

Project Title	Professional Consulting Services (Mechanical Engineering) SBC No. 540/000-01-2020
Institution	UT Systemwide
Description	<p>This project will provide professional consulting services for Mechanical Engineering services for the UT Systemwide campuses / institutions from November 1, 2022, through October 31, 2025. This contract will be based upon 3 years of service; however, parties will meet at the conclusion of each year to review overall pending State Building Commission approval services.</p> <p>Work under this contract is limited programming (scope definition), alterations, improvements, planning, repairs, and maintenance; including, but not limited to site visitation and investigation, analysis, <b>mechanical engineering services</b>, specification development, cost estimating, and construction and/or repair observation for various project which cost are under \$250,000. Other Terms and Conditions as outlined in Exhibit A.</p> <p>This is an “on-call” service with the University and awarded firms will be expected to respond to the University within 48 hours of call and assignment. Firms proposing should be qualified and willing to accept University requests for any service at any University property in region of service as outlined above.</p> <p>It is the desire of the University to select multiple Mechanical Engineering firms to service any of our campuses or institutions depending on location of need. Number of firms in each area and location are anticipated to be as follows:</p> <ul style="list-style-type: none"> <li>• Memphis / Martin Region – 2 firms</li> <li>• Nashville Region – 2 firms</li> </ul> <p>After firms have been awarded, individual project selection will be based upon submitted qualifications and firm capacity to complete the work in the allotted time as requested for each project.</p>
Project Schedule	Designer Award by SBC Executive Sub-Committee – Anticipated October 24, 2022 (Pending SBC Approval on October 13, 2022)
Estimated Total Project Cost	TBD, based on requested services
Maximum Allowable Construction Cost (MACC)	TBD, based on requested services
Professional Service Fee	<p>Anticipated fee amount maximum will vary based upon an hourly as a multiple of Direct Personnel Expense for each location.</p> <ul style="list-style-type: none"> <li>• Memphis / Martin Region - \$50,000</li> <li>• Nashville Region - \$50,000</li> </ul>
Insurance Coverage	<p>Commercial General Liability</p> <p>Each Occurrence - \$1,000,000</p>

	<p>Aggregate - \$1,000,000</p> <p>Commercial Automobile Liability</p> <p>Any Auto – Each Accident, Combined Single Limit - \$1,000,000</p> <p>Workers' Compensation as required by statute, including employers' liability with limits of:</p> <p>Each Accident - \$100,000  Disease, each employee - \$100,000  Disease, policy limits - \$1,000,000</p> <p>Professional Liability Insurance</p> <p>Each Claim - \$1,000,000  Annual Aggregate - \$1,000,000</p>
Project Category	Minor
Designer Solicitation Date	August 3, 2022
Email Intent to Submit Date	<p>Email by August 17, 2022, your intent to submit to <a href="mailto:designer@tennessee.edu">designer@tennessee.edu</a></p> <p>Only designers who intend to submit will be notified of any updates to this solicitation.</p>
Letter of Interest Due Date	August 31, 2022, at 5:00 pm ET
Questions received until:	<p>August 16, 2022, at 5:00 pm ET</p> <p>Any updates regarding this solicitation will be emailed to potential proposers if request for notification is received via email to <a href="mailto:designer@tennessee.edu">designer@tennessee.edu</a> by the date and time of the deadline for questions listed above.</p>

# AGREEMENT

between

**THE STATE OF TENNESSEE**

**The University of Tennessee**

and

**(Designer Name)**

**SBC Project No. 540/000-01-2020**

This Agreement, by and between the State of Tennessee, The **University of Tennessee**, hereinafter referred to as the STATE and **(Designer Name)**, hereinafter referred to as the CONSULTANT, is for the provision of analysis, design, and related services, as further defined in the "SCOPE OF SERVICES", below.

The STATE and the CONSULTANT, having agreed to the conditions outlined in Articles A through D below; hereby enter into the following Agreement:

**A. SCOPE OF SERVICES: Requested professional service Consultant for UT**

1. The CONSULTANT shall provide such professional advice and assistance as the State may request regarding limited programming (scope definition), alterations, improvements, planning, repairs, and maintenance; including, but not limited to site visitation and investigation, analysis, Requested professional service, specification development, cost estimating, and construction and/or repair observation for various State projects where the total project does not exceed \$250,000 unless prior approval is granted by the State Building Commission. Any work done by the CONSULTANT shall be approved in writing by the State prior to the start of the work. For the purposes of this Agreement, the CONSULTANT's Principal is (name).

**B. PAYMENT TERMS AND CONDITIONS:**

1. For the Work performed under this Agreement, as defined in Section A, the CONSULTANT shall be compensated an amount not to exceed **XXX HUNDRED THOUSAND and N0/100ths dollars (\$XXX,XXX.00)**. This amount shall be the maximum amount for the work performed and the total compensation due the CONSULTANT for the Service and all of the CONSULTANT's obligations hereunder regardless of the difficulty, hours worked, or materials or equipment required. The Agreement price includes, but is not limited to, all applicable taxes, fees, site visitation and investigation, analysis, design, specification development, cost estimating, and overheads, profit, and all other direct and indirect costs incurred or to be incurred, by the CONSULTANT, except as noted in this Agreement.
2. The CONSULTANT shall furnish a **monthly** summary sheet of all projects under this Agreement, identifying each project expenditure, the total expenditures to date, and the balance of funds remaining in this Agreement. The CONSULTANT's compensation for services is based on a multiple of Direct Personnel Expense (DPE), determined as follows
3. Time for all individuals providing services under this Agreement shall be billed at the individual's typical or standard rate, in dollars per hour, calculated as set forth below and not to exceed one hundred seventy-five and no/100 dollars (\$175.00) per hour.
  - a. The typical or standard hourly rate for any employees (not principals or owners) of CONSULTANT shall not exceed a multiple of two and forty-five one hundredths (2.45) times the individual's DPE. The term "Direct Personnel Expense" means the actual cost of the individual to the company, which may not exceed one hundred thirty nine percent (139%) of the individual's base salary. "Direct Personnel Expense" includes the cost of the individual's base salary and of mandatory and customary benefits such as statutory employee benefits, insurance, sick leave, holidays and vacations, pensions, and similar benefits.
  - b. The typical or standard hourly rate for any principals and owners of CONSULTANT shall not exceed the greater of (A) a multiple of two and forty-five one hundredths (2.45) times the individual's DPE or (B) the average of the highest typical or standard hourly rate charged by an employee under the employ of said principal or owner for services provided under this Agreement, and the maximum hourly rate permissible in Section B.3 above.

## Exhibit A

4. Invoices to the CONSULTANT for surveys, tests, reports or other outside professional services for work authorized under this Agreement, shall be paid to the CONSULTANT with a fee, where the total payment does not to exceed one and twenty-one hundredths (1.20) times the amount invoiced to the CONSULTANT.
5. The STATE shall reimburse the CONSULTANT the actual verified cost of reproduction of drawings and specifications, computer services, renderings and models, and special supplies authorized by the STATE.
6. The CONSULTANT shall not be reimbursed for any traveling or living expenses in connection with this Agreement, unless approved in writing in advance by the STATE. If approved, compensation to the CONSULTANT for travel, meals, and/or lodging shall be subject to the amounts and limitations specified in the "University of Tennessee Travel Regulations," as they are amended from time to time or be subject to an agreed amount per person per day between the CONSULTANT and STATE.
7. The Agreement Price and maximum liability of the STATE under this Agreement is firm for the duration of the Agreement and are not subject to escalation for any reason, unless amended.
8. The CONSULTANT shall submit all invoices, in a form acceptable to the STATE with all of the necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices will be submitted monthly and shall include any reimbursement for travel expenses as defined under Paragraph 6 of this Section.
9. The Payment of an invoice by the STATE shall not prejudice the STATE's right to object to or to question any invoice or matter in relation thereto. Such payment by the STATE shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the costs invoiced therein. CONSULTANT's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the STATE, on the basis of audits conducted in accordance with the terms of this Agreement, not to constitute allowable costs. Any payment shall be reduced for over-payments or increased for under-payments on subsequent invoices.
10. The STATE reserves the right to deduct from amounts which are or shall become due and payable to the CONSULTANT under this or any Agreement between the parties, any amounts which are or shall become due and payable to the STATE by the CONSULTANT.
11. In no event shall the maximum liability of the STATE under this Agreement exceed **XXX HUNDRED THOUSAND and N0/100ths Dollars (\$XXX,XXX.00)**.

### C. TERM:

1. Term. This Agreement shall be effective for a three-year period commencing on November 1, 2022 and ending on October 31, 2025.
2. Term Extension. Intentionally Deleted.
3. In Process Work Term Extension. This Agreement shall be automatically extended for a period beginning at the end of the final term for the purpose of completing all work order activities associated with any authorized work initiated during the term of this Agreement.

### D. **STANDARD TERMS AND CONDITIONS:**

1. The STATE is not bound by this Agreement until it is approved by the appropriate State officials as indicated on the signature page of this Agreement.
2. This Agreement may be modified only by a written amendment which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement, upon submission of a thirty (30) day written notice.
3. The STATE may terminate this Agreement by giving the CONSULTANT at least thirty (30) days written notice before the effective termination date. The CONSULTANT shall be entitled to receive compensation for the services in an amount which the State determines to be equitable compensation for any work which has been completed prior to the date of termination.
4. If the CONSULTANT fails to properly perform its obligations under this Agreement or violates any terms

**Exhibit A**

of this Agreement, the STATE shall have the right to immediately terminate this Agreement and withhold payments in excess of fair compensation for completed services. The CONSULTANT shall not be relieved of liability to the STATE for damages sustained by virtue of any breach of this Agreement by the CONSULTANT.

- 5. The CONSULTANT shall not assign this Agreement or enter into a sub-Agreement for any of the services performed under this Agreement without obtaining the prior written approval of the STATE. If such sub-Agreements are approved by the STATE, they shall contain, at a minimum, Paragraphs D.6 and D.8 of this Agreement.
- 6. The CONSULTANT warrants that no part of the total Agreement Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation or gifts in exchange for acting as an officer, agent, employee, sub-Agreement, or consultant to the CONSULTANT in connection with any work contemplated or performed relative to this Agreement.
- 7. The CONSULTANT shall maintain documentation for all charges against the STATE under this Agreement. The books, records, and documents of the CONSULTANT, insofar as they relate this Agreement, shall be maintained for a period of three (3) years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State agency or the Comptroller of the Treasury, or their duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles.
- 8. No person on the grounds of handicap, race, color, religion, sex, or national origin will be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement, or in the employment practices of the CONSULTANT. The CONSULTANT shall, upon request, show proof of such non-discrimination, and shall post in conspicuous places, available to all employees and applicants, notices on non-discrimination.
- 9. Prohibition of Illegal Immigrants
  - a. The requirements of Public Acts of 2006, Chapter Number 878, of the State of Tennessee, addressing the use of illegal immigrants in the performance of any Agreement to supply goods or services to the State of Tennessee, shall be a material provision of this Agreement, a breach of which shall be grounds for monetary and other penalties, including termination of this Agreement.
  - b. The Consultant hereby attests, certifies, warrants, and assures that the Consultant shall not knowingly utilize the services of an illegal immigrant in the performance of this Agreement and shall not knowingly utilize the services of any sub-Agreement or consultant who will utilize the services of any illegal immigrant in the performance of this Agreement. The Consultant shall affirm this attestation, in writing, by his signature on this Agreement.
  - c. The Consultant understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law provides for the prohibition of a Consultant from any sub-Agreement with, or submitting an offer, proposal, or bid to Agreement with the State of Tennessee to supply goods or services for a period of one year after a Consultant is discovered to have knowingly used the services of illegal immigrants during the performance of this Agreement.
  - d. For purposes of this Agreement, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a lawful permanent resident, or a person whose physical presence in the United States is authorized or allowed by the Department of Homeland Security and who, under Federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Agreement.
- 10. The CONSULTANT shall maintain insurance coverage with the limits set forth below. CONSULTANT's certificates of insurance, in a form acceptable to the STATE, shall be provided to the STATE before the date of this Agreement and thereafter upon written request. The certificate of insurance required by this paragraph shall contain a provision requiring notice of cancellation to the STATE.

Commercial General Liability	
Each Occurrence	\$1,000,000
Aggregate	\$1,000,000
Commercial Automobile Liability	

**Exhibit A**

Any Auto – Each Accident, Combined Single Limit	\$1,000,000
Workers' Compensation as required by statute, including employer's liability with limits of:	
Each Accident	\$ 100,000
Disease, each employee	\$ 100,000
Disease, policy limits	\$ 500,000
Professional Liability Insurance	
Each Claim	\$1,000,000
Annual Aggregate	\$1,000,000

- 11. The CONSULTANT agrees to pay all taxes incurred in performance of this Agreement.
- 12. The STATE shall have no liability except as specifically provided in this Agreement.
- 13. The CONSULTANT shall comply with all applicable Federal and State laws and regulations in the performance of this Agreement.
- 14. This Agreement shall be governed by laws of the State of Tennessee.
- 15. This instrument may be executed in one or more counterparts. It shall be fully executed when each party whose signature is required has signed at least one (1) counterpart, even though no one (1) counterpart contains the signatures of all parties to this instrument. Electronic, scanned or facsimile signatures shall have the same force and effect as original signatures.

**CONSULTANT: Designer Firm Name**

BY: \_\_\_\_\_ Date: \_\_\_\_\_  
(Name), Principal

**THE UNIVERSITY OF TENNESSEE:**

BY: \_\_\_\_\_ APPROVED: \_\_\_\_\_  
Austin Oakes Ryan Stinnett  
Assistant Vice President, Department General Counsel  
of Capital Projects

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

**STATE ARCHITECT:**

APPROVED: \_\_\_\_\_  
Ann McGauran, State Architect