

**ARTICLE 1
GENERAL**

1.1 The Owner and the Consultant, for the considerations hereinafter named, agree as follows:

1.2 The Consultant agrees to perform professional services for the above-named project in accordance with the Project Description (Exhibit A) and as set forth hereinafter. 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.

1.3 The Owner agrees to pay the Consultant for such services as set forth in the Project Description, (Exhibit A) and as hereinafter defined, including other payments and reimbursements as hereinafter provided, the said fee being hereinafter called the "Basic Rate."

1.4 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 the Owner and the Consultant.

1.5 Nothing contained in this Agreement shall create a contractual relationship between a third party and either the Owner or the Consultant.

**ARTICLE 2
BASIC SERVICES**

2.1.1 The Consultant's Basic Services shall consist of the phases described as follows and shall include where applicable, but are not limited to, architectural, and structural, civil, mechanical, and electrical engineering services. During each phase of work, the Consultant shall fulfill all requirements and responsibilities as described in the University of Missouri Consultant Procedures and Design Guidelines, as incorporated by reference in Exhibit A. Any deviation from, or deletion to, these requirements and responsibilities must be requested in writing by the Consultant, and must be approved in writing by the Owner. The Consultant shall obtain written approval from the Owner before proceeding with each phase. Specific Basic Services applicable to all phases include the following:

2.1.2 The Consultant shall prepare and distribute to the Owner meeting minutes of all meetings, and telephone logs documenting conversations concerning project scope. The Consultant shall attend project review meetings for each phase of the project unless otherwise directed by the Owner.

2.1.3 The Consultant shall prepare a monthly payment request form, furnished by the Owner, for all

billings. The Consultant shall include a list of tasks accomplished and the status of work with regard to the project schedule stated in Exhibit A.

2.1.4 It is understood that the project designed hereunder shall be efficient, economical, reliable, and of proven quality material, and must harmonize architecturally with the buildings upon the University campus and those buildings to be under construction concurrently. In order to accomplish such purpose, the Consultant shall cooperate mutually with the Owner and with other Consultants who might be employed by the Owner.

2.1.5 The Owner's construction budget takes precedent over project space and/or function requirements, unless authorized by the Owner in writing. Budget limitations shall not relieve the consultant's work from standards of fitness and suitability. The Consultant shall notify the Owner of conflicts between the construction budget and the project space and/or functional requirements.

2.1.6 All Architectural and Engineering services performed by the Consultant and their Subconsultants shall be supervised by a Professional Architect and /or Professional Engineer respectively, who is currently registered by the State of Missouri. All project drawings and specifications shall bear the seal of the Professional Architect and/or Engineer. The Consultant will furnish the Owner a written list of all Subconsultants. The Consultant and their subconsultants shall possess the degree of care, learning, skill and ability which is ordinarily possessed by members of their profession and the consultant and their subconsultants will exercise such degree of care, learning, skill and ability as is ordinarily employed by architects and engineers under similar conditions and like circumstances.

2.1.7 The selection of the Consultant was predicated on the credentials of the Consultant's key design professionals nominated for the project, including subconsultants. A key design professional includes, but is not limited to the project manager, project architect, and lead engineer of any discipline. The Consultant shall notify the Owner of any change to the Consultants' or Subconsultant's key project design professionals and shall supply the Owner with the credentials of design professionals nominated to replace those no longer on the project. The Owner reserves the right to approve any change to the Consultants' or Subconsultant's key design professionals.

2.1.8 Estimates of construction costs provided by the Consultant under this Agreement will represent the Consultant's use of the most appropriate methods and accurate data available, and the Consultant's best judgment as a design professional familiar with the construction industry. Neither the Consultant, nor the Owner, has control over the cost of labor, material, or equipment, or over the Bidder's method of determining

competitive bid prices. Therefore, while the Consultant cannot guarantee that the estimate of construction cost will not vary from actual bids, the Consultant recognizes the Owner's interest in receiving dependable estimates of construction costs and will endeavor to provide the Owner with timely estimates based on current information and free from mathematical error.

2.1.9 The Consultant understands that time is of the essence and agrees to perform services under this Agreement in a manner that will not cause undue delay in progress and completion of the project.

2.1.10 LIABILITY & INSURANCE REQUIREMENTS

2.1.10.1 Liability: The Consultant agrees to defend, indemnify, and save harmless The Curators of the University of Missouri, their Officers, Agents, Employees and Volunteers, from and against all loss or expense from any injury or damages to property of others arising out of the negligent acts, errors, or omissions of the Consultant's operations. The Consultant agrees to investigate, handle, respond to and provide defense for and defend against any such liability, claims, and demands at the sole expense of the Consultant, or at the option of the University, agrees to pay to or reimburse the University for the defense costs incurred by the University in connection with any such liability claims, or demands. The parties hereto understand and agree that the University is relying on, and does not waive or intend to waive by any provision of this Contract, any monetary limitations or any other rights, immunities, and protections provided by the State of Missouri, as from time to time amended, or otherwise available to the University, or its officers, employees, agents or volunteers.

2.1.10.2 Insurance: 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. Consultant shall cause each Subconsultant to purchase and maintain insurance of the types and amounts specified herein. Limits of such coverage may be reduced only upon written agreement of Owner.

2.1.10.3 Commercial General Liability Coverage comparable to Comprehensive General Liability coverage to protect the Consultant and any 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 any Subconsultant or by anyone directly or indirectly employed by the Consultant or Subconsultant. In addition, the coverage is to include "The Curators of the University of Missouri" as "additional insured". 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 general aggregate, for both bodily injury and property damage combined.

2.1.10.4 Comprehensive Automobile Liability coverage will be provided by the Consultant and include coverage for all Owned, Hired, and Non-Owned vehicles. The coverage is to include for protection of the Consultant and Subconsultant or by anyone directly or indirectly 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.

2.1.10.5 Professional Liability Insurance will be provided by the Consultant to cover claims arising out of the negligent acts, errors and omissions by the Consultant, Subconsultant, or anyone directly or indirectly employed by them. The coverage provided shall not be less than \$1,000,000 aggregate or the value noted on Exhibit A.

2.1.10.6 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 any Subconsultant similarly to provide Worker's Compensation Insurance for all of the latter's employees, unless such employees are covered by the protection afforded by the Consultant. 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 for each of the three coverages listed for Employer's Liability.

2.1.10.7 All insurance shall be procured through agencies and be written by insurance companies which are acceptable to and approved by the Owner, e.g., all coverages should be placed with Insurance Carriers that are licensed to do business in the state of Missouri as an admitted Carrier and 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.

2.1.10.8 The Consultant shall furnish the Owner with certificates, Additional Insured endorsements, 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. Consultant is required to maintain coverages as stated and required to notify the University of a Carrier Change or cancellation within 2 business days. The University reserves the right to request a copy of the policy. 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.

2.1.10.9 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, any Subconsultant or their employees in the performance of the Agreement.

2.2 SCHEMATIC DESIGN PHASE

2.2.1 The Consultant shall consult with the Owner to ascertain the requirements of the project and shall confirm such requirements to the Owner.

2.2.2 The Consultant shall provide a preliminary evaluation of the program and the project budget requirements each in terms of the other.

2.2.3 The Consultant shall review with the Owner alternative approaches to design and construction of the project.

2.2.4 The Consultant shall provide Life-Cycle Cost Studies of Alternative Building Systems when required in Exhibit A.

2.2.5 The Consultant shall provide energy consumption information for the project in the form of Btu/sq. ft./year when required in Exhibit A.

2.2.6 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, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of project components.

2.2.7 When required by the Owner and identified on Exhibit A, the Consultant shall present Schematic Design Documents at a meeting of the University of Missouri Board of Curators. The presentation shall include a color perspective of the project exterior and a Schematic Design Report consisting of site plans, floor plans, elevations, project cost estimate, and outline specifications of all architectural, structural, civil, electrical and mechanical systems, materials, and such other essentials as may be appropriate. The report shall include a comparison tabulation of gross and assignable floor areas, as designed, and as stated in the Owner's program.

2.2.8 The Consultant shall submit to the Owner, a quantitative estimate of Construction Cost as described in the University of Missouri Consultant Procedures and Design Guidelines, based on the schematic design documents listing line items costs for building systems and components. This estimate should take into account the expected construction start date and duration.

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or project budget, the Consultant shall prepare, for review and approval by the

Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the entire project as to architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate.

2.3.2 The Consultant shall submit to the Owner a detailed quantitative estimate of Construction Cost as described in the University of Missouri Consultant Procedures and Design Guidelines, based on design development documents listing line item costs for building systems and components. This estimate should take into account the expected construction start date and duration.

2.4 CONSTRUCTION DOCUMENT PHASE

2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope, schedule, or quality of the project, or in the project budget authorized by the Owner, the Consultant shall prepare, for review and approval by the Owner, Construction Documents consisting of drawings and specifications setting forth in detail the requirements for construction of the project.

2.4.2 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 certify such action by including a signed certification statement on the cover page of the drawings. Applicable codes, standards and design guidelines shall include, but not be limited to, those listed in the University of Missouri Consultant Procedures and Design Guidelines.

2.4.3 The Consultant shall prepare documents to include additive alternate bids requested by the Owner to keep the project within the "Total Construction Amount Available" as shown on Exhibit A. Compensation for such alternates shall be included as part of the Basic Rate.

2.4.4 The Consultant shall assist the Owner in the preparation of the necessary bidding documents as described in the University of Missouri Consultant Procedures and Design Guidelines.

2.4.5 The Consultant shall submit to the Owner a detailed quantitative estimate of construction cost as described in the University of Missouri Consultant Procedures and Design Guidelines, based on Construction Documents before the Owner's final review and approval of the Documents for bidding. The estimate shall reflect current area market conditions. The Consultant shall make no provision for a bidding contingency in the construction estimate.

2.4.6 The Consultant shall prepare a final tabulation of net, net assignable and gross square feet for all

building areas as described in the University of Missouri Consultant Procedures and Design Guidelines.

2.5 BIDDING PHASE

2.5.1 The Consultant, following the Owner's approval of the Construction Documents and the latest detailed estimate of Construction Cost, shall assist the Owner in the reproduction and distribution of Construction Documents and in obtaining bids. Reproduction and distribution costs incurred by the Consultant will be a reimbursable expense in accordance with paragraph 9.9. The Consultant shall attend the prebid meeting and the bid opening when required in Exhibit A as part of the Basic Rate. The Consultant shall advise the Owner of any adjustments to the previous estimate of construction cost before bid opening.

2.5.2 The Consultant shall prepare and distribute addenda related to document interpretation as outlined in the University of Missouri Information for Bidders, and the University of Missouri Consultant Procedures and Design Guidelines, and as approved by the Owner, which will be incorporated in the contract for construction.

2.5.3 Consultant shall conduct a thorough review of all bids including the Bidder's Statement of Qualifications and make a recommendation as to lowest responsible and responsive bid(s) in compliance with the contract documents.

2.5.4.1 The bid review process shall include but not be limited to the Consultant providing the Owner with a written analysis and explanation of the bidding results, including an opinion on variations in the bids if the low bid varies from the estimate by more than plus or minus 5%.

2.6 CONSTRUCTION PHASE

2.6.1 The construction phase will commence with the award of the construction contract(s), and will terminate upon final acceptance of the project by the Owner.

2.6.2 The Consultant shall perform the duties set forth in the University of Missouri Information for Bidders, General Conditions of the Contract for Construction and the specifications for the project, which will be incorporated in the contract for construction. The Information for Bidders and General Conditions of the Contract for Construction are incorporated into this agreement by reference.

2.6.3 The Consultant shall review and approve (or take other appropriate action in respect to) shop drawings, samples and other submittals by the Contractor, only for conformance with the design concept of the project and for compliance with the information given in the project Contract Documents, and shall return said reviewed items to the Contractor

within fourteen (14) consecutive calendar days of receipt thereof.

2.6.4 The Consultant shall assist the Owner in the interpretation of the technical specifications and drawings of the Contract Documents. Upon the request of the Owner's Representative, the Consultant shall provide interpretation of the Contract Documents within the time frame established by the Consultant and the Owner's Representative. The Consultant shall advise the Owner on all claims of the Contractor relating to the execution and progress of the project and on all other matters or questions related thereto.

2.6.5 As part of the Basic Rate, the Consultant shall evaluate and determine the acceptability of Substitutions or Approved Equals proposed by the Contractor, in accordance with Article 3 of the General Conditions of the Contract for Construction. The Consultant will review Substitutions and Approved Equals during the bidding phase as directed by the Owner's Representative.

2.6.6 The Consultant shall advise and consult with the Owner, and all instructions to the Contractor shall be issued through the Owner's Representative. The Consultant shall have authority to act on behalf of the Owner to the extent provided in the General Conditions of the Contract for Construction unless otherwise modified in writing.

2.6.7 The Consultant shall, as directed by the Owner, revise original drawings and specifications issued during the bidding phase to incorporate addenda items. These revised drawings and specifications will be reissued for the construction phase. Reproduction and distribution costs incurred by the Consultant, for drawings and specifications revised under this requirement, will be a reimbursable expense under this agreement.

2.6.8 The Consultant shall work with the Owner to secure correction of any defects that become apparent after construction is completed. The services shall be considered Additional Services unless the defects in the Work result from errors or omissions in the design prepared by the Consultant.

2.6.9 Construction Observation Visits

2.6.9.1 The Consultant and their Subconsultants shall have access to the site of the project at all times. The Consultant shall visit the site for the preconstruction conference, the preparation of the punch list(s), the final inspection(s), and the number of periodic site visits identified on Exhibit A of this agreement as a part of the Basic Rate. Only site visits requested by the Owner's Representative shall be considered as within this agreement or be considered an Additional Service. The Consultant shall prepare and submit to the Owner a written site visit report for each site visit. Additional site visits, than those above, will be considered an

Additional Service except site visits related to the Consultant's design errors and omissions.

2.6.9.2 The Consultant and their Subconsultants shall visit the project site as requested by the Owner's Representative, to become generally familiar with the progress and quality of the work and to determine in general if the project is proceeding in accordance with the Contract Documents. Based on on-site observations, the Consultant shall to the best of their knowledge, information and belief, protect the Owner against defects and deficiencies in the work of the Contractor. The Consultant and their Subconsultants shall also visit the project site as requested by the Owner to provide technical assistance in resolving construction-related problems.

2.6.9.3 The Consultant shall not have control or charge of, and shall not be responsible for actual construction means, methods, techniques, sequences, procedures, or for safety precautions and programs in connection with the work, or for the acts or omissions of the Contractor, Subcontractors or any other persons performing any of the work.

2.6.9.4 The Consultant shall inform the Owner in writing, for appropriate action by the Owner, of work that in the opinion of the Consultant does not conform to the Contract Documents. The Consultant shall advise the Owner if, in the Consultant's professional opinion, the Contractor is not exercising proper performance of the contract. The Consultant shall have the authority to require special inspection or testing of any work in accordance with the provisions of the project Contract Documents, whether or not such work be fabricated, installed or completed.

2.6.10 Change Orders

2.6.10.1 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.

2.6.10.2 The Consultant shall prepare design documents for change orders due to design errors and omissions at no cost to the Owner.

2.6.10.3 The Consultant may be liable, at the Owner's discretion to reimburse the Owner for the non-value added cost of change orders due to design errors and omissions over 1.0% of the total construction cost. 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.

2.6.10.4 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.

2.6.11 Final Completion

The Consultant shall assist the Owner in conducting observations to determine the dates of substantial and of final completion. The Consultant shall receive and forward to the Owner written guarantees and related documents assembled by the Contractor. The Consultant shall issue written certification to the Owner that the project has been completed in general accordance with the project Contract Documents and applicable codes, to the best of the Consultant's knowledge, information and belief and establish the date of final completion.

2.6.12 Record Drawings

The Consultant shall furnish the Owner either one set of Record Drawings on reproducible mylar and one set on high quality (minimum 24 lb) bond paper; or two (2) sets of Record Drawings on high-quality (minimum 24 lb) bond paper as indicated in Exhibit A, within twenty-one (21) days of receipt of the marked up drawings from the Contractor. At the Owner's written request, archival quality photographic 4 mil Mylar will be used for selected drawings and reimbursed as a reimbursable expense as provided in this agreement. These drawings shall indicate as-built conditions at final completion of the project based upon information supplied by the Contractor, and shall be of sufficient quality to facilitate photographic reproduction. An electronic copy in the format designated by the Owner, shall be furnished of any drawings. The Owner will retain five percent (5%) of the Consultants total fee until Record Drawings, as specified, are received. By incorporating information supplied by the Contractor into the Record Drawings, the Consultant does not assume responsibility for the accuracy of the Contractor-supplied information.

ARTICLE 3 ADDITIONAL SERVICES

3.1 The following services are not covered under Compensation for Consultant's Basic Services, described in this agreement. If any of the following services are requested by the Owner in writing, additional compensation will be allowed as hereinafter provided.

3.2 If changes in project scope are directed by the Owner' Representative following the approval of Design Development or Construction Documents, which are not necessary to bring the cost of the Project within the "Total Construction Amount Available" (Exhibit A), the Consultant may be entitled to additional compensation. This compensation will be agreed upon by the Owner and the Consultant, and this contract will be amended, in writing, to reflect that agreement, before the Consultant making such revisions.

3.3 Compensation for approved additional site visits, by the Consultant and their Subconsultants, in excess of those included in the basic services of this agreement shall not exceed the rate stated in Exhibit A, or as approved in writing by the Owner's Representative.

3.4 Additional compensation for services required after completion of Construction Contract(s) shall be agreed upon in writing before providing services.

3.5 When not provided by the Owner, the Consultant's services may be required to analyze the Owner's needs, and program the project requirements. The method and amount of compensation shall be agreed upon in writing before providing services.

3.6 The Consultant shall make all requests for compensation for additional services performed through the construction document phase before advertisement of the project for bids. All requests for additional compensation will be made in writing to the Owner.

ARTICLE 4 THE OWNER'S RESPONSIBILITIES

4.1 The Owner will allocate a fixed limit for construction cost as hereinafter defined.

4.2 The Owner will be represented by an Owner's Representative authorized to act in its behalf with respect to the project. The Owner's Representative will examine documents submitted by the Consultant and will render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Consultant's work. The Owner's review does not relieve the Consultant from design responsibility.

4.3 The Owner will furnish, or direct the Consultant to secure, as a reimbursable expense, a certified land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements, and adjoining property; rights-of-way, restrictions, easements, encroachments, deed restrictions, boundaries, and contours of the site; locations, dimensions, and complete data pertaining to existing buildings, other site improvements, and landscape plantings; location and full information concerning available service and utility lines (above and below ground), both public and private. Cost for the survey shall require prior approval by the Owner.

4.4 The Owner will provide full information regarding the Owner's requirements for the project.

4.5 The Owner will furnish existing certified soils reports including test borings, test pits, and soil bearing values that will assist in determining subsoil conditions. If such reports are not available, the Owner may direct the Consultant to obtain such tests as necessary for

determining subsoil conditions, and the cost of such tests, following approval by the Owner, will be a reimbursable expense.

4.6 The Owner will furnish information requested by the Consultant as expeditiously as necessary for the orderly progress of the work.

4.7 The Owner, through the Owner's Representative, will provide on-site field observation during the construction phase.

ARTICLE 5 CONSTRUCTION COST

5.1 The Construction Cost for the project shall not exceed the Total Construction Amount Available identified in Exhibit A for the project, unless otherwise authorized in writing, by the Owner.

5.2 Materials and fixed equipment specified by the Consultant and furnished by the Owner shall be included in the construction cost as the lesser of cost or current market value.

5.3 If the Bidding Phase has not commenced within six months after the Consultant submits the Construction Documents to the Owner, the project budget or fixed limit of construction cost will be adjusted to reflect the change in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought.

5.4 If the lowest responsible and responsive bid, or estimate of construction cost exceeds the Total Construction Amount Available established as a condition of this Agreement, the Owner will at its option (1) give written approval of an increase in the Total Construction Amount Available, (2) authorize rebidding of the project within a reasonable time, (3) cooperate in revising the project scope as required to reduce the estimated cost. In the case of (2) and (3), the Consultant, without additional compensation, shall modify the drawings and specifications or perform other services as necessary to bring the construction cost within the Total Construction Amount Available.

5.5 Percentage of Construction Cost Fee

5.5.1 The Construction Cost for determining the Consultants compensation under a Percentage of Construction Cost Fee shall be determined as follows with precedence in the order listed:

5.5.1.1 For completed construction, the total contract awarded for all such work, not including changes to the work, which required no services by the Consultant.

5.5.1.2 For work not constructed, the lowest responsible and responsive bid received from a qualified bidder for any or all such work.

5.5.1.3 For work for which bids are not received, the latest detailed cost estimate approved by the Owner.

5.5.2 The Construction Cost will include the sum total of the construction work for which services were performed by the Consultant and specified by the Consultant to be performed by a General Contractor or other Prime Contractors if the work is divided into appropriate classes. In no event shall the Construction Cost include professional fees, Owner's supervision, reimbursable expenses, legal expenses, advertising, movable equipment for the project, cost of land, items furnished by the Owner, when no service is provided by the Consultant, or any other expense for which the Owner is responsible.

5.5.3 Materials and fixed equipment specified by the Consultant and furnished by the Owner shall be included in the construction cost as the lesser of cost or current market value.

5.5.4 As an option to the method of calculating the final Percentage of Construction Cost Fee described in Article 5.5.1.1 and 5.5.1.2, the Owner and the Consultant may mutually agree to use the final Owner approved Prebid Estimate of Construction Cost as the Construction Cost for determining the Consultants compensation. This option shall be agreed to before the receipt of bids.

5.6 Alternates

5.6.1 The Consultant may propose additive bid alternates to adjust the construction cost to the fixed limit, but the Owner reserves the right to reject any proposed alternates, materials, built-in equipment, component systems, or types of construction at any phase of the work which would, in the Owner's opinion, reduce the efficiency or durability of the project to an extent which could not be condoned.

5.6.2 The Consultant shall include only those bid alternates approved by the Owner. All alternates shall be additive alternates to the base bid.

5.6.3 For additive alternates approved by the Owner, the Consultant's compensation will be determined as defined in paragraph 5.5 or as described on Exhibit A.

ARTICLE 6 OWNERSHIP OF DOCUMENTS

6.1 All studies, perspectives, reports, plans and specifications prepared by the Consultant and their Subconsultants, shall become the property of the Owner whether the project for which they are made is completed or not. It is understood that any reuse of such documents in whole or in part for work not covered by this Agreement, without the written consent of the Consultant and their Subconsultants, will relieve the Consultant and their Subconsultants of all liability pertaining to such reuse.

ARTICLE 7 ADMINISTRATIVE REVIEW

7.1 Disputes between the Consultant and the Owner can be submitted in writing to administrative review as provided in this article. All requests for administrative review shall be made to the Owner's Representative, who in turn forwards the request to the Campus Contracting Officer.

7.2 Upon written request from the Consultant, the Campus Contracting Officer will convene a meeting between the Owner's Representative and the Consultant. After reviewing the facts presented, the Campus Contracting Officer will issue a written opinion to the Consultant and Owner's Representative regarding the disputes.

7.3 If the Consultant is not in agreement with the opinion of the Campus Contracting Officer, the UM System Contracting Officer or designee will convene a meeting with the Campus Contracting Officer, the Owner's Representative, and the Consultant. After reviewing the facts, the UM System Contracting Officer or designee will issue a written opinion to the Consultant and Campus Contracting Officer regarding the disputes. This written opinion will conclude the Administrative Review process.

ARTICLE 8 TERMINATION OF AGREEMENT

8.1 The Owner may terminate this Agreement at any time and for any cause by a notice in writing to the Consultant. Upon receipt of such notice, the Consultant shall, unless the notice directs other-wise, immediately discontinue all services and work, the placing of all orders, or the entering into contracts for supplies, assistance, facilities, and materials in connection with the performance of this Agreement, and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement.

8.2 Should the Agreement be terminated due to the fault of the Consultant, no further payments on the fee account will thereafter be made except for services previously authorized and performed which are of value to the Owner. Should the Agreement be terminated due to no fault of the Consultant, the Consultant will be paid promptly any unpaid fees and reimbursable expenses for work actually authorized and performed under the Agreement.

8.3 The notice required under Paragraph 8.1 will be delivered or served upon the Consultant or mailed to the Consultant's last known address by registered mail, and in case the notice is so mailed, it shall be deemed delivered within forty-eight (48) hours after the same is post marked.

**ARTICLE 9
PAYMENTS TO THE CONSULTANT**

9.1 The Basic Rate herein provided shall cover the compensation for all Basic Services to be rendered hereunder and expenses of whatsoever nature, except reimbursable expenses in accordance with this agreement, incurred by the Consultant or their representatives or Subconsultants while in the discharge of any duties connected with the project, or where specific provision is otherwise made in this Agreement.

9.2 Payments will be paid in proportion to the services performed. Payments toward the Basic Rate will be made monthly and at the completion of each phase. The payments will not exceed the percentages of the Basic Rate for the completion of each phase as set forth below, or as described in Exhibit A:

Schematic Design Phase	15%
Design Development	20%
Construction Documents	40%
Bidding Phase	5%
Construction Phase	15%
<u>Record Drawings</u>	<u>5%</u>
Total	100%

9.3 At the Owners request, the Consultant shall classify the personnel engaged on the project in the Consultant's Rates Schedule for Billing and such schedule will be attached to this agreement.

9.4 Payments for approved reimbursable expenses or other approved extra compensation over and above the applied Basic Rate will be made promptly upon presentation, to the Owner, of the Consultant's statement of services rendered and supporting documentation.

9.5 If the project is abandoned in whole or in part, the Consultant will be paid for services performed before receipt of written notice from the Owner of such abandonment. Payments will not, however, be made for any phase of the work which has not been authorized in writing by the Owner.

9.6 Should work which has been abandoned in whole or in part be ultimately resumed, the Owner shall be allowed full credit for any amounts previously paid if the project is substantially the same and a reasonable credit for any studies previously made which would facilitate the performance of services in a major re-design of the project.

9.7 If the Design Development Phase, Construction Document Phase, Bidding Phase or Construction Phase, respectively, has not commenced within six (6) months after the Consultant submits the previous phase documents to the Owner, the project budget or fixed limit of Construction Cost will be adjusted to reflect the change in the general level of

prices in the construction industry between the date of submission of the previous phase documents to the Owner and the date on which the next phase is begun. If the Consultant's fee (Basic Rate) is on a percentage basis, the appropriate consultant phase payment will be based upon the project budget applicable at the time of design of the respective phase.

9.8 EXAMINATION OF RECORDS

The Owner, and any parties it deems necessary, shall have access to and the right to examine any accounting records of the Consultant involving transactions and work related to this Agreement until the expiration of five years after final payment hereunder.

9.9 REIMBURSABLE EXPENSES

9.9.1 Reimbursable expenses are in addition to the professional fee determined by the Basic Rate. The furnishing and distribution of all copies of the bidding documents will be a reimbursable expense at Consultant's direct cost without Consultant's overhead and profit, if such service is not provided by the Owner.

9.9.2 If authorized in advance in writing by the Owner, direct expense of special consultants for other than the normal services furnished by the Consultant will be reimbursable expenses.

9.9.3 If authorized in advance in writing by the Owner, the production and/or reproduction of presentation models, mock-ups, perspectives 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.

9.9.4 Telephone calls, mileage and/or other travel costs, meals and lodging for out-of-town trips, photocopying costs, and expenses of a similar nature will not be considered a reimbursable expense under this Agreement unless such items are specifically authorized in advance, in writing by the Owner.

9.10 SUBCONSULTANT PAYMENT

The Consultant shall pay all subconsultants and others for all supplies and services used by the Consultant for this agreement, within a reasonable time after payment by the Owner.

**ARTICLE 10
MISCELLANEOUS PROVISIONS**

10.1 APPLICABLE LAW DEEMED INSERTED

This Agreement shall be governed by the laws of the State of Missouri. All applicable provisions required by law shall be deemed to be incorporated herein.

10.2 CONFLICT OF INTEREST

10.2.1 The Consultant will not hire any officer or employee of the Owner to perform any service covered by this Agreement. If the work is to be performed, in connection with a federal contract or grant, the Consultant will not hire any employee of the United States government to perform any service covered by this Agreement.

10.2.2 The Consultant affirms that to the best of their knowledge there exists no actual or potential conflict between the Consultant's family, business or financial interests and the Consultant's services under this Agreement, and in the event of change in either the Consultant's private interests or service under this Agreement, the Consultant will raise with the Owner any questions regarding possible conflict of interest which may arise as a result of such change.

10.2.3 The Consultant herein is an independent contractor and shall not act as an agent for the University, nor shall the Consultant be deemed an employee of the University for any purpose whatsoever. The Consultant shall not enter into any agreement, incur any obligations on the University's behalf, or commit the University in any manner.

10.3 NONDISCRIMINATION EQUAL OPPORTUNITY

The University serves from time to time as a contractor for the United States government. Accordingly, the provider of goods and/or services shall comply with federal laws, rules and regulations applicable to subcontractors of government contracts including those relating to equal employment opportunity and affirmative action in the employment of minorities (Executive Order 11246), women (Executive Order 11375), persons with disabilities (29 USC 706) and Executive Order 11758, and certain veterans (38 USC 4212 formerly [2012]) contracting with business concerns with small disadvantaged business concerns (Publication L. 95-507). Contract clauses required by the Government in such circumstances are incorporated herein by reference.

10.4 PATENTS

The Consultant shall hold and save harmless the Owner and its officers, agents, servants and employees, from liability of any nature or kind, including cost and expense, for or on account of infringement or use of any patented or otherwise protected invention, process, or article in the performance of this Agreement, including its use by the Owner.

Whenever any invention or discovery is made or conceived by the Consultant in the course of or in connection with this Agreement, the Consultant shall furnish the Owner with complete information with respect thereto and the Owner will have the sole power to determine whether or where a patent application will be filed and to determine the disposition of title to and all rights under any application or patent that may result. The Consultant shall, at the Owner's expense and the Owner's request, execute all documents and do all things necessary or proper with respect to such patent application.

10.5 COPYRIGHT

The Owner will have the sole power to determine whether a copyright application will be filed for any published report or other document that results from the work performed under this Agreement. The Consultant shall, at the Owner's expense and at the Owner's request, execute all documents and do all things necessary or proper with respect to such copyright application.

10.6 JURISDICTION

Consultant and Owner each agree that the State of Missouri Circuit Court for the County where the Project is located shall have exclusive jurisdiction to resolve all Claims and any issue and disputes between Consultant and Owner. Consultant agrees that it shall not file any petition, complaint, lawsuit or legal proceeding against Owner in any other court other than the State of Missouri Circuit Court for the County where the Project is located.

10.7 DEBARMENT AND SUSPENSION CERTIFICATE

The contractor certifies to the best of its knowledge and belief that it and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency in accordance with Executive Order 12549 (2/18/86).

ARTICLE 11 ASSIGNMENT

11.1 The services to be rendered by the Consultant hereunder are personal in character. This Agreement shall not be assigned by the Consultant without the written approval of the Owner.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed as of the day and year first above written.

FOR CONSULTANT:

FOR THE CURATORS OF THE UNIVERSITY OF MISSOURI:

UM Contracting Officer

Title

Federal Identification Number

MBE	Yes_____	No_____
WBE	Yes_____	No_____
SDVE	Yes_____	No_____
Veteran	Yes_____	No_____
DBE	Yes_____	No_____