

AGREEMENT
Between Owner and Design Professional for
Contractor Projects

for the

_____ Project

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SCHEDULE OF PROJECT DETAILS

Note: Section 13.2 “Arbitration” included in previous versions has been removed.

**AGREEMENT BETWEEN OWNER AND DESIGN PROFESSIONAL
FOR CONTRACTOR PROJECTS**

for

[PROJECT NAME]

U-M Project No. P

(P000)

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

Under the terms of an Agreement between the Contractor and the Owner for Construction to be entered into at a later date, the Owner will retain the services of a Contractor to construct the Project; and

The Owner may have the Project designed with Separate Design Packages and it may be 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 with respect to the Project.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

ARTICLE 1. DEFINITIONS

All capitalized terms used herein and not otherwise defined in this Agreement will have the meanings set forth in the General Conditions.

1.1 Applicable Law.

All applicable codes, statutes, ordinances, laws (including the Americans with Disabilities Act [“ADA”]), rules and regulations, and lawful orders of all public authorities having jurisdiction over the Owner, the Project, the Project Site, the Services or the Work.

1.2 As-constructed Record Drawings.

Complete As-constructed Record Drawings, prepared by the Design Professional, showing significant changes in the Project resulting from addenda, accepted or deleted alternates, field orders, change orders, construction change directives, bulletins, and/or from the Contractor Mark-up Set, including marked-up prints, drawings and/or other data generated by the Contractor 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. The As-constructed Record Drawings will be submitted in the format set forth in the Design Guidelines Section 2.

1.3 Construction Cost.

The sum total of all costs of constructing the Project as depicted in the Construction Documents, such as labor and materials, general conditions costs, Contractor costs, fees and contingencies, fixed equipment furnished and installed by a member of the Construction Team, but excluding: (a) the cost of moveable furniture and fixed equipment furnished and/or installed by parties other than the Construction Team, as defined in §1.5; (b) the cost of Work not designed or specified by the Design Professional or a member of the Construction Team; 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 will design the Project so that the Construction Cost for the Project will not exceed the “Fixed Limit of Construction Cost,” set forth in the Schedule of Project Details.

1.4 Construction Documents.

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

1.5 Construction Team.

The Contractor or any Subcontractor or Supplier employed directly or indirectly by or through the Contractor.

1.6 Contract Documents.

The "Contract Documents" consist of: the Agreement between the Contractor and the Owner for Construction (available on the Owner’s website at: <https://umaec.umich.edu/vendors/contracts-agreements/construction/>) and the 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.

1.7 Deliverables.

The documents required to be provided by the Design Professional as enumerated in Section 2.2 of the Design Guidelines.

1.8 Design Guidelines.

The Owner's "Design Guidelines" are as published on the Owner's website (<http://umaec.umich.edu/for-vendors/design-guidelines/>). In addition to providing a guide to be used in the preparation of design documents for the Owner's construction projects, the Design Guidelines also contain regulatory code compliance and other Owner requirements. The "Effective Date" (as noted in Section 2.7 of the Design Guidelines), determining which edition will be used for a given project, is set at the beginning of Design Development and will govern the preparation of construction documents for the project unless noted otherwise. Compliance with the Design Guidelines does not relieve the Design Professional from any of its responsibility.

1.9 Design Professional.

The organization which employs architects, engineers and other persons having special expertise with respect to the Project, or hires one or more of them as Sub-consultant(s), and which undertakes the duties and responsibilities set forth in this Agreement. Unless otherwise specified, the term "Design Professional" includes any of the Design Professional's Sub-consultants.

1.10 Estimated Construction Cost.

The Design Professional's estimate of Construction Cost, which will be submitted during each of the three phases described in §3.2 through §3.4. Estimated Construction Cost will be audit-trackable to the previous estimate and contain a level of detail satisfactory to the Owner. All Estimated Construction Cost will have a reasonable basis and will be developed using the Design Professional's best professional judgment. The Design Professional's detailed documentation supporting each estimate will be submitted to the Owner's Representative and the Contractor. If Separate Design Packages are prepared, the Design Professional will develop Estimated Construction Cost during each of the design phases for each Separate Design Phase Package. If the Owner's Contractor 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 Contractor to promptly reconcile their respective estimates. Upon reconciliation, the Design Professional will submit the reconciled estimate to the Owner. If the Design Professional and the Contractor are unable to reconcile discrepancies in their estimates, the Design Professional will agree with the Contractor as to a method of resolution.

1.11 General Conditions.

The Owner's "Standard General Conditions Applicable to Projects Where the Owner Has Retained the Services of a Contractor", available on the Owner's website at: <https://umaec.umich.edu/for-vendors/contracts-agreements/construction/>

1.12 Owner's Representative.

The individual(s) designated by the Owner from the Owner's Architecture, Engineering and Construction department.

1.13 Project Site.

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

1.14 Regular Base Hourly Rate.

The annual compensation paid to professional and technical employees of the Design Professional engaged on the Project divided by 2080. "Annual compensation" means, and is limited to, the cost of an employee's mandatory or customary benefits such as statutory employee benefits, insurance, sick leave, holidays, vacations, bonuses, profit sharing contributions, pensions and similar benefits.

1.15 Schedules.

1.15.1 The "**Design Schedule**" is a schedule to be prepared by the Design Professional that sets forth the timing of (i) the beginning and completion of the various portions of the Design Professional's services as identified in §3.2 through §3.5, (ii) the identification and presentation of Deliverables and (iii) the various phases of construction. The Design Schedule will be submitted to the Owner for approval promptly following execution of this Agreement. The Design Professional will periodically inform the Owner of design progress in relation to target dates and will control the design progress and staffing to meet those target dates.

1.15.2 [intentionally omitted]

1.15.3 The "**Construction Schedule**" is the Critical Path Method ("CPM") schedule for the Work submitted by the Contractor and accepted by the Owner that will be utilized by the Contractor for the duration of the Project.

1.15.4 The Design Professional and the Contractor will cooperate with one another to reconcile their respective schedules.

1.16 Separate Design Packages.

Any parts of the Contract Documents which represent a division of the Work into separate bid packages and which will be used for the bidding and awarding of separate construction contracts.

1.17 Services.

The Design Professional's Basic and Extra Services, and any other work or services to be performed by the Design Professional, or a Sub-consultant, under this Agreement..

1.18 Sub-consultant.

A person or organization hired by the Design Professional in connection with the Project, other than its employees. The Design Professional will, 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 will be included in the Basic Lump Sum Fee and at no additional cost to the Owner.

1.19 Supplier.

A "Supplier" is a person or entity who is hired by the Contractor, 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.

1.20 Subcontractors.

A "Subcontractor" is a person or entity who is hired by the Contractor, 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.

1.21 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, longevity, reliability, quality and safety.

1.22 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 Contractor under the Contract Documents, or (iii) necessary or appropriate to fully construct, fixture, operate and maintain the Project. The Work will be performed in strict 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 may 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 necessary or appropriate to fully design all aspects of the Project. Without limiting the generality of the foregoing, as part of the Design Professional's Basic Services, the Design Professional will complete on a timely basis the requirements of §3.2 through §3.6, including associated civil engineering, structural engineering, mechanical engineering, electrical engineering, and all architectural design, 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.

3.1.1 As part of its Basic Services, the Design Professional will coordinate any Separate Design Packages, and provide (i) adequate clearances, and (ii) services to secure variances or other exceptions to codes, laws and regulations and otherwise meet program requirements.

3.1.2 [intentionally omitted]

3.1.3 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. Owner approval notwithstanding, 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.

3.1.4 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.

3.1.5 All of the Design Professional's work shall comply with the Owner's Design Guidelines.

3.1.6 The Owner will have the right to reasonably disapprove any portion of the Design Professional's work. If it does, the Design Professional will revise its work to satisfy the Owner's objections. Such revisions will be without additional cost to the Owner unless either (i) the Owner agrees otherwise in writing, or (ii) disapproval is made of work previously approved by the Owner.

3.1.7 If the Project includes the renovation of or addition to existing facilities, the Design Professional will make measured drawings and/or confirm other information furnished by the Owner or the Contractor. The Design Professional will inspect, meter, or otherwise determine capacities of existing building systems and will include in its design all improvements needed to provide new services without degrading existing system conditions. The Design Professional will incorporate such information into the Construction Documents.

3.1.8 The Design Professional will assist the Owner and the Contractor, by attending and providing other necessary support, at all meetings with governmental and/or regulatory agencies regarding the Project.

3.1.9 The Design Professional will participate in the Value Engineering program for the Project. The Design Professional will incorporate into the Construction Documents those Value Engineering options approved by the Owner.

3.2 Schematic Design Phase.

The Design Professional will do everything necessary or appropriate to develop a schematic design for the Project, such as:

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

3.2.2 Examine the site of the Project (including existing conditions when the Project involves renovation of an existing facility) to assist the Owner in determining its suitability for the Project and make recommendations to the Owner 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 a report regarding them.

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

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

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

3.2.7 Assist the Owner 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 alternative approaches to design and construction of the Project.

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

3.2.10 Prepare a Schematic Design Phase statement of Estimated Construction Cost and submit it to the Owner's Representative for review and comment within two weeks from submitting the final Schematic Design drawings. A narrative will accompany the Schematic Design Phase.

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 will be acceptable to the Owner.

3.2.12 Prepare 3D design renderings of the Project's exterior appearance and colored site and floor plans as directed by Owner's Representative, and present same for Owner's approval as directed by Owner's Representative.

3.2.13 At 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.

3.2.14 Obtain and respond to comments from the Owner 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.

3.3 Design Development Phase.

The Design Professional will do everything necessary or appropriate to complete design development for the Project, such as:

3.3.1 Meet with the Owner's Representative 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 for review and comment.

3.3.4 Prepare design development drawings, outline specifications, and full descriptions for all required disciplines identified in §3.1 and submit such design development documents to the Owner's Representative for review and comment. The Design Professional will submit, as part of 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 Cost and submit it to the Owner's Representative for review and comment within two weeks following submittal of the final design development drawings. The submitted format will be consistent with the previous estimate but will provide greater detail as to all costs. A narrative will accompany the Design Development Phase estimate addressing significant changes from the previous estimate and any assumptions related thereto. The Design Development Phase cost

estimate will clearly indicate, by line item, major changes between the cost estimates for the Design Development Phase and the Schematic Design Phase.

3.3.6 Assist the Owner , 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 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 will do everything necessary or appropriate to develop Construction Documents for the Project, such as:

3.4.1 Generate a final finish schedule for the Project and submit it to the Owner's Representative for approval. The approved finish schedule will 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 for review and comment. The Construction Documents will depict a Project which, if built in accordance with such documents, will comply with all Applicable Law. Submit, with the Construction Documents, an indexed copy of all design calculations to include structural, heating, plumbing, mechanical and electrical systems design.

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, one (1) sealed set of pre-bid Construction Documents for record purposes.

3.4.4 Update the statement of Estimated Construction Cost 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 will be consistent with the previous estimates but will provide a level of detail as to all costs that is satisfactory to the Owner. A narrative will accompany the Construction Documents Phase estimate addressing significant changes from the Design Development Phase estimate. The Construction Documents Phase estimate will include a comparison, by line item, of major changes from the Design Development Phase estimate.

3.4.5 Work with the Owner 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 Based on written comments and direction from the Owner's Representative, revise the Construction Documents and bid documents and submit copies of complete, bid-ready documents to the Owner to issue for bids.

3.4.8 Assist with bidding and negotiation activities, as follows:

- (a) Participate in pre-bid conferences with the Owner's Representative, contractors, subcontractors and suppliers.
- (b) Consult with the Owner to develop, assemble and distribute all bid packages and provide information to prospective bidders.
- (c) Assist the Owner to establish a bidding schedule.
- (d) Respond to the contractors', subcontractors' and suppliers' questions and prepare addenda if required.
- (e) Assist the Owner in the receipt and opening of bids.
- (f) Participate in post-bid review and verification of bids and make recommendations to the Owner's Representative as to whether the bids are responsive and acceptable in the context of the requirements of the Project.
- (g) Assist the Owner in its scope review meetings.

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

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

3.5 Construction Services Phase.

During the construction phase of the Project, the Design Professional will:

3.5.1 Become familiar with the responsibilities of the Design Professional set forth in the Contract Documents, all of which are incorporated herein by reference.

3.5.2 Prepare a set of black-line prints and deliver them to the Contractor at the start of construction.

3.5.3 Upon the request of the Owner's Representative, participate in pre-construction meetings with the Owner's Representative and the Contractor, Subcontractors and Suppliers for the Project, and attend all construction progress meetings.

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

3.5.5 Clarify any 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 and which are brought to the attention of the Design Professional by the Owner or Contractor; provided, however, that neither the Owner nor the Contractor will have an obligation to discover any such deficiency.

3.5.6 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. The Design Professional will, as part of its Basic Services, provide the Owner with a cost estimate of each prior to their issuance to the Contractor.

3.5.7 Review and approve or take other appropriate actions with regard to all shop drawings, Project data, Contractor-generated coordination drawings, training schedules, and samples. It is solely the responsibility of the Design Professional to verify that all shop drawings are in compliance with the Construction Documents, including the final (or amended) Construction Documents and bid documents. The Design Professional will 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 Contractor and/or Subcontractor(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 is to maintain a file of Project submittals for use throughout the duration of the Project.

3.5.8 Revise the Construction Documents when necessary or appropriate in connection with a change to the Work. Sign all change orders. The Design Professional will 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.

3.5.9 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 will be rejected in writing by the Design Professional. The Design Professional will give the Owner and the Contractor 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.

3.5.10 Advise and consult with the Owner and the Contractor concerning the conformance of the Work to the Construction Documents. 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 Contractor and the Owner.

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

3.5.12 Require, when it deems them necessary, 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.

3.5.13 Meet monthly with the Contractor and the Owner to review and approve Subcontractor Payment Applications. Where progress payments are requested based upon portions of the Work performed on a unit price basis, review, and if appropriate approve, the Contractor's verification of the number of units provided.

3.5.14 Review and certify or reject the Contractor's applications for payment. The issuance of an approved certificate of payment will 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 Contractor is entitled to payment in the amount certified by the Design Professional. If the Design Professional rejects any payment application, it will set forth the reason for its rejection in writing.

3.5.15 Conduct preliminary, above ceiling, pre-final, and final inspections of the Work and prepare and submit to the Owner's Representative and the Contractor 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 to the Contract Documents. Make all necessary final inspections to verify correction of all deficiencies during the Correction Period.

3.5.16 Prepare and submit As-constructed Record Drawings to the Owner within thirty (30) days of the Design Professional's receipt of the supporting documentation from the Contractor. The As-constructed Record Drawings will be submitted in the format set forth in the Design Guidelines Section 2.

3.5.17 Review proposed change order quotations from the Contractor and make written recommendations to the Owner as to the propriety of such quotations.

3.5.18 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.

3.5.18.1 Within a reasonable time after being notified that the Contractor 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 will notify the Contractor, stating what will be required to bring the Work into a state of Substantial Completion. Update the punchlist at Substantial Completion.

3.5.19 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.

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

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

3.5.22 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 Contractor pursuant to the warranties given in or required by the Contract Documents.

3.5.23 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 Contractor.

3.6 Obligations of the Design Professional to the Contractor.

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

3.6.1 [intentionally omitted]

3.6.2 [intentionally omitted]

3.6.3 [intentionally omitted]

3.6.4 [intentionally omitted]

3.6.5 [intentionally omitted]

3.6.6 [intentionally omitted]

3.6.7 [intentionally omitted]

3.6.8 [intentionally omitted]

3.6.9 Review, and if appropriate approve, alternative solutions proposed by the Contractor and make appropriate changes in the design.

3.6.10 [intentionally omitted]

3.6.11 [intentionally omitted]

3.6.12 When the request has been reviewed and substantiated by the Contractor, coordinate with the Contractor and the Owner if any Subcontractor requests interpretations of the meaning and intent of any of the Contract Documents and reasonably assist in the resolution of any questions which may arise. Provided such request is reviewed and substantiated by the Contractor and forwarded to the Design Professional from the Contractor.

3.6.13 [intentionally omitted]

3.6.14 Assist the Contractor in the preparation of the technical requirements for the testing program set forth in the Contractor's quality control plan.

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

3.6.16 When requested by the Contractor, consider, and if appropriate approve, deviations from the requirements of the Contract Documents.

3.6.17 Accompany the Contractor in its observation of Subcontractors' evaluation of utilities, operating systems and equipment for readiness.

3.6.18 When requested by the Owner, review and, if appropriate approve, the form of cost accounting reports prepared and submitted by the Contractor.

3.6.19 Cooperate with the Contractor in connection with the preparation of Contractor Mark-up Sets (commonly called “as-built drawings”) by Subcontractors.

3.6.20 Abide by the Contractor's control of the Project Site and the safety rules established therefor.

3.6.21 Coordinate with the Contractor and the Owner in connection with the development, implementation and maintenance of a collaborative process 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 constructive working relationship is fostered among all persons working on the Project. The Design Professional will cooperate fully with the Owner and the Contractor in meeting these objectives.

3.6.22 In general, reasonably cooperate with the Contractor on all matters throughout the duration of the Project.

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 will fully compensate the Design Professional for all Basic Services required by this Agreement. Additional terms and conditions are as follows:

4.1.1 Payments to the Design Professional will be made within thirty (30) days following the Design Professional's request for payment. Requests for payment will be apportioned for each phase of service in accordance with the schedule therefor set forth on the Schedule of Project Details.

4.1.2 Progress payments to all of the Design Professional's Sub-consultants must be made within 30 days after the Design Professional receives payment from the Owner, and the Owner may request proof of payment.

4.1.3 If the scope of the Project increases or decreases in any material manner during the development of its design, the Basic Lump Sum Fee may, if appropriate, be modified by written agreement.

4.1.4 If, during the course of the Work, the Owner requests a change in the original scope of the Project, any increase or decrease in the Design Professional's compensation will be based on the provisions of §6.2.

4.1.5 All addenda, bulletins, construction change directives, and change orders resulting from ambiguity, inaccuracy, conflict, inconsistency or inadequacy of the Construction Documents prepared by the Design Professional will be considered Basic Services and are included in the Basic Lump Sum Fee.

4.1.6 The Owner may, at any time and for any reason or no reason, direct the Design Professional to discontinue work on all or any part of the Project or to eliminate portions of the Services. If the Owner does so, the Design Professional will be paid for its work up to the point of the suspension or elimination based upon the percentage of work completed at that time.

ARTICLE 5. THE DESIGN PROFESSIONAL'S REIMBURSABLE EXPENSES

5.1 Reimbursable Expenses.

When such services are requested by the Owner, the Owner agrees to reimburse the Design Professional, in addition to the Basic Lump Sum Fee, for:

- (a) the direct cost (without mark-up) of copies of Construction Documents beyond those specified in this Agreement, as requested by the Owner;
- (b) 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 §3.1 as part of the Basic Services;
- (c) the direct cost (without mark-up) of preparing presentation models, presentation renderings, and miscellaneous artwork, using outside service providers, when their use is approved in advance in writing by the Owner;
- (d) the direct cost (without mark-up) of printing, reproduction, photography, photocopies and plots;
- (e) the direct cost (without mark-up) of Sub-consultants, when their use has been approved in advance in writing by the Owner, and the use of those Sub-consultants is not included in Basic Services; and
- (f) the direct costs incurred while traveling on trips authorized in writing by the Owner. The Design Professional must comply with the Owner's "AEC Reimbursement Expense Guidelines", included with the Schedule of Project Details, and in no case will any reimbursement include markup

or exceed the limits set forth therein.

5.2 Non-Reimbursable Expenses.

All other costs, including, but not limited to communications equipment and charges, computer hardware, software and internet services (except as approved in writing by the Owner) 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 described in Article 4 and Reimbursable Expenses permitted by Article 5, the Design Professional will be paid for those Extra Services described in the Schedule of Project Details, 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 §9.3) requiring revisions in the Construction Documents.

6.1.3 Insolvency of the Contractor, 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 Design of special signage, donor plaques, and promotional information.

6.1.9 Preparation of life cycle analyses.

6.2 Amount.

Requests for payment for extra services will be based on either (i) an hourly charge for all hours worked by the Design Professional's professional personnel assigned to providing those services or (ii) a negotiated lump sum fee, as the parties agree before the Extra Service is performed. The charge for hours worked will be billed at the Regular Base Hourly Rate of each such employee.

6.3 Non-Compensable.

In no case will 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 will be compensated as an extra service.

ARTICLE 7. RESPONSIBILITY FOR CONSTRUCTION COST

7.1 Fixed Limit of Construction Cost.

In performing its design services, the Design Professional will use its best efforts to design the Project in a manner that has Construction Cost fall within the Fixed Limit of Construction Cost. In doing so, the Design Professional will be permitted to determine, in accordance with the Design Guidelines and the Owner's 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, with the Owner's prior approval, to make reasonable adjustments in the scope of the Project. The Design Professional will, as part of its Basic Services hereunder, include "alternates" to provide a mechanism to adjust Construction Cost so that they remain within the Fixed Limit of Construction Cost; provided, however, that such alternates will not compromise the Owner's program for the Project.

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 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 Cost for the Project.

7.3 Necessary Design Modifications.

7.3.1 If the Owner elects to suspend or terminate the Project pursuant to §7.2(a) or to authorize rebidding pursuant to §7.2(b), the Design Professional will 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 §7.2(c), the Design Professional will revise the Construction Documents appropriately at no additional cost to the Owner and the total fee for its Services will not exceed the Basic Lump Sum Fee plus any amount owed to date for Extra Services.

7.3.3 If the Owner elects to proceed under §7.2(d), the Design Professional will modify the Construction Documents as necessary to bring the Construction Cost within the Fixed Limit of Construction Cost at no additional cost to the Owner, and the total fee for its Services will not exceed the Basic Lump Sum Fee plus any amount owed to date for Extra Services.

ARTICLE 8. DOCUMENTS

8.1 Ownership of Documents; Patents and Copyright.

8.1.1 All intellectual property of any kind, such as the drawings, specifications, reports and supporting data, however stored or presented, furnished by the Design Professional to the Owner or developed by the Design Professional in connection with the delivery of its services under this Agreement, are instruments of service that will 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. Upon request, the Design Professional will execute whatever documentation the Owner deems necessary or appropriate to confirm or validate its ownership of such intellectual property.

8.1.2 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 will 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.

8.1.3 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 will furnish the Owner with complete information regarding the invention or discovery and the Owner will have the sole power to determine whether and where a patent application will be filed and to determine the disposition of title to and all rights under any application or patent that may result. The Design Professional will, at the Owner's expense, execute all documents and do all things necessary or proper with respect to such patent application.

8.1.4 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.

8.1.5 If this Agreement is funded under a government prime contract or grant, that provides a different disposition of the rights identified in §8.1.3 and §8.1.4, the contract or grant, as appropriate, will govern.

8.1.6 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 will 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 will 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.

ARTICLE 9. THE DESIGN PROFESSIONAL

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 Contractor and to assist in the coordination and interface of all parties involved in the Project. Specific, but not limited, aspects of the Design Professional's relationship with the Contractor are set forth in Article 3.6.

9.2 The Design Professional's Representative.

The Design Professional will 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 Good Standing; Licensing; and Applicable Standard of Care.

9.3.1 The Design Professional represents and warrants that it is a legally organized entity in good standing under the laws of the state of its organization and, where required, qualified to do business and in good standing under the laws of the State of Michigan.

9.3.2 The Design Professional represents and warrants that it or one or more of the professionals within its organization who are providing Services is, to the extent required by Applicable Law, properly licensed by the State of Michigan.

9.3.3 The Design Professional, in performing each and every aspect of its work under this Agreement, will act in accordance with the 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 design professional having a stature comparable to the stature the Design Professional holds itself out as having.

9.3.4 The Design Professional agrees that, unless otherwise approved by the Owner in writing in advance, no Design Professional personnel will provide Services if any of the following have occurred: (a) any *applicable* registration, certification, licensure (including where applicable, Medicare/Medicaid provider status) of any Design Professional personnel, in any state,

is or has been threatened with limitation, suspension, revocation or exclusion; (b) any registering, certifying, or licensing board reprimands, sanctions or otherwise disciplines Design Professional personnel; or (c) a negligence or malpractice claim related to the provision of the Services or similar services has been asserted against Design Professional personnel.

9.4 Design Professional Proposal.

The Design Professional proposal is not incorporated into this Agreement in any way.

9.5 Accuracy and Adequacy of Construction Documents and Bid Documents.

Notwithstanding any review or approval by the Owner, the Design Professional is and will remain solely responsible for the accuracy, consistency, completeness, adequacy and buildability of the Construction Documents and bid documents.

9.6 Authority; Advice and Consultation.

9.6.1 The Design Professional will have such authority as is provided in this agreement, and in the General Conditions and any Supplemental or Special Conditions applicable to the Project and will comply with the provisions of those documents that apply to the Design Professional.

9.6.2 When requested, the Design Professional will 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 will be final.

9.7 Archiving Materials.

The Design Professional's archive of Project materials, including submittals delivered to the Design Professional under the terms of the General Conditions, will be available to the Owner for ten (10) years from the date of final completion of the Project.

9.8 Compliance with Laws, Policies & Procedures.

9.8.1 The Design Professional will ascertain that all documents it prepares are in accordance with Applicable Law.

9.8.2 The Design Professional will perform all of its Services strictly in accordance with Applicable Law to the satisfaction of the unit of government having jurisdiction.

9.8.2.1 Without limiting the generality of §9.8.2, the Design Professional will comply with the provisions of all Applicable Law and all licensing requirements pertaining to any professional status they hold. The Design Professional will upon request deliver to the Owner copies of all licenses held by it or its Sub-consultants, or the employees of either of them.

9.8.2.2 If the Design Professional performs any Services or permits any Work to be performed in a manner that it knows, or should have known, to be contrary to any

Applicable Law, the Design Professional will, without recovery from the Owner, assume full responsibility and will bear all attributable costs (including cost of correction and all fines and penalties).

9.8.3 If the Design Professional identifies potential non-compliance with any Applicable Law, regulations or policies in connection with its provision of the Services, the Design Professional will promptly contact the Owner's Compliance Hotline at 866-990-0111 and provide details concerning the suspected wrongdoing sufficient to facilitate an investigation by Owner.

9.8.4 The Design Professional will be solely responsible for insuring that any recommendations made in connection with the Services comply with all applicable federal, state, local and Owner laws, rules, regulations, policies and procedures. Unless otherwise expressly provided for in this Agreement, the Design Professional will obtain and comply with all permits, licenses and similar authorizations that are necessary to provide the Services.

9.9 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.

9.10 Promptness.

The parties recognize that timely response by the Design Professional is important to the success of the Work. Hence, 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 or set forth in the General Conditions. The Owner, the Contractor and the Design Professional will meet promptly after execution of the Owner/Contractor Agreement to establish mutually acceptable time lines for the Design Professional's responses.

9.11 Invoices.

9.11.1 All invoices must separate expenses from actual fees for services. Basic Services will be charged to the Owner as provided in the Schedule of Project Details, and invoices therefor must reflect the percentage of work completed. Billings for Extra Services identified in the Schedule of Project Details, to be performed on a time and materials basis, must include the following detail for all time charged to the project:

- (a) name of Design Professional's employee;
- (b) date and number of hours worked on the date;
- (c) employee's job classification (as it pertains to billing); and
- (d) employee's billing rate.

9.11.2 Any invoice itemizing charges for time and materials will include the following statement and will be signed by the Design Professional's project principal, including printed name and title: *"I certify that all time charged on this invoice represents actual effort spent on the project being charged and is in accordance with the terms of our contract with the Owner."*

ARTICLE 10. THE OWNER'S RESPONSIBILITIES

10.1 Consult with the Design Professional.

The Owner will consult with the Design Professional on matters that are related to the Design Professional's Services.

10.2 Owner's Representative.

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

10.3 Surveys.

Unless the Schedule of Project Details provides otherwise, the Owner will 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.

Unless the Schedule of Project Details provides otherwise, the Owner will 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 Contractor 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.

10.7 Obligations of the Contractor to the Design Professional.

The Owner will cause the Contractor to:

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

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

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

10.7.4 Furnish to the Design Professional in a timely manner information it has or has obtained from prospective subcontractors 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.

10.7.5 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.

10.7.6 When requested by the Design Professional, provide either one (1) set of marked Construction Documents noting the changes made to the documents during the construction process, or access thereto.

ARTICLE 11. INSURANCE AND INDEMNIFICATION

11.1 Indemnification.

The Design Professional will 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, court costs and related expenses) to the extent they arise from the Design Professional's performance under this Agreement including, but not limited to: (a) claims for bodily injury, death and/or property damage; (b) claims by a member of the Construction Team 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 will promptly obtain and maintain the insurance coverage described on the Schedule of Project Details and provide the Owner with proof of that insurance before commencing services under this Agreement. The Design Professional agrees that the Services may not commence 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 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 proposed 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 will be made without sixty (60) calendar days prior written notice to the Owner, nor will any change or cancellation in insurance be made unless it is replaced with comparable coverage.

11.2.5 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 Contractor'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 If any of the Design Professional's insurance is underwritten on a claims-made basis and the Design Professional changes its coverage or underwriter, it must require tail coverage or prior acts coverage, in either case retroactive to the beginning of the Project.

11.2.7 The insurance required in this section does not reduce or limit indemnification in §11.1.

ARTICLE 12. TERMINATION OF AGREEMENT BY THE OWNER

12.1 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 will 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 will have no liability for any lost compensation, profits, or income to the Design Professional, or any other liability.

ARTICLE 13. CLAIMS

All claims, disputes, or other matters, arising out of or in connection with this Agreement ("Claims") will be resolved in accordance with the following procedure:

13.1 Negotiation.

The claim will be submitted to a Senior Officer from each party for resolution by mutual agreement. Any mutual agreement reached by the Senior Officers will be binding upon the parties.

13.1.1 For purposes of this section, the term "Senior Officer" will mean, with respect to the Design Professional, the Design Professional's president or chief executive officer, and with respect to the Owner, the Associate Vice President of Facilities and Operations.

13.1.2 All applicable periods of limitation will be tolled during the pendency of negotiations under this §13.1. If the parties mutually agree to defer resolution of any Claim until completion of the Project or another mutually acceptable date, all applicable limitations periods will remain tolled until the agreed date.

ARTICLE 14. MISCELLANEOUS

14.1 Order of Procedure.

The Design Professional will proceed with the services set forth in this Agreement only in the order and to the extent authorized by the Owner.

14.2 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.

14.3 Nondiscrimination in Employment.

The Design Professional warrants that it is an equal opportunity employer and that, during the performance of this Agreement, it will comply 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.

14.4 Meeting the Owner's Objectives.

The Owner may from time to time observe, review, or take other appropriate action concerning the Design Professional's Services. The Owner's doing so will be solely for the limited purpose of providing the Design Professional with information concerning the Owner's objectives and goals with respect to the Project, not for the purpose of determining their accuracy or completeness, and will not create any responsibility whatsoever on the part of the Owner for or complicity by the Owner in errors, inconsistencies, omissions or other deficiencies, nor will any review, approval, other action or payment of the Design Professional alter or in any way reduce the Design Professional's obligations under the Agreement.

14.5 Audits.

The Design Professional will 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 will 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.

14.6 Confidential or Proprietary Information.

14.6.1 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 and its service marks. Since it is difficult to separate confidential and proprietary information from that which is not, the Design Professional will 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. Likewise, the Design Professional will not disclose confidential and proprietary program information related to the Project. 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 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, but neither confidential or proprietary information or intellectual property of any kind owned by the Owner nor the name of the Owner will be used by the Design Professional in its promotional materials, seminar presentations or otherwise without the Owner's prior written permission, which may be withheld by the Owner in its sole and absolute discretion. The Design Professional will instruct its employees and Sub-consultants concerning the provisions of this §14.6.1 and will be responsible for the violation of this provision by any one or more of them.

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

14.6.3 The Design Professional will not, without the express written consent of the Owner, discuss the Project or any part thereof with persons under circumstances in which the communications cannot reasonably be expected to be published in newspapers, magazines or trade journals or broadcast on radio or television. This restriction will not apply to statements consistent with a crisis management plan development and agreed to by both parties with respect to the Project. This restriction also will not apply to any fair response by the Design Professional to publicity released by the Owner that is detrimental to the reputation of the Design Professional. Any such contact will be referred to the Owner for response.

14.6.4 The Design Professional will not, without the Owner's prior written permission, which may be withheld by the owner in its sole and absolute discretion, participate in professional or trade seminars or publish or submit articles for publication, the subject of which is, in whole or in part, the Project.

14.7 Time.

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

14.8 Successors and Assigns.

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

14.9 Complete Agreement.

This Agreement represents the entire and integrated Agreement between the Owner and the Design Professional related to the Project and supersedes and excludes all prior statements, negotiations, representations and agreements, either written or oral, related to the Project.

14.10 Governing Law.

This Agreement will be governed by the laws of the State of Michigan that are applied to contracts made and to be performed in that State. The Design Professional agrees that any disputes it has against the Owner that are not subject to arbitration will be filed, if at all, in the Michigan Court of Claims, which has exclusive jurisdiction over the Owner. If the Owner submits a Claim to litigation under Section 13.2, the Design Professional consents to the jurisdiction of a court with applicable subject matter jurisdiction sitting in the state of Michigan with respect to any claims arising under this Agreement.

14.11 Modification.

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

14.12 Taxes.

The fees, expenses and costs payable under this Agreement include all applicable taxes and will 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.

14.13 Headings.

The headings contained in this Agreement have been included to promote the readability of the document. They are not intended to, and will not, imply or limit the substance of the sections they precede.

14.14 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 will not represent to anyone that the Design Professional has such authority.

14.15 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.

14.16 Not Excluded.

The Design Professional warrants that neither Design Professional, nor, to the best of Design Professional's knowledge, Design Professional Personnel, is excluded from participating in the Medicare or Medicaid program nor currently debarred or suspended or listed on the General Services Administration's ("GSA") List of Parties Excluded from Federal Procurement or Non-procurement Programs in accordance with Executive Orders 12549 and 12689, "*Debarment and Suspension*". Design Professional will immediately notify the University if it becomes debarred or suspended during the term of this Agreement. Design Professional further represents that no adverse action by the federal government that will or may result in exclusions from a federal health care program has occurred or is pending or threatened against Design Professional or its affiliates, or to the best of its knowledge, against any Design Professional Personnel. Design Professional agrees that it will not perform any act that will cause Design Professional to be excluded from a federal health care program or debarred, suspended or listed in the GSA's List of Parties Excluded from Federal Procurement or Non-procurement Programs during the term of this Agreement.

14.17 Freedom of Information Act.

Nothing in this Agreement will in any way limit the ability of the Owner to comply with any laws or legal process concerning disclosures by public bodies. The parties acknowledge that any responses, materials, correspondence or documents provided to the Owner are subject to the State of Michigan Freedom of Information Act ("Act") and may be released to third parties in compliance with that Act or any other law will not constitute a breach or threatened breach of this Agreement.

14.18 Regental Approval.

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

14.19 Cross Default.

A default under this or any other agreement between the Owner and Design Professional is considered a default under this Agreement.

14.20 Set-off and Recoupment.

Without prejudice to Owner's right to terminate this Agreement in accordance with the terms of this Agreement, and in addition to any other available remedies, Owner shall have the right of set-off and recoupment against amounts coming due to Design Professional under this Agreement, or any

other agreement between the parties, in the event Seller breaches this Agreement or any right of indemnification arises in favor of Owner under this Agreement or any other agreement between the parties. Design Professional retains the right to lawfully contest any such set-off or recoupment in an action to collect any amounts due Design Professional under this Agreement, or other agreements between the parties. The inclusion of this special set-off or recoupment provision shall not affect the availability, if any, of rights of set-off or recoupment arising at law or in equity.

[FIRM NAME]

The Design Professional

By: _____

(Signature)

(Printed Name)

(Title)

THE REGENTS OF THE UNIVERSITY OF MICHIGAN

Owner

By: _____

Geoffrey S. Chatas

Executive Vice President and Chief Financial Officer

SCHEDULE OF PROJECT DETAILS