

**Southeast Missouri State University
Facilities Management Department
Cape Girardeau, MO 63701**

Index No.
Project No.

**AGREEMENT BETWEEN OWNER AND CONSULTANT
(ARCHITECT OR ENGINEER)**

THIS AGREEMENT, made this _____ () day of _____ in the year Two Thousand and Sixteen (2016) between **Southeast Missouri State University** hereinafter called the Owner, and **(Enter Consultants Name and Address)** hereinafter called the Consultant.

(Refer to Article X for Owner-Consultant Communication)

Refer to Supplementary Conditions for any revisions or modifications to this agreement.

PROJECT

Title:

Enter Project Title

SCOPE OF WORK

It is the intent of the Owner to contract with the Consultant to provide the following services, **(Enter Phases of Work) (Enter Project Description)** at Southeast Missouri State University.

(Enter Scope of Work)

CONSULTANT'S PROJECT COMPLETION SCHEDULE

The Consultant shall commence immediately with the services described in Article 1. upon the execution of this Agreement and will be completed by the dates as set forth in the following schedule, subject to authorized extensions of time and to delays not caused by the Consultant.

(Enter Project Completion Schedule)

COMPENSATION

THE CONSULTANT shall provide professional services for this Project in accordance with the Terms and Conditions of this agreement and THE OWNER shall compensate the Consultant in accordance with the Terms and Conditions of this Agreement, as follows:

Total lump sum of (Enter Fee Amount) Dollars (\$00,000.00).

ADDITIONAL SERVICES: Compensation for Additional Services which have been authorized in writing by the Owner shall be computed as follows:

A lump sum fee to be mutually agreed upon by Consultant and Owner or in the absence of a lump sum fee a not to exceed amount based on an hourly basis per category of employee.

REIMBURSABLE EXPENSES: Compensation for Reimbursable Expenses shall be limited to those items listed in Article VIII and shall be computed at 1.0 times the actual cost up to and **not to exceed \$**, exclusive of printing for construction bidding.

CONSULTANT'S PAYMENT SCHEDULE

A. BASIC SERVICES

Payments for Consultant's Basic Services shall be due and payable each month upon approval by the Owner. Consultant will submit monthly statement for services rendered in proportion to the amount of work complete. Documentation substantiating personnel costs and reimbursable expenses requested shall be included with each statement. Payment for all goods and services shall be made in accordance with the laws of the State of Missouri. Total payment shall not exceed the following percentages at the completion of each phase unless modified by mutual agreement:

Distribution of fee by phase, for each bid package:

Schematic Design	%
Design Development Phase	%
Construction Document Phase	%
Bidding Phase	%
Construction Administration Phase	%

B. ADDITIONAL SERVICES AND/OR REIMBURSABLE EXPENSES

Payments for Additional Services and/or Reimbursable Expenses approved in accordance with the provisions of Article II of the Agreement shall be made monthly upon presentation of the Consultant's statement of services rendered. Evidence of reimbursable expenses submitted for payment shall be included with the Consultant's monthly statement.

C. **PAYMENTS, SUMS WITHHELD**

The Owner reserves the right to withhold payments to the Consultant for losses connected with the Project caused by the negligent errors, omissions, or wrongful acts of the Consultant in performing his duties under this Agreement. Upon receipt of written notice of the Owner's intention to withhold payments, the Consultant may request the Owner to instead seek payment against the Consultant's insurer by notifying the Owner by certified mail, within seven days of receiving the notice of intent to withhold payments. The Consultant's failure to contact the Owner shall be deemed a waiver of this option. In no event shall the withholding of payments under the terms and conditions of this paragraph be deemed or construed as a waiver or abrogation of the Owner's right to pursue payment or redress for any claim it may have against the Consultant under this Agreement. The owner shall include a construction contingency of at least 5% of the cost of work. The contingency shall be in addition to the Contract Sum or Guaranteed Maximum Price agreed to between Owner and its Contract(s) in the contract for construction. This construction contingency is established to provide for additional Construction Cost of the Work that arises during the Construction Phase of the Project due to modification of the Construction Documents that are typically required due to a variety of reasons. These reasons include, but are not limited to, normal clarification, and modifications to the Construction Documents to address coordination issues.

**TERMS AND CONDITIONS OF AGREEMENT BETWEEN
OWNER AND CONSULTANT**

**ARTICLE I
BASIC SERVICES**

The Consultant's Basic Services consist of the phases described as follows, except as modified by supplementary conditions, and include, but are not limited to, normal architectural, structural, mechanical and electrical and civil engineering services. The Consultant shall obtain written approval of the Owner before proceeding with each phase. Nothing in this agreement shall be construed as placing any obligation on the Owner to proceed with any phase beyond the latest phase approved by the Owner.

A. **SCHEMATIC DESIGN PHASE**

1. The Consultant 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.
2. The Consultant shall prepare Schematic Design Studies consisting of drawings and other documents illustrating the scale and relationship of Project components for approval by the Owner.
3. The Consultant shall submit in writing to the Owner's Representative a Statement of Estimated Construction Cost based on current area, volume or other unit costs.

B. DESIGN DEVELOPMENT PHASE

1. The Consultant shall prepare from the Owner approved Schematic Design Studies, The Design Development Documents consisting of Drawings and other documents to fix and describe the size and character of the entire Project as to structural, mechanical and electrical systems, materials and such other essentials as may be appropriate. .
2. The Consultant shall submit in writing to the Owner a Statement of Estimated Construction Cost.
3. The Consultant shall assist the Owner in filing any required documents for the approval of governmental authorities having jurisdiction over the Project, when applicable.

C. CONSTRUCTION DOCUMENTS PHASE

1. The Consultant shall prepare from the approved Design Development Documents, for approval 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. The Consultant shall develop a construction schedule for the Project and incorporate the schedule into the Construction Documents.
2. The Consultant shall submit in writing to the Owner a Final Statement of Estimated Construction Cost.
3. The Consultant shall obtain written approval of the appropriate authority of 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.
4. In the case of new construction, the Consultant shall provide the Owner with written certification and summary verification calculations that Construction Documents comply with the latest issue of ASHRAE Standard 90, Energy Conservation in New Building Design.
5. The Consultant shall submit documents for Owner review and incorporating comments into bid documents.
6. The Consultant is to provide two sets of reproducible bid documents.

D. BIDDING PHASE

1. The Consultant, following the Owner approval of the Construction Documents and the Final Statement of Estimated Construction Cost, shall be present at the bid opening and assist the Owner in obtaining and reviewing bids. The Consultant shall also provide representation at prebid meetings. The Consultant shall prepare and issue addenda as necessary to clarify or correct the Construction Documents.
2. After the award of the construction contract the Consultant will issue construction documents, which incorporate all addenda and accepted alternates.

E. CONSTRUCTION ADMINISTRATION PHASE

1. The Construction Administration Phase will commence with the award of the Construction contract and will terminate with the final acceptance by the owner.
2. The Consultant shall provide for Administration, of the Construction Phase as set forth in the Southeast Missouri State University Standard General Conditions.
3. The Consultant, during Construction Administration, shall advise and consult with the Owner and shall have authority to act on behalf of the Owner only to the extent provided in the General Conditions unless otherwise modified in writing.
4. The Consultant shall at all times have access to the Work.
5. The Consultant shall visit the project site as necessary, essentially in accord with the following schedule, to determine if the work is proceeding in accordance with the Construction Documents and to answer all questions pertaining to the Work as described in Construction Documents and required to make the project complete. The site visits shall be performed not less than once per month and on the basis of the site observations, the Consultant shall submit to the Owner a written progress and observation report summarizing each visit and presenting the current status of the Project with regard to pending changes, design or construction problems and scheduled variations. All observations, including those specified to be performed by the Consultant 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 he shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Construction Documents. Nor shall he be responsible for the acts or omissions of the Contractor or Subcontractors, or any other person performing the Work.
6. Based on such observations at the site and on the Contractor's written request for payment, the Consultant shall determine the amount owing to the Contractor and shall certify requests for payment in such amounts, on the basis that the Work has progressed to the point indicated; and that to the best of the Consultant's knowledge, information and belief, the quality of Work is in

accordance with the Construction Documents. Such certification 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.

7. The Consultant shall, in the first instance, be the interpreter of the requirements of the Construction Documents. However, this paragraph shall in no way abrogate the provisions of Article XIV of this agreement.
8. 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 for special inspection and/or testing.
9. The Consultant shall review and approve shop drawings, samples, and other information request or submissions of the Contractor for conformance with the design concept of the Project and for compliance with the information given in the Construction Documents and shall respond to and return said items to the Contractor within fourteen (14) consecutive calendar days of receipt thereof.
10. The Consultant shall review and process Change Order Requests in accordance with the form and procedures prescribed by the Owner.
11. All substitutions must be coordinated with the Owner as required in the Southeast Missouri State University Standard General Conditions prior to the Consultants approval.
12. During the warranty period of the Construction Contract(s), the Consultant shall work with the Owner to secure correction of any defects that become apparent. Services provided by the Consultant during this 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. In addition, the Consultant and his 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 within 30 days of the inspection.

ARTICLE II

ADDITIONAL SERVICES

Additional Services shall be provided only upon prior written authorization by the Owner and shall be paid for by the Owner as hereinbefore provided. The following examples of Additional Services are representative of those that may be authorized, unless such services have been included as part of Basic Services under Article I.

- A. If the Owner determines that full-time on-site construction observation is required, then the Consultant shall provide one or more full-time Project Representatives. Such full-time Project Representative(s) shall be selected, employed and directed by the Consultant.
- B. Providing special analyses of, and programming for, the Owner's needs.
- C. Providing financial feasibility or other special studies.
- D. Providing planning surveys, site evaluations, and environmental or comparative studies of prospective sites.
- E. Providing design services relative to future facilities, systems and equipment which are not intended to be constructed as part of the Project.
- F. Providing extraordinary services to investigate existing conditions of facilities or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by the Owner's Representative, beyond that which normally is required to perform the Basic Services, considering the nature of the Project.
- G. Providing formal life-cycle cost studies of alternative building systems when requested by the Owner.
- H. Providing interior design, graphics design, and other services required for or in connection with the selection of furniture, furnishings and equipment.
- I. Providing revisions of Drawings, Specifications or other documents when such revisions are required by changes to previously approved design criteria.
- J. Providing consultation concerning replacement of any Work damaged by fire or other cause during construction.
- K. Providing professional services made necessary by the default of the Contractor or by major defects in the Work of the Contractor in the performance of the Construction Contract.
- L. Providing services or special consultants (other than stipulated) for other than the normal civil, architectural, structural, mechanical and electrical engineering services for the Project.
- M. If such services are deemed necessary by the Owner, other than that which was stipulated in the Scope of Work then the Consultant shall furnish the services of a soils engineer or other similar consultant. Such services may include but not be limited to additional test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, with appropriate professional analysis thereof. The Owner's Representative shall approve the selection of the soils engineer before he may commence work.
- N. Preparing to serve or serving as expert witness in connection with any public hearing, or legal proceeding where the Consultant is not a named party to such a hearing or proceeding.

ARTICLE III

CONSULTANT'S RESPONSIBILITIES

- A. The Consultant will diligently work to accomplish said Project(s) within the intent of the program(s) and budget(s). In the event the Consultant determines that the Project(s) cannot be accomplished within the established budget(s), he shall notify the Owner of this fact in writing prior to completion of the Schematic Design Phase, so that the Project(s) scope can be reviewed and modified if necessary.
- B. The Consultant agrees to full inspection of the job site prior to commencing his Work and shall use reasonable care to verify that all information supplied to him by the Owner is correct and accurate.
- C. The Consultant agrees to provide all drawings and reproductions for review by the Owner prior to completing the Construction Documents.
- D. The Consultant shall provide upon demand evidence of an appropriate professional liability insurance policy.
- E. At the completion of the Project, the Consultant shall provide the Owner with one set of prints showing the project drawings, with all changes and additions incorporated therein. In addition, the Consultant shall provide the Facilities Management Department an electronic copy on CD or DVD disk(s) of the same drawings in both AutoCAD.DWG and .TIF format.
- F. The Consultant shall see that the design of all connections to private or public utility systems or public roads and streets comply with applicable ordinances, regulations and codes.
- G. If Consultant renders basically Architectural Services, he hereby agrees that all plans, specifications, detail drawings, etc., for Engineering work pertaining to heating, ventilation, refrigeration, electrical, or other mechanical or structural work shall be done by a registered professional Engineer in his own organization, or agrees to employ without additional cost to the Owner, and subject to the approval of the Owner, 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 inspection services.
- H. If Consultant renders basically Engineering Services, he hereby agrees that all plans, specifications, detailed drawings, etc., for Architectural work pertaining to this Project shall be done by a registered professional Architect in his own organization, or agrees to employ without additional cost to the Owner, and subject to the approval of the Owner, 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 inspection services.

**ARTICLE IV
OWNER'S RESPONSIBILITIES**

- A. The Owner shall provide information regarding his requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, as well as information required of him in order to promote the orderly progress of the Work.
- B. If the Owner observes or otherwise becomes aware of any fault or defect in the Project or non-conformance with the Contract Documents, he shall give prompt written notice thereof to the Consultant.
- C. The Owner shall assist the Consultant by placing at the Consultant's disposal all available information pertinent to the Project including background drawings, surveys, specifications, previous reports and any other data relative to the design or potential construction planning of the Project.
- D. All of the above items relating to Owner's responsibilities shall in no way abrogate the Consultant's responsibility.

**ARTICLE V
COMPETITIVE BIDDING REQUIREMENTS**

Under statutory provisions of the State of Missouri, the Owner is required to competitively bid all construction projects. Negotiation of Construction amounts shall not be permitted. All estimates concerning the Project shall be held confidential between the Owner and the Consultant.

**ARTICLE VI
ALTERNATES**

- A. Upon approval of the Owner, the Consultant may include in the Project additive alternates. The alternates when bid must be accepted in numerical order.
- B. When the Owner's Representative requires the Consultant to include alternates to the Project, the cost of those alternates shall be used to determine the Consultant's compensation whether the alternates are accepted or not accepted.
- C. When the Consultant elects to include alternates for the purpose of determining cost, or to protect the budget established for the Base Bid(s), or for any other reason, no compensation will be allowed the Consultant for alternates not accepted.
- D. If the Owner does not accept the alternates, this action shall not render the Project unusable. Therefore, the Consultant, in determining his final estimate, must include Base Bid and necessary alternate costs within the funds available for construction, unless otherwise approved by the Owner.

ARTICLE VII

DIRECT PERSONNEL EXPENSE

- A. Direct Personnel Expense is defined as the cost of salaries and includes mandatory and customary benefits such as insurance, sick leave, vacation, holiday, pensions and other such cost that relate to employees engaged on the Project by the Consultant.
- B. Employees may include, but are not necessarily limited to, architects, engineers, designers, draftsmen, specification writers, stenographers, typists and other personnel engaged in consultations, research, design, document production or other Work pertaining to the Project.
- C. Should Direct Personnel Expense be selected as the method of compensation, the Consultant will submit in writing to the Owner's Representative a complete list of all employees to be engaged on the project along with a schedule of rates and benefits for those employees.

ARTICLE VIII

REIMBURSABLE EXPENSES

- A. Reimbursable Expenses shall not include the actual cost of reproduction of bid documents and postage or delivery of such documents. The Owner is responsible for the reproduction of bid documents.
- B. Further Reimbursable Expenses are defined as direct costs which may be in addition to the compensation for Basic and/or Additional Services and may include but are not necessarily limited to the following:
 - 1. Wire and wireless communications of messages and data made in connection with the Project.
 - 2. Meals, lodging and transportation expenses incurred while traveling in connection with the Project.
 - 3. Reproductions of drawings, photographs, and reports which are prepared for the Owner's review and the cost of the reproductions which constitute the delivery of the work.
 - 4. Reimbursable expenses may include topographic surveys and/or soils investigation work.
- C. The consultant shall be paid only for those Reimbursable Expenses described in this article or set out under Compensation for Reimbursable Expenses on page two (2) of this Agreement. Payment for said services shall be at 1.0 times the direct cost to the Consultant unless specifically set out otherwise on page two (2) of this Agreement.

ARTICLE IX

CONSULTANT'S ACCOUNTING RECORDS

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 and shall be available to the Owner or his authorized representatives upon request. The Owner's Representative reserves the right to withhold payment of

any amounts owed to the Consultant unless or until said records and receipts are received and verified by him when requested.

ARTICLE X

OWNER'S REPRESENTATIVE

For the purposes of this Agreement, the Director of Facilities Management, or the Director's designated Project Manager, shall serve as the Owner's Representative. All communication between Consultant and Owner shall be through the Owner's Representative. No plans and specifications, or changes thereto, will be accepted by the Owner, nor any payments made, without approval of the Owner's Representative.

ARTICLE XI

CONSULTANT'S COOPERATION

The Consultant agrees to perform his services under this Contract in such a manner and at such times so that the Owner and/or any contractor who has Work to perform, or Contracts to execute, can do so without delay.

ARTICLE XII

OWNERSHIP OF DOCUMENTS

Project Documents, as instruments of service, are and shall remain the property of the Owner, whether the Project for which they are prepared is constructed or not. They may be used by the Owner to construct another like Project without approval of, or additional compensation to, the Consultant, provided that the Owner accepts design responsibility for any such additional use.

ARTICLE XIII

SUCCESSORS AND ASSIGNS

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

ARTICLE XIV

DISPUTES AND DISAGREEMENTS

In the event any controversy or difference of opinion shall arise between the parties to this Agreement in relation to the performance on the part of the Consultant or the obligations of the Owner with respect to the quality, quantity or value of the Work or material, the interpretation of the provisions of this agreement or any matter connected with this Work, the issues will be discussed between the Consultant and the Director of Facilities Management of the Owner. In the event agreement is not reached, prior to filing litigation, the matter shall be submitted to mediation in accordance with the procedures established for alternative dispute resolution by the

Missouri Supreme Court. If the parties are unable to agree upon a mediator, upon application of either party a mediator may be designated by the Presiding Judge of the Circuit Court of Cape Girardeau County. Each party shall bear its own cost incurred in connection with mediation, and the fees and expenses of the mediator shall be borne equally by the parties.

ARTICLE XV
TERMINATION

This Agreement may be terminated by the Owner 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, or funds for the Project are not appropriated, or funds are insufficient to proceed with the Project. The Owner 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 rightful claim or set off by the Owner's Representative.

**ARTICLE XVI
EXTENT OF AGREEMENT**

THIS AGREEMENT represents the entire and 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.

OWNER:

CONSULTANT:

APPROVAL RECOMMENDED:

PM Name, Project Manager
Facilities Management

Firm Name

Signature of Owner

APPROVAL RECOMMENDED:

Angela Meyer
Director, Facilities Management

Mailing Address

City, State, Zip

ATTEST:

APPROVAL RECOMMENDED:

Kathy M. Mangels
Vice President for Finance and Administration

Signature of Corporate Secretary

CORPORATE SEAL:

APPROVED:

Carlos Vargas
President