



# EASTERN MICHIGAN UNIVERSITY

## SAMPLE

### PROFESSIONAL SERVICES CONTRACT (Sample)

THIS PROFESSIONAL SERVICES AGREEMENT (the “Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ (the “Effective Date”) by and between \_\_\_\_\_ the **Consultant**, whose principal place of business is \_\_\_\_\_, and EMU, whose principal place of business is Ypsilanti, Michigan.

#### Recitals:

EMU desires to have certain professional services performed as more particularly described on Attachment A – Proposal / **Consultant** RFP Response. The **Consultant** is willing to perform the services that EMU desires.

NOW, THEREFORE, in consideration of the mutual promises and the terms and conditions contained herein, the parties agree as follows:

#### Article I - Scope of Services

**Section 1.1:** The **Consultant** hereby agrees to perform certain services as set forth in Attachment A, which is hereby incorporated by reference and made a part of this Agreement, during the term of this Agreement.

#### Article II - Compensation

**Section 2.1:** In full consideration for the **Consultant’s** satisfactory performance of the contract Services, EMU agrees to compensate the **Consultant** in the manner set forth in Attachments A and C. Attachments A and C are hereby incorporated by reference and made a part of this Agreement.

#### Article III - Expenses

**Section 3.1:** EMU shall reimburse the Consultant for all pre-approved expenses and disbursements incurred by the Consultant in connection with the performance of special services as identified in Attachment A. All other expenses and disbursements are solely the responsibility of the Consultant.

#### Article IV - Term of Agreement

**Section 4.1:** The term of this Agreement shall be for **two (2) years**, from contract execution date, unless sooner terminated pursuant to Article XI.



## E A S T E R N M I C H I G A N U N I V E R S I T Y

### Article V - Independent Contractor

**Section 5.1:** The relationship of the **Consultant** to EMU is and shall continue to be that of an independent Contractor, and no liability or benefits such as workers' compensation, pension rights or liabilities, insurance rights or liabilities, arising out of or related to an employer/employee relationship shall arise, or accrue to either party or either party's agent, subcontractor or employee, as a result of this Contract or its performance. No relationship, other than that of independent Contractor, shall be implied between the parties or between either party and the other party's agent, employee, or subcontractor, and the Contractor hereby agrees to hold EMU harmless from any such claims by it, its employees, agents, subcontractors, or associates, and any expense related thereto.

### Article VI - Subcontracts

**Section 6.1:** The **Consultant** shall advise EMU if any part of the service is to be performed by others, and shall submit for approval the name, address, discipline or expertise of the subcontractor and shall describe the terms of the subcontracting arrangement

**Section 6.2:** The **Consultant** will obtain EMU's written permission before subcontracting any portion of the Services. If permission is given to subcontract the Services, the **Consultant** will remain solely responsible for completing the Services in accordance with this Agreement, and will incorporate the terms and conditions of this Agreement in the subcontracting agreement.

**Section 6.3:** No assignment of this Agreement or any of the rights or obligations hereunder will be made by the **Consultant** without first obtaining the written consent of EMU.

**Section 6.4:** Approval by EMU of the subcontractor shall not relieve the **Consultant** of any responsibility for the **Consultant** services for the project.

### Article VII – Documents

**Section 7.1:** All final drawings, specifications, contract documents, and instruments of service prepared by or furnished to the **Consultant** for use under this contract are and shall be henceforth the property of EMU. They may only be used and/or distributed, as EMU deems appropriate. The originals of all such documents, including the final revised edition of any specifications and all of their word processing memory disks, plus all drawing tracings and all of their associated memory disks, shall be turned over to EMU at the end of the project and prior to the final payment of professional fees.

**Section 7.2:** The **Consultant** may retain copies of the documents for his use and files as may be related to this project. These retained copies may not be used elsewhere by the **Consultant** without the written consent of EMU. All final documents shall be prepared in or converted for use in the currently used EMU formats. These formats include MSOffice (latest version) and AutoCAD (latest version).



## E A S T E R N M I C H I G A N U N I V E R S I T Y

**Section 7.3:** Documents shall be created based upon the EMU Architectural / Engineering Standards for Design and Construction Documents.

### **Article VIII - Confidential Information**

**Section 8.1:** As used herein, the term “Confidential Information” will include any and all information concerning the business, assets, finances, and operations of EMU, which is furnished to the **Consultant** in writing, orally, or in the form of a tangible sample or model.

**Section 8.2:** The **Consultant** recognizes and acknowledges that it has and will have access to certain Confidential Information of EMU and its affiliates that are valuable, special and unique assets and property of EMU and such affiliates. The **Consultant** will not disclose, without prior written consent or authorization of EMU, any of such information to any person, for any reason or purpose whatsoever.

**Section 8.3:** The **Consultant** will not disclose Confidential Information or any information concerning the Services to any person or entity, except its own employees and outside attorneys, accountants and financial advisors, on a strict need-to-know basis, who are bound by a similar confidentiality obligation. Such Confidential Information is and will remain the property of EMU; it will be used by the **Consultant** only as required to perform the Services covered by this Agreement. If in written, graphic or other tangible form, all Confidential Information will be returned by the **Consultant** to EMU upon request when the Services have been completed or terminated.

**Section 8.4:** Disclosure of Confidential Information hereunder will not be deemed to constitute a grant of a right or license to the Confidential Information or to any patents or patent applications of EMU. Such information is and will remain the property of EMU.

The Contractor shall not publish or otherwise disclose, except matters of public record, any information or data obtained hereunder from private individuals, organizations, or public agencies, in a publication whereby the information or data furnished by any particular person or establishment can be identified, except with the prior written consent of such person or establishment.

### **Article IX - Time, Place and Manner of Performance.**

**Section 9.1:** The **Consultant** shall be available for advice and counsel to EMU at such reasonable and convenient times and places as may be mutually agreed upon. Except as aforesaid, the time, place and manner of performance of the services hereunder, including the amount of time to be allocated by the **Consultant** to any specific service, shall be determined at the sole discretion of the **Consultant**.



## EASTERN MICHIGAN UNIVERSITY

### Article X - No Agency

**Section 10.1:** Nothing in this Agreement is intended, nor will anything be construed, as appointing the **Consultant** or any agents or employees of the **Consultant**, as agents of EMU. Neither the **Consultant** nor any agents or employees of the **Consultant** will have any right or authority to assume or create any obligation of any kind on behalf of EMU or to bind EMU in any respect whatsoever. For greater certainty, neither the **Consultant** nor any agents or employees of the **Consultant** will be the legal representatives of EMU for any purpose whatsoever.

### Article XI – Termination

**Section 11.1:** Without excusing the **Consultant**'s obligations of Confidentiality, EMU may terminate this Agreement at any time, with cause or without cause, on ten (10) days prior written notice to the **Consultant**.

**Section 11.2:** The **Consultant** may terminate this Agreement for cause on ten (10) days prior written notice to EMU.

**Section 11.3:** EMU shall compensate the **Consultant** for all services performed prior to the termination date specified in the notice.

### Article XII – Indemnification

**Section 12.1:** The **Consultant** agrees to save, defend, indemnify and hold harmless Eastern Michigan University, its regents, directors, officers, employees, shareholders and agents from and against any and all claims, damages, liabilities, losses, suits, actions, property damages, personal injuries or death, (including reasonable attorney's fees, arbitration, mediation and/or litigation costs) which they may incur arising directly or indirectly from the negligent performance of this Agreement by the **Consultant**, its employees and agents.

### Article XIII - Standard of Care

**Section 13.1:** The technical and professional services provided will be performed by qualified and competent personnel in accordance with industry practice and the standards of care and practice appropriate to the nature of the Services rendered.

### Article XIV – Insurance

**Section 14.1:** The **Consultant** shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the **Consultant**'s service under this Contract, whether such service be by himself or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. To protect the **Consultant** and EMU against liability for damage, loss, or expense arising out of, or in connection with, or resulting from the performance of the Services, the **Consultant** will at



## E A S T E R N M I C H I G A N U N I V E R S I T Y

all times during the progress of the Services carry, at his own expense, and on such forms and terms as will protect the **Consultant** and EMU, with reliable insurance companies acceptable to EMU and authorized to do business in the State of Michigan, insurance coverage, the type and amounts of which are customary in the **Consultant's** business, including without limitation, the following:

**Section 14.2:** Worker's Compensation Insurance for claims under Michigan's Worker's Compensation Act or other similar employee benefit act of any other state applicable to an employee.

**Section 14.3:** Employer's Liability Insurance usually provided with Worker's Compensation Insurance, for claims for damages because of bodily injury, occupational sickness or disease or death of an employee when Worker's Compensation is not an exclusive remedy, subject to minimum available limit of liability.

**Section 14.4:** Comprehensive Automobile Liability Insurance covering owned, non-owned and hired vehicles with limits of not less than One Hundred Thousand Dollars (\$100,000) for injuries to or death of more than one person per occurrence and Property Damage limits of not less than One Hundred Thousand Dollars (\$100,000) per occurrence or a Combined Single Limit of Three Hundred Thousand Dollars (\$300,000) per occurrence.

**Section 14.5:** Professional Liability Insurance for claims for damages arising out of an error, omission or negligent act in the performance of the **Consultant's** services, subject to limits of liability of not less than \$100,000 for each occurrence or 10-percent of the probable total construction cost, whichever amount is greater, a deductible, if any, of not more than \$10,000 and if applicable, and annual aggregate of not less than three (3) times each occurrence limit.

**Section 14.6:** Contractual Liability Insurance for claims for damages that may arise from the **Consultant's** assumption of liability of EMU under the indemnity or other agreement within the contract to the extent that such kinds of contractual liability are not covered by any other liability insurance and are ordinarily insurable, subject to limits of liability of not less than the amount for the professional liability insurance or general liability insurance, whichever amount is greater.

**Section 14.7:** General Liability Insurance for claims for damages because of bodily injury or death of any person, other than the **Consultant's** employees, or damage to tangible property of others, including loss of use resulting therefrom, to the extent that such kinds of liability are not insured by other specific liability insurance and are ordinarily insurable under general liability insurance, subject to bodily injury limits of no less than \$500,000 for each occurrence and \$1,000,000 annual aggregate and property damage limits of not less than \$400,000 for each occurrence, or combined bodily injury/property damage limits of not less than \$750,000 for each occurrence and \$1,000,000 annual aggregate.

**Section 14.8:** Insurance required shall be in force until acceptance by EMU of the entire completed work, and shall be written for not less than any limits of liability specified above. The **Consultant** has the responsibility of having any subcontractor comply with these insurance requirements. Certificates of Insurance, acceptable to EMU, shall name EMU as an additional insured, except for Professional Liability Insurance and Workers' Compensation Certificates. All such certificates shall be filed with the EMU Physical Plant Office prior to commencement of the **Consultant** service. All of these Certificates shall contain a provision that coverage



## E A S T E R N M I C H I G A N U N I V E R S I T Y

afforded under the policies will not be modified or canceled until at least fifteen days' prior written notice to the EMU.

### **Article XV - Saving Clause/Independent Terms**

**Section 15.1:** Any paragraph, sentence, phrase, or other provision of this Agreement which is in conflict with any applicable statute, rule, or other law, or which is deemed invalid or unenforceable for any reason, shall be deemed, if possible, to be omitted herefrom. The invalidity or unenforceability of any portion hereof shall not affect the force or effect of the remaining portions hereof.

### **Article XVI – Waiver**

**Section 16.1:** The failure by a party to insist upon strict adherence to any provision of this Agreement shall not be considered a waiver or relinquishment by that party of the right thereafter to insist upon strict adherence to that provision, or any other provision, of the Agreement.

### **Article XVII - Governing Law**

**Section 17.1:** The Agreement shall be construed and enforced in accordance with the laws of the State of Michigan, and any suit or proceeding arising from or related to the Agreement must be brought within the State of Michigan.

### **Article XVIII - Binding Effect**

**Section 18.1:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

### **Article XIX – Notices**

**Section 19.1:** Unless otherwise provided herein, all communications from one party to the other shall be in writing and sent by registered by mail, overnight mail or facsimile transmission and shall be effective upon receipt thereof. However, routine communications, including monthly statements, shall be considered as duly delivered, when mailed by either; registered mail, overnight mail, ordinary mail or facsimile transmission. All communications should be addressed to:



## EASTERN MICHIGAN UNIVERSITY

**Consultant:** \_\_\_\_\_ Eastern Michigan University  
Address: \_\_\_\_\_ 875 Ann Street  
Address: \_\_\_\_\_ Ypsilanti, Michigan 48197  
Attn: \_\_\_\_\_ Attn: Scott Storrar  
Title: \_\_\_\_\_ Manager; Facilities, Planning and  
Construction  
Telephone: \_\_\_\_\_ Telephone: (734) 487 -3591  
Fax: \_\_\_\_\_ Fax: (734) 487 - 8680

### Article XX - Right to Use Other Services

**Section 20.1:** This Agreement is not an exclusive services contract. EMU retains the right, within its sole discretion, to contract with other companies or individuals for the same Services or different services.

### Article XXI - Other Assurances

**Section 21.1:** Upon request, the **Consultant** will provide to EMU such other assurances, which EMU reasonably requests to confirm that **Consultant** is in compliance with all requirements of this Agreement and with all applicable Federal, State and Local laws.

### Article XXII – Non-Discrimination

**Section 22.1** The Contractor agrees that it will not discriminate against any employee or applicant for employment with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, sex, age, national origin, ancestry, height, weight, martial status, sexual orientation, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position and breach of this covenant may be regarded as material breach of this Contract.

**Section 22.2** The Contractor further agrees that it will, in all subcontracts relating to the performance of the work under this Contract, provide in its subcontracts that the subcontractor will not discriminate against any employee or applicant for employment, to be employed in the performance of such Contract, with respect to their hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, sex, age, national origin, ancestry, height, weight, marital status, sexual orientation, or disability that is unrelated to the individual's ability to perform the duties of a particular job or position, and that breach of this covenant may be regarded as a material breach of this Contract.



## E A S T E R N M I C H I G A N U N I V E R S I T Y

### **Article XXIII - Contract Documents**

**Section 23.1:** This Agreement includes the following sections (and all documents referenced therein), which are incorporated by reference and made a part of this Agreement:

#### **Fill In Pertinent Documentation**

### **Article XXIV - Entire Agreement**

**Section 24.1:** This Agreement and the attachments referenced in Section 22.1, is the entire agreement between the parties regarding the subject matter hereof. The Agreement incorporates and supersedes all prior negotiations, communications, understandings and agreements between the parties hereto regarding the subject matter hereof, whether written or oral. No such prior negotiations, communications, understandings or agreements shall be of further force or effect.

**Section 24.2** This contract constitutes the entire agreement as to the services agreed to between the parties. Any waiver, alteration, or modification of any of the provisions of this Agreement shall be valid only if made in writing and signed by duly authorized representatives of the parties hereto. Each party hereto, may waive any of its rights hereunder without affecting a waiver with respect to any subsequent occurrences or transactions hereof.





E A S T E R N M I C H I G A N U N I V E R S I T Y

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers, as of the day and year first above written.

**Consultant:** \_\_\_\_\_

*(Insert company name here)*

Signature: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

**EMU: EASTERN MICHIGAN UNIVERSITY**

Signature: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_



# EASTERN MICHIGAN UNIVERSITY

## ATTACHMENT C

### General Terms

#### Premise

1. The **Consultant** is in the business of providing space utilization services; and EMU deems it to be in its best interest to retain the **Consultant** to render said services, and
2. The service to be provided by the **Consultant** shall include all disciplines and the expertise necessary to achieve the purpose of the agreement in the best interest of EMU, and
3. The service includes attendance at meetings and conferences as required.

#### Compensation

1. Compensation for services shall be paid for at the **Consultant's** standard fee schedule as provided in Attachment A
  - a. Items considered reimbursable expenses, shall include the following:
    - i. Computer time, when running especially approved computer programs essential to the development of the project, and approved by EMU.
    - ii. Travel and living expenses, when traveling away from the **Consultant's** normal work location at the request of or on behalf of and with the approval of EMU.
    - iii. Special reproductions, perspectives, photographs and/or models by others, when requested and approved by EMU. Costs for final printing of contract documents including attachments for advertisement and bid purposes are considered special reproductions and a reimbursable expense.
    - iv. Other outside services, when specifically called for and identified in the **Consultant's** proposal and detailed description of the service and/or when otherwise requested and approved as a reimbursable expense by EMU.
  - b. Items considered by EMU to be normal business overhead and not reimbursable, are listed as follows:
    - i. Incidental computer work such as word processing normally provided as part of a standard the **Consultant** project process or package.
    - ii. Travel to and from the EMU campus for job meetings, investigations of the project site, data gathering, and other activities related to the **Consultant's** normal function on such a project.
    - iii. Telephone use, facsimile machine use, Federal Express (Fed-X) and United Parcel Service (UPS) transmittals, etc.



## EASTERN MICHIGAN UNIVERSITY

- c. The **Consultant** shall submit with its proposal, a standard fee schedule (as more particularly described on Attachment A, attached hereto) to be used as the basis for its billings. This section shall apply unless there is an agreement to the contrary, itemized in the **Consultant's** proposal letter such as fixed monthly account management fees.

### **Payments**

1. Applications for payments shall be submitted by the **Consultant**, appropriately itemized, on a monthly basis, for work completed during the previous month.
2. Applications shall not be submitted in amounts exceeding any "Not-to-Exceed" amount, unless so authorized in writing by EMU.
3. Payments for reimbursable expense shall be in the amount incurred prior to the date of the application. Each expense must be properly documented.
4. The **Consultant** shall submit with its application for payment a sworn statement that amounts previously invoiced for services performed by subcontractors have been paid to such subcontractors

### **Accounting**

1. The **Consultant** shall keep records of all costs and expenses to support its applications for payment. He shall also keep records as to contract work and as to certificates of payment to subcontractors. Both records shall be accounted for on a generally recognized basis. Such records shall be available to the EMU as may be reasonably required.

### **Non-Discrimination**

1. The **Consultant** will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, age, sex, height, weight, marital status, or sexual orientation.



EASTERN MICHIGAN UNIVERSITY

ADDENDUM # 1

**Consultant** hereby agrees not to hire or retain any Eastern Michigan University staff until two years after it has completed all assignments at the University.

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**Consultant** Signature



EASTERN MICHIGAN UNIVERSITY

**ADDENDUM II**  
**NONCOLLUSIVE AFFIDAVIT**

State of Michigan County of \_\_\_\_\_)

\_\_\_\_\_, BEING DULY SWORN deposes and says that:

1. The bid has been arrived at by the bidder independently and has been submitted without collusion with, and without any agreement, understanding, or planned common course of action with, any other vendor of materials, supplies, equipment, or services described in the invitation to bid, designed to limit independent bidding or competition, and
2. The contents of the bid have not been communicated by the bidder or its employees or agents to any person not an employee or agent of the bidder or its surety on any bond furnished with the bid, and will not be communicated to any such person prior to the official opening of the bid.

\_\_\_\_\_  
SIGNATURE OF THE BIDDER

Subscribed and sworn to before me this \_\_\_\_\_ day of

\_\_\_\_\_, AD 200\_\_ a notary public in and for said

County. \_\_\_\_\_

Notary Public, \_\_\_\_\_

County, Michigan

My commission expires \_\_\_\_\_