

Special Conditions – Exhibit 2 (Reduced Scope Agreement)



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

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These Special Conditions for Projects Less Than \$50,000 and Professional Fee Less than \$25,000, amend and supplement the Reduced Scope Agreement and other provisions of the Contract Documents as indicated below. All provisions which are not amended remain in full force and effect.

Contracting Authority
The Ohio State University
Facilities Operations and Development
400 Central Classroom Building
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Institutional Designee
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ARTICLE I. RESPONSIBILITIES OF THE ARCHITECT/ENGINEER

1.1.5 Personnel. The identities of the principal persons, and the extent of their participation in performing the Architect/Engineer's services set forth as in the Technical Proposal, shall not be altered without the written consent of the Owner.

1.1.6 Non-Discrimination. The Architect/Engineer shall comply with applicable equal employment opportunity requirements pursuant to Section 153.59 of the Ohio Revised Code or applicable state or federal law.

1.1.7 Consultants. The Architect/Engineer may provide services through one or more consultants employed by the Architect/Engineer. The Architect/Engineer shall remain accountable to the Owner for all obligations under this Agreement. The Architect/Engineer shall not retain Consultants upon terms inconsistent with this Agreement. The Architect/Engineer shall identify in the Technical Proposal, Consultants and the work they will perform. The Architect/Engineer shall not change consultants without the written consent of the Owner.

1.1.8 Drug-Free Workplace. No employee of the Architect/Engineer shall purchase, transfer, use or possess or be under the influence of alcohol or illegal drugs or abuse legally obtained drugs while on or about the Project.

1.1.9 Ethics. The Architect/Engineer represents that it is familiar with all applicable ethics law requirements, including without limitation Sections 102.04 and 3517.13 of the Ohio Revised Code, and certifies that it is in compliance with such requirements.

1.1.10 Ohio Services. Unless otherwise authorized by the Owner, the Architect/Engineer's services shall be performed within the State.

1.1.11 Limitation of Authority. The Architect/Engineer does not have authority to bind the Owner to contracts. The Owner shall authorize payments and contracts on its behalf. The Architect/Engineer shall have authority to act on behalf of the Owner only to the extent provided herein or in the Standard Conditions of Contract for Construction (the "Standard Conditions"). The Architect/Engineer's authority to act on behalf of the Owner shall be modified only by an amendment in accordance with Subparagraph 9.5.2.

1.1.12 Approval or Disapproval of Architect/Engineer's Work. The Owner shall have the right to reasonably disapprove any portion of the Architect/Engineer's work on the Project, including, without limitation, any design work or documents or Drawings prepared by the Architect/Engineer. In the event that any of the Architect/Engineer's work is disapproved by the Owner, the Architect/Engineer shall proceed, when requested by the Owner, with revisions to the work, documents or Drawings prepared or performed to attempt to satisfy the objections. The Architect/Engineer acknowledges that any review or approval by the Owner of any work, documents or Drawings prepared or performed by the Architect/Engineer

pursuant to this Agreement shall not relieve the Architect/Engineer of the Architect/Engineer's responsibility to properly and timely perform such work and prepare such documents and Drawings.

1.1.13. EDGE Business Development Program Participation. The Architect/Engineer shall seek subcontractors and document the participation of businesses certified under the Encouraging Diversity Growth and Equity (EDGE) Business Development Program pursuant to Section 123.152 of the Ohio Revised Code.

The Architect/Engineer shall certify that it does not provide material assistance to organizations on the U.S. Department of State terrorist exclusion list pursuant to Ohio Revised Code Section 2909.33(C).

1.1.14. Declaration Regarding Material Assistance/Non-Assistance to a Terrorist Organization (DMA). The Architect/Engineer shall complete the DMA form provided by the Department of Public Safety, (ref. Section 2909.33(C) of the Ohio Revised Code, enacted by Am. S.B. 9, 126th General Assembly), to certify that it does not provide material assistance to any organization on the United States Department of State's terrorist exclusion list. The certified form shall be submitted as an attachment to this Agreement for Professional Design Services.

ARTICLE II. SCOPE OF ARCHITECT/ENGINEER'S BASIC SERVICES

2.0 Basic Services Services to be provided by the Architect/Engineer are detailed in the Architect/Engineer's proposal dated which is attached as Exhibit 1 and incorporated herein.

ARTICLE III. ADDITIONAL SERVICES

3.1.1 Services Not Included. The services that are not included in Basic Services and shall be provided only if identified in the Technical Proposal and approved by the Owner or otherwise authorized in writing by the Owner prior to providing the Additional Services.

ARTICLE IV. RESPONSIBILITIES OF THE OWNER

4.0 Site Description. The Owner shall furnish legal description and certified land survey of the site.

ARTICLE V. COMPENSATION

5.0 Direct Personnel Expense. Direct salaries and wages of all personnel and Consultants, for time expended on the project added to the mandatory and customary contributions and benefits for that time.

5.1 Reimbursable Expenses

5.1.1 Definition. Reimbursable Expenses means actual expenditures incurred by the Architect/Engineer or its Consultants in the interest of the Project approved by the Owner..

5.2.2 Extent of Basic Fee. Basic Fee includes employee compensation, general operating expense, applicable capital expense, applicable interest on capital employed for the Project, and overhead.

5.3 Method and Terms of Payment

5.3.1 Payments. Monthly payments for Basic Services, Reimbursable Expenses, and Additional Services shall be based on properly completed Architect/Engineer's Pay Requests pursuant to ORC 126.30.

5.3.2 Additional Fees. For other Additional Services provided by the Architect/Engineer and any Consultants in accordance with Article III, the Owner shall pay the Architect/Engineer Additional Fees in an amount negotiated to the mutual reasonable satisfaction of the Owner and the Architect/Engineer, but in all events, such Additional Fees shall not exceed two and one-half (2.5) times the Direct Personnel Expense incurred by the Architect/Engineer and any applicable Consultant in providing those Additional Services. Except for the Additional Services and Additional Fees listed above, Additional Services and any Additional Fees may be approved only by an amendment in accordance with Subparagraph 9.5.2. The Architect/Engineer, with the prior written consent of the Owner, may provide Additional Services through one or more Consultants.

5.3.3 Payments by Architect/Engineer. The Architect/Engineer shall pay expenses due to consultants as Reimbursable Expenses within ten (10) business days of receipt of payment made pursuant to this Agreement.

5.3.4 Compensation for Extension of Project Time. If the Architect/Engineer notifies the Owner not less than thirty (30) days prior to the time for completion of the Project set by the Project Schedule approved pursuant to Subparagraph 1.1.3 that such time for completion is reasonably expected to be exceeded by more than ten percent (10%) through no fault of the Architect/Engineer, the compensation, if any, for Basic Services to be rendered during such extended period shall be negotiated to the mutual reasonable satisfaction of the Owner and the Architect/Engineer. If, as a result of such negotiation, the Owner agrees that the Architect/Engineer shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Subparagraph 8.5.2 before the Architect/Engineer renders any services made necessary by such extension of the time of completion, unless otherwise agreed in writing by the Architect/Engineer and the Owner

5.4 Method and Terms of Payment

5.4.1 Basic Fee. 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 Architect/Engineer's Pay Request and shall be made within the applicable time limits provided by Section 126.30 of the Ohio Revised Code.

5.4.2 Additional Fees, Reimbursable Expenses. Payments of Fees for Additional Services in accordance with Subparagraph 5.3.2 and for Reimbursable Expenses as set forth in Paragraph 5.2 shall be made monthly based upon services performed or expenses incurred, as applicable, and as shown by a properly completed Architect/Engineer's Pay Request.

5.4.3 Payments by Architect/Engineer. Within ten (10) business days of receipt of payment made pursuant to this Agreement, the Architect/Engineer shall pay all portions thereof due to Consultants and to persons who provided items the expenses of which are Reimbursable Expenses.

5.4.4 Compensation for Extension of Project Time. If the Architect/Engineer notifies the Owner not less than thirty (30) days prior to the time for completion of the Project set by the Project Schedule approved pursuant to Subparagraph 1.1.3 that such time for completion is reasonably expected to be exceeded by more than ten percent (10%) through no fault of the Architect/Engineer, the compensation, if any, for Basic Services to be rendered during such extended period shall be negotiated to the mutual reasonable satisfaction of the Owner and the Architect/Engineer. If, as a result of such negotiation, the Owner agrees that the Architect/Engineer shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Subparagraph 8.5.2 before the Architect/Engineer renders any services made necessary by such extension of the time of completion, unless otherwise agreed in writing by the Architect/Engineer and the Owner.

ARTICLE VI. INSURANCE AND INDEMNIFICATION

6.1 Casualty Insurance. The Architect/Engineer shall maintain insurance at its expense. The Architect/Engineer with at least one employee shall maintain Workers' Compensation and employer's liability insurance. The Architect/Engineer shall maintain commercial general liability coverage; \$2,000,000 general aggregate limit each occurrence and \$1,000,000 each occurrence. The Architect/Engineer shall retain commercial automobile liability coverage, to include non-owned and hired coverage, in an amount not less than \$1,000,000.

6.2 Professional Liability Insurance. The Architect/Engineer shall be covered pursuant to ORC 153.70 (A).

6.3 Indemnification

6.3.1 Indemnification by Associate Generally. To the fullest extent permitted by law, the Associate shall and does agree to indemnify and hold harmless the Owner and their members, officers, employees and representatives from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, which (a) arise out of, are caused by or result from performance of the Associate's services hereunder and (b) are attributable to bodily injury, personal injury, sickness, disease or death of any person, or to damage to or destruction of property, including the loss of use and consequential damages resulting therefrom, but (c) only to the extent they are caused by any negligent acts, errors or omissions of the Associate, anyone directly or indirectly employed by the Associate or anyone for whose acts the Associate is legally liable. This Subparagraph is intended to be, and shall be construed as consistent with, and not in conflict with, Section 2305.31 of the Ohio Revised Code.

6.3.2 Intellectual Property Indemnification. To the fullest extent permitted by law, the Associate shall and does agree to indemnify and hold harmless the Owner and their members, officers, employees and representatives from and against all claims, damages, losses, liens, causes of action, suits, judgments and expenses (including attorney's fees and other costs of defense), of any nature, kind or description, which result from any claimed infringement of any copyright, patent or other intangible property right caused by the Associate, anyone directly or indirectly employed by the Associate or anyone for whose acts the Associate is legally liable. The Associate shall not be required to indemnify and hold harmless such persons for such matters when the claimed infringement occurs in materials provided by the Owner.

ARTICLE VII.DISPUTE RESOLUTION PROVISIONS

7.1 Mediation. The parties may through mutually agreeable written terms, submit matters in question to mediation.

7.2 Notice and Filing of Requests. Written requests for additional fees or expenses shall be submitted to the Owner prior to payment of the final 5% of the Basic Fee

7.3 Request Information. The Architect/Engineer shall identify: the nature and amount of the request; identity 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 mitigate delay.

7.4 Meeting with Owner. The Owner shall schedule a meeting with the Architect/Engineer within (30) days of a written request from the Architect/Engineer 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.

7.5 Performance. The Architect/Engineer shall continue to perform this Agreement during the dispute resolution process. The Owner shall make payment for portions of the agreement that are not in dispute.

ARTICLE VIII. TERMINATION AND REMEDIES

8.1 Termination of Agreement

8.1.1 Means of Termination. Either party may terminate this agreement upon seven (7) days written notice. The Architect/Engineer shall not terminate this Agreement for non-payment if the Owner initiates payment within ten (10) days of receipt of the Architect/Engineer's written notice to terminate.

8.1.2 Termination Without Cause. The parties may terminate this agreement without cause upon fifteen days written notice. The Architect/Engineer shall be compensated for all Basic Services performed and Reimbursable Expenses incurred prior to the termination date.

8.1.3 Architect/Engineer's Remedies Upon Termination for Cause. The Architect/Engineer will be paid for Basic Services, Reimbursable Expenses, and Additional Services completed before notice of termination.

8.1.4 Architect/Engineer's Remedies Upon Termination by Mutual Consent. The parties shall negotiate compensation for Basic Services, Additional Services, or Reimbursable Expenses prior to termination and incorporate them into the Agreement through an amendment.

8.2 Remedies

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

8.2.2 Remedies Not Waived. No delay, omission or forbearance to exercise any right accruing to the Owner or the Architect/Engineer shall impair any right be construed to waive any breach or default.

ARTICLE IX. MISCELLANEOUS PROVISIONS

9.1 Ownership and Use of Documents. Drawings and documents prepared for this project are property of the Owner whether or not the project is commenced or completed. The Owner shall not use, sell or convey documentation to others to use on other projects except by agreement and compensation of the Architect/Engineer. This Subparagraph shall survive termination of this Agreement.

9.2 Records. The Architect/Engineer shall maintain all financial and project records open to the Owner for seven (7) years after Final Acceptance of the Project.

9.3 Successors and Assigns. The parties bind themselves, their successors, assigns and legal representatives to this Agreement. The Architect/Engineer shall not assign, or transfer any interest in this Agreement.

9.4 Amendments. This Agreement may be changed by amendment signed by the parties.

9.5 Precedence. Contract Documents prevail over the Announcement, Technical Proposal or this Agreement.

9.6. Law of Ohio. The laws of the State of Ohio govern this contract.

9.9 Severability. Unenforceability of a part of this contract does not invalidate remaining parts.

9.10 Unresolved Finding for Recovery ORC 9.24: The Agreement is void and the Architect/Engineer must repay the Owner funds paid under the Contract if the Architect/Engineer has unresolved finding for recovery.