

CONTRACT ADMINISTRATION
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**PURCHASING CONTRACT
PROFESSIONAL SERVICES
TERMS AND CONDITIONS**

The following terms and conditions govern the work described in the Professional Services Purchasing Contract for AEC (the "Purchasing Contract"):

I. WORK TO BE PROVIDED

The Consultant will perform the professional services described in the Scope of Work attached to the Purchasing Contract to the satisfaction of the University, with the standard of professional care and skill customarily provided in the performance of such services, and with the degree of skill and care to which the Consultant has represented it provides in performing such services. If any of the Consultant's employees or subcontractors proves unsatisfactory to the Owner, upon request from the Owner such employee or subcontractor shall be promptly replaced by the Consultant.

II. PERIOD OF SERVICE AND TERMINATION

Time is of the essence for the Consultant to provide the services and the Consultant agrees to work expeditiously. The Consultant may terminate the work at any time for any reason with forty-five (45) days prior written notice. The University may terminate and cancel the Purchasing Contract at any time for any reason with written notice. If either the Consultant or the University terminates the Purchasing Contract, the Consultant will immediately cease all activities and promptly give the University all work produced and files developed by the Consultant and all documents provided by the University under the Purchasing Contract. Under such circumstances, the University will reimburse the Consultant all fees, costs and expenses incurred to the date of the termination (and those which cannot reasonably be avoided though incurred after such date) consistent with the Professional Services Purchasing Contract and all referenced documents.

III. FEES AND OTHER COSTS

The University will pay fees to the Consultant for services performed pursuant to the Purchasing Contract as follows:

- a. Total consulting fee as described in the Purchasing Contract.
- b. For the direct cost (without mark-up) of transportation and living expenses incurred while traveling on trips authorized by the Owner. This shall not include the cost of transportation for any Consultant traveling between the Owner's Architecture, Engineering and Construction office in Ann Arbor and/or designated project site and the Consultant's home office address that is within a 75 mile radius, nor living expenses for individuals of those firms while in Ann Arbor.
- c. For the direct cost (without mark-up) of copies of Construction Documents beyond those specified in this Purchasing Contract, for review, bid, and construction purposes, as requested by the Owner.
- d. For the direct cost (without mark-up) of surveys, soil borings, tests, etc., when their use is authorized in writing by the Owner.
- e. For the direct cost (without mark-up) for preparation of presentation models, presentation renderings, and miscellaneous artwork, using outside service providers.

- f. For the direct cost (without mark-up) for printing, reproduction, photography, photocopies and plots.
- g. For the direct cost (without mark-up) of Sub-consultants, when their use has been approved in writing by the Owner.
- h. All other costs, including, but not limited to, long distance calls, facsimile transmissions, and routine shipping/mailling charges, will not be reimbursed and are part of the total consulting fee.
- i. Travel expenses must be itemized separately according to University policy as indicated in the Owner's Architecture, Engineering and Construction [Reimbursement Expense Guidelines](#).
- j. Payment will be made thirty (30) days after receipt of an invoice from the Consultant. Invoices must detail expenses apart from consulting fees and reflect the percent of work completed. When compensation for services performed is based on time worked, invoices must include the following detail for all time charged to the project:
 - Name of Consultant's employee
 - Date and number of hours worked on that date
 - Employee's job classification (as it pertains to billing)
 - Employee's billing rate

Also, included on the invoice shall be the following statement, signed by the Consultant's project principal:

"I certify that all charges for time worked, included on this invoice, represent actual effort and are in accordance with all terms of our contract with the Owner."

IV. TAX EXEMPT STATUS

The Consultant acknowledges that the University is a tax-exempt institution, granted such status by authorized taxing units of State of Michigan, and is exempt from Federal Excise Tax and Michigan General Sales Tax (see Michigan Public Act 167 of 1933. Section 4 as amended).

V. COMPLIANCE WITH ALL LAWS

The Consultant will comply with all applicable federal, state, local or University laws, rules and regulations in providing the services. The Consultant is solely responsible for insuring that any recommendations made in connection with the services comply with all applicable federal, state, local and University laws, rules and regulations.

VI. ASSIGNMENT

The Consultant may not assign or transfer the Purchasing Contract or any interest or claim under the Purchasing Contract without prior written approval of the University.

VII. PATENTS AND COPYRIGHT

- a. Whenever any invention or discovery is made or conceived by the Consultant in the course of or in connection with the Purchasing Contract, the Consultant will furnish the University with complete information with respect to such invention or discovery and the University will have the sole power to determine whether and 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 will, at the University's expense, execute all documents and do all things necessary or proper with respect to such patent application.
- b. Whenever any copyright is secured in connection with the transcription or publication of the results of research financed by the Purchasing Contract, title and all rights to such copyright will vest in the University.
- c. If the Purchasing Contract is funded under a government prime contract or grant, which provides a different disposition for Items a. and b. above, the latter will govern.

VIII. TECHNICAL INFORMATION, RECORDS AND REPORTS

All notes, designs, drawings, memoranda, reports, computer programs (including supporting data which may be

included in cards, tapes, discs, drums, and the like), and other technical data, furnished by the Consultant or developed by the Consultant in connection with the performance of services are the property of the University. All such notes, designs, drawings, memoranda, reports and other technical data is to be delivered to the University upon demand, and the University has the right to use them, for any purpose which it may deem desirable without the necessity of compensating the Consultant or any other person or persons for their use. No information, report, etc., developed in connection with the services may be reproduced without the University's prior written consent.

IX. CONFIDENTIAL INFORMATION

The Consultant will keep confidential and not disclose to third parties any information provided by the University or by private individuals, organizations or public agencies pursuant to the Purchasing Contract unless the Consultant has received the prior written consent of the University to make such disclosure. This obligation of confidentiality does not extend to information that is or becomes through no fault of the Consultant available to the general public. This provision survives expiration and termination of the Purchasing Contract for the services.

X. INDEPENDENT CONTRACTOR STATUS

It is expressly understood that the Consultant is an independent contractor and not the agent, partner, or employee of the University. The Consultant and the Consultant's workers are not employees of the University and are not entitled to tax withholding, workers' compensation, unemployment compensation, or any employee benefits, statutory or otherwise through the University. The Consultant has no authority to enter into any contract or agreement to bind the University and may not represent to anyone that the Consultant has such authority.

XI. INDEMNIFICATION

The Consultant agrees that injuries to any person or damage to any property incurred due to its negligent error, omission or act is the responsibility of the Consultant.

The Consultant warrants that the Consultant's and/or the University's use of products, process, techniques and methodologies recommended by the Consultant or developed by the Consultant will not infringe upon the copyright, patent or other proprietary rights of others.

The Consultant will indemnify the University, including its board members, officers, employees, agents and students, from and against any and all costs, losses, damages, liabilities, expenses, demands and judgments, including court costs and attorney fees, which arise out of the Consultant's negligent errors, omissions or acts under or in connection with the Purchasing Contract.

XII. INSURANCE

The Consultant will maintain comprehensive general liability insurance, including contractual liability, with limits not less than \$1 million per occurrence and \$2 million aggregate; professional liability insurance with minimum limits of \$2 million per occurrence, incident or claim and \$2 million aggregate; automobile liability for owned, non-owned and hired vehicles with a combined single limit not less than \$1 million per occurrence; Employers Liability with a minimum limit of \$500,000; and Workers' Compensation to statutory limits as required by the State of Michigan. The Consultant will have The Regents of The University of Michigan added as additional insured with respect to comprehensive general liability insurance and provide the University with 30 days prior written notice of any material changes in the above insurance. The Consultant will provide the University with a certificate of the above insurance coverage and amounts immediately after issuance of the Purchasing Contract. If any of the required insurance is on a claims made basis, Consultant agrees to purchase tail coverage or prior acts coverage so that such insurance is in effect from the date the original agreement was executed until 3 years after termination of last agreement if readily and reasonably available.

XIII. USE OF THE UNIVERSITY NAME AND MARKS

The Consultant will not use the name of the University or any of its service marks, trademarks or trade names without the prior written permission of the University.

XIV. CONFLICT OF INTEREST

The Consultant affirms that to the best of its knowledge, there exists no actual or potential conflict between the Consultant, or the Consultant's services, and the University under the Purchasing Contract, and in the event of change in either its private interests or services under the Purchasing Contract, the Consultant will inform the University regarding possible conflict of interest which may arise as a result of such change. The Consultant also affirms that there exists no actual or potential conflict between a University employee and the Consultant.

XV. AFFIRMATIVE ACTION

The Consultant certifies that it is an equal opportunity employer and that, during the performance of this contract, it will comply PL 101.507 and with Federal Executive Order 11246, as amended, The Rehabilitation Act of 1973, as amended, and the respective regulations thereunder, and the Michigan Civil Rights Act of 1976.

XVI. RIGHT TO AUDIT

The Owner reserves the right to audit and to adjust final Purchasing Contract price for discrepancies for any compensation which was based on methods other than lump sum or fixed price. The Consultant must segregate its records in such a manner as to facilitate a complete audit and agrees that such audit may be used as the basis for settlement of charges for the services.

XVII. GENERAL PROVISIONS

- a. Any notice to either party must be in writing signed by the party giving it, and must be served either personally or by registered or certified mail addressed as noted on the Purchasing Contract and the proposal or to such other addressee as may be later designated by written notice. All such notices are effective only when received by the addressee.
- b. The Purchasing Contract and the Purchasing Contract Professional Services Terms and Conditions constitute the entire understanding between the parties with respect to the subject matter and any conflicting or supplemental terms and conditions of the Consultant will not be accepted and to which notice of objection is hereby given. The Purchasing Contract and the Purchase Contract Professional Terms and Conditions may not be amended except by a Purchasing Contract amendment.
- c. The terms of the Purchasing Contract and the Purchasing Contract Professional Services Terms and Conditions are severable such that if any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions continue to be valid and enforceable.
- d. The Purchasing Contract and the Purchasing Contract Professional Services Terms and Conditions will be governed by and construed under the laws of the State of Michigan. Any claims, demands, or actions asserted against the University will be brought in the Michigan Court of Claims. The Consultant, its successors and assigns, consent to the jurisdiction of the Washtenaw County Circuit Court for the State of Michigan with respect to any claims arising under the Purchasing Contract.
- e. The paragraph headings in these Professional Services Terms and Conditions are inserted for convenience only and do not limit or modify the scope of any provision of the Purchasing Contract.
- f. The delay or failure of either party to exercise any of its rights under this document for a breach is not a waiver of such rights, nor is the same a waiver of any subsequent breach, either of the same provision or otherwise.
- g. The Consultant is to give preference in the development of the design and specifications to goods and services manufactured or provided in Michigan and/or the United States of America if they are competitively priced and of comparable quality.