



Washington University in St. Louis

CONSULTING SERVICES AGREEMENT

THIS AGREEMENT is made effective as of this [redacted] day of [redacted] in the year of [redacted].

BETWEEN Owner:

THE WASHINGTON UNIVERSITY

ADDRESS LINE 1

ADDRESS LINE 2

CITY, STATE ZIP

And Consultant

COMPANY NAME

ADDRESS LINE 1

CITY, STATE ZIP

For the following Project:

Project Number: [redacted]

Project Title: [redacted]

Commitment ID: [redacted]

The Fee is:

Reimbursable Expenses (not to exceed amount): \$0.00

Project Description:

N/A

Special Conditions of Contract

N/A

ARTICLE 1. CONSULTANT'S RESPONSIBILITIES

- 1.1. Consultant agrees to provide those services for the Project set forth in the Scope of Services described in this Agreement and any other services required by the terms of this Agreement ("Services"). Consultant shall be responsible for the performance of the Services whether provided directly by Consultant or through the retention of sub-consultants. Consultant shall coordinate its Services with those provided by Owner or any other separate consultant identified by Owner ("Separate Consultants") and with any governmental agencies having jurisdiction over the Project or Services to the extent (if any) set forth herein and to the extent necessary for the proper performance of the Services.
- 1.2. Consultant warrants that its Services will be suitable for the use intended by Owner, as described in this Agreement. Consultant further warrants that all tests and evaluations shall be performed in accordance with the expertise, care and skill exercised by nationally recognized professionals for projects of comparable size and complexity, using testing equipment and facilities properly and specifically suited for the required tests or evaluations ("Standard of Care").
- 1.3. Consultant represents that it has reviewed the Scope of Services and fully understands Owner's requirements with regard to the Services. Consultant shall be solely responsible for all work, labor, equipment, materials, testing or any other activities necessary to complete the Services in accordance with the terms and conditions herein. Except as otherwise provided herein, Consultant shall be responsible for obtaining any data or information necessary for the performance of the Services. The compensation for the Services established by this Agreement includes compensation for all such costs.
- 1.4. Consultant shall perform its Services required by this Agreement as expeditiously as practicable, consistent with the Standard of Care and the orderly progress of the Project. Consultant shall confer with Owner to determine a mutually acceptable schedule. Consultant shall complete its services on or before Monday, January 01, 0001. Consultant acknowledges and agrees that time is of the essence.
- 1.5. In connection with the Services, Consultant shall meet with and report to Owner or others designated by Owner and at such times as Owner may reasonably request. Consultant shall be responsible for filing the applications and notices and obtaining all necessary permits for inspection or other governmental approvals (and for paying any required application fees), if any are required in connection with performing the Services or the issuance of permits and approvals necessary for performance of the Services.
- 1.6. Consultant and Owner agree that this Agreement is intended to and shall govern all of the Services provided by Consultant, whether initiated or performed prior or subsequent to the execution of this Agreement, and that the effective date of this Agreement shall be deemed to be the first date when the Services were so provided by Consultant. All terms and phrases defined in this Agreement shall have the meanings and definitions set forth herein. All words which have well known technical or construction industry meanings are used in this Agreement in accordance with such recognized meanings, unless defined differently herein or the context clearly indicates otherwise. All references to "days" herein shall mean calendar days, unless otherwise specified.
- 1.7. If applicable to the Services provided hereunder, Consultant agrees to become familiar with and knowledgeable about laws, codes, ordinances, rules, regulations and statutes ("Codes") governing the Services, and agrees that the Services shall be performed and provided in conformance with such Codes. Consultant agrees to correct or modify promptly any Services and/or Work-Product that do not so comply and at no cost to Owner.
- 1.8. Consultant acknowledges that its Services and any Work-Product it provides as part of the Services may be used and relied upon by Owner, third-parties retained by Owner for other work and services relating to the Project, or other third parties identified by Owner. Consultant agrees to provide written acknowledgement to such third parties of their right to rely upon the Services or Work-Product upon request by Owner and at no additional cost to Owner or third-party.
- 1.9. Consultant shall document the performance of its Services and provide Owner with a comprehensive report of such Services including recommendations, in such form and with such content as required by Owner. Consultant shall retain and preserve all records, data, analyses, calculations and other records related to the Services ("Records") for five (5) years after completion of the Services. Consultant shall retain and preserve all samples not otherwise consumed as part of the testing or analysis of such samples ("Samples") until the earlier of (i) one (1) year after the taking of such Sample; or (ii) the expiration of the applicable retention time for such Sample. Prior to disposal, Consultant shall notify Owner and provide Owner an opportunity to take possession of the Records or Samples (rather than permit them to be disposed). All Records and Samples shall be made available to Owner upon request.

- 1.10. If the Services include the investigation, inspection or testing of facilities or property, Consultant shall take appropriate and necessary precautions and measures to avoid damage to existing and adjacent facilities, property or utilities. Consultant shall promptly repair any damage caused by such investigations, inspection or testing and shall restore the affected property or facility to its condition prior to the investigation, inspection or testing at no additional cost to Owner.
- 1.11. If Consultant encounters any hazardous material, Consultant shall immediately stop work in the affected area and notify Owner. Consultant shall not thereafter resume activities in the affected area until the hazardous material has been removed or rendered harmless. Consultant shall not be responsible for the removal or remediation of hazardous material unless so provided in the Scope of Services described in this Agreement or otherwise agreed to by Owner and Consultant in writing.

ARTICLE 2. ADDITIONAL SERVICES

- 2.1. Owner, without invalidating this Agreement, may order changes to the Services within the general scope of this Agreement consisting of additions, deletions or other revisions. Owner and Consultant agree that such change in the Services shall be provided by Consultant and paid for by Owner only if (a) the Consultant receives prior written approval to proceed with such additional services; (b) Consultant provides the estimated cost thereof; and (c) Owner issues a written modification that authorizes the scope of the additional Services and the compensation therefore. Failure of Consultant to obtain the written modification prior to performing such additional services shall constitute a waiver of any claim by Consultant for additional compensation for such additional services. If Consultant believes that services beyond those required by this Agreement are required it shall so notify Owner in writing and shall obtain Owner's approval prior to performing the services at issue. If, in response to Consultant's notification that such services may be necessary, Owner deems that all or any part of such services are not required, Owner shall so indicate in writing and Consultant shall not provide those services.
- 2.2. Notwithstanding any other provision of this Agreement, Consultant shall not be entitled to compensation as additional services for any services rendered by Consultant to the extent such services are or were required due to the negligence or breach of contract of Consultant.

ARTICLE 3. CONSULTANT'S WORK-PRODUCT

- 3.1. Any documents, reports and other work or information provided as part of the Services for the Project ("Work-Product") shall be the property of Owner. The Work-Product shall not be used by any person other than Owner, third parties authorized by Owner, or contractors retained by Owner on projects other than the Project. Consultant may retain copies of any tangible Work-Product for its records.

ARTICLE 4. OWNER

- 4.1. Owner shall provide Consultant (a) with information requested by Consultant that is within the reasonable possession, custody or control of Owner; and (b) access to any property or facility under the control of Owner, each as reasonably necessary for the performance of the Services.
- 4.2. Notwithstanding any other provision of this Agreement, it is understood and agreed that Owner is under no obligation to evaluate the Services or inspect any Work Product for errors, defects or omissions. The failure of Owner to give notice of or to observe, discover or otherwise notice any error, defect, or omission in the Services or Work Product shall not constitute a waiver or acceptance of such error, defect or omission and shall not affect or reduce Consultant's responsibilities.

ARTICLE 5. LITIGATION

- 5.1. All claims, disputes or other matters in question between the parties to this Agreement, arising out of or relating to this Agreement or the breach thereof, shall be decided by resort to litigation in any court of competent jurisdiction located within the State where the Project is located.
- 5.2. Venue for any litigation shall be proper only in the jurisdiction where the Project is located.
- 5.3. The prevailing party in any dispute arising out of or relating to this Agreement or its breach that is resolved by a binding dispute resolution process shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred by the prevailing party in connection with such dispute resolution process.

ARTICLE 6. TERMINATION

- 6.1. If Consultant (a) refuses or fails to supply enough properly skilled staff, proper materials, and/or equipment to complete the Services or make timely progress towards the completion of the Services; (b) fails to make prompt payment to its staff, sub-consultants or suppliers; (c) disregards laws, ordinances, rules, regulations or orders of any public authority having jurisdiction; or (d) is otherwise in material breach of a provision of this Agreement, Consultant may be deemed in default. Following written notice of default from Owner, if Consultant fails within seven (7) working days to commence and continue satisfactory correction of such default with diligence and promptness, then Owner, without prejudice to any other rights or remedies, shall have the right to take those reasonable steps it deems necessary to correct deficiencies and charge the cost to Consultant, who shall be liable for such costs, including reasonable overhead and profit.
- 6.2. In addition to Owner's rights under Paragraph 6.1 above, if Consultant fails to commence and satisfactorily continue correction of the default set forth in the notice of default, Owner may notify Consultant that it intends to terminate this Agreement within three (3) additional business days. Unless Consultant commences appropriate corrective action during such three (3) day period, Owner may terminate this Agreement immediately by written notice.
- 6.3. In addition to Owner's rights to terminate this Agreement pursuant to Paragraphs 6.1 and 6.2 above, this Agreement may be terminated immediately by Owner without cause upon written notice to Consultant by Owner. Upon receipt of the notice of termination, Consultant shall cease providing any further Services on the Project. Owner shall pay Consultant for Services accepted by Owner and performed prior to Consultant's receipt of the notice of termination .
- 6.4. Consultant may terminate the Agreement upon thirty (30) days written notice to Owner if Owner fails to pay Consultant any undisputed amounts due under this Agreement and thereafter, Owner fails to pay Consultant during such subsequent thirty (30) days period.

ARTICLE 7. COMPENSATION

- 7.1. Except as may be adjusted pursuant to the prior written approval of Owner, Owner shall pay Consultant, as full and complete compensation for performance of the Services required by this Agreement, the amounts and at the times set forth in this Section 7.1.
- N/A
- 7.2. In addition to the amounts set forth above, Owner shall pay Consultant for Reimbursable Expenses (1) in accordance with the Guidelines for Allowable Reimbursable Expenses attached hereto as Exhibit A and incorporated herein by reference, and (2) actually incurred in connection with Consultant's Services, in the same amount as paid or incurred by Consultant without mark-up or increase of any kind. Total Reimbursable Expenses greater than \$0.00 shall not be incurred by Consultant without prior approval from Owner.
- 7.3. Consultant agrees to pay any sub-consultants that it retains to perform the services, within five (5) days after receipt of payment from Owner.
- 7.4. As a condition to final payment, Consultant shall submit to Owner a final release and waiver of all claims, liens or other demands against Owner on behalf of Consultant and any sub-consultants in connection with the Project, effective upon receipt of final payment.

ARTICLE 8. INDEMNITY AND INSURANCE

- 8.1. General Indemnity. For any claim other than those alleging that Consultant breached the Standard of Care in performing design or other architectural services, the Consultant shall indemnify, defend and hold harmless Owner, and its successors, assignees, agents, representatives, employees, officers and trustees from and against all claims, damages, liabilities, injuries, losses and expenses (including but not limited to attorneys' fees and expenses), arising out of or resulting from (a) Consultant's or sub-consultants' negligent errors, acts or omissions or its willful misconduct; (b) breach of this Agreement; or (c) Consultant's or sub-consultants' violation of any laws governing the Project or Consultant's Services. Consultant shall, at the Owner's election, diligently defend any claim or suit brought against the Owner or any assignee of the Owner based upon any such injury, death, loss or damage, and shall pay all cost and expenses (including reasonable attorneys' fees and expenses) in connection with such claim or suit, provided that the Owner or such assignee gives Consultant prompt written notice of such claim or suit and provides such reasonable assistance in connection therewith as Consultant may request.

- 8.2. Professional Services Indemnity. For any claim alleging or arising out of a breach by Consultant of the Standard of Care in performing its Services, Consultant shall indemnify and hold harmless Owner and its affiliates, successors, assignees, agents, representatives, employees, officers, directors, trustees and faculty from and against all claims, damages, liabilities, injuries, losses and expenses (including but not limited to attorneys' fees and expenses) arising out of or resulting from Consultant's or sub-consultants' negligent errors, acts or omissions. Consultant shall not be obligated to defend Owner or its respective successors, assignees, agents, representatives, employees, officers, directors, trustees and faculty against claims of negligent errors, acts or omissions in Consultant's professional services, but Consultant shall fully reimburse Owner and its respective successors, assignees, agents, representatives, employees, officers, directors, trustees and faculty for all court costs, attorneys' fees and other expenses Owner and its related entities incur if any court, arbitrator, or other finder of fact determines that Consultant or sub-consultants breached the Standard of Care in providing professional services.
- 8.3. Lien. Consultant shall indemnify, defend, and hold harmless Owner and its officers, trustees and employees from and against any liens, claims and suits on liens, claims for unjust enrichment and /or quantum meruit, or any other similar claims, damages, losses or expenses, including reasonable attorneys' fees, arising out of or resulting from nonpayment by Consultant or by any of Consultant's sub-consultants at any tier. Consultant's obligation shall include any claim, damages, losses or expenses arising out of any one or more employee(s) of Consultant or its consultants, any material suppliers, any other person or entity in privity of contract with Consultant or Consultant's sub -consultants at any tier who perform work or services or provide materials on the Project, or any other person or entity who claims a right to payment by reason of the Consultant's Services. Such obligation shall not be construed to negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist as to a party or person described in this clause.
- 8.4. Notwithstanding anything to the contrary set forth in any proposal or terms and conditions issued by Consultant, Consultant's liability to Owner pursuant to this indemnity or otherwise shall not be limited by any purported limitation of liability contained therein.
- 8.5. The Consultant hereby agrees to maintain insurance with such coverage and limits as set forth in Exhibit B attached hereto and incorporated herein by reference. If it fails to furnish and maintain all of the insurance as provided therein, the Owner may purchase such insurance on behalf of the Consultant and the Consultant shall pay the cost thereof to the Owner upon demand and shall furnish to the Owner any information needed to obtain such insurance. All costs associated with maintaining such insurance have already been included in the compensation being paid to the Consultant for the Services; consequently, no additional compensation shall be due the Consultant with respect thereto.

ARTICLE 9. MISCELLANEOUS PROVISIONS

- 9.1. Prior to beginning any of the Services required by this Agreement, and as a condition to the execution of this Agreement, Consultant shall provide Owner with certificates of insurance with such coverage and limits as set forth in Exhibit B. All coverage, except coverage for workers' or workmen's compensation and professional liability, shall name Owner as an additional insured. Coverage under such policies shall be primary with Owner's insurance being non-contributory and excess over Consultant's coverage. Such insurance shall be issued by an insurance company authorized to do business in the State of Missouri and shall not be canceled or changed without thirty (30) days prior written notice to Owner.
- 9.2. This Agreement will be governed by the laws of the state of Missouri .
- 9.3. This Agreement will be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the parties. This Agreement may not be assigned by either party without the written consent of the other party, except that Owner may, without the consent of Consultant, assign its interest under this Agreement to any corporation wholly owned or controlled by Owner or by any corporation that wholly controls Owner, now or in the future.
- 9.4. Written notice will be deemed given on the date of the first attempted delivery of evidence by records of the U.S. Postal Service or overnight courier service as appropriate.

If to Owner: The Washington University
ADDRESS LINE 1
ADDRESS LINE 2
CITY, STATE ZIP

With a copy to: The Washington University
Office of the Executive Vice Chancellor & General Counsel
1 Brookings Drive
Campus Box 1058
St. Louis, Missouri 63130

If to Consultant: COMPANY NAME
ADDRESS LINE 1
CITY, STATE ZIP

- 9.5. No action or failure to act by Owner or Consultant will constitute a waiver of a right or duty afforded them under this Agreement, nor will such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.
- 9.6. This Agreement will not be deemed to create a relationship of agency, joint venture, employment or partnership between or among the parties. Each party understands and agrees that the agents and employees of each are not the agents or employees of the other party. No party will in any way represent that an employee, agent, independent contractor or volunteer of either party is under the direct or indirect control, supervision or direction of the other party. Neither party has the right or authority to act on behalf of the other party.
- 9.7. Consultant acknowledges that time is of the essence for each and every obligation hereunder.
- 9.8. Consultant shall maintain all information related to the Services or obtained during the performance of the Services in a confidential manner and shall not disclose any such information except to the extent required to perform the Services hereunder or otherwise as required by law.

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OWNER

THE WASHINGTON UNIVERSITY

COMPANY



Signature

Date

Signature

Date

Exhibit A

Allowable Reimbursable Expenses

The Allowable Reimbursable Expenses specific to this Agreement can be found under the Attachments tab in the PMWeb commitment record and said document is incorporated herein by this reference as if fully set forth herein.

Exhibit B

Insurance Requirements

The Insurance Requirements specific to this Agreement can be found under the Attachments tab in the PMWeb commitment record and said document is incorporated herein by this reference as if fully set forth herein.