

**AGREEMENT**

Between Owner and Design Professional for  
Construction Manager Projects

for the

\_\_\_\_\_ Project

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AGREEMENT BETWEEN OWNER AND DESIGN PROFESSIONAL  
FOR CONSTRUCTION MANAGER PROJECTS

THIS AGREEMENT (“Agreement”) is effective from and after the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between THE REGENTS OF THE UNIVERSITY OF MICHIGAN, a Michigan constitutional corporation having its principal office at Ann Arbor, Michigan (“the Owner”), and \_\_\_\_\_, a \_\_\_\_\_ having its principal office at \_\_\_\_\_ (the “Design Professional”).

OBJECT:

The Owner intends to construct the project (the “Project”) as more particularly described on the schedule of project details attached to this Agreement (the “Schedule of Project Details”); and

The Owner will retain the services of a Construction Manager to assist it with the Project under the terms of an Agreement for Construction Management Services to be entered into at a later date; and

The Owner may have the Project designed with Separate Design Packages and constructed on a phased construction basis as described in the Schedule of Project Details; and

The Design Professional has agreed to provide Architectural and Engineering Basic Services, defined in Article 3, and any such Extra Services as are hereinafter designated for the Project in accordance with the requirements of Article 6; and

This Agreement sets forth the contract between the Owner and the Design Professional regarding their respective duties and responsibilities as to the Project.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1. DEFINITIONS

1.1 Construction Schedule.

The “Construction Schedule” is the Critical Path Method (“CPM”) schedule for construction of the Work submitted by the Construction Manager to the Owner prior to the release of the first bid package, that shall be utilized by the Construction Manager for the duration of the Project and upon which the Guaranteed Maximum Price shall be based.

1.2 Construction Costs.

The sum total of those costs of construction which are specified or designed by the Design Professional for the completed Project, including Construction Manager costs, fees and

contingencies, fixed equipment furnished and installed by the Construction Manager or any Trade Contractor or Supplier employed directly or indirectly by or through the Construction Manager, but excluding: (a) the cost of moveable furniture and fixed equipment furnished and/or installed by parties other than the Construction Manager or any Trade Contractor or Supplier employed directly or indirectly by or through the Construction Manager; (b) the cost of Work designed or specified by others; and (c) the fees and expenses of the Design Professional and Sub-consultants retained directly or indirectly by either the Design Professional or the Owner. The Design Professional shall design the Project so that the Construction Cost for the Project shall not exceed the "Fixed Limit of Construction Cost", set forth on the Schedule of Project Details.

### 1.3 Construction Documents.

The drawings and specifications prepared by the Design Professional for the construction of the Project.

### 1.4 Contract Documents.

The "Contract Documents" consist of: the Agreement for Construction Management Services between the Owner and the Construction Manager and the attached General Conditions, any Supplemental or Special Conditions applicable to the Work, the Drawings, Specifications, and Addenda, the Construction Schedule, all Bulletins, Change Orders and Construction Change Directives, all modifications, and any documents incorporated by reference into any of the foregoing. The Contract Documents do not include any other documents, such as (i) bidding requirements, advertisements or Invitations to Bid, Instructions to Bidders, sample forms, soils, geotechnical, or other reports, surveys, or analyses, which may be printed, bound, or assembled with the Contract Documents, or otherwise made available for review or information, (ii) bids, or (iii) portions of the Addenda relating to bidding requirements.

### 1.5 Design Professional.

The organization which either employs architects, engineers, planners, designers, etc., or hires them as Sub-consultant(s), and which engages in performing the duties and responsibilities outlined in this Agreement.

### 1.6 Estimated Construction Costs.

The various Estimated Construction Costs as developed by the Design Professional during each of the phases described in Article 3. Estimates shall be audit-trackable to the previous estimate and contain a level of detail satisfactory to the Owner. All Estimated Construction Costs shall have a reasonable basis and shall be developed using the Design Professional's best professional judgment. If Separate Design Packages, described below, are prepared, the Design Professional shall develop an Estimated Construction Cost during each of the design phases for each Separate Design Phase Package. If the Owner's Construction Manager also prepares comparable cost estimates and any one or more of those cost estimates differ from the Design Professional's in any material respect, the Design Professional agrees to work with the Construction Manager to promptly reconcile their

estimates. Upon reconciliation, the Design Professional shall submit the reconciled estimate to the Owner. If the Design Professional and the Construction Manager are unable to reconcile discrepancies in their estimates, the Design Professional shall agree with the Construction Manager as to a method of resolution.

1.7 Project Schedule.

The “Project Schedule” is the preliminary schedule for the Work to be developed by the Construction Manager. The Project Schedule shall coordinate and integrate the Construction Manager’s Services, the Design Professional’s services, and the Owner’s responsibilities through the Schematic Design, Design Development and Construction Document phases. The Project Schedule shall include a preliminary construction schedule and identify the required construction bid packages. The Construction Manager shall obtain the Design Professional’s approval of that portion relating to the performance of the Design Professional’s services.

1.8 Owner’s Representative.

The individual(s) designated by the Owner from the Owner’s Facilities and Operations Division.

1.9 Project Site.

The “Project Site” is the place where the Work is being carried on.

1.10 Record Drawings.

A complete reproducible mylar-type set of drawings and electronic files, Microstation or AutoCAD 14, prepared by the Design Professional, showing significant changes in the Project resulting from addenda, accepted or deleted alternates, field orders, construction change directives, bulletins, and/or from marked-up prints, drawings and/or other data generated by the Construction Manager during the course of construction of the Project. These drawings need not include minor changes in the routing of conduit runs and plumbing lines, the exact order of wiring, receptacles, or lighting fixtures.

1.11 Regular Base Hourly Rate.

The basic hourly rate or the basic salary (reduced to basic hourly rate) actually paid to professional and technical employees of the Design Professional engaged on the Project, excluding the cost of their mandatory or customary benefits such as statutory employee benefits, insurance, sick leave, holidays, vacations, bonuses, profit sharing contributions, pensions and similar benefits, and which does not include any mark-up for overhead, profit or general expenses of any kind. In reducing basic annual salary to basic hourly rate for any employee, the basic annualized salary for such employee, adjusted as provided above, shall be divided by 2080.

1.12 Separate Design Packages.

That part of the Contract Documents as defined herein which represents a division of the Work into separate bid packages to be used for the bidding and awarding of separate construction contracts.

1.13 Sub-consultant.

“Sub-consultant” means anyone hired by the Design Professional who is not one of its employees.

1.14 Trade Contractors.

A "Trade Contractor" is a person or entity who is hired by the Construction Manager, not the Owner, (i) to perform a portion of the Work at the Work Site or (ii) to furnish materials fabricated to a special design according to the Contract Documents.

1.15 Supplier.

A "Supplier" is a person or entity who is hired by the Construction Manager, not the Owner, to provide materials, equipment or supplies in connection with the Work which are not fabricated to a special design according to the Contract Documents.

1.16 Value Engineering.

“Value Engineering” means the detailed analysis of systems, equipment, materials, services, facilities, and supplies required by the Contract Documents for the purpose of achieving the desired and essential functions of the Owner’s program at the lowest cost consistent with required and necessary performance, reliability, quality and safety.

1.17 Work.

The “Work” consists of all goods and services, such as labor, transportation, materials, tools, and equipment (i) to be incorporated into the Project, (ii) required of the Construction Manager under the Contract Documents, or (iii) necessary or appropriate to fully construct, fixture, operate and maintain the Project. The Work shall be performed in accordance with the Contract Documents.

## ARTICLE 2. PROJECT DESCRIPTION

2.1 The Project.

The Project is described on the Schedule of Project Details.

2.2 Separate Design Packages.

To facilitate the management of the Project, including accounting and tracking, the Project will be designed in Separate Design Packages as enumerated and described on the Schedule of Project Details.



## ARTICLE 3. THE DESIGN PROFESSIONAL'S BASIC SERVICES

### 3.1 Architectural and Engineering Basic Services.

The Design Professional's "Basic Services" means all responsibilities assigned to the Design Professional in this Agreement, except those specifically designated "Extra Services and Special Cases" in Article 6. The Basic Services include those services which are reasonably and customarily provided to fully design all aspects of the Project and produce Construction Documents that are complete, consistent, accurate, adequate and buildable. Without limiting the generality of the foregoing, the Design Professional's Basic Services consist of all work necessary or appropriate to complete on a timely basis the requirements of each of the four (4) phases described in Sections 3.2-3.5, including associated civil engineering, structural engineering, mechanical engineering, electrical engineering, and all architectural design, telecommunications, security, energy management, vertical transportation, interior design, landscape design, movable equipment planning, building storage, and any other design and engineering services necessary to produce a set of Construction Documents that are complete, consistent, accurate, adequate and buildable.

If the Owner has elected to have the Project designed in a phased approach, construction activities will commence prior to completion of all of the Design Professional's Construction Documents Phase services, the Design Professional shall provide the services for all phases of Basic Services in an overlapping manner rather than in the normal sequence in order to expedite the Owner's occupancy of all or a portion of the Project. The Owner shall require the Construction Manager to furnish to the Design Professional in a timely manner information obtained from the Construction Manager and prospective Trade Contractors regarding anticipated market conditions and construction cost; availability of labor, materials and equipment; and their proposed methods, sequences and time schedules for construction of the Work.

As part of its Basic Services, the Design Professional shall take whatever action may be reasonably necessary to make corrections in or adjustments to the drawings, specifications or other documentation, which may become necessary if the Owner has chosen to proceed with the Project on a phased construction basis, to coordinate the Separate Design Packages, provide adequate clearances, or otherwise meet program requirements.

3.1.1 Should the Design Professional choose to sub-consult for structural, civil, mechanical and/or electrical design services, written approval of that and the proposed Sub-consultant must first be obtained from the Owner. Such Owner approval does not in any way release the Design Professional from responsibility for the acts and omissions of the Sub-consultant; the Design Professional remains fully responsible to the Owner for the acts and omissions of any Sub-consultant. The Design Professional must provide detailed information regarding the terms of any Sub-consultant agreement if requested by the Owner.

3.1.2 The Design Professional will perform its duties (1) before and during construction, and (2) until Final Payment is due. The Design Professional will have authority to act on behalf of the Owner only to the extent the Owner has granted that authority in writing.

3.1.3 All of the Design Professional's work shall comply with the Owner's current design guidelines in effect on the date this Agreement was executed.

### 3.2 Schematic Design Phase.

The Design Professional shall:

3.2.1 Meet with the Owner's Representative and the Construction Manager to evaluate the Owner's requirements for the Project.

3.2.2 Examine the site of the Project to assist the Owner in determining its suitability for the Project and make recommendations to the Owner and the Construction Manager regarding any additional testing that the Design Professional recommends be undertaken at the site.

3.2.3 Evaluate the applicable code and regulatory restrictions related to the Project and prepare and submit to the Owner's Representative and the Construction Manager a report regarding the same.

3.2.4 Meet with the Owner's named Project participants and the Construction Manager and prepare preliminary schematic drawings, as Owner requires.

3.2.5 Interpret all reports, such as geo-technical reports, surveys or the like it hires or receives from the Owner or the Construction Manager.

3.2.6 Prepare an area summary, net and gross, and submit it to the Owner's Representative and the Construction Manager for review and comment.

3.2.7 Assist the Owner and the Construction Manager, by attending and providing other necessary support, at all meetings with governmental and/or regulatory agencies regarding the Project.

3.2.8 Prepare and review with the Owner's Representative and the Construction Manager alternative approaches to design and construction of the Project.

3.2.9 Based upon direction from the Owner's Representative and the Construction Manager, prepare final schematic design drawings and outline specifications for all required disciplines identified in Section 3.1 and submit them to the Owner's Representative and the Construction Manager for review and comment. Thereafter, refine and submit to the Owner's Representative and the Construction Manager the area summary.

3.2.10 Prepare a Schematic Design Phase statement of Estimated Construction Costs and submit it to the Owner's Representative and the Construction Manager for review and comment within two weeks from submitting the final Schematic Design drawings. The Design Professional's detailed documentation supporting such estimate shall also be submitted to the Owner's Representative and the Construction Manager. A narrative shall accompany the Schematic Design Phase. If the Owner's Construction Manager also prepares comparable cost estimates and these cost estimates differ from the Design Professional's in any material respect, the Design Professional agrees to work with the Construction Manager to promptly reconcile their estimates. Upon reconciliation, the Design Professional shall submit the reconciled estimate to the Owner. If the Design Professional and the Construction Manager are unable to reconcile discrepancies in their estimates, the Design Professional shall agree with the Construction Manager as to a method of resolution.

3.2.11 Furnish electronic drawing files of the schematic floor plans to the Owner's Representative for the purpose of determining room numbering. The format for these files shall be acceptable to the Owner.

3.2.12 As part of Basic Services, prepare a design model and/or design rendering of the Project's exterior appearance and colored site and floor plans and, through the Owner's Representative, present same for Owner's approval.

3.2.13 Obtain and respond to comments from the Owner and Construction Manager and obtain the approval of the Owner's Representative before proceeding to the next phase. Incorporate those comments into the design documents, as directed by the Owner's Representative.

3.2.14 Upon the request of the Owner, prepare a presentation model or presentation rendering, or both, miscellaneous artwork, and/or printing, using outside service providers as an extra service.

### 3.3 Design Development Phase.

The Design Professional shall:

3.3.1 Meet with the Owner's Representative and the Construction Manager to further refine the scope of the Project.

3.3.2 Either prepare or review a furnishings and equipment layout, as indicated on the Schedule of Project Details.

3.3.3 Prepare typical preliminary door, hardware, and finish schedules and submit them to the Owner's Representative and the Construction Manager for review and comment.

3.3.4 Prepare design development drawings, outline specifications, and full descriptions for all required disciplines identified in Section 3.1 and submit such design development documents to the Owner's Representative and the Construction Manager for review and comment. The Design Professional shall submit, with the design development documents, sketches of the Project, copies of all significant calculations, and cost estimates of the various proposed systems with recommendations and justifications for them.

3.3.5 Prepare a Design Development Phase statement of Estimated Construction Costs and submit it to the Owner's Representative and the Construction Manager for review and comment within two weeks following submittal of the final design development drawings. The submitted format shall be consistent with the previous estimate but shall provide greater detail as to all costs. The Design Professional's detailed documentation supporting such estimate shall be submitted to the Owner's Representative and the Construction Manager. A narrative shall accompany the Design Development Phase estimate addressing significant changes from the previous estimate and any assumptions related thereto. The Design Development Phase cost estimate shall clearly indicate, by line item, major changes between the cost estimates for the Design Development Phase and the Schematic Design Phase. If the Owner's Construction Manager also prepares comparable cost estimates and these cost estimates differ from the Design Professional's in any material respect, the Design Professional agrees to work with the Construction Manager to promptly reconcile their estimates. Upon reconciliation, the Design Professional shall submit the reconciled estimate to the Owner. If the Design Professional and the Construction Manager are

unable to reconcile discrepancies in their estimates, the Design Professional shall agree with the Construction Manager as to a method of resolution.

3.3.6 Assist the Owner and the Construction Manager, by attending and providing other necessary support regarding the Project, at all meetings with governmental and/or regulatory agencies.

3.3.7 Obtain comments from the Owner and Construction Manager and approval of the Owner's Representative before proceeding to the next Phase. Incorporate those comments into the documents, as directed by the Owner's Representative.

#### 3.4 Construction Documents Phase.

The Design Professional shall:

3.4.1 Generate a final finish schedule for the Project and submit it to the Owner's Representative and the Construction Manager for approval. The approved finish schedule shall be incorporated into the Construction Documents for the Project.

3.4.2 Prepare 95% construction drawings, specifications and bid documents setting forth in detail all requirements for the construction of the Project and submit them to the Owner's Representative and the Construction Manager for review and comment. **Notwithstanding that review, the Design Professional shall be solely responsible for the accuracy, consistency, completeness, adequacy, and buildability of the Construction Documents and bid documents.** The Design Professional's Construction Documents shall depict a Project which, if built in accordance with such documents, complies with the applicable laws, ordinances, rules, regulations and codes. If the Project includes the renovation of or addition to existing facilities, the Design Professional shall make measured drawings and/or confirm other information furnished by the Owner or the Construction Manager. The Design Professional shall inspect, meter, or otherwise determine capacities of existing building systems and shall include in its design all improvements needed to provide new services without degrading existing system conditions. The Design Professional shall incorporate such information into the Construction Documents. The Design Professional shall submit, with the Construction Documents, an indexed copy of all design calculations to include structural, heating, plumbing, mechanical and electrical systems design. The Construction Manager shall furnish the Design Professional copies of the General Conditions, and information for the preparation of Supplemental General Conditions, Special Conditions, Invitations for Bid, Instructions to Bidders and Construction Contract(s) for incorporation into the Contract Documents.

3.4.3 Submit to the Owner's Representative, two (2) sealed sets of the Construction Documents for final review and approval by the Michigan Department of Consumer and Industry Services and/or the State Fire Marshal, if applicable. Submit to the Owner's Representative and the Construction Manager, one (1) sealed set of pre-bid Construction Documents for record purposes.

3.4.4 Update the statement of Estimated Construction Costs and submit it to the Owner's Representative for review and comment within two weeks following submittal of the construction drawings. The Design Professional's standard office practice may be used to prepare the Construction Documents Phase cost estimate. The submitted format shall be consistent with the previous estimates but shall provide a level of detail as to all costs that is satisfactory to the Owner.

The Design Professional's detailed documentation supporting such estimate shall be submitted to the Owner's Representative and the Construction Manager. A narrative shall accompany the Construction Documents Phase estimate addressing significant changes from the Design Development Phase estimate. The Construction Documents Phase estimate shall include a comparison, by line item, of major changes from the Design Development Phase estimate. If the Owner's Construction Manager also prepares comparable cost estimates and these cost estimates differ from the Design Professional's in any material respect, the Design Professional agrees to work with the Construction Manager to promptly reconcile their estimates. Upon reconciliation, the Design Professional shall submit the reconciled estimate to the Owner. If the Design Professional and the Construction Manager are unable to reconcile discrepancies in their estimates, the Design Professional shall agree with the Construction Manager as to a method of resolution.

3.4.5 Be responsible to work with the Owner and the Construction Manager to develop the interior design concept, including providing consultation in the selection and layout of furniture, furnishings and related equipment, and develop and produce the color and finish schedule.

3.4.6 Perform interior design services as indicated on the Schedule of Project Details.

3.4.7 Assist the Owner and the Construction Manager, by attending and providing other necessary support, at all meetings with governmental and/or regulatory agencies regarding the Project.

3.4.8 Based on written comments and direction from the Owner's Representative (or the Construction Manager with the prior written approval of the Owner), revise the Construction Documents and bid documents and submit copies of complete, bid-ready documents to the Owner to issue for bids. Assist with bidding and negotiation activities, as follows:

- (a) Participate in pre-bid conferences with the Owner's Representative, Construction Manager, and potential Trade Contractors and Suppliers.
- (b) Consult with the Owner and the Construction Manager to develop, assemble and distribute all bid packages and provide information to prospective bidders.
- (c) Assist the Construction Manager and the Owner to establish a bidding schedule.
- (d) Respond to the Construction Manager's and potential Trade Contractors' and Suppliers' questions and prepare addenda if required.
- (e) Submit pre-bid estimates, in the form of a completed Form of Proposal, with the bid documents to the Owner's Representative and the Construction Manager.
- (f) Assist the Construction Manager in the receipt and opening of bids.
- (g) Participate in post-bid review and verification of bids and make recommendations to the Owner's Representative and the Construction Manager as to whether the bids are responsive and acceptable in the

context of the requirements of the Project.

(h) Assist the Construction Manager in its scope review meetings.

3.4.9 Keep the Owner's Representative and the Construction Manager informed if any changes in requirements or changes in specifications are developed, and advise the Owner's Representative and the Construction Manager if any such changes result in an adjustment in the Estimated Construction Costs.

3.4.10 Furnish the Owner's Representative and the Construction Manager with electronic drawing files of the floor plans in a format acceptable to the Owner.

### 3.5 Construction Services Phase.

The Design Professional shall:

3.5.1 Upon the request of the Owner's Representative, participate in pre-construction meetings with the Owner's Representative and the Construction Manager, Trade Contractors and Suppliers for the Project, and attend all construction progress meetings.

3.5.2 Clarify all ambiguities and rectify all inaccuracies, inconsistencies, incompleteness, inadequacies and omissions in the drawings, specifications or other Contract Documents which have been prepared by the Design Professional or its Sub-consultants which are brought to the attention of the Design Professional by the Owner or Construction Manager.

3.5.3 Review and approve or take other appropriate actions with regard to all shop drawings, Project data, Construction Manager-generated coordination drawings, training schedules, and samples. As regards shop drawing approval, it is solely the responsibility of the Design Professional to check that all shop drawings are in compliance with the Construction Documents, including the final (or amended) Construction Documents and bid documents. The Design Professional shall not be responsible for any deviations from the Construction Documents not brought to the attention of, or submitted to, the Design Professional in writing by the Construction Manager and/or Trade Contractor(s), unless the deviation should, under the applicable standard of care, have been discovered in the course of the Design Professional's review. The Design Professional's review, approval and other actions with respect to shop drawings and other submittals shall meet the requirements of the provisions of the Owner's General Conditions applicable to the Project. The Design Professional is to maintain a file of Project submittals for use throughout the duration of the Project.

3.5.4 Prepare bulletins and/or construction change directives (CCDs) at no cost to the Owner, arising as a result of any inaccuracy, inadequacy, conflict or other deficiency in the Contract Documents including the Construction Documents and bid documents to the extent that they were prepared by the Design Professional or its Sub-consultants. The Design Professional shall provide the Owner with a construction cost estimate of each prior to issuance to the Construction Manager. All other construction change directives shall be compensated as an additional service as provided in Article 6.

3.5.5 Be familiar with the responsibilities of the Design Professional set forth in the Contract Documents, all of which are incorporated herein by reference. These responsibilities include responsibilities of the Design Professional that are described in the applicable general and any Supplemental or Special Conditions.

3.5.6 Prepare a set of black-line prints and deliver them to the Construction Manager at the start of construction.

3.5.7 Visit the Project Site to become familiar with the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. Work observed to be nonconforming shall be rejected in writing by the Design Professional. The Design Professional shall give the Owner and the Construction Manager written notification of any such rejection and written reports summarizing the circumstances and findings of each observation. On the basis of its on-site observations, the Design Professional will keep the Owner informed of the progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

3.5.8 Participate, as necessary, with the Owner and the Construction Manager in meetings or through correspondence with governmental and/or regulatory agencies regarding reviews and inspections of the Project.

3.5.9 Review and certify or reject the Construction Manager's applications for payment. The issuance of an approved certificate of payment shall constitute a representation by the Design Professional to the Owner that to the best of the Design Professional's knowledge acting within the standard of care required by this Agreement, the Work has progressed to the point indicated in the certificate of payment; that the quality of Work is in accordance with the Contract Documents (subject to specific qualifications stated in the particular certificate); and that the Construction Manager is entitled to payment in the amount certified by the Design Professional. If the Design Professional rejects any payment application, it shall set forth the reason for its rejection in writing.

3.5.10 Conduct preliminary, above ceiling, pre-final, and final inspections of the Work and prepare and submit to the Owner's Representative and the Construction Manager a proposed punchlist or lists after the pre-final inspection noting all Work that is observed during the inspection to be defective or fails to conform with the Contract Documents. Make all necessary final inspections to verify correction of all deficiencies during the Correction Period.

3.5.11 Prepare and submit Record Drawings to the Owner within thirty (30) days of the Design Professional's receipt of the supporting documentation from the Construction Manager. Submit one (1) hard copy and electronic files of Record Drawings in a format acceptable to the Owner.

3.5.12 When the Work has reached an appropriate stage, certify to the Owner, in writing, the dates of substantial completion and final completion of the Project, both as defined in the General Conditions for the Project.

3.5.12.1 Within a reasonable time after being notified that the Construction Manager believes the Work to be substantially complete, the Design Professional will make a preliminary inspection of the Work to determine if it is substantially complete. If in the opinion of the Design Professional the Work is not substantially complete, the Design Professional shall notify the Construction Manager, which will be required to bring the Work into a state of Substantial Completion.

3.5.13 Receive and review operation and maintenance manuals in the same manner as that of any other submittal.

3.5.14 Review proposed change order quotations from the Construction Manager, and make written recommendations to the Owner as to the propriety of such quotations.

3.5.15 Prepare and submit to Owner, as requested by the Owner's Representative, a list of items to be delivered pursuant to the terms of the Contract Documents, including operation and maintenance manuals, spare parts and training manuals.

3.5.16 Respond to Owner inquiries and assist in the initial start-up of architectural, mechanical, plumbing, electrical and such other systems, as the Owner shall require.

3.5.17 Inspect the Project before the final certificate for payment is issued and prepare for the Owner a list of observed items, materials or systems that require replacement or additional Work by the Construction Manager pursuant to the warranties given in or required by the Contract Documents.

3.5.18 Meet monthly with the Construction Manager and the Owner to review and approve Trade Contractor Payment Applications.

3.5.19 Where progress payments are requested based upon portions of the Work performed on a unit price basis, review, and if appropriate approve, the Construction Manager's verification of the number of units provided.

3.5.20 If the Design Professional at any time observes or otherwise becomes aware of any fault or defect in the Work, or any nonconformance of the Work with the Contract Documents, give prompt written notice to the Construction Manager and the Owner.

3.5.21 Sign all change orders.

3.5.22 Update the punchlist at Substantial Completion.

3.5.23 Revise the Construction Documents when necessary or appropriate in connection with a change to the Work. The Design Professional shall not be compensated therefor to the extent the revision is necessary because of the Design Professional's errors or omissions or breach of this Agreement.

3.5.24 The Design Professional will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, but must comply with all laws, regulations and ordinances and the administrative rules and administrative plans of the Construction Manager.

3.5.25 At the request of the Owner, interpret and decide matters concerning the design. All interpretations and decisions of the Design Professional shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings.

### 3.6 Owner's Right to Disapprove.

Owner shall have the right to reasonably disapprove any portion of the Design Professional's work. In such event, the Design Professional shall proceed with revisions to its work to attempt to satisfy Owner's objections. Such revisions shall be without additional cost to the Owner unless agreed otherwise in writing by the Owner, or disapproval is made to work previously approved by the Owner.



### 3.7 General Duties.

3.7.1 When it is appropriate to modify or interpret the drawings and specifications, by addition, deletion, clarification or correction, the Design Professional shall assist the Construction Manager in preparation of addenda prior to the execution of individual bid package contracts.

3.7.2 The Design Professional shall participate as a member of the Value Engineering program for the Project. The Design Professional shall incorporate into the Construction Documents the Value Engineering options approved by the Owner.

## ARTICLE 4. PAYMENTS FOR BASIC SERVICES

### 4.1 Basic Lump Sum Fee.

The Owner agrees to pay the Design Professional for services rendered under this Agreement the “Basic Lump Sum Fee” identified on the Schedule of Project Details. The Basic Lump Sum Fee shall fully compensate the Design Professional for all Basic Services required by this Agreement to the full extent of the scope of the Project that is reflected within the Construction Costs stated in Section 1.2 of this Agreement regardless of what the Construction Costs may turn out to be. Additional terms and conditions are as follows:

4.1.1 Progress payments to all of the Design Professional’s Sub-consultants must be made in a reasonable amount of time after the Design Professional receives payment from the Owner.

4.1.2 If the scope of the Project increases or decreases by a significant amount during the development of its design, a contract modification may be made through mutual agreement in writing, signed by both parties and recalculating the basic lump sum fee, if appropriate.

4.1.3 All addenda, bulletins, construction change directives, and change orders resulting from inaccuracy, conflict, inconsistency or inadequacy of the Construction Documents prepared by the Design Professional shall be considered Basic Services and are included in the Basic Lump Sum Fee, except as provided in Article 6.

4.1.4 If, during the course of the construction, the Owner requests a change from the original scope of the Project, compensation will be based on provisions outlined in Section 6.2 of this Agreement.

4.1.5 If the Owner requests the Design Professional to perform architectural services for any part of the Project which is not built or if the Project is discontinued at any point, the Design Professional shall be paid for its work up to the point of its suspension based upon the percentage of work completed at the time of suspension. At any time and for any reason, the Owner reserves the right to discontinue the design work on the Project or delete portions of the professional services, in which case the Design Professional shall be paid as required by this Agreement for the work performed to the date of such cancellation or deletion.

4.1.6 Payments to the Design Professional shall be made within thirty (30) days following the Design Professional’s request for payment. Requests for payment shall be

proportioned for each phase of service in accordance with the schedule therefor set forth on the Schedule of Project Details.

4.1.7 The Design Professional may issue monthly requests for partial payment for each phase in proportion to the work completed for that particular phase.

## ARTICLE 5. THE DESIGN PROFESSIONAL'S REIMBURSABLE EXPENSES

### 5.1 Reimbursement.

When such services are requested by the Owner, the Owner agrees to reimburse the Design Professional, in addition to the Basic Lump Sum Fee, the amounts set forth below, but only if and to the extent the Design Professional complies with the Owner's Architecture, Engineering and Construction Reimbursement Expense Guidelines for reimbursable expenses, and in no case shall any reimbursement exceed the limits set forth therein.

5.1.1 For the direct cost (without mark-up) of transportation and living expenses incurred while traveling on trips authorized by the Owner. This shall not include the cost of transportation for any Design Professional traveling between the Owner's Architecture, Engineering and Construction office in Ann Arbor and/or designated project site and the Design Professional's home office address that is within a 75 mile radius, nor living expenses for individuals of those firms while in Ann Arbor.

5.1.2 For the direct cost (without mark-up) of copies of Construction Documents beyond those specified in this Agreement, for review, bid, and construction purposes, as requested by the Owner.

5.1.3 For the direct cost (without mark-up) of surveys, soil borings, tests, etc., when their use is authorized in writing by the Owner, and not required under Section 3.1 as part of the Basic Services.

5.1.4 For the direct cost (without mark-up) preparation of presentation models, presentation renderings, and miscellaneous artwork, using outside service providers.

5.1.5 For the direct cost (without mark-up) printing, reproduction, photography, photocopies and plots.

5.1.6 For the direct cost (without mark-up) of special Sub-consultants, when their use has been approved in advance in writing by the Owner.

### 5.2 Non-Reimbursable.

All other costs, including, but not limited to, long distance calls, facsimile transmissions, and routine shipping/mailing charges, will not be reimbursed and are part of the Basic Services.

## ARTICLE 6. EXTRA SERVICES AND SPECIAL CASES

### 6.1 Compensable.

In addition to receiving the Basic Lump Sum Fee and Reimbursable Expenses pursuant to Article 5, the Design Professional shall be paid for extra services, but only when authorized by the Owner in writing prior to the work necessitated by the following:

6.1.1 General revisions in design, layout, and program requested by the Owner after written acceptance of the previous phase of professional services, provided the Design Professional makes a claim for extra compensation within thirty (30) days after receiving Owner's instructions regarding such revisions.

6.1.2 Unforeseen circumstances and hidden conditions (neither of which would have been discoverable with the exercise of the standard of care described in Section 9.3 below) requiring revisions in the Construction Documents.

6.1.3 Insolvency of the Construction Manager, to the extent this causes a material adverse financial impact on the Design Professional.

6.1.4 Damage to Project caused by fire, windstorm, or Act of God.

6.1.5 Physical presence at the Project Site beyond that required in Article 3.

6.1.6 Services relating to the preparation of special brochures, special drawings, models, or special funding documents or data not customarily associated with professional services or required by this Agreement, when authorized in writing by the Owner.

6.1.7 Services beyond the scope of this Agreement, as specifically described and agreed to in writing by Owner and the Design Professional prior to the performance of such services.

6.1.8 Services to secure variances or other exceptions to codes, laws and regulations.

6.1.9 Design of special signage, donor plaques, and promotional information.

6.1.10 Preparation of life cycle analyses.

### 6.2 Amount.

Requests for payment for extra services shall be based on an hourly charge for all man-hours worked by the Design Professional's personnel assigned to providing such services or a negotiated lump sum fee, as the parties agree. The charge for man-hours worked shall be billed at no greater than two and three-quarters (2-3/4) times the regular Base Hourly Rate of the employee. In the case of a salaried employee, the equivalent hourly rate will be obtained by dividing his/her annual base salary by 2080.

### 6.3 Non-Compensable.

In no case shall the Design Professional receive extra compensation by reason of any subdivision of the Work into separate architectural, mechanical, and electrical contracts because of the phased nature of the design and construction of the Project, if the Owner has so elected.

Notwithstanding the provisions set forth in this Article 6, no services of the Design Professional made necessary, in whole or in part, by any fault or omission of the Design Professional in performing its duties and responsibilities under this Agreement shall be compensated as an extra service.

## ARTICLE 7. RESPONSIBILITY FOR CONSTRUCTION COSTS

### 7.1 Fixed Limit of Construction Cost.

In performing its design services, the Design Professional shall use its best efforts to have Project bids satisfy the Fixed Limit of Construction Cost. To enable the Design Professional to design within such Fixed Limit of Construction Cost, the Design Professional shall be permitted to determine, in accordance with the Owner's design guidelines and program, as defined in the Schedule of Project Details, what materials, non-medical equipment, non-medical component systems and types, and means of construction are to be included in the Contract Documents, and to make reasonable adjustments in the scope of the Project to assure that the Construction Costs are not exceeded. The Design Professional shall, as part of its Basic Services hereunder, include alternate bids in the Contract Documents to provide a mechanism to adjust the Bid Pricing to remain within the Fixed Limit of Construction Cost; provided, however, such alternates shall not compromise the program for the Project without the written acceptance of the Owner.

### 7.2 Action if the Fixed Limit of Construction Cost is Exceeded.

If the Fixed Limit of Construction Cost is exceeded by the lowest bona fide bids or negotiated proposals, or at any time by the latest Estimated Construction Cost for the Project, the Owner may, at its option, and as its exclusive remedy elect to do any one or more of the following:

- (a) Suspend or terminate the Project;
- (b) Authorize rebidding within a reasonable time;
- (c) Give written approval of an increase in the Fixed Limit of Construction Cost; and/or
- (d) Cooperate with the Design Professional in revising the scope and quality of the Project as required to reduce the probable Construction Costs for the Project.

### 7.3 Necessary Design Modifications.

7.3.1 If the Owner elects to suspend or terminate the Project pursuant to Section 7.2 (a) above or to authorize rebidding pursuant to Section 7.2 (b) above, the Design Professional shall take all appropriate action to assist the Owner at no additional cost to the Owner.

7.3.2 If the Owner decides to increase funding partially or wholly to adjust for bids greater than the Design Professional's pre-bid cost estimate as provided in Section 7.2 (c) above, the Design Professional will revise the Contract Documents appropriately at no additional cost to the

Owner and the total fee for architectural/engineering services shall not exceed the Basic Lump Sum Fee.

7.3.3 In the case of Section 7.2 (d) above, the Design Professional shall modify the Contract Documents as necessary to bring the Construction Costs within the Fixed Limit of Construction Cost without additional cost to the Owner, and the total fee for architectural/engineering services shall not exceed the Basic Lump Sum Fee.

## ARTICLE 8. DOCUMENTS

### 8.1 Ownership of Documents.

The drawings, specifications, reports and supporting data, including that which may be stored on disks, tapes or drums, or otherwise furnished by the Design Professional to the Owner, as well as the other Contract Documents, are instruments of service and shall become the property of the Owner upon payment in full of all monies due the Design Professional for the Project, exclusive of monies which are the subject of a good faith dispute. If the Owner modifies such instruments of service or reuses them for any other project without the Design Professional's written authorization, the Owner agrees that it does so at its own risk and without liability on the part of the Design Professional except to the extent the Design Professional would otherwise be liable under this Agreement. To the extent permitted by law, and except to the extent the Design Professional is otherwise liable under this Agreement, the Owner shall indemnify and hold harmless the Design Professional, including its officers, directors, employees, and Sub-consultants, for any damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from or connected with the Owner's modification of the instruments of service or reuse of such instruments on another project.

## ARTICLE 9. THE DESIGN PROFESSIONAL'S RESPONSIBILITIES

### 9.1 Coordination.

The Design Professional agrees to cooperate fully with each of the consultants retained by the Owner and with the Owner's Representative and the Construction Manager and to assist in the coordination and interface of all parties involved in the Project. Other aspects of the Design Professional's relationship with the Construction Manager are set forth in Article 12 below.

### 9.2 The Design Professional's Representative.

The Design Professional shall designate a single representative authorized to act on the Design Professional's behalf in all interactions with all parties involved in the Project.

### 9.3 Licensing and Applicable Standard of Care.

The Design Professional warrants and represents to the Owner that the Design Professional is fully licensed by the State of Michigan to perform the services designated in this Agreement. The Design Professional, in performing each and every aspect of its work under this Agreement, shall

exercise the professional standard of care customarily provided in the performance of the types of services addressed in this Agreement (for a [phased] construction project similar in size, scope and complexity to the Project) by a firm having a stature comparable to the stature the Design Professional holds itself out as having, and shall accomplish all work in conformance with the codes, rules, laws and regulations applicable to the Project.

9.4 Design Professional Proposal.

The statements, representations and warranties in the Design Professional's promotional material and Project proposal are incorporated by reference into this Agreement.

9.5 Schedule.

The Design Professional agrees to give the Owner detailed schedule information and milestone data on the design sequence of the Project with sufficient lead-time to allow the Project schedule to be updated from time to time. The detailed information furnished by the Design Professional shall include reasonable allowances for periods of time required for the review and comment of the Owner's Representative and the Construction Manager and for submittals to authorities having jurisdiction over the Project. The Design Professional shall periodically inform the Owner of design progress in relation to target dates and shall control the design progress and staffing of the Design Professional to meet those target dates.

9.6 Accuracy and Adequacy of Construction Documents and Bid Documents.

The Design Professional assumes and accepts full responsibility to the Owner for the accuracy, adequacy, consistency, buildability, and completeness of the Construction Documents and bid documents.

9.7 Advice and Consultations.

During the Construction Services Phase, the Design Professional shall advise and consult with the Owner and the Construction Manager regarding the conformance of the Work to the Construction Documents.

9.7.1 The Design Professional shall have such authority as is provided in the General and any Supplemental or Special Conditions to the Owner's contract with the Construction Manager and shall comply with all provisions of those General Conditions that apply to the Design Professional.

9.7.2 When requested, the Design Professional shall promptly make recommendations relating to the execution and progress of the Work and on all other design matters or questions related thereto. The Design Professional's decision in matters relating to artistic effect shall be final.

9.7.3 The Design Professional shall have authority to reject any Work, which does not conform to the Contract Documents.

9.8 Special Testing or Inspections.

The Design Professional may, when it considers it necessary or advisable, require special inspection or testing of any Work in accordance with the provisions of the Contract Documents whether or not such Work be then fabricated, installed or completed, as long as the Design Professional has first received written authorization from the Owner's Representative.

9.9 Archiving Materials.

The Design Professional's typical archive of Project materials such as hard copy, microfilm, and computer data on tapes, disks, drums and the like, of the final Project deliverables shall be available to the Owner at reasonable prices for ten (10) years from the date of final completion of the Project.

9.10 Hazardous Materials.

The identification and removal of Hazardous Materials will not be the responsibility of the Design Professional, except to the extent the Design Professional causes the introduction of Hazardous Materials to the Project Site or exacerbates contamination or a potentially hazardous situation such as asbestos-containing material already on the Project Site that was made known to or inadvertently discovered by the Design Professional.

9.11 Promptness.

The Design Professional's response to requests for interpretation or for approval of submittals will be made with reasonable promptness and within any time limits agreed upon in writing. The parties recognize that timely response by the Design Professional is important to the success of the Work. Accordingly, the Owner, the Construction Manager and the Design Professional shall meet promptly after execution of the Owner/Construction Manager Agreement to establish mutually acceptable time lines for the Design Professional's responses.

ARTICLE 10. OWNER'S RESPONSIBILITIES

10.1 Consult with the Design Professional.

The Owner shall consult with the Design Professional on matters that are related to the Design Professional's duties as specified in Article 9.

10.2 Owner's Representative.

The Owner's Representative shall render decisions and furnish information on behalf of the Owner with reasonable promptness.

### 10.3 Surveys.

The Owner shall provide, for the Design Professional's use and interpretation, a survey of the Project site showing its boundaries, topography and utility locations meeting the Owner's usual standards.

### 10.4 Geotechnical Data.

The Owner shall provide for the Design Professional's use and interpretation, geotechnical information for the Project indicating soil type, condition, and suitability for foundations and other below grade structures.

### 10.5 Construction Testing.

The Owner or the Owner's Construction Manager will contract for testing services required in the Contract Documents.

### 10.6 Furniture.

Unless doing so is included in the scope of the Design Professional's services as described on the Statement of Project Details, the Owner will develop, document, and procure the furniture for the Project.

## ARTICLE 11. INSURANCE AND INDEMNIFICATION

### 11.1 Indemnification.

The Design Professional shall indemnify the Owner, including its Board of Regents, officers, and employees, against and hold it harmless from all claims, liabilities, demands, costs and expenses (including reasonable attorneys' fees and court costs and related expenses) to the extent they arise from the Design Professional or its Sub-consultants' negligent performance or failure to perform under this Agreement including, but not limited to: (a) claims for bodily injury, death and/or property damage; (b) contractor claims for additional compensation or damages (including claims for additional work, delays, and/or extended conditions); and/or (c) claims arising from or relating to the Design Professional's breach of or performance under this Agreement.

### 11.2 Insurance Coverages.

The Design Professional shall promptly obtain and maintain the insurance coverages described on the Schedule of Project Details and will provide the Owner with proof of insurance before commencing services under this Agreement. The Design Professional agrees that this Agreement shall not be in effect until all proof of required insurance has been provided to and approved by the Owner.

11.2.1 If the Design Professional's insurance coverage is cancelled or is reduced at any time, the Owner may (but need not) obtain the requisite coverage at the sole cost of the Design Professional and invoice the Design Professional for the cost. If the Design Professional does not



pay the invoice promptly, the Owner may offset it against amounts next coming due to the Design Professional under this Agreement unless it is replaced with comparable coverage.

11.2.2 Self-insurance for any of the insurance requirements is subject to the Owner's approval. To seek such approval, the Design Professional agrees to provide the Owner with a written description of the funding methodology and the Design Professional's most recent financial statements.

11.2.3 The Design Professional agrees that insurance carriers providing the above insurance must have an A.M. Best's Rating of "A" or better, except for the Professional Liability carrier which must be approved by the Owner's Risk Management Department.

11.2.4 To help the Owner monitor the Design Professional's compliance with this Article 11, the Design Professional agrees that no reduction in stated limits or cancellation in insurance shall be made without sixty (60) calendar days prior written notice to the Owner, nor shall any change or cancellation in insurance be made unless it is replaced with comparable coverage.

11.2.5 If any policy form is claims-made and the Design Professional changes insurance companies, the new insurance must be retroactive to the beginning of the Project. The Design Professional's professional liability coverage is to continue for six (6) years after the date of the Design Professional's certification of the Construction Manager's final payment for the Project, so long as similar coverage remains commercially available to five or more of the top ten architectural firms (based upon gross revenues) in the United States.

11.2.6 The insurance required in this section does not reduce or limit indemnification in Section 11.1.

## ARTICLE 12. RELATIONSHIP WITH CONSTRUCTION MANAGER.

### 12.1 Obligations of the Design Professional.

As part of its Basic Services, the Design Professional shall:

12.1.1 Cooperate with the Construction Manager and the Owner toward meeting the Owner's objective of having the Construction Manager's Guaranteed Maximum Price be no greater than the Fixed Limit of Construction Cost.

12.1.2 Cooperate with the Construction Manager in the preparation of cost evaluations, including cost/benefit analysis, for alternative approaches to bring costs in line with the Fixed Limit of Construction Cost.

12.1.3 Cooperate with the Construction Manager in connection with the preparation of as-built drawings by Trade Contractors.

12.1.4 Assist the Construction Manager in the preparation of the technical requirements for the testing program set forth in the Construction Manager's quality control plan.

12.1.5 Prior to the execution of the contract for individual bid packages with the Construction Manager, jointly schedule and attend regular meetings with the Owner to review and evaluate the design. The Design Professional shall consult with the Construction Manager in connection with the preparation of a meeting schedule and shall keep minutes of all meetings.

12.1.6 Coordinate with the Construction Manager to help it determine which design phase team meetings require the presence of the Construction Manager.

12.1.7 Coordinate with the Construction Manager, during the design phases concerning site use and improvements, costs, scheduling, selection of materials, building systems, equipment and options for Project delivery.

12.1.8 Coordinate with the Owner and the Construction Manager in connection with the preparation of a Project budget.

12.1.9 Coordinate with the Construction Manager and the Owner in connection with the development, implementation and maintenance of a process "partnering" involving them and Trade Contractors so that (i) the goals and objectives of each are clearly understood and accepted by the participants, (ii) potential problems are identified and resolved promptly, and (iii) a harmonious relationship is fostered among all persons working on the Project. The Design Professional shall cooperate fully with the Owner and the Construction Manager in meeting these objectives.

12.1.10 Coordinate with the Construction Manager and the Owner if any Trade Contractor requests interpretations of the meaning and intent of any of the Contract Documents and reasonably assist in the resolution of questions, which may arise. Provided such request is reviewed and substantiated by the Construction Manager and forwarded to the Design Professional from the Construction Manager.

12.1.11 Review, and if appropriate approve, alternative solutions proposed by the Construction Manager.

12.1.12 Review, and if appropriate approve, that portion of the Project Schedule prepared by the Construction Manager that relates to the performance of the Design Professional's services.

12.1.13 Review cost estimates prepared by the Construction Manager following the Owner's approval of schematic design documents and again following the Owner's approval of design development documents and again when the Construction Documents for each bid package are ninety-five percent (95%) complete.

12.1.14 When appropriate in connection with changes to the Work, review and, if appropriate approve, quantities and classifications of unit price work.

12.1.15 When requested by the Owner, review and, if appropriate approve, the form of cost accounting reports prepared and submitted by the Construction Manager.

12.1.16 Meet with the Owner and the Construction Manager to review the Construction Manager's Guaranteed Maximum Price Proposal. If the Design Professional discovers any inconsistencies or inaccuracies in the information presented in connection with the Construction Manager's Guaranteed Maximum Price Proposal, it shall promptly notify the Owner and the Construction Manager.

12.1.17 Coordinate with the Construction Manager in preparation of a schedule for the Owner's purchase of materials and/or equipment which shall constitute a part of the Work, including materials and/or equipment requiring long lead time procurement.

12.1.18 Abide by the Construction Manager's control of the Project Site.

12.1.19 When requested by the Construction Manager, consider, and if appropriate approve, deviations from the requirements of the Contract Documents.

12.1.20 Accompany the Construction Manager in its observation of Trade Contractors' evaluation of utilities, operating systems and equipment for readiness.

12.1.21 In general, reasonably cooperate with the Construction Manager on all matters throughout the duration of the Project.

12.2 Obligations of the Construction Manager.

The Owner shall cause the Construction Manager to:

12.2.1 Provide adequate facilities at the Work Site so that the Design Professional may properly perform its duties.

12.2.2 Provide the Design Professional with access to the Work in preparation and in progress, wherever located and reasonable facilities on the Project Site.

12.2.3 Give the Design Professional reasonable access, both vehicular and pedestrian, to the Project Site and all adjacent areas.

12.2.4 Give the Design Professional one (1) set of marked Construction Documents noting the changes made to the documents during the construction process.

ARTICLE 13. TERMINATION OF AGREEMENT BY THE OWNER

13.1 Terminable at Will.

This Agreement is terminable at the will and in the discretion of the Owner, with or without cause. In the event of such a termination, Owner's only liability shall be to compensate the Design Professional for the services and reimbursable expenses rendered to the date of the termination and, in such circumstance, the Owner shall have no liability for any lost compensation, profits, or income to the Design Professional, or any other liability.

ARTICLE 14. ARBITRATION

All claims, disputes, or other matters, in question between the parties to this Agreement that are not resolved by negotiations shall be resolved through binding arbitration in accordance with the Rules of Arbitration attached hereto as Exhibit ARB. Any arbitration proceeding may include all relevant parties. The Design Professional and Owner shall be bound by the award in any such proceeding and judgment may be entered upon the award by a court of competent jurisdiction.

## ARTICLE 15. MISCELLANEOUS

### 15.1 Sub-consultants.

The Design Professional shall, as part of its Basic Services, provide services of all Sub-consultants necessary or reasonably required in connection with the design and construction of the Project. Unless otherwise indicated on the Schedule of Project Details, the cost of all such services and Sub-consultants shall be included in the Basic Lump Sum Fee and at no additional cost to the Owner. Any Sub-consultant required to be retained by the Design Professional in connection with the services covered by this Agreement must be specifically identified and agreed to by the Owner. The Design Professional shall obtain the Owner's written consent before employing or making any substitution for such Sub-consultants. The Owner's approval of Sub-consultants does not in any way limit the liability of the Design Professional for the acts and omissions of such Sub-consultants.

### 15.2 Order of Procedure.

The Design Professional shall proceed with the services set forth in this Agreement only to the extent authorized by the Owner. Authorization must be received from the Owner's Representative prior to commencing any new phase of the Basic Services.

### 15.3 Changes.

The Owner may, at any time, by written order and without prior notice to the Design Professional, make changes to the scope of services to be performed by the Design Professional under this Agreement. If any such changes cause an increase or decrease in the compensation payable to the Design Professional, the Owner and the Design Professional shall mutually make an equitable adjustment in the compensation payable to the Design Professional, the delivery schedule, or both, and provide written record of such adjustment.

### 15.4 Nondiscrimination in Employment.

The Design Professional agrees not to discriminate against any employee or applicant for employment in the performance of this Agreement, with respect to his/her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of race, sex, color, religion, creed, national origin or ancestry, age, marital status, sexual orientation, disability, special disabled veteran, or Vietnam-era veteran status, and height or weight, except as allowed by the need for bona fide occupational qualifications, in employment, educational programs and activities, and admissions. The Design Professional further agrees to develop and maintain an Affirmative Action Program for its firm and that every subcontract, relating to professional services entered into for the performance of this Agreement, will contain a provision requiring nondiscrimination in employment, and the development and maintenance of an Affirmative Action Program as herein specified on the part of each Sub-consultant with contracts in excess of ten thousand dollars. Breach of this provision may be regarded as a material breach of this Agreement.

#### 15.5 Audits.

The Design Professional shall keep accurate books and records with regard to its charges to the Owner, and if additional services are rendered, the Owner and its designated agents or representatives shall have the right to audit the same at all reasonable times during the performance of services under this Agreement and for a period of three (3) years thereafter.

#### 15.6 Confidential Information.

So that the Design Professional may effectively provide services under this Agreement, it may be necessary or desirable for the Owner to disclose or cause disclosure of confidential and proprietary information to the Design Professional pertaining to the Owner's past, present and future activities. Since it is difficult to separate confidential and proprietary information from that which is not, the Design Professional shall regard all information it gains as a result of services rendered hereunder as confidential and proprietary to the Owner and such information will not be disclosed to any organization or individual without the prior written consent of the Owner. This Obligation of confidentiality does not extend to information which becomes available to the general public through no fault of the Design Professional, nor if the Design Professional is required to disclose the information pursuant to court order or other legal action. The Design Professional shall so instruct its employees and Sub-consultants. The Owner agrees that information provided to the Design Professional for purposes of designing the Project may be discussed with vendors, suppliers, contractors and other associated professionals to assist in making informed design decisions. The Design Professional will endeavor not to disclose confidential and proprietary program information related to the Project. The Design Professional shall so instruct its employees and Sub-consultants.

#### 15.7 Time.

The Design Professional will use its best efforts to do everything possible to meet all deadlines reasonably established by the Owner and shall proceed as expeditiously as possible. Such efforts shall be undertaken in a manner consistent with the applicable standard of care set forth in this Agreement.

#### 15.8 Successors and Assigns.

This Agreement is binding upon the parties and their respective successors and assigns. Neither the Owner nor the Design Professional shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other.

#### 15.9 Complete Agreement.

This Agreement represents the entire and integrated Agreement between the Owner and the Design Professional. All prior negotiations, representations and agreements, either written or oral, are merged herein.

15.10 Governing Law.

This Agreement shall be governed by the laws of the State of Michigan. The Design Professional agrees that any disputes it has against the Owner that are not subject to arbitration shall be filed, if at all, in the Michigan Court of Claims, which has exclusive jurisdiction over the Owner.

15.11 Modification.

This Agreement may be amended only by written instrument signed by both the Owner and the Design Professional.

15.12 Taxes.

The fees, expenses and costs payable under this Agreement include all applicable taxes and shall not be changed as the result of the Design Professional's failure to include any applicable tax, or as a result of any change in the Design Professional's tax liabilities.

15.13 Patents and Copyright.

15.13.1 Whenever any invention or discovery is made or conceived by the Design Professional in the course of or in connection with this Agreement, the Design Professional shall furnish the Owner with complete information regarding the invention or discovery and the Owner shall have the sole power to determine whether and where a patent application shall be filed and to determine the disposition of title to and all rights under any application or patent that may result. The Design Professional shall, at the Owner's expense, execute all documents and do all things necessary or proper with respect to such patent application.

15.13.2 Whenever any copyright is secured in connection with any work performed under this Agreement, (including the transcription or publication of the results of research financed by this Agreement,) title and all rights to such copyright will vest in the Owner.

15.13.3 If this Agreement is funded under a government prime contract or grant, which provides a different disposition for Items a. and b. above, the contract or grant, as appropriate, will govern.

15.13.4 The Design Professional to the best of its knowledge, information and belief warrants that the Design Professional's and/or the Owner's use of products, process, techniques and methodologies recommended by the Design Professional or developed by the Design Professional shall not infringe upon the copyright, patent or other proprietary rights of others. Regardless of the Design Professional's knowledge, information or belief, however, the Design Professional shall defend and indemnify the Owner against, and hold it harmless from, any and all loss, liability or damages it suffers or incurs as a result of or in connection with a claim that any aspect of the Design Professional's work infringes upon the copyright, patent or other proprietary rights of others.

15.14 Independent Contractor Status.

The Design Professional is an independent contractor and not the agent, representative, partner, or employee of the Owner. The Design Professional and the Design Professional's workers are not employees of the Owner and are not entitled to tax withholding, workers' compensation, unemployment compensation, or any employee benefits, statutory or otherwise. The Design

Professional has no authority to enter into any contract or agreement to bind the Owner and shall not represent to anyone that the Design Professional has such authority.

15.15 Use of the Owner's Name and Marks.

The Design Professional shall not use the name of the Owner or any of its service marks, trademarks, or trade names without the prior written permission of the Owner.

15.16 Conflict of Interest.

The Design Professional affirms that to the best of its knowledge, there exists no actual or potential conflict between the Design Professional, the Owner and the Design Professional's services, and in the event of change in either its private interests or services, the Design Professional will inform the Owner regarding any possible conflict of interest which may arise as a result of such change. The Design Professional also affirms that there exists no actual or potential conflict between an employee of the Owner and the Design Professional.

15.17 Affirmative Action.

The Design Professional certifies that it is an equal opportunity employer and that, during the performance of this Agreement, it will comply with PL 101.507 and with Federal Executive Order 11246, as amended, The Rehabilitation Act of 1973, as amended, and the respective regulations thereunder, and the Michigan Civil Rights Act of 1976.

15.18 Regental Approval.

The Owner's obligation to proceed and perform under this Agreement is subject always to the approval of its Board of Regents.

**[FIRM NAME]**

The Design Professional

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

**THE REGENTS OF THE UNIVERSITY OF MICHIGAN**

Owner

By: \_\_\_\_\_  
Kevin P. Hegarty  
Executive Vice President and  
Chief Financial Officer

#584182v3  
Jan 2001



## **Modified Fast Track Rules**

### **F-1. APPLICABILITY**

These Modified Fast Track Rules ("MFTR") shall apply to all arbitration proceedings under the Agreement, regardless of the amount in controversy. The MFTR shall be applied as described herein, in addition to any other portion of the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA") that are not in conflict with the Arbitration provisions of the General Conditions applicable to the Project (Part 09.1, *et seq.*) and the MFTR.

### **F-2. LIMITATION ON EXTENSIONS**

In the absence of extraordinary circumstances, the AAA may grant a party no more than one seven (7) business-day extension of the time in which to respond to a demand for arbitration or counterclaim as provided in Section F-3. In extraordinary instances, the AAA or the arbitrators may grant an additional extension.

### **F-3. CHANGES OF CLAIM OR COUNTERCLAIM**

A party may at any time prior to the close of the hearing increase or decrease the amount of its claim or counterclaim. Any new or different claim or counterclaim, as opposed to an increase or decrease in the amount of a pending claim or counterclaim, shall be made in writing and filed with the AAA, and a copy shall be mailed to the other party, who shall have a period of five (5) business days from the date of such mailing within which to file an answer with the AAA. The arbitrators shall determine whether such new or different claims or counterclaims shall be heard together with or separately from a pending claim or counterclaim, toward the goal of assuring a just, speedy, and economical determination of all disputes.

### **F-4. COMMUNICATION OF NOTICES**

The parties shall accept all notice from the AAA by mail, overnight delivery, telephone or electronic facsimile ("fax"). Such notices by the AAA shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any notice hereunder, the proceeding shall nonetheless be valid if notice has, in fact, been given by telephone.

### **F-5. APPOINTMENT AND QUALIFICATION OF ARBITRATOR**

The arbitrators shall be appointed and qualified as provided in Part 09.1.5 of the General Conditions applicable to the Project.

### **F-6. PRELIMINARY TELEPHONE CONFERENCES**

Unless otherwise agreed by the parties and the arbitrators, as promptly as practicable after the submission of a claim, a preliminary telephone conference shall be held among the parties or their attorneys or representatives, and the arbitrators.

### **F-7. EXCHANGE OF EXHIBITS**

At least five (5) business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing. The arbitrators are authorized to resolve any disputes concerning the exchange of exhibits.

F-8. DISCOVERY

Discovery shall be limited and shall be permitted only as agreed by the parties or as ordered by the arbitrators when the demands of justice require it, toward the goal of assuring a just, speedy, and economical determination of all disputes.

F-9. DATE, TIME, AND PLACE OF HEARING

Where no party's claim exceeds \$10,000, exclusive of claimed interest and arbitration fees and costs, the dispute shall be resolved by submission of documents, unless any party requests an oral hearing, or the arbitrators determine that an oral hearing is necessary. The arbitrators shall establish a fair and equitable procedure for the submission of documents.

In all other cases, unless the parties agree otherwise, there shall be a hearing. The arbitrators shall set the date, time, place of the hearing, and number of hearing days, which shall be scheduled to commence within 90 days after submission to the AAA of the initial demand for arbitration as to the claim. The AAA will notify the parties in advance of the hearing date. A formal notice of hearing will also be sent by the AAA to the parties.

F-10. THE HEARING

Unless the arbitrators determine otherwise, each party shall have equal opportunity to submit its proofs and complete its case. The arbitrators shall determine the order of the hearing, and may require further submission of documents within five (5) business days after the hearing.

There will be a stenographic record. The moving party, or the complainant (as the case may be) shall make arrangements directly with a stenographer, and shall notify the other party of these arrangements in advance of the hearing. A copy shall be made available for inspection by the other party and the arbitrators, at the expense of the ordering party.

F-11. TIME OF AWARD

Unless otherwise agreed by the parties, the award shall be rendered no later than seven (7) business days from the date of the closing of the hearing.

F-12. TIME STANDARDS

The arbitration shall be completed by settlement or award within one hundred twenty (120) days after submission of the demand for arbitration, unless all parties and the arbitrators agree otherwise or the arbitrators extend this time in extraordinary cases when the demands of justice require it.

F-13. ARBITRATOR'S COMPENSATION

Arbitrators will receive compensation as determined pursuant to Part 09.1.9 of the General Conditions applicable to the Project.

SCHEDULE OF PROJECT DETAILS