



The Ohio State University
2009 Millikin Road, Room 400, Columbus, Ohio 43210

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These Special Conditions are for projects less than \$200,000 and Professional Fee less than \$50,000, or Design/Build projects less than \$200,000.

Contracting Authority
The Ohio State University
Facilities Operations and Development
400 Central Classroom Building
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Institutional Designee
Paul Sherwood
Assistant Vice President

ARTICLE 1 - RESPONSIBILITIES OF THE VENDOR

1.1 Scope of Services: The VENDOR shall provide services for the project listed in their proposal. Services include, but are not limited to services provided by members of a trade, profession, and those services customarily furnished in accordance with generally accepted architectural or engineering services that are provided by architects and engineers that are licensed in the state of Ohio. The VENDOR shall provide such services in accordance with Applicable Law.

1.2 Standard of Care: The VENDOR shall perform its services consistent with the professional skill and care ordinarily provided by members of a trade, profession, registered architects, landscape architects, professional engineers, or professional surveyors in the same or similar locality under the same or similar circumstances.

1.3 Personnel: The identities of the principal persons, and the extent of their participation in performing the VENDOR's, shall not be altered without the written consent of the Owner.

1.4 Consultants: The VENDOR may provide services through one or more consultants employed by the VENDOR provided, however, that the VENDOR shall remain responsible to the Owner for all of the VENDOR's duties and obligations under this Agreement. No consultant shall be retained upon terms inconsistent with this Agreement. The identity of any consultants and the extent of such consultant's participation in performing the VENDOR's services as set forth in the VENDOR's proposal shall not be altered without the Owner's prior written consent.

1.5 Drug Free Safety Program: The VENDOR shall comply with all Applicable Law regarding smoke-free and drug-free workplaces and shall make a good faith effort to ensure that none of its employees or permitted subcontractors or Consultants engaged in the services being performed hereunder purchase, transfer, use, or possess illegal drugs or alcohol, or abuse prescription drugs in any way while on, or about, the Project.

1.6 Ethics Compliance: The VENDOR represents that it: (1) has reviewed and understands Executive Order 2007-01S, (2) has reviewed and understands the Ohio ethics and conflict of interest laws, and (3) shall take no action inconsistent with those laws and this order.

1.7 Ohio Services and Offshore Services: The VENDOR represents that it: (1) has reviewed and understands Executive Order 2010-09S, (2) shall abide by those requirements in the performance of this Agreement, (3) shall perform no services required under this Agreement outside of the United States, (4) shall immediately notify the State of any change or shift in the location of services performed by the VENDOR or its Consultants under this Agreement, and (5) no services shall be changed or shifted to one or more locations that are outside of the United States.

1.8 Use of Domestic Steel: The VENDOR shall comply with the State of Ohio's policy regarding the specification and use of domestically produced steel products, including furnishing the required certifications. This policy is available on the Department of Administrative Service's Web site at <http://das.ohio.gov> (click on "DAS Statewide Policies" under the Hot Links menu). Scroll down and then click on Directive GS-D-07 "Required Use of Domestic Steel."

1.9 Limitation of Authority: The VENDOR shall not have any authority to bind the Owner for the payment of any costs or expenses without the prior express written approval of the Owner. The VENDOR shall have authority to act on behalf of the Owner only to the extent provided herein. The VENDOR's authority to act on behalf of the Owner shall be modified only by an amendment.

1.10 If the University decides, in its sole discretion, to utilize the University's e-Builder project management software for the Project, the VENDOR shall use such software for all compatible services required under this Contract. All costs for the use of the University's e-Builder project management software for the Project shall be included in the VENDOR's Basic Fee.

ARTICLE 2 - SCOPE OF BASIC SERVICES

2.1 Basic Services to be provided by the VENDOR are detailed in the VENDOR's proposal and incorporated herein by reference.

ARTICLE 3 - COMPENSATION

3.1 Incorporation: The following Special Conditions are incorporated into "Ohio State's Standard Purchase Order terms and Conditions" at Section 4.

3.2 Basic Fee: The VENDOR's Basic Fee includes all compensation for Basic Services, including, but not limited to, salaries or other compensation of the VENDOR's employees, general operating expense, applicable capital expenses of the VENDOR, including applicable interest on capital employed for the Project, and overhead.

3.3 Additional Fees: There shall be no fees for approved Change Orders processed as a result of errors and/or omissions on the part of the VENDOR or decreases in construction cost.

3.4 Reimbursable Expenses: The VENDOR shall use its best efforts to minimize Reimbursable Expenses. No mark-up shall be permitted on Reimbursable Expenses.

3.5 Method and Terms of Payment: Payment of the Basic Fee shall be made monthly in proportion to services completed. Payments for Basic Services shall be based upon a properly completed Pay Request and shall be made within the applicable time limits provided by Section 126.30 of the Ohio Revised Code.

3.6 Payments by VENDOR: Within 10 business days of receipt of payment made pursuant to this Agreement, the VENDOR shall pay all portions thereof due to Consultants, Subcontractors, and to persons who provided items.

ARTICLE 4 - INSURANCE

4.1 Casualty Insurance: Except when a modification is requested in writing by the VENDOR and approved in writing by the Owner, the VENDOR shall carry, and maintain at the VENDOR's cost, with companies authorized to do business in Ohio, all necessary liability insurance during the term of this Agreement. Such liability insurance shall include, as a minimum, all of the following requirements:

- a. Workers' Compensation and employer's liability insurance, to the fullest extent required by Applicable Law;
- b. Commercial general liability coverage for bodily injury and property damage, including limited contractual liability coverage, in not less than the following amounts:
 1. General Aggregate Limit: \$2,000,000,
 2. Each Occurrence Limit: \$1,000,000; and
- c. Commercial automobile liability coverage, including non-owned and hired, in an amount not less than \$1,000,000.

4.2 Professional Liability Insurance: The VENDOR shall maintain insurance to protect against claims arising from the performance of the VENDOR's services caused by any negligent acts, errors or omissions for which the VENDOR is legally liable ("Professional Liability Insurance"). Except when a waiver is approved by the Owner upon written request of the VENDOR, such Professional Liability Insurance shall be in an amount not less than \$1,000,000 per claim. The VENDOR shall keep such insurance in effect throughout the term of this Agreement and for a period of no less than 10 years after Contract Completion, for so long as the VENDOR may be held liable for its performance of services for the Project.

If the Professional Liability Insurance is written on a claims-made basis, such insurance shall have a retroactive date no later than the date on which the VENDOR commenced to perform services relating to the Project. The insurance company issuing the Professional Liability Insurance policy must be authorized to do business in Ohio and have a rating of at least A status as noted in the most recent edition of the Best's Insurance Reports.

4.3 Insurance Policy Requirements: The VENDOR shall provide the Owner with certificates of insurance evidencing the required coverage and amounts, including, but not limited to, any certificates of renewal of insurance. Each such certificate of insurance shall expressly provide that the insurer will endeavor to provide no less than 30 days' written notice to the Owner in the event of cancellation of the coverage evidenced by the certificate. For each insurance policy required by this Agreement, the VENDOR shall provide the Owner with 30 days' prior written notice of cancellation or non-renewal.

ARTICLE 6 - DISPUTE RESOLUTION

6.1 Mediation: The Owner and VENDOR may, by written agreement, submit any claims, requests, disputes, or matters in question between or among them to mediation upon such terms as shall be mutually reasonably agreeable.

6.2 Notice and Filing of Requests: Any request by the VENDOR for additional fees or expenses shall be made in writing to the Owner and filed prior to payment of the final 5 percent of the Basic Fee.

6.3 Substantiation of Request: The VENDOR shall provide the nature and amount of the request; identification of persons, entities and events responsible for the request; activities on the Project Schedule affected by the request or new activities created by any delay and the relationship with existing activities; anticipated duration of any delay; and recommended action to avoid or minimize any future delay.

6.4 Meeting with Owner: The Owner shall schedule a meeting with the VENDOR within (30) days of a written request from the VENDOR to resolve a dispute or render a decision or render a decision on the request without a meeting unless the contracting parties agree to extend the time limit.

6.5 Performance: The VENDOR shall proceed with the VENDOR's to performance of the Agreement during the dispute resolution process. The Owner shall continue to make payment for portions of the agreement that are not in dispute.

ARTICLE 7 - TERMINATION AND REMEDIES

7.1 Incorporation: The following Special Conditions are incorporated into "Ohio State's Standard Purchase Order terms and Conditions" and modify Section 21 of "Ohio State's Standard Purchase Order Terms and Conditions.

7.2 Termination of Agreement: The Agreement may be terminated by either party upon 7 days written notice should the other party fail to perform in accordance with the terms of this Agreement. This Agreement may be terminated by the Owner without cause upon 15 days written notice to the VENDOR. This Agreement may be terminated at any time upon the mutual written consent of the Owner and the VENDOR.

7.3 Remedies Upon Termination by Owner Without Cause: In the event of a termination by the VENDOR or a termination which is not a result of the VENDOR's failure to perform in accordance with the terms of this agreement, the VENDOR shall be compensated for all Basic Services performed and Reimbursable Expenses incurred prior to the termination date.

7.4 Remedies Upon Termination by Owner for Cause: In the event of a termination resulting from the VENDOR's failure to perform in accordance with the terms of this agreement, the VENDOR shall be compensated only for Basic Services, Reimbursable Expenses, and Additional Services completed prior to notice of termination.

7.5 Remedies Upon Termination by Mutual Consent: In the event of a termination upon mutual written consent of the Owner and VENDOR, any compensation for Basic Services, Additional Services, or Reimbursable Expenses shall be negotiated prior to termination.

7.6 Remedies: Each remedy of the contracting parties shall be cumulative and shall be in addition to any other remedy given to the Contracting parties.

ARTICLE 8 - MISCELLANEOUS PROVISIONS

8.1 Document Ownership and Use: Drawings, Specifications, and other documents prepared by, or with the cooperation of, the VENDOR or any Consultant pursuant to this Agreement, including the Electronic Files used to create them, are, from the moment of creation, the property of the Owner, whether or not the Project for which they are prepared is commenced or completed, and the Owner alone owns every right, title, and interest therein.

8.2 Successors and Assigns: The Owner and the VENDOR, each bind themselves, their successors, assigns, and legal representatives, to the other party to this Agreement and to the successors, assigns and legal representatives of the other party with respect to all terms of this Agreement.