AdvantageME CT#

**State of Maine**

**ARCHITECT / ENGINEER AGREEMENT**

**Special Consulting Services**

Use this *Special Consulting Services* Architect / Engineer Agreement for services such as feasibility studies, engineering analyses, master planning, facility assessments, project cost analyses, interior design, or other similar limited, pre-design, or independent services performed apart from a larger A/E Agreement. Use the *Design Consulting Services* Architect / Engineer Agreement for services which directly lead to construction procurement.

Agreement entered into by and between the ***insert contracting entity name*** hereinafter called the ***Owner*** and ***insert company name of Architect or Engineer***, hereinafter called the ***Consultant*** ("Consultant": the Architect or Engineer individual or firm acting as the Professional-of-Record).

The process used for selecting the Consultant: .

A Request for Qualifications (RFQ) selection process results in no predetermined fee limit. A Professional Services Prequalification List direct selection process requires Consultant fees for the entire project to be limited to $25,000, per statute.

BGS Project No.: ***insert number assigned by BGS*** Other Project No.:

For the following Project: ***brief name of project*** at ***facility, campus or SAU name***, ***municipality***, Maine.

Brief Project Description: ***insert text describing the purpose of the project, such as: "Determine several options for relocaton of XYZ facility in three alternate locations"***.

Brief Scope of Services: ***insert text that indicates broadly what services the Consultant will perform (insert the detailed scope in Attachment C)***

Overview of select data delineated elsewhere in this Agreement:

|  |  |  |
| --- | --- | --- |
| Specified limit of Consultant's Compensation including Reimbursable Expenses | see § 1.1 | $***0.00*** |
| The services of this Agreement shall be completed on or before the Agreement Final Completion Date | see Attachment B *Project Schedule* | ***31 December 2000*** |
| The Agreement Expiration Date (This is the Owner's specified deadline for internal management of contract accounts.) | | ***31 December 2000*** |

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The Owner and Consultant agree as follows:

**ARTICLE 1   COMPENSATION AND PAYMENTS**

When using this Agreement with the *Standard Department of Education Supplement A* complete section 1.1 in that document – do not fill in the form fields in section 1.1 below.

* 1. The Consultant's Compensation shall not exceed ***$0.00*** and is computed as the sum of Professional Services, and Reimbursable Expenses, as shown below.
  2. Professional Services Fee () ***$0.00***

The Professional Services Fee amount includes the sum of the prime Consultant’s and the Subconsultant’s fees. The prime Consultant provides

* 1. *Not Used*
  2. Reimbursable Expenses (sum of estimated items below) ***$0.00***

|  |  |  |
| --- | --- | --- |
| **.1** | Transportation in connection with this project and other pre-authorized travel reimbursed at the prevailing State of Maine rate per mile at the time the expense is incurred (no mark-up allowed) | *$0.00* |
| **.2** | Application fees paid for securing approval of Authorities Having Jurisdiction (AHJ) over the project | *$0.00* |
| **.3** | Paper reproductions- excluding those required for submissions to AHJ or for Consultant's or Subconsultant's in-office use | *$0.00* |
| **.4** | Postage, handling and delivery of the Instruments of Service | *$0.00* |
| **.5** | Other: ***none*** | *$0.00* |

1. Reimbursable Expensesare in addition to compensation for the Consultant's services and include actual, reasonable expenses incurred by the Consultant or their Subconsultants directly related to the project, not to exceed the amount set forth above without the written approval of the Owner. Compensation for Reimbursable Expenses, except valid travel and subsistence expenses, shall be computed as a multiple of 1.1 times the expenses incurred by the Consultant or their Subconsultants. Compensation for eligible travel and subsistence expenses shall be for the actual expense incurred by the Consultant and their Subconsultants, without mark-up. The acceptable maximum per diem may be determined at the website of the State of Maine Office of the State Controller.
2. The Consultant shall be reimbursed for the following items, or other items, only if each has had prior authorization by the Owner:
   1. Reproductions of drawings and specifications, excluding those required for routine submissions to AHJs, and those created for in-office use by the Consultant or Subconsultant.
   2. *Not used*.
   3. Application fees paid for acquiring necessary approvals from AHJs.
   4. Three dimensional models created for the use of the Owner.
   5. Transportation and lodging or living expenses incurred by the Consultant in the execution of any special duties in connection with the work.
3. The Consultant shall be reimbursed as needed according to the following provisions:
   * + 1. Eligible transportation expenses directly related to Professional Services activities shall be compensated at the current State of Maine rate (currently $0.45 per mile).
       2. Lodging or living expenses and telecommunication expenses associated with Professional Services are the responsibility of the Consultant.
       3. When the services of a Clerk of the Works or Architect’s Project Representative is directed by the Owner, compensation shall be computed as a multiple of 1.1 times the expenses incurred for an individual who is a Subconsultant, or as a multiple of not more than 1.5 times the direct salary expense for an individual who is an employee of the Consultant.
4. Compensation for a change in services of the Consultant or Subconsultants shall be based on the Consultant's Professional Rate Schedule (see Attachment A – *Professional Rate Schedule*), if feasible. Any change of the scope of services and compensation shall be negotiated by the Consultant and the Owner and defined in a fully executed Supplemental Agreement, approved by BGS, prior to commencement of such services.
5. *Not used.*
6. Payment shall be made to the Consultant according to these provisions, or in the event of suspension or cancellation of this Agreement, at a pro-rated or negotiated amount. Consultant’s statement of services shall contain sufficient detail and supporting information for the Owner to evaluate and support the payment requested.
7. Payments are due and payable twenty-five working days from the date of receipt of a Consultant's invoice which is approved by the Owner.
8. The Owner shall notify the Consultant in writing of any items submitted but not approved and the reason for non-approval within fifteen calendar days of receipt of the Consultant's invoice.
9. Provisions for late payments will be governed by 5 M.R.S. Chapter 144, *Payment of Invoices Received from Business Concerns*, and interest shall be calculated at 1% per month.

**ARTICLE 2   SCHEDULE**

1. The Consultant shall complete all work of this Agreement according to Attachment B – *Project Schedule*.
2. The Project Schedule shall allow for the periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the project. Time limits established by this schedule approved by the Owner shall not be exceeded by the Consultant or the Owner, except for reasonable cause and by written approval in the form of a Supplemental Agreement.

**ARTICLE 3   PROJECT TEAM**

1. The Owner's designated representative is:

|  |  |
| --- | --- |
| ***Name*** | ***Owner agency name*** |
| ***Title of person*** | ***Address*** |
|  | ***City, State zip code*** |
| ***Telephone*** | ***e-mail address*** |

1. The Consultant's designated representatives are:

|  |  |
| --- | --- |
| ***Name*** | ***Consultant firm name*** |
| *Principal in Charge* | ***Address*** |
| ***Name*** | ***City, State zip code*** |
| *Project Manager* |  |
| ***Telephone*** | ***e-mail address*** |

* 1. The Subconsultants retained at the Consultant's expense are:

|  |  |  |  |
| --- | --- | --- | --- |
| **.1** | ***Service type*** | ***Firm name and address*** | ***not used*** |
| **.2** | ***Service type*** | ***Firm name and address*** | ***not used*** |
| **.3** | ***Service type*** | ***Firm name and address*** | ***not used*** |
| **.4** | ***Service type*** | ***Firm name and address*** | ***not used*** |
| **.5** | ***Service type*** | ***Firm name and address*** | ***not used*** |
| **.6** | ***Service type*** | ***Firm name and address*** | ***not used*** |
| **.7** | ***Service type*** | ***Firm name and address*** | ***not used*** |

**ARTICLE 4   CONSULTANT'S RESPONSIBILITIES**

1. **General**
   1. The Consultant shall provide appropriate architectural, engineering, or other professional consulting services for the project. The Consultant's services shall be performed expeditiously and consistent with standard professional skill and care and the orderly progress of the project.
   2. The Consultant shall review laws, codes, and regulations applicable to the Consultant's services. The Consultant’s work product shall reflect all requirements imposed by authorities having jurisdiction over the project.
   3. The Consultant shall be responsible for any cost incurred on the project to the extent caused by the negligent acts, errors, or omissions of the Consultant or their Subconsultants in the performance of work under this Agreement.
   4. The Consultant shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law or create the risk of significant harm to the public. The Consultant shall require their Subconsultants to similarly maintain the confidentially of information specifically designated as confidential by the Owner.
   5. The Consultant shall not engage in any activity nor accept any employment, interest or remuneration that would reasonably appear to compromise the Consultant’s professional judgment with respect to this project.
   6. The Consultant shall not enter into any subcontract for the work to be performed under this Agreement without the express written consent of the Owner.  This provision shall not apply to contracts of employment between the Consultant and its employees.  The Consultant is solely responsible for the performance of work under this Agreement.  The approval by the Owner of a Subconsultant under this Agreement shall not relieve the Consultant of their responsibility for the performance of the work.
2. **Project Evaluation**
   1. The Consultant shall provide a preliminary assessment of the project information provided by the Owner. Based on the assessment, the Consultant shall advise the Owner of any other information needed, or consultant services required, which may be needed to accomplish the project.
   2. The Consultant shall provide prompt written notice to the Owner if the Consultant becomes aware of any errors, omissions or inconsistencies in any services or information provided by the Owner.

**ARTICLE 5   OWNER'S RESPONSIBILITIES**

1. The Owner shall provide full information to the Consultant about the objectives, schedule, and constraints of the project, and shall establish a budget, with reasonable contingencies, which covers the project requirements.
2. *Not used.*
3. *Not used.*
4. *Not used.*
5. *Not used.*
6. *Not used.*
7. *Not used.*
8. The Owner shall advise the Consultant of any known Owner-related reviews or approval processes of third parties which the Consultant may not be aware, yet requires work of the Consultant.
9. The Owner shall coordinate the services provided by the Owner’s other consultants with those services provided by the Consultant and their Subconsultants.
10. The Owner shall provide timely responses to the Consultant’s recommendations and advice. The Owner shall perform all responsibilities as expeditiously as possible, consistent with normal skill and care and the orderly progress of the project.

**ARTICLE 6   INSTRUMENTS OF SERVICE**

1. Drawings, specifications, and other documents, including those in electronic form, prepared by the Consultant and their Subconsultants are Instruments of Service for use solely with respect to this project. The Consultant and their Subconsultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights, except as expressly provided herein.
2. Upon execution of this Agreement, the Consultant grants to the Owner a nonexclusive, assignable license to reproduce the Consultant's Instruments of Service solely for purposes of a) advancing the project, provided that the Owner shall comply with all obligations, including prompt payment of all sums when due, under this Agreement, or b) completion of the project if Owner has declared Consultant to be in default, including any modified or different project. The Consultant shall obtain similar nonexclusive licenses from their Subconsultants consistent with this Agreement. In the event the Owner contracts with a different Consultant for the completion of the project contemplated by the Consultant’s Instruments of Service, such use shall be at Owner’s sole risk.
3. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the project is not to be construed as publication in derogation of the reserved rights of the Consultant and their Subconsultants. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Consultant and their Subconsultants.
4. Notwithstanding the provisions of this Agreement, the Owner and the Consultant may, by separate written agreement, set forth specific conditions governing the sharing of electronic data, the format of Instruments of Service, or any third party special limitations or licenses not otherwise provided for in this Agreement.

**ARTICLE 7   TERMINATION**

1. This Agreement may be terminated at the Owner's convenience and without cause upon not less than seven days written notice to the Consultant.
2. The Owner or the Consultant may terminate this Agreement upon not less than seven days written notice to the other party should such other party fail to perform in accordance with the terms of this Agreement.If the Consultant should fail to submit documents under this agreement at the times specified herein, or violate any of the stipulations herein, causing the Owner to incur expenses above and beyond those funds allocated in the approved budget, without prior written authorization for such from the Owner, the Owner may elect to terminate this Agreement by giving seven days’ notice to them in writing by registered mail, return receipt requested.
3. The Consultant shall deliver all finished work and all documentation, complete and incomplete, to the Owner in the event of termination. The Consultant shall not be held responsible for modifications to the Consultant’s work or work subsequently completed by others beyond the point of termination and their submittal of documents.
4. The Consultant shall not be entitled to special or exemplary damages of any kind, including, but not limited to, lost profits, consequential damages, or loss of business in the event of termination for any reason.
5. The Consultant shall be compensated for services satisfactorily performed prior to termination, with Reimbursable Expenses then due, in the event of termination not the fault of the Consultant.
6. If the Consultant is unable to continue to the completion of the project without successors or administrators or assigns competent in the Owner's judgment to carry the work to completion, or if the Owner terminates the contract prior to the completion of the project due to the Consultant’s failure to correct a material breach in its performance, the Owner shall have the right and license to use any and all finished and unfinished work product produced for the project solely for the purpose of continuing the project, which license and right of use shall in the case of unfinished work product, be at the Owner’s sole risk. In such event the Consultant will be entitled to receive just and equitable compensation for services already satisfactorily performed and approved.

**ARTICLE 8   INDEMNIFICATION**

1. The Consultant shall indemnify and hold harmless the Owner and its officers and employees from and against any and all damages, liabilities, and costs, including reasonable attorney fees, and defense costs, for any and all injuries to persons or property, including claims for violation of intellectual property rights, to the extent caused by the negligent acts or omissions of the Consultant, its employees, agents, officers or subcontractors in the performance of work under this Agreement. The Consultant shall not be liable for claims to the extent caused by the negligent acts or omissions of the Owner or for actions taken in reasonable reliance on written instructions of the Owner.
2. The Consultant shall notify the Owner promptly of all claims arising out of the performance of work under this Agreement by the Consultant, its employees or agents, officers, or subcontractors.
3. This indemnity provision shall survive the termination of the Agreement, completion of the project or the expiration of the term of the Agreement.

**ARTICLE 9   INSURANCE REQUIREMENTS**

* 1. The Consultant shall provide, with each original of this signed Agreement, an insurance certificate or certificates issued by companies acceptable to the Owner. The Consultant shall submit insurance certificates to the Owner at the commencement of this Agreement and at policy renewal or revision dates. The certificates shall identify the project name and project number, and shall name the Owner as certificate holder. The submitted forms shall contain a provision that coverage afforded under the insurance policies will not be canceled or materially changed unless at least ten days prior written notice by registered letter has been given to the Owner.
  2. The Owner does not warrant or represent that the insurance required herein constitutes an insurance portfolio which adequately addresses all risks faced by the Consultant. The Consultant is responsible for the existence, extent and adequacy of insurance prior to signing this Agreement.
  3. The Consultant shall procure and maintain primary insurance for the duration of the project and, if written on a Claims-Made basis, shall also procure and maintain Extended Reporting Period (ERP) insurance for the period of time that any claims could be brought (see Maine Limitation of Actions statute (14 M.R.S. §752-A)). The Consultant shall ensure that all Subconsultants they engage or employ will procure and maintain similar insurance in form and amount acceptable to the Owner. At a minimum, the insurance shall be of the types and limits set forth herein protecting the Consultant from claims which may result from the Consultant’s execution of the Work, whether such execution be by the Consultant or by those employed by the Consultant or by those for whose acts they may be liable. All required insurance coverages shall be placed with carriers authorized to conduct business in the State of Maine by the Maine Bureau of Insurance.
  4. The Consultant shall have Workers' Compensation insurance for all employees on the project site in accordance with the statutory workers’ compensation law of the State of Maine. Minimum acceptable limits for Employer’s Liability are:

Bodily Injury by Accident $500,000

Bodily Injury by Disease $500,000 Each Employee

Bodily Injury by Disease $500,000 Policy Limit

* 1. The Consultant shall have Commercial General Liability insurance providing coverage for bodily injury and property damage liability for all hazards of the project including premise and operations, products and completed operations, contractual, and personal injury liabilities. Minimum acceptable limits are:

General aggregate limit $2,000,000

Products and completed operations aggregate $1,000,000

Each occurrence limit $1,000,000

Personal injury aggregate $1,000,000

* 1. The Consultant shall have Automobile Liability insurance against claims for bodily injury, death or property damage resulting from the maintenance, ownership or use of all owned, non-owned and hired automobiles, trucks and trailers. The minimum acceptable limit is:

Any one accident or loss $1,000,000

* 1. The Consultant shall have Professional Liability insurance against claims arising out of all negligent acts, errors, or omissions of the Consultant in rendering or failing to render professional services related to the project. Minimum acceptable limits are:

Each claim $1,000,000

Aggregate limit $2,000,000

**ARTICLE 10   DISPUTE RESOLUTION**

1. In the event of a dispute between the parties which arises under this Agreement which cannot be resolved through informal negotiation, the dispute shall be submitted to a neutral mediator jointly selected by the parties. The cost of the mediator shall be equally shared by the parties.
   1. Either party may file suit before or during mediation if the party in good faith deems it to be necessary to avoid losing the right to sue due to a statute of limitations. If suit is filed before good faith mediation efforts are completed, the party filing suit shall agree to stay all proceedings in the lawsuit pending completion of the mediation process, provided such stay is without prejudice.
2. If the dispute is not resolved through mediation, the dispute shall be settled by arbitration. The arbitration shall be conducted before a panel of three arbitrators. Each party shall select one arbitrator; the third arbitrator shall be appointed by the arbitrators selected by the parties. The arbitration shall be conducted in accordance with the Maine Uniform Arbitration Act (“MUAA”), except as otherwise provided in this section.
   1. The decision of the arbitrators shall be final and binding upon all parties. The decision may be entered in court as provided in the MUAA.
   2. The costs of the arbitration, including the arbitrators’ fees shall be borne equally by the parties to the arbitration, unless the arbitrator orders otherwise.
   3. In any arbitration between the Owner and the Consultant, the Owner shall have the right to consolidate related claims between Owner and other parties.

**ARTICLE 11   MISCELLANEOUS PROVISIONS**

1. This Agreement shall be governed by the laws of the State of Maine.
2. The Owner and Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to this Agreement. Neither party to this Agreement shall assign the contract as a whole without written consent of the other, which consent the Owner may withhold without cause.
3. Professional Services not covered by this Agreement include, but are not limited to, unanticipated scope of services revisions due to changes in the scope, quality, or budget of the project.
4. Suspected toxic or hazardous materials observed on the project site by the Consultant or Subconsultants requires the Consultant to promptly notify the Owner in writing. The Consultant shall not direct any party to expose, disrupt, handle, remove or dispose of such materials.
5. The Consultant shall provide the Owner with drawings in Adobe Portable Document Format (PDF) and AutoCAD format for all drawings of each phase of development, in addition to the paper copies necessary to review the design. AutoCAD drawings shall be provided complete- without X-references. Bind AutoCAD drawings using the insert option and do not explode the inserted block.
6. The Owner has the right to use any product of services from this Agreement in a project in the future. Reuse of a product of services for purposes other than as specified in this Agreement without verification or adaptation by the Consultant is done at the sole risk of the Owner.
7. A Supplemental Agreement between the Consultant and the Owner, approved by BGS, shall be created prior to the commencement of any additional services by the Consultant.
8. Notwithstanding any other provision of this Agreement, if the Owner does not receive sufficient funds to fund this Agreement or funds are de-appropriated, or if the Owner does not receive legal authority from the Maine State Legislature or Maine Courts to expend funds intended for this Agreement, then the Owner is not obligated to make payment under this Agreement; provided, however, the Owner shall be obligated to pay for services satisfactorily performed prior to any such non-appropriation in accordance with the termination provisions of this agreement. The Owner shall timely notify the Consultant of any non-appropriation and the effective date of the non-appropriation.
9. The Consultant shall comply with the Maine Code of Fair Practices and Affirmative Action, 5 M.R.S. §784 (2).
10. The Consultant is prohibited from releasing, publishing, or allowing publication of narrative, graphic, photographic, or artistic representations of the project unless expressly allowed in writing by the Owner. The Consultant shall not include the Owner’s confidential or proprietary information in any project representations if the Owner advises the Consultant in writing of the specific information considered by the Owner to be confidential or proprietary.

**ARTICLE 12   OTHER PROVISIONS**

1. ***not used***

**ARTICLE 13 ATTACHMENTS**

**13.1** A. Professional Rate Schedule

B. Project Schedule

C. Project Requirements

D. *not used*

E. Insurance Certificates

F.

G.

H. ***not used***

# Signature Sheet

BGS Project No.:

The Agreement is effective as of the date executed by the approval authority.

|  |  |  |
| --- | --- | --- |
| **OWNER** |  | **CONSULTANT** |
|  |  |
| *(Signature) (Date)* | *(Signature) (Date)* |
| ***insert name and title*** |  | ***insert name and title*** |
|  |  |
| ***insert contracting entity name*** |  | ***insert company name*** |

*(Indicate names of the review and approval individuals appropriate to the approval authority.)*

|  |  |  |
| --- | --- | --- |
|  | | |
| Reviewed by: |  | Approved by: |
|  |  |
| (Signature) (Date) | (Signature) (Date) |
|  | Joseph H. Ostwald |
| Project Manager/ Contract Administrator | Director, Planning, Design & Construction |