Agreement. In the event of termination, the Consultant shall be paid his compensation for services performed up until the date of termination subject to amounts withheld to satisfy any amount due the Owner by reasons of any prior default of the Consultant or otherwise.

#### **ARTICLE 19 – EQUAL EMPLOYMENT OPPORTUNITY AND PUBLIC ACCOMMODATION**

- 19.0 Consultant will not discriminate on the basis of race, color, national origin (including ancestry, or any other subcategory of national origin recognized by applicable law), religion, sex (including marital status, pregnancy, sexual orientation, gender identity, gender expression, or any other subcategory of sex recognized by applicable law), age, disability, veteran status, genetic information, or any other basis, as required by Executive Order No. 11246 of September 24, 1965, incorporated herein by reference and the Missouri Fair Employment and Public Accommodation Practices Act, Chapter 213 RSMo., and will further comply with any applicable provisions of the Americans with Disabilities Act of 1990, Titles VI and VII of the Civil Rights Act of 1964, all incorporated herein by reference, and will hold harmless Missouri State University from any violation or claimed violation of law, ordinance or regulation arising from this Agreement.

#### **ARTICLE 20 – STATUTORY PREFERENCE**

- 20.0 Preference will be given to Missouri labor, products, commodities and materials, as may be required by Section 8.280 RSMo and Section 34.350 RSMo, incorporated herein by reference.

## **ARTICLE 21 – EMPLOYMENT OF UNAUTHORIZED ALIENS**

- 21.0 The Consultant shall comply with all the provisions of Section 285.530, RSMo, for all services in excess of \$5,000.00.
- 21.1 Consultant shall complete and return the Affidavit for Compliance with Section 285.530, RSMo., attached hereto and provide documentation evidencing current enrollment in a federal work authorization Program, e.g., the electronic signature page from the E-Verify program's Memorandum of Understanding. The required documentation must be from the federal work authorization program provider. E-verify, <http://www.dhs.gov/everify>, is a FREE internet-based federal work authorization program operated by the Department of Homeland Security, U.S. Citizenship and Immigration Services.
- 21.2 The Consultant shall only utilize personnel authorized to work within the United States and in the State of Missouri in accordance will applicable federal and state laws. This includes but is not limited to the Illegal Immigration Reform and Immigrant Responsibility Act.
- 21.3 The Consultant shall affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. The Consultant further certifies that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.
- 21.4 If the Consultant is found to be in violation of this requirement or the applicable laws of the state or federal laws and regulations, and if Missouri State University has reasonable cause to believe that the Consultant has knowingly employed individuals who are not eligible to work in the United States, the University shall have the right to cancel the contract immediately without penalty or recourse and suspend or debar the Consultant from doing business with the University.
- 21.5 The Consultant agrees to fully cooperate with any audit or investigation from federal, state or local law enforcement agencies.

## **ARTICLE 22 – ANTI-KICK BACK**

- 22.0 Consultant shall comply with all provisions of the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 C.F.R., Part 3), incorporated herein by reference.
- 22.1 Consultant hereby certifies that no person employed on the Work has been induced to or required to give up any part of the compensation to which he is otherwise entitled. Consultant further certifies that it is not sought by collusion, payment to any person, or otherwise to obtain any advantage over Owner or made any payment or promise of other consideration to Missouri State University or its agents to cause award of this contract to Consultant.

## **ARTICLE 23 - UNIVERSITY NON-DISCRIMINATION STATEMENT**

- 23.0 Missouri State University is a community of people with respect for diversity. The University emphasizes the dignity and equality common to all persons and adheres to a strict non-discrimination policy regarding the treatment of individual faculty, staff, and students. In accord with federal law and applicable Missouri statutes, the University does not discriminate on the basis of race, color, national origin (including ancestry, or any other subcategory of national origin recognized by applicable law), religion, sex (including marital status, family status, pregnancy, sexual orientation, gender identity, gender expression, or any other subcategory of sex recognized by applicable law), age, disability, veteran status, genetic information, or any other basis protected by applicable law in employment or in any program or activity offered or sponsored by the University. Sex discrimination encompasses sexual harassment, which includes sexual violence, and is strictly prohibited by Title IX of the Education Amendments of 1972.

This policy shall not be interpreted in a manner as to violate the legal rights of religious organizations or of military organizations associated with the Armed Forces of the United States of America.

The University maintains a grievance procedure incorporating due process available to any person who believes he or she has been discriminated against. Missouri State University is an Equal Opportunity/Affirmative Action/Minority/Female/Veterans/Disability/Sexual Orientation/Gender Identity employer. Inquiries concerning the complaint/grievance procedure related to sex discrimination, including sexual harassment and sexual assault, should be addressed to the Title IX Coordinator, Carrington Hall 205,

901 S. National Ave., Springfield, Missouri 65897, TitleIX@MissouriState.edu, 417-836-4252, or to the Office for Civil Rights. All other inquiries concerning the grievance procedure, Affirmative Action Plan, or compliance with federal and state laws and guidelines should be addressed to the Equal Opportunity Officer, Office for Institutional Equity and Compliance, Carrington Hall 205, 901 S. National Ave., Springfield, Missouri 65897, Equity@MissouriState.edu, 417-836-4252, or to the Office for Civil Rights. (Res. Board Policies No. 70-11; Bd. Min. 10-28-11.)

#### ARTICLE 24 – ACCESS TO RECORDS AND REPORTS

24.0 Consultant agrees to provide Missouri State University or any of their duly authorized representatives with access to any books, documents, papers and record of the Consultant which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

#### ARTICLE 25 – COMPENSATION

25.0 Consultant's Payment Schedule – Payments for Consultant's Basic Services shall be made monthly and will be in proportion to services performed within each phase and will total the following percentages of total compensation:

Design Phase:	<i>thirty percent</i>	(30%)
Construction Documents Phase:	<i>forty percent</i>	(40%)
Bidding Phase:	<i>five percent</i>	( 5%)
Construction Administration Phase:	<i>twenty percent</i>	(20%)
Post Construction:	<i>five percent</i>	( 5%)
<hr/>		
Total Basic Compensation:	<i>one hundred percent</i>	(100%)

25.1 Reimbursable Expenses – Reimbursable Expenses shall be provided by the Consultant and payment made by the Owner per the terms in Article 10.

25.2 Additional Services – For any Additional Services authorized by the Owner and provided by the Consultant, payment will be based on an amount negotiated by the Owner and Consultant prior to the specific Additional Service being rendered. Payment will be made monthly upon presentation of the Consultant's statement of services rendered.

25.3 Invoices – Payment will be made upon submission of a detailed invoice. The invoice must include the total fee, a percentage of completion, the previous fees billed and the current fee billing. Any reimbursable expenses shall be listed separately by line item and invoices shall contain, or be attached to, documentation that is satisfactory to the Owner per the terms of Article 9. Applicable reporting requirements must be met before payment will be made.

25.4 Payments, Sums Withheld – No deductions will be made from the Consultant's compensation on account of penalty, liquidated damages, or other sums withheld from payments to Contractor(s), or on account of the cost of changes in the Work other than those for which the Consultant has been adjudged to be liable. Payments are due and payable upon receipt of an approved Consultant's invoice. An amount unpaid 30 days after the invoice date shall bear reasonable interest from the date payment is due in accordance with Chapter 431.180, RSMo.

#### ARTICLE 26 – SEVERABILITY

26.0 In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement; this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. This Agreement shall be governed by the laws of the State of Missouri.

**ARTICLE 27 – SUPPLEMENTAL DOCUMENTS**

27.0 This Agreement, by this specific reference, shall include the following supplemental documents:

- Missouri State University [General Conditions](#)
- Consultant’s Proposal dated: \_\_\_\_\_ and approved:

THIS AGREEMENT represents the entire integrated agreement between the Owner and the Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Consultant.

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EXECUTED THE DATE AND YEAR FIRST ABOVE MENTIONED

Consultant

**THE BOARD OF GOVERNORS FOR  
MISSOURI STATE UNIVERSITY**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature  
Mark Wheeler, AIA, LEED AP  
University Architect and Director of  
Planning, Design and Construction

\_\_\_\_\_  
Printed Name & Title

\_\_\_\_\_  
Printed Name & Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Project Manager Acknowledgement

**Affidavit for Compliance with Section 285.530, RSMo (For Contracts over \$5,000.00)**

Before me, the undersigned Notary Public, in and for the County of \_\_\_\_\_, State

of \_\_\_\_\_ personally came and appeared \_\_\_\_\_,  
*(Name)*

\_\_\_\_\_ of the \_\_\_\_\_  
*(Position)* *(Name of Company)*

a (corporation) (partnership) (proprietorship) in carrying out the contract and work in connection with  
\_\_\_\_\_  
*(Name of Project)*

located at Missouri State University, after being duly sworn did depose and say:

- (1) That said company is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the contracted services; and
- (2) that said company does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

The terms used in this affidavit shall have the meaning set forth in Section 285.530 RSMo., et seq.

**Documentation of participation in a federal work authorization program must be attached to this affidavit.**

\_\_\_\_\_  
(Signature)

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

My Commission expires \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
(Notary Public)