



ConsensusDocs®
BUILDING A BETTER WAY

ConsensusDocs® 415
STANDARD DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS
BETWEEN OWNER AND DESIGN-BUILDER
(Lump Sum Price)



This page is **GENERAL INSTRUCTIONS**. These instructions are solely for the information and convenience of ConsensusDocs users, and **is are** not a part of the **contract document**. Gray boxes indicate where you should click and type in your project information. The yellow shading is a **Word®-Word** default function that displays editable text **and is not necessary for document completion**. Shading can be turned off by going to the Review tab, select “Restrict Editing” button and uncheck “Highlight the regions I can edit”. In Word 2003 you will find this option under the Tools tab, Options, Security tab, Protect Document button.

EMBEDDED INSTRUCTIONS are provided **solely** to help you complete the document. To display or hide instructions select the “¶” button under the “Home” tab to show all formatting marks. **Instruction boxes are color coded as follows:**

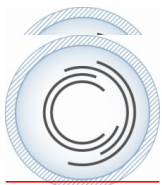
- Red Boxes:** Instructions for fields that are typically required to complete contract.
- Blue Boxes:** Instructions for fields that may or may not be required for a complete contract.
- Green Boxes:** Provide general instructions or ConsensusDocs Coalition Guidebook comments, which can be found at www.ConsensusDocs.org/guidebook.

ENDORSEMENT. This document was developed through a collaborative effort of organizations representing a wide cross-section of the design and construction industry. **The organizations endorsing this document believe it represents a fair allocation of risk and responsibilities of all project participants.**

Endorsing organizations recognize that this document must be reviewed and adapted to meet specific needs and applicable laws. This document has important legal and insurance consequences, and it is not intended



as a substitute for competent professional services and advice. ~~This document must be reviewed and adapted to meet your project-specific needs~~[Consultation with an attorney and an insurance or surety adviser is strongly encouraged](#). Federal, State and Local laws may vary with respect to the applicability or enforceability of specific provisions in this document. CONSENSUSDOCS SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ~~PURCHASER ASSUMES~~ [PURCHASERS ASSUME](#) ALL LIABILITY WITH RESPECT TO THE USE OF THIS DOCUMENT, AND CONSENSUSDOCS AND ANY OF THE [ENDORISING](#) ORGANIZATIONS SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING FROM SUCH USE. For additional information, please contact ConsensusDocs, 2300 Wilson Blvd, Suite 300, Arlington, VA 22201, 866-925-DOCS (3627), support@consensusdocs.org or www.ConsensusDocs.org.



ConsensusDocs® 415
STANDARD DESIGN-BUILD AGREEMENT AND GENERAL CONDITIONS
BETWEEN OWNER AND DESIGN-BUILDER
(Lump Sum Price)



TABLE OF ARTICLES

1. AGREEMENT
2. GENERAL PROVISIONS
3. DESIGN-BUILDER'S RESPONSIBILITIES
4. OWNER'S RESPONSIBILITIES
5. SUBCONTRACTS
6. CONTRACT TIME
7. CONTRACT PRICE
8. CHANGES IN THE WORK
9. PAYMENT
10. INDEMNITY, INSURANCE, AND BONDS
11. SUSPENSION, NOTICE TO CURE, AND TERMINATION
12. DISPUTE MITIGATION OR RESOLUTION
13. MISCELLANEOUS
14. CONTRACT DOCUMENTS
 AMENDMENT 1

ARTICLE 1 AGREEMENT

Job Number: [] Account Code: [] CPXXXX

This Agreement is made this [] Day of [] XXXXXX in the year [] XXXX, by and between the



OWNER: Michigan State University
1147 Chestnut Rd.
East Lansing, MI 48824

and the

DESIGN-BUILDER: XXXXXX Company
XXXXXX Street
Tax identification number (TIN):
Contractor Licensing No., if applicable:
XXXXXX City, State, ZIP

Design Professional Licensing No. in the State of the Project: XXXXXX Name and License #

for services in connection with the following:

PROJECT: XXXXXX Project Name
Notice to the Parties shall be given at the above addresses.

ARTICLE 2 GENERAL PROVISIONS

2.1. ~~2.1~~ **TEAM RELATIONSHIP** ~~Each Party agrees to act~~ The Parties each agree to proceed with the Project on the basis of trust, good faith, and fair dealing, ~~and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner. The Parties shall each endeavor to promote harmony and cooperation among all Project participants.~~ The Design-Builder agrees to furnish or procure, as permitted by Law, the architectural and engineering services set forth below and the construction and administration of the Work.

2.1.1. The Design-Builder represents that it is an independent contractor and that it is familiar with the type of work it is undertaking.

2.1.2. ~~2.1.1~~ ~~Neither~~ Neither the Design-Builder nor any of its agents or employees shall act on behalf of or in the name of the Owner unless authorized in writing by the Owner's Representative.

2.1.3. ~~2.2~~ **ETHICS** ~~Each Party~~ The Parties shall perform their obligations with integrity. ~~Each shall, ensuring at a minimum that each:~~ (a) ~~avoid conflicts of interest;~~ (b) ~~promptly disclose to the other Party any a) avoids~~ conflicts of interest ~~which may arise.~~ Each or promptly discloses any to the other Party-, and (b) warrants that it has not and shall not pay ~~or nor~~ receive any contingent fees or gratuities to or from the other Party, including its agents, officers and employees, ~~Design Professional, Subcontractors, Subsubcontractors, Suppliers or Others~~ or others for whom they may be liable, to secure preferential treatment.

2.2. ~~2.3~~ **DESIGN PROFESSIONAL** Architectural and engineering services shall be procured from licensed, independent design professionals retained by the Design-Builder or furnished by licensed employees of the Design-Builder, as permitted by the Law. The person or entity providing architectural and engineering services shall be referred to as ~~Design Professional. If Design Professional is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between Design-Builder and the~~ Design Professional.

2.2.1. ~~2.3.1~~ **STANDARD OF CARE** The Design Professional shall furnish and provide the architectural and engineering services necessary to design the Project in accordance with the



Owner's requirements, as outlined in [the](#) Owner's Program and other relevant data defining the Project. The architectural and engineering services shall be performed in accordance with the standard of professional skill and care required for a Project of similar size, scope, and complexity, during the time in which the Services are provided.

2.2.2. [If the Design Professional is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between the Design-Builder and the Design Professional. The Design Professional for the Project is XXXX Design Professional Company.](#)

2.3. ~~2.4~~ DEFINITIONS

2.3.1. ~~2.4.1~~ "Agreement" means this ConsensusDocs 415 Standard Design-Build Agreement and General Conditions Between Owner and Design-Builder (Lump Sum Price), as modified, amendments, exhibits, addenda, and attachments made part of this Agreement upon its execution.

2.3.1.1. ~~2.4.1.1 EXHIBIT A: Agreement establishing Fast-Track Approach and Construction Schedule, EXHIBIT A: The Design Builder's Proposal; dated XXXXXX,~~

~~[] pages.~~

EXHIBIT B: Basis of Design/Owner's Program ~~;~~ [\(Included by reference\) and / or Specific Description XXXXXXXXX](#)

~~EXHIBIT C: Labor Relations.~~

2.3.2. ~~2.4.2~~ "Business Day" means all Days, except weekends and official federal or state holidays where the Project is located.

2.3.3. ~~2.4.3A~~ "Change Order" is a written order signed by [the](#) Owner and [the](#) Design-Builder after execution of this Agreement, indicating changes in the scope of the Work or Contract Time, including substitutions proposed by [the](#) Design-Builder and accepted by ~~Owner~~ [the Owner. Change Orders will be issued through the Owner's Oracle Primavera Unifier system.](#)

~~2.4.4 — "Construction Schedule" is the document prepared by Design-Builder that specifies the dates on which Design-Builder plans to begin and complete various parts of the construction phase services Work, and the Project, including dates on which information and approvals are required from Owner.~~

2.3.4. ~~2.4.5~~ The "Contract Documents" consist of those documents identified in section 14.1.

2.3.5. ~~2.4.6~~ The "Contract Time" is the period between the Date of Commencement and ~~total time authorized to achieve~~ Final Completion.

2.3.6. ~~2.4.7~~ "Day" means calendar day.

2.3.7. ~~2.4.8~~ "Date of Commencement" is as provided for in section 6.1.

2.3.8. ~~2.4.9~~ "Defective Work" is any portion of the Work not in conformance to the requirements of the Contract Documents.

2.3.9. ~~2.4.10~~ "Final Completion" occurs on the date when [the](#) Design-Builder's obligations under this Agreement are complete and accepted by [the](#) Owner and final payment becomes due and payable.

~~2.4.11 — A Hazardous Material is any substance or material identified now or in the future as hazardous under any Laws or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal or clean-up.~~



~~2.4.12 —“Interim Directive” is any written order containing Work instructions that is signed by Owner after execution this Agreement and before Substantial Completion to the Work directed by Owner.~~

2.3.10. “FADE” or “F.A.D.E.” is the acronym used to reference the University’s “Facility Asset Data Exchange” process. Details on the process, and the responsibilities of the parties to this Agreement can be found on the University’s website. Should the FADE process change in form or content during the course of the project, it does not relieve the Design-Builder from fully executing the work required to compile the asset information and complete the Asset Log. Refer to the following locations for the process outline and instructions:

<https://us.promapp.com/msu/Process/Minimode/Permalink/FiD6QFhsKRIThfdphYuAz8>

2.3.11. “GMP” is defined as “Guaranteed Maximum Price” and is the maximum amount the Owner will be required to pay for the completed project, when constructed according to approved Construction Documents, unless modified by Change Order.

2.3.12. ~~2.4.13~~ “Law” means a federal, state or local law, ordinance, code, rule, or regulation applicable to the Work with which “Laws” means federal, state, and local laws, ordinances, codes, rules, and regulations applicable to the Work with which the Design-Builder must comply that are enacted as of the Agreement date.

~~2.4.14 —“Others” means Owner’s other: (a) contractors/constructors, (b) suppliers, (c) subcontractors, subsubcontractors, or suppliers of (a) and (b); and others employed directly or indirectly by (a), (b), or (c) or any by any of them or for whose acts any of them may be liable.~~

2.3.13. A “Material Supplier” is a person or entity retained by the Design-Builder to provide material and equipment for the Work.

2.3.14. “Others” means other contractors and all persons at the Worksite who are not employed by the Design-Builder, its Subcontractors, or Material Suppliers.

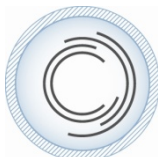
2.3.15. ~~2.4.15~~ “Overhead” shall mean (a) payroll costs and other compensation of Design-Builder’s employees in the Design-Builder’s principal and branch offices; (b) general and administrative expenses of the Design-Builder’s principal and branch offices including charges against the Design-Builder for delinquent payments; and (c) the Design-Builder’s capital expenses, including interest on capital used for the Work.

2.3.16. ~~2.4.16~~ The “Owner” is the person or entity identified in ARTICLE 1, and includes the Owner’s representative.

2.3.17. ~~2.4.17~~ The “Owner’s Program” is a description of the Owner’s objectives, budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements, together with Schematic Design Documents which shall include drawings, ~~outline specifications~~ the MSU Standards for Construction, and other conceptual documents illustrating the Project’s basic elements, scale, and their relationship to the Worksite.

2.3.18. ~~2.4.18~~ The “Parties” are collectively the Owner and Design-Builder.

2.3.19. ~~2.4.19~~ The “Project,” as identified in ARTICLE 1, is the building, facility, or other improvements for which the Design-Builder is to perform the Work under this Agreement. It may also include improvements to be undertaken by the Owner or Others.



~~2.4.20~~ —“Project schedule” A schedule that shows the timing and sequencing of the design and construction required to meet the time criteria set forth in Owner's Program. The Project includes the Construction Schedule and is coordinated with design phase service activities.

2.3.20. ~~2.4.21~~A “Subcontractor” is a person or entity retained by the Design-Builder as an independent contractor to provide the labor, materials, equipment, or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Design Professional or any separate contractor employed by the Owner or any separate contractor's subcontractors.

2.3.21. ~~2.4.22~~“Substantial Completion” of the Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended, without unscheduled disruption. The issuance of a certificate of occupancy is not a prerequisite for Substantial Completion if the certificate of occupancy cannot be obtained due to factors beyond the Design-Builder's control. This date shall be confirmed by a certificate of Substantial Completion signed by ~~The Parties, the Owner and Design-Builder.~~ The certificate shall state the respective responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work, and insurance. The certificate shall also list the items to be completed or corrected, and establish the time for their completion and correction within the timeframe, if any, established in subsection 6.2.3 for the Date of Final Completion.

2.3.22. ~~2.4.23~~ A “Subsubcontractor” ~~A “Sub-subcontractor”~~ is a party or entity who has an agreement with a Subcontractor or other ~~Subsubcontractor, or Supplier~~ Sub-subcontractor to perform any portion of the ~~Work or to supply material or equipment.~~ Subcontractor's work.

~~2.4.24~~ — A “Supplier” is a person or entity retained by Design-Builder to provide material and equipment for the Work.

2.3.23. ~~2.4.25~~“Terrorism” means a violent act, or an act that is dangerous to human life, property, or infrastructure, that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion. Terrorism includes, but is not limited to, any act certified by the United States Secretary of Treasury as an act of terrorism pursuant to the Terrorism Risk Insurance Act, as amended.

2.3.24. ~~2.4.26~~The “Work” is the design services procured in accordance with ~~§3.1~~section 3.1, the construction services provided in accordance with ~~§3.2~~section 3.2, additional services in accordance with ~~§3.11~~section 3.15, and other services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.~~The Work may refer to the whole Project or only a part of the Project if work is also being performed by Owner or Others.~~

2.3.25. ~~2.4.27~~“Worksite” means the geographical area of the Project location mentioned in ARTICLE 1 where the Work is to be performed.

ARTICLE 3 DESIGN-BUILDER'S RESPONSIBILITIES

The Design-Builder shall be responsible for procuring or furnishing the design and for the construction of the Work consistent with the Owner's Program. The Design-Builder shall exercise reasonable skill and judgment in the performance of the Work.

3.1. ~~3.1~~DESIGN SERVICES Pursuant to a mutually agreeable schedule, the Design-Builder shall submit for the Owner's written approval, as applicable, Design Development Documents ~~or~~and Construction



Documents, ~~based on the Contract Documents in existence at the time of the execution of this Agreement~~ or any further development of Contract Documents that have been approved in writing by the Owner.

3.1.1. ~~3.1.1~~ ~~If required, the~~ The Design Development Documents shall further define the Project, including drawings and outline specifications fixing and describing the Project size and character as to site utilization, and other appropriate elements incorporating the structural, architectural, mechanical, and electrical systems. When the Design-Builder submits the Design Development Documents, the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Contract Documents in existence at the time of the execution of this Agreement. Any changes in the Work contained in the Design Development Documents approved by the Owner shall ~~, at the option of the Owner,~~ result in a Change Order pursuant to ARTICLE 8 adjusting the Contract Price or the Date of Substantial Completion or the Date of Final Completion if the Owner elects to set the project GMP at the time of Design Development Document approval.

3.1.2. ~~3.1.2~~ The Construction Documents shall set forth in detail the requirements for construction of the Work, and shall be based upon codes, laws, or regulations enacted at the time of their preparation. When the Design-Builder submits the Construction Documents, the Design-Builder shall identify in writing all material changes and deviations that have taken place from the Design Development Documents ~~or the Contract Documents in existence at the time of the execution of this Agreement.~~ Any changes in the Work contained in the Construction Documents approved by the Owner shall result in a Change Order pursuant to ARTICLE 8 adjusting the Contract Price or the Date of Substantial Completion or the Date of Final Completion and shall be established as the GMP. Construction shall be in accordance with the approved Construction Documents. One set of these documents shall be furnished to the Owner before commencing construction.

3.1.3. ~~3.1.3~~ OWNERSHIP OF DOCUMENTS

3.1.3.1. ~~3.1.3.1~~ OWNERSHIP OF TANGIBLE DOCUMENTS The Owner shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data, and information (hereinafter "Documents") prepared, provided or procured by the Design-Builder, its Design Professional, Subcontractors, or consultants and distributed to the Owner for this Project, upon the making of final payment to the Design-Builder or in the event of termination under ARTICLE 11, upon payment for all sums due to Design-Builder pursuant to ARTICLE 11. ~~Owner's acquisition of the copyright shall be subject to Owner's making of all payments required by this Agreement.~~

3.1.3.2. ~~3.1.3.2~~ COPYRIGHT The Parties agree that Owner shall/ ~~shall not~~ obtain ownership of the copyright of all Documents. The Owner's acquisition of the copyright for all Documents shall be subject to the making of payments as required by ~~§3.1.3.1~~ subsection 3.1.3.1 and the payment of the fee reflecting the agreed value of the copyright set forth below:

If the Parties have not made a selection to transfer copyright interests in the Documents, the copyright shall remain with the Design-Builder.

3.1.3.3. ~~3.1.3.3~~ USE OF DOCUMENTS IN EVENT OF TERMINATION In the event of a termination of this Agreement pursuant to ARTICLE 11, the Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project, regardless of whether there has been a transfer of copyright under ~~§3.1.3.1,~~ subsection 3.1.3.1, provided payment has been made pursuant to ~~§3.1.3.4~~ subsection 3.1.3.1

3.1.3.4. ~~3.1.3.4~~ OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT After completion of the Project, the Owner may reuse, reproduce, or make derivative works



from the Documents solely for the purposes of maintaining, renovating, remodeling, or expanding the Project at the Worksite. The Owner's use of the Documents without the Design-Builder's involvement or on other projects is at the Owner's sole risk, except for the Design-Builder's indemnification obligations, and the Owner shall indemnify and hold harmless the Design-Builder, its Design Professional, Subcontractors, and consultants, and the agents, officers, directors, and employees of each of them, from and against any and all claims, damages, losses, costs, and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from any such prohibited use.

3.1.3.5. ~~3.1.3.5~~DESIGN-BUILDER'S USE OF DOCUMENTS Where the Design-Builder has transferred its copyright interest in the Documents under ~~§3.1.3.1, subsection 3.1.3.1, the~~ Design-Builder may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.

3.1.3.6. ~~3.1.3.6~~The Design-Builder shall obtain from its Design Professional, Subcontractors, and consultants rights and rights of use that correspond to the rights given by the Design-Builder to the Owner in this Agreement, and the Design-Builder shall provide evidence that such rights have been secured.

3.1.3.7. The Design-Builder shall prepare, according to the Owner's requirements, a Facility Asset Data Log to support the Owner's "Facility Asset Data Exchange" (FADE) initiative for major assets and space obtained through Capital Projects.

3.2. ~~3.2~~CONSTRUCTION SERVICES

3.2.1. ~~3.2.1~~Construction will commence upon the issuance by the Owner of a written notice to proceed.

3.2.2. TEMPORARY FACILITIES The Design-Builder shall make recommendations regarding temporary construction facilities, equipment, materials, and services for common use by the Design-Builder, its Subcontractors, Sub-subcontractors, and Material Suppliers.

3.2.3. ~~3.2.2~~In order to complete the Work, the Design-Builder shall provide all necessary construction supervision, inspection, construction equipment, construction labor, materials, tools, and subcontracted items.

3.2.4. ~~3.2.3~~COMPLIANCE WITH ~~LAW~~-LAWS The Design-Builder shall give all notices and comply with all Laws at its own costs. The Design-Builder shall be liable to the Owner for all loss, cost, and expense attributable to any acts or omissions by the Design-Builder, its employees, subcontractors, and agents resulting from the failure to comply with Laws, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if notice to Owner was given, and advance approval by appropriate authorities, including ~~Owner, is received.~~ the Owner, is received.

3.2.5. The Design Builder and each of its trade contractors and suppliers shall comply with the MSU Contractor Criminal Background Check Requirements, which can be found at the following location:

<https://usd.msu.edu/common/documents/criminal-back-ground-check.pdf>

~~3.2.3.1 ——— CHANGES IN LAW The Contract Price or Contract Time, or both shall be equitably adjusted by Change Order for additional costs or time needed resulting from any change in Law, including increased taxes, enacted after the date of this Agreement~~



3.2.6. ~~3.2.4~~The Design-Builder shall maintain the Schedule of Work. This schedule shall indicate the dates for the start and completion of the various stages of the construction, including the dates when information and approvals are required from the Owner. It shall be revised as required by the conditions of the Work.

3.2.7. ~~3.2.5~~The Design-Builder shall obtain and the Owner shall pay, in addition to the Contract Price, for the building permits necessary for the construction of the Project.

3.2.8. ~~3.2.6~~The Design-Builder shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. The Owner, upon request, shall be afforded access to and the right to examine all the Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to ~~Change Order work performed on the basis of actual cost.~~ this Agreement during normal business hours. The Design-Builder shall preserve all such records for a period of three years after the final payment or longer where required by law. The Design-Builder shall preserve all records relating to a claim arising out of the performance of this Agreement until the claim has been resolved. In the event that an examination of the Design-Builder's records discloses any payment error, the Design-Builder shall promptly refund any overpayment it has received. Further, if any governmental agency provides any funds for the Project, then the Design-Builder shall maintain such records and permit such audits of its records as are required by such governmental agency. This provision shall also apply to Subcontractors and Suppliers.

3.2.9. ~~3.2.7~~The Design-Builder shall provide periodic written reports to the Owner on the progress of the Work in such detail as is required by the Owner and as agreed to by ~~The Parties.~~ the Owner and Design-Builder.

3.2.10. The Design-Builder shall update, according to the Owner's requirements, the Facility Asset Data Log during construction.

3.2.11. ~~3.2.8~~The Design-Builder shall regularly remove debris and waste materials at the Worksite resulting from the Work. ~~Before~~ Prior to discontinuing Work in an area, the Design-Builder shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. The Design-Builder shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Design-Builder shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

3.2.12. ~~3.2.9~~The Design-Builder shall prepare and submit to the Owner either:

- final marked up as-built drawings
- updated electronic data

that generally document how the various elements of the Work including changes were actually constructed or installed, or as defined by the Parties by attachment to this Agreement.

3.3. ~~3.3~~ **CONSTRUCTION SCHEDULE OF THE WORK** The Design-Builder shall prepare and submit a Schedule of Work for the Owner's acceptance and written approval as to milestone dates. This schedule shall indicate the commencement and completion dates of the various stages of the Work, including the dates when information and approvals are required from the Owner. The Schedule shall be revised ~~on a monthly basis or as mutually agreed by the Parties.~~ as required by the conditions of the Work.

3.3.1. LONG-LEAD ITEMS The Design-Builder shall recommend to the Owner a schedule for procurement of long-lead-time items which will constitute part of the Work as required to



meet the Schedule of the Work. The Design-Builder shall help expedite the delivery of long-lead-time items.

3.4. ~~3.4~~ SAFETY OF PERSONS AND PROPERTY

3.4.1. ~~3.4.1~~ SAFETY PRECAUTIONS AND PROGRAMS The Design-Builder shall have overall responsibility for safety precautions and programs in the performance of the Work. However, such obligation does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with the provisions of Laws.

3.4.2. ~~3.4.2~~ The Design-Builder shall ~~prevent against~~ seek to avoid injury, loss, or damage to persons or property by taking reasonable steps to protect:

3.4.2.1. ~~3.4.2.1~~ its employees and other persons at the Worksite;

3.4.2.2. ~~3.4.2.2~~ materials, supplies, and equipment stored at the Worksite for use in performance of the Work; and

3.4.2.3. ~~3.4.2.3~~ the Project and all property located at the Worksite and adjacent to work areas, whether or not said property or structures are part of the Project or involved in the Work.

3.4.3. ~~3.4.3~~ DESIGN-BUILDER'S SAFETY REPRESENTATIVE The Design-Builder shall designate an individual at the Worksite in the employ of the Design-Builder who shall act as the Design-Builder's designated safety representative with a duty to prevent accidents. Unless otherwise identified by the Design-Builder in writing to the Owner, the designated safety representative shall be the Design-Builder's project superintendent. The Design-Builder will report immediately in writing all accidents and injuries occurring at the Worksite to the Owner. When the Design-Builder is required to file an accident report with a public authority, the Design-Builder shall furnish a copy of the report to the Owner.

3.4.4. ~~3.4.4~~ The Design-Builder shall provide the Owner with copies of all notices required of the Design-Builder by Law. The Design-Builder's safety program shall comply with the requirements of governmental and quasi-governmental authorities having jurisdiction over the Work.

3.4.5. ~~3.4.5~~ Damage or loss not insured under property insurance which may arise from the performance of the Work, to the extent of the negligence attributed to such acts or omissions of the Design-Builder, or anyone for whose acts the Design-Builder may be liable, shall be promptly remedied by the Design-Builder. Damage or loss attributable to the acts or omissions of the Owner or Others and not to the Design-Builder shall be promptly remedied by the Owner.

3.4.6. ~~3.4.6~~ If the Owner deems any part of the Work or Worksite unsafe, the Owner, without assuming responsibility for the Design-Builder's safety program, may require the Design-Builder to stop performance of the Work or take corrective measures satisfactory to the Owner, or both. If the Design-Builder does not adopt corrective measures, the Owner may perform them and reduce the amount of the Contract Price by the costs of the corrective measures. The Design-Builder agrees to make no claim for damages, for an adjustment in the Contract Price or the Date of Substantial Completion or the Date of Final Completion based on the Design-Builder's compliance with the Owner's reasonable request.

3.5. ~~3.5~~ EMERGENCIES In any emergency affecting the safety of persons or property, the Design-Builder shall act in a reasonable manner to prevent threatened damage, injury, or loss. Any change in the Contract Price, the Date of Substantial Completion, or the Date of Final Completion, and if appropriate the



compensation for Design Phase services, on account of emergency work shall be determined as a Change Order.

3.6. ~~3.6~~ HAZARDOUS MATERIAL

3.6.1. A Hazardous Material is any substance or material identified now or in the future as hazardous under any Laws, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal, or clean-up. ~~The 3.6.1~~ Design-Builder shall not be obligated to commence or continue Work until all Hazardous Material discovered at the Worksite has been removed, rendered, or determined to be harmless by the Owner as certified by an independent testing laboratory and approved by the appropriate government agency.

3.6.2. ~~3.6.2~~ If after commencing the Work, Hazardous Material is discovered at the Project, the Design-Builder shall be entitled to immediately stop Work in the affected area. The Design-Builder shall report the condition to the Owner and, if required, the government agency with jurisdiction. The stop work order shall be confirmed by issuance of a Construction Change Directive.

3.6.3. ~~3.6.3~~ The Design-Builder shall not ~~resume nor~~ be required to ~~continue perform~~ any Work ~~affected by any relating to or in the area of~~ Hazardous Material without written mutual agreement ~~between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency with jurisdiction~~ Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures or remedial action. Such measures shall be the sole responsibility of Owner, and shall be performed in a manner minimizing any adverse effect upon the Work.

3.6.4. The Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures or remedial action. Such measures shall be the sole responsibility of the Owner, and shall be performed in a manner minimizing any adverse effect upon the Work of the Design-Builder. The Design-Builder shall resume Work in the area affected by any Hazardous Material only upon written agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency or agencies with jurisdiction.

3.6.5. ~~3.6.4~~ If the Design-Builder incurs additional costs or is delayed due to the presence or remediation of Hazardous Material, the Design-Builder shall be entitled to an equitable adjustment in the Contract Price or the date of Substantial Completion.

3.6.6. ~~3.6.5~~ To the extent not caused by the negligent ~~or intentionally wrongful~~ acts or omissions of the Design-Builder, its Subcontractors and ~~Subsubcontractors, Sub-subcontractors,~~ and the agents, officers, directors, and employees of each of them, the Owner shall indemnify and hold harmless the Design-Builder, its Subcontractors and ~~Subsubcontractors, Sub-subcontractors,~~ and the agents, officers, directors, and employees of each of them, from and against all claims, damages, losses, costs, and expenses, including but not limited to reasonable attorneys' fees, costs, and expenses incurred in connection with any dispute resolution process, to the extent permitted pursuant to ~~§6.5~~ section 6.5, arising out of or relating to the performance of the Work in any area affected by Hazardous Material.

3.6.7. ~~3.7~~ Safety Data Sheets (SDS) as required by law and pertaining to materials or substances used or consumed in the performance of the Work, whether obtained by the Design-Builder,



Subcontractors, the Owner or Others, shall be maintained at the Project by the Design-Builder and made available to the Owner and Subcontractors.

3.6.8. ~~3.7.4~~ During the Design-Builder's performance of the Work, the Design-Builder shall be responsible for the proper handling, ~~application, storage, removal, and disposal~~ of all materials brought to the Worksite by the Design-Builder. Upon the issuance of the Certificate of Substantial Completion, the Owner shall be responsible under this section for materials and substances brought to the ~~Worksite by site by the~~ Design-Builder if such materials or substances are required by the Contract Documents.

3.6.9. ~~3.7.2~~ ~~§3.6~~ Section 3.6 shall survive the completion of the Work under this Agreement or any termination of this Agreement.

3.7. SUBMITTALS

3.7.1. The Design-Builder shall submit to the Owner all shop drawings, samples, product data, and similar submittals required by the Contract Documents for review and approval. Submittals shall be submitted in electronic form if required in accordance with subsection 4.6.1. Submittals shall be recorded and tracked through the Owner's Oracle Primavera Unifier system. The Design-Builder shall be responsible for the accuracy and conformity of its submittals to the Contract Documents. At no additional cost, the Design-Builder shall prepare and deliver its submittals in such time and sequence so as not to delay the performance of the Work or the work of the Owner and Others. The Design-Builder's submittals shall identify in writing for each submittal all changes, deviations, or substitutions from the requirements of the Contract Documents. The review and approval of any Design-Builder submittal shall not be deemed to authorize changes, deviations, or substitutions from the requirements of the Contract Documents unless express written approval is obtained from the Owner specifically authorizing such deviation, substitution, or change. To the extent a change, deviation, or substitution causes an impact to the Contract Price or Contract Time, such approval shall be promptly memorialized in a Change Order. The Owner shall not make any change, deviation, or substitution through the submittal process without specifically identifying and authorizing such deviation to the Design-Builder. If the Contract Documents do not contain submittal requirements pertaining to the Work, the Design-Builder agrees upon request to submit in a timely fashion to the Owner for review any shop drawings, samples, product data, manufacturers' literature, or similar submittals as may reasonably be required by the Owner.

3.7.2. The Owner shall be responsible for review and approval of submittals with reasonable promptness to avoid causing delay. Processing of submittals shall be in accordance with the Owner's submittal process in Oracle Primavera Unifier.

3.7.3. The Design-Builder shall perform all Work strictly in accordance with approved submittals. Approval of shop drawings is not an authorization to perform changed work, unless the procedures of ARTICLE 8 are followed. Approval does not relieve the Design-Builder from responsibility for Defective Work resulting from errors or omissions on the approved shop drawings.

3.7.4. Record copies of the following, incorporating field changes and selections made during construction, shall be maintained on a current basis at the Worksite and available to the Owner upon request: drawings, specifications, addenda and other modifications, and required submittals including product data, samples, and shop drawings.



3.7.5. No substitutions shall be made in the Work unless permitted in the Contract Documents and then only after the Design-Builder obtains approvals required under the Contract Documents for substitutions. Substitutions resulting in cost increases/decreases shall be memorialized by a Change Order. The Design-Builder shall prepare and submit to the Owner final as-built drawings and records in the format designated in Division 1 of the MSU Construction Standards.

3.8. WORKSITE CONDITIONS

3.8.1. WORKSITE VISIT The Design-Builder acknowledges that it has visited, or has had the opportunity to visit, the Worksite to visually inspect the general and local conditions which could affect the Work.

3.9. CLEANING UP

3.9.1. The Design-Builder shall regularly remove debris and waste materials at the Worksite resulting from the Work. Prior to discontinuing Work in an area, the Design-Builder shall clean the area and remove all rubbish and its construction equipment, tools, machinery, waste, and surplus materials. The Design-Builder shall minimize and confine dust and debris resulting from construction activities. At the completion of the Work, the Design-Builder shall remove from the Worksite all construction equipment, tools, surplus materials, waste materials, and debris.

3.9.2. If the Design-Builder fails to commence compliance with cleanup duties within two (2) Business Days after written notification from the Owner of non-compliance, the Owner may implement appropriate cleanup measures without further notice and the cost shall be deducted from any amounts due or to become due the Design-Builder in the next payment period.

3.10. ACCESS TO WORK The Design-Builder shall facilitate the access of the Owner to Work in progress.

3.11. COMPLIANCE WITH LAWS The Design-Builder shall comply with all Laws at its own costs. The Design-Builder shall be liable to the Owner for all loss, cost, or expense attributable to any acts or omissions by the Design-Builder, its employees, subcontractors, and agents for failure to comply with Laws, including fines, penalties, or corrective measures. However, liability under this subsection shall not apply if notice to the Owner is given and advance approval by appropriate authorities, including the Owner, is received.

3.12. ~~3.8~~ WARRANTY

3.12.1. ~~3.8.1~~ The Design-Builder warrants that all materials and equipment furnished under this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Warranties shall commence on the date of Substantial Completion of the Work or of a designated portion.

3.12.2. ~~3.8.2~~ To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by the Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face thereof. To the extent products, equipment, systems, or materials incorporated in the Work are specified by the Owner but purchased by the Design-Builder and are inconsistent with selection



criteria that otherwise would have been followed by the Design-Builder, the Design-Builder shall assist the Owner in pursuing warranty claims. ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.

3.12.3. ~~3-8-3~~ The Design-Builder shall secure required certificates of inspection, testing, or approval and deliver them to the Owner.

3.12.4. ~~3-8-4~~ The Design-Builder shall collect all written warranties and equipment manuals and deliver them to the Owner in a format directed by the Owner.

3.12.5. ~~3-8-5~~ With the assistance of the Owner's maintenance personnel, the Design-Builder shall direct the checkout of utilities and start-up operations, and adjusting and balancing of systems and equipment for readiness.

3.13. ~~3-9~~ CORRECTION OF WORK WITHIN ONE YEAR

3.13.1. ~~3-9-1~~ Before ~~if, prior to~~ Substantial Completion and within one year after the date of Substantial Completion of the Work or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents, ~~if~~ any Defective Work is found, the Owner shall promptly notify the Design-Builder in writing. Unless the Owner provides written acceptance of the condition, the Design-Builder shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period the Owner discovers and does not promptly notify the Design-Builder or give the Design-Builder an opportunity to test or correct Defective Work as reasonably requested by the Design-Builder, the Owner waives the Design-Builder's obligation to correct that Defective Work as well as the Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.13.2. ~~3-9-2~~ With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall ~~commence when that portion of Work is complete~~ be extended by the period of time between Substantial Completion and the actual performance of the later Work. Correction periods shall not be extended by corrective work performed by the Design-Builder.

3.13.3. ~~3-9-3~~ If the Design-Builder fails to correct Defective Work within a reasonable time after receipt of written notice from the Owner ~~before~~ prior to final payment, the Owner may correct it in accordance with the Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting such deficiencies from payments then or thereafter due the Design-Builder. If payments then or thereafter due Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

3.13.4. ~~3-9-4~~ The Design-Builder's obligations and liability, if any, with respect to any Defective Work discovered after the one-year correction period shall be determined by the Law. If, after the one-year correction period but before the applicable limitation period has expired, the Owner discovers any Work which the Owner considers Defective Work, the Owner shall, unless the Defective Work requires emergency correction, promptly notify the Design-Builder and allow the Design-Builder an opportunity to correct the Work if the Design-Builder elects to do so. If the Design-Builder elects to correct the Work, it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from the Owner and shall complete the correction of Work within a mutually agreed timeframe. If the Design-Builder does not elect to correct the Work, the Owner may have the Work corrected by itself or Others, and, if the Owner intends to seek recovery of those costs from the Design-Builder, the Owner shall promptly provide the Design-Builder with an accounting of the correction costs it incurs.



3.13.5. ~~3-9.5~~ If the Design-Builder's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing buildings, the Design-Builder shall be responsible for the cost of correcting the destroyed or damaged property.

3.13.6. ~~3-9.6~~ The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of the Design-Builder's other obligations under the Contract Documents.

3.13.7. ~~3-9.7~~ ~~Before~~ Prior to final payment, at the Owner's option and with the Design-Builder's agreement, the Owner may elect to accept Defective Work rather than require its removal and correction. In such case the Contract Price shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

3.14. ~~3-10~~ CONFIDENTIALITY The Design-Builder shall treat as confidential and not disclose to third-persons, except Subcontractors, ~~Subsubcontractors, and Sub-subcontractors, and the~~ Design Professional as is necessary for the performance of the Work, or use for its own benefit any of the Owner's developments, confidential information, know-how, discoveries, production methods, and the like that may be disclosed to the Design-Builder or which the Design-Builder may acquire in connection with the Work. The Owner shall treat as confidential information all of the Design-Builder's estimating systems and historical and parameter cost data that may be disclosed to the Owner in connection with the performance of this Agreement. The ~~Parties~~ Owner and the Design-Builder shall each specify those items to be treated as confidential and shall mark them as "Confidential." ~~Confidentiality obligations do not supersede compulsion by Law, a governmental agency or authority, an order of a court of competent jurisdiction, or a validly issued subpoena. In such event, a Party shall promptly notify the other Party to permit that Party's legal objection.~~

3.15. ~~3-11~~ ADDITIONAL SERVICES The Design-Builder shall provide or procure the following Additional services upon the request of the Owner. A written agreement between ~~The Parties~~ the Owner and Design-Builder shall define the extent of such Additional services. Such Additional services shall be considered a Change in the Work, unless they are specifically included in ~~§3.1 or §3.2~~ sections 3.1 or 3.2.

3.15.1. ~~3-11.1~~ ~~Assisting in the developing~~ development of the Owner's Program, establishing the Project budget, investigating sources of financing, general business planning, and other information and documentation as may be required to establish the feasibility of the Project;

3.15.2. ~~3-11.2~~ ~~Consultations,~~ consultations, negotiations, and documentation supporting the procurement of Project financing;

3.15.3. ~~3-11.3~~ ~~Surveys,~~ surveys, site evaluations, legal descriptions, and aerial photographs;

3.15.4. ~~3-11.4~~ ~~Appraisals~~ appraisals of existing equipment, existing properties, new equipment, and developed properties;

3.15.5. ~~3-11.5~~ ~~Soils,~~ soils, subsurface, and environmental studies, reports, and investigations required for submission to governmental authorities or others having jurisdiction over the Project;

3.15.6. ~~3-11.6~~ ~~Consultations~~ consultations and representations before governmental authorities or others having jurisdiction over the Project other than normal assistance in securing building permits;

3.15.7. ~~3-11.7~~ ~~Investigation~~ investigation or making measured drawings of existing conditions or the verification of Owner-provided drawings and information;



- 3.15.8. ~~3.11.8~~ ~~Artistic~~ artistic renderings, models, and mockups of the Project or any part of the Project or the Work;
- 3.15.9. ~~3.11.9~~ ~~Inventories~~ inventories of existing furniture, fixtures, furnishings, and equipment which might be under consideration for incorporation into the ~~Project;~~ Work;
- 3.15.10. ~~3.11.10~~ ~~Interior~~ interior design and related services including procurement and placement of furniture, furnishings, artwork, and decorations;
- 3.15.11. ~~3.11.11~~ ~~Making~~ making revisions to design documents after they have been approved by the Owner when revisions are due to causes beyond the control of the Design-Builder. Causes beyond the control of the Design-Builder do not include acts or omissions on the part of Subcontractors, ~~Subsubcontractors, or~~ Sub-subcontractors, or the Design Professional;
- 3.15.12. ~~3.11.12~~ ~~Design,~~ design, coordination, management, expediting, and other services supporting the procurement of materials to be obtained, or work to be performed, by the Owner, including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems, and other specialty systems which are not a part of this Agreement;
- 3.15.13. ~~3.11.13~~ ~~Estimates,~~ estimates, proposals, appraisals, consultations, negotiations, and services in connection with the repair or replacement of an insured loss, provided such repair or replacement did not result from the negligence of the Design-Builder;
- 3.15.14. ~~3.11.14~~ ~~The~~ the premium portion of overtime work ordered by the Owner including productivity impact costs, other than that required by the Design-Builder to maintain the Schedule of Work;
- 3.15.15. ~~3.11.15~~ ~~Out-of-town~~ out-of-town travel by the Design Professional in connection with the Work, except between the Design Professional's office, Design-Builder's office, Owner's office, and the Project site;
- ~~3.11.16 — Obtaining service contractors and training maintenance personnel; assisting and consulting in the use of systems and equipment after the initial startup;~~
- 3.15.16. ~~3.11.17~~ ~~Services~~ services for tenant or rental spaces not ~~required by a part of~~ this Agreement;
- 3.15.17. ~~3.11.18~~ ~~services~~ requested by the Owner or required by the Work which are not specified in the Contract Documents and which are not normally part of generally accepted design and construction practice;
- 3.15.18. ~~3.11.19~~ ~~Except when Design Professional is a party to the proceeding,~~ serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project;
- 3.15.19. ~~3.11.20~~ document reproduction exceeding the limits provided for in this Agreement;
- 3.15.20. ~~3.11.21~~ providing services relating to Hazardous Material discovered at the Worksite; and
- ~~3.11.22 — acting as a Green Building Facilitator as identified in the ConsensusDocs 310 Green Building Addendum or separate addenda, which, at a minimum, shall include: (a) coordinating and facilitating the achievement of elected green measures and green status, such as achieving Leadership in Energy and Environmental Design "LEED" certification; (b) identifying, preparing, and~~



~~submitting necessary documentation for elected green status; and (c) identifying project participants responsible to complete physical and procedural green measures;~~

~~3.11.23—performing formal commissioning services; and~~

3.15.21. ~~3.11.24~~ other services as agreed to by the Parties and identified in an attached exhibit.

3.16. ~~3.12~~ DESIGN-BUILDER'S REPRESENTATIVE The Design-Builder shall designate a person who shall be the Design-Builder's authorized representative. The Design-Builder's Representative is ~~_____~~ XXXX XXXXX. The Design-Builder's Representative shall possess full authority to receive instructions from the Owner and to act on those instructions. The Design Builder shall not change its representative or their authority without prior written approval from the Owner, which approval shall not unreasonably be withheld.

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1. ~~4.1~~ INFORMATION AND SERVICES PROVIDED BY OWNER

The Owner's responsibilities under this article shall be provided with reasonable detail and in a timely manner.

~~4.2—FINANCIAL INFORMATION Before commencing the Work and thereafter at the written request of Design-Builder, Owner shall provide Design-Builder evidence of Project financing. Evidence of such financing shall be a condition precedent to Design-Builder's commencing or continuing the Work. Design-Builder shall be notified before any material change in Project financing.~~

4.2. ~~4.3~~ WORKSITE INFORMATION To the extent the Owner has obtained, or is required elsewhere in the Contract Documents to obtain, the following Worksite information, the Owner shall provide at the Owner's expense and with reasonable promptness:

4.2.1. ~~4.3.1~~ information describing the physical characteristics of the site, including surveys, site evaluations, legal descriptions, data, or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available services, lines at the Worksite and adjacent thereto, and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used by the Design-Builder in laying out the Work;

4.2.2. ~~4.3.2~~ tests, inspections, and other reports dealing with environmental matters, Hazardous Material, and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or by Law; and

~~4.3.3 the limits of Pollution Liability Insurance covering the Worksite held by Owner; and~~

4.2.3. ~~4.3.4~~ any other information or services requested in writing by the Design-Builder which are required for Design-Builder's performance of the Work and under the Owner's control.



4.3. ~~4.4~~MECHANICS AND CONSTRUCTION LIEN INFORMATION ~~Within seven (7) Days after receiving Design-Builder's written request, Owner shall provide Design-Builder with the information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include Owner's interest in the real property on which the Project is located and the record legal title.~~

4.4. ~~4.5~~RESPONSIBILITIES DURING DESIGN

4.4.1. ~~4.5.1~~The Owner shall review and approve further development of the drawings and specifications as set forth in ARTICLE 3.

4.5. ~~4.6~~RESPONSIBILITIES DURING CONSTRUCTION

4.5.1. ~~4.6.1~~The Owner shall review the ~~Construction~~ Schedule of Work, timely approve milestone dates set forth, and timely respond to its obligations.

4.5.2. ~~4.6.2~~If the Owner becomes aware of any error, omission, or failure to meet the requirements of the Contract Documents or any fault or defect in the Work, the Owner shall give prompt written notice to the Design-Builder. The failure of the Owner to give such notice shall not relieve the Design-Builder of its obligations to fulfill the requirements of the Contract Documents.

4.5.3. ~~4.6.3~~The Owner shall have no contractual obligations to Subcontractors, suppliers, or the Design Professional.

~~4.6.4 Owner shall provide insurance for the Project as provided in ARTICLE 10.~~

4.6. OWNER'S REPRESENTATIVE The Owner's representative is ~~XXXXX XXXXXX~~. The representative:

4.6.1. shall be fully acquainted with the Project;

4.6.2. agrees to furnish the information and services required of the Owner pursuant to section 4.2 so as not to delay the Design-Builder's Work; and

4.6.3. shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization, or written notice. If the Owner changes its representative or the representative's authority as listed above, the Owner shall notify the Design-Builder in writing in advance.

4.7. ~~4.7~~TAX EXEMPTION If in accordance with the Owner's direction the Design-Builder claims an exemption for taxes, the Owner shall indemnify and hold the Design-Builder harmless from all liability, penalty, interest, fine, tax assessment, attorneys' fees, or other expense or cost incurred by the Design-Builder as a result of any action taken by the Design-Builder in accordance with the Owner's direction.

4.8. ~~4.8~~ELECTRONIC DOCUMENTS If the Owner requires that ~~The Parties~~ the Owner and Design-Builder exchange documents and data in electronic or digital form, ~~before~~ prior to any such exchange, ~~The Parties~~ the Owner and Design-Builder shall agree on a written protocol governing all exchanges ~~in ConsensusDocs 200.2 or a separate agreement~~, which, at a minimum, shall specify: (a) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (b) management and coordination responsibilities; (c) necessary equipment, software, and services; (d) acceptable formats, transmission methods, and verification procedures; (e) methods for maintaining version control; (f) privacy and security requirements; and (g) storage and retrieval requirements. The Parties shall each bear their own costs for the requirements identified in the protocol.



In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

~~4.9 Owner's Representative is [_____]. Owner's representative shall: (a) be fully acquainted with the Project; (b) agree to furnish the information and services required of Owner in a timely manner; and (c) have the authority to bind Owner in all matters requiring Owner's approval, authorization or written notice. If Owner changes its representative or the representative's authority as listed above, Owner shall notify Design-Builder in writing in advance.~~

ARTICLE 5 SUBCONTRACTS

Work not performed by the Design-Builder with its own forces shall be performed by Subcontractors or the Design Professional.

5.1. RETAINING SUBCONTRACTORS The Design-Builder shall not retain any Subcontractor ~~or Supplier~~ to whom the Owner has a reasonable and timely objection, provided that the Owner agrees to increase the Contract Price for any additional costs incurred by the Design-Builder as a result of such objection. The Owner may propose subcontractors to be considered by the Design-Builder. The Design-Builder shall not be required to retain any subcontractor to whom the Design-Builder has a reasonable objection.

5.2. MANAGEMENT OF SUBCONTRACTORS The Design-Builder shall be responsible for the management of the Subcontractors in the performance of their work.

5.3. CONTINGENT ASSIGNMENT OF SUBCONTRACT AGREEMENTS

5.3.1. If this Agreement is terminated, each subcontract agreement shall be assigned by the Design-Builder to the Owner, subject to the prior rights of any surety, provided that:

5.3.1.1. this Agreement is terminated by the Owner pursuant to ~~§11.2 or §11.3~~ sections 11.2 or 11.2.7; and

5.3.1.2. the Owner accepts such assignment, after termination by notifying the Subcontractor and Design-Builder in writing, ~~and~~ and assumes all rights and obligations of the Design-Builder pursuant to each subcontract ~~or supply~~ agreement.

5.3.2. If the Owner accepts such an assignment, and the Work has been suspended for more than thirty (30) consecutive Days, following termination, if appropriate, ~~Subcontractor's or Supplier's~~ the Subcontractor's compensation shall be equitably adjusted as a result of the suspension.

5.4. BINDING OF SUBCONTRACTORS AND MATERIAL SUPPLIERS The Design-Builder agrees to bind every Subcontractor and Material Supplier (and require every Subcontractor to so bind its Subsubcontractors and ~~significant~~ Material Suppliers) to all the provisions of this Agreement and the Contract Documents as they apply to the Subcontractors' applicable provisions to that portion and Material Suppliers' portions of the Work.

5.5. I.R.S. FORM SS-8 Before any person, including a sole proprietor operating under an assumed name, becomes a Subcontractor, Sub-subcontractor, or performs any Work, the Design-Builder shall deliver to the Owner the information required by Parts II, III, and IV of IRS Form SS-8 with respect to such person.

ARTICLE 6 CONTRACT TIME



6.1. DATE OF COMMENCEMENT The Date of Commencement is the Agreement date in ARTICLE 1 unless otherwise set forth below []. The Work shall proceed in general accordance with the **Project Schedule** ~~which of Work as such schedule~~ may be amended ~~in accordance with~~ from time to time, subject, however, to other provisions of this Agreement.

6.2. SUBSTANTIAL COMPLETION/FINAL COMPLETION

6.2.1. The Date of Substantial Completion of the Work is XXXXXXXX DATE, subject to adjustments as provided for in the Contract Documents.

6.2.2. Time is of the essence for this Agreement and Contract Documents.

6.2.3. ~~shall be achieved in [] ([]) Days from the Date of Commencement. Unless otherwise specified, the Work shall be finally complete within [] ([]) Days after the date of Substantial Completion~~ The Date of Final Completion of the Work is XXXXXXXX DATE, subject to adjustments as provided for in the Contract Documents.

~~6.2.2. — Time is of the essence with regards to the obligations of the Contract Documents.~~

~~6.2.3. — The Date of Final Completion of the Work is [] or within [] ([]) Days after the Date of Substantial Completion, subject to adjustments as provided for in the Contract Documents.~~

6.2.4. Unless ~~otherwise~~ instructed by ~~an Interim Directive, the Owner in writing, the~~ Design-Builder shall not knowingly commence the Work before the effective date of insurance that is required to be provided by the Design-Builder and the Owner.

6.3. DELAYS AND EXTENSIONS OF TIME

6.3.1. If the Design-Builder is delayed at any time in the commencement or progress of the Work by any cause beyond the control of the Design-Builder, the Design-Builder shall be entitled to an equitable extension of the Date of Substantial Completion or the Date of Final Completion. Examples of causes beyond the control of the Design-Builder include, but are not limited to, the following: (a) acts or omissions of the Owner or Others; (b) changes in the Work or the sequencing of the Work ordered by the Owner, or arising from decisions of the Owner that impact the time of performance of the Work; (c) encountering Hazardous Materials, or concealed or unknown conditions; (d) delay authorized by the Owner pending dispute resolution or suspension by the Owner under ~~§12.1~~ Section 12.1; (e) transportation delays not reasonably foreseeable; (f) labor disputes not involving the Design-Builder; (g) general labor disputes impacting the Project but not specifically related to the Worksite; (h) fire; (i) Terrorism; (j) epidemics; (k) adverse governmental actions, (l) unavoidable accidents or circumstances; (m) adverse weather conditions not reasonably anticipated. The Design-Builder shall process any requests for equitable extensions of the Date of Substantial Completion or the Date of Final Completion in accordance with the provisions of ARTICLE 8.

6.3.2. In addition, if Construction Manager incurs additional costs as a result of a delay that is caused by items (a) through (d) immediately above, Design Builder shall be entitled to an equitable adjustment in the GMP subject to §7.

6.3.3. In the event delays to the project are encountered for any reason, the Parties agree to undertake reasonable steps to mitigate the effect of such delays.

6.4. LIQUIDATED DAMAGES



6.4.1. SUBSTANTIAL COMPLETION The ~~Parties~~ Owner and the Design-Builder agree that this Agreement [] shall/ [] shall not provide for the imposition of liquidated damages based on the Date of Substantial Completion.

6.4.1.1. The Design-Builder understands that if the Date of Substantial Completion ~~established by Amendment No. 1~~, as may be amended by subsequent Change Order, is not attained, the Owner will suffer damages which are difficult to determine and accurately specify. The Design-Builder agrees that if the Date of Substantial Completion is not attained, the Design-Builder shall pay the Owner [] dollars (\$[]) as liquidated damages and not as a penalty for each Day that Substantial Completion extends beyond the Date of Substantial Completion. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages of whatsoever nature incurred by the Owner which are occasioned by any delay in achieving the Date of Substantial Completion.

6.4.2. FINAL COMPLETION The Owner and the Design-Builder agree that this Agreement [] shall/ [] shall not provide for the imposition of liquidated damages based on the Date of Final Completion.

6.4.2.1. The Design-Builder understands that if the Date of Final Completion ~~established by this Amendment No. 1 is~~ not attained, the Owner will suffer damages which are difficult to determine and accurately specify. The Design-Builder agrees that if the Date of Final Completion is not attained, the Design-Builder shall pay the Owner [] dollars (\$[]) as liquidated damages for each Day that Final Completion extends beyond the Date of Final Completion. The liquidated damages provided herein shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages of whatsoever nature incurred by the Owner which are occasioned by any delay in achieving the Date of Final Completion.

6.4.3. OTHER LIQUIDATED DAMAGES The Owner and the Design-Builder may agree upon the imposition of liquidated damages based on other project milestones or performance requirements. Such agreement shall be included as an exhibit to this Agreement.

6.5. LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for damages mutually agreed upon by the Parties as liquidated damages in ~~§6.4 section 6.4~~ and excluding losses covered by insurance required by the Contract Documents, the Owner and the Design-Builder agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below. The Owner agrees to waive damages including but not limited to the Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit, or financing related to the Project, as well as the loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, loss of reputation, or insolvency. The Design-Builder agrees to waive damages including but not limited to loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency.

6.5.1. The following items of damages are excluded from this mutual waiver: None.

6.5.2. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination. The Owner and the Design-Builder shall require similar waivers in contracts with Subcontractors and Others retained for the Project.

ARTICLE 7 CONTRACT PRICE



~~The Contract Price is [] dollars (\$[]) subject to adjustment as provided in ARTICLE 8.~~
The Contract Price is (INSERT PRICE IN NUMBERS AND WORDS AND REVISE PARAGRAPH AS NECESSARY FOR PROJECT) for the Pre-construction Phase, which includes Construction Documents and Bidding. The Owner shall have the option to establish the GMP upon Board of Trustee approval for the project in XXXXX DATE, based upon the DATE proposal submitted by the Design-Builder, or later in accordance with the terms of this Agreement. Upon acceptance and incorporation by Change Order, the accepted GMP will be the final Contract Price, and only subject to further adjustment in accordance with the provisions of ARTICLE 8.

ARTICLE 8 CHANGES IN THE WORK

Changes in the Work which are within the general scope of this Agreement may be accomplished without invalidating this Agreement by Change Order, Interim ~~Directive, Directed Change,~~ or a minor change in the Work, subject to the limitations stated in the Contract Documents.

8.1. CHANGE ORDERS

8.1.1. ~~The~~ Design-Builder may request or ~~the~~ Owner, without invalidating this Agreement, may order changes in the Work within the general scope of the Contract Documents consisting of adjustment to the Contract Price or the Date of Substantial Completion or the Date of Final Completion. All such changes in the Work shall be authorized by applicable Change Order, ~~and~~ processed in accordance with this article. Each adjustment in the Contract Price resulting from a Change Order shall clearly separate the amount attributable to Design services.

8.1.2. The ~~Parties~~ Owner and the Design-Builder shall negotiate an appropriate adjustment to Contract Price or the Date of Substantial Completion or the Date of Final Completion in good faith and conclude negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the Contract Price or the Date of Substantial Completion or the Date of Final Completion shall not be unreasonably withheld.

8.1.3. NO OBLIGATION TO PERFORM ~~The~~ Design-Builder shall not be obligated to perform changes in the Work until a Change Order has been executed or a written ~~Interim~~ Construction Change Directive has been issued.

8.2. ~~INTERIM~~ CONSTRUCTION CHANGE DIRECTIVE

8.2.1. ~~The~~ Owner may issue ~~an Interim a written Construction Change~~ Directive directing a change in the Work ~~before agreeing on an prior to reaching agreement with the Design-Builder on the~~ adjustment, if any, in the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate, the compensation for Design services ~~or directing Design-Builder to perform Work that Owner believes is not a change. If the Parties disagree that the Interim Directed work is within the scope of the Work, Design-Builder shall perform the disputed Work and furnish Owner with an estimate of the costs to perform the disputed work in accordance with Owner's interpretations.~~

8.2.2. ~~The Parties~~ The Owner and the Design-Builder shall negotiate expeditiously and in good faith for appropriate adjustments, as applicable, to the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design services, arising out of Interim ~~Directive~~ Directed Changes. As the changed work is completed, the Design Builder shall submit its costs for such work with its Application for Payment beginning with the next Application for Payment within thirty (30) Days of the issuance of the Interim ~~Directive.~~



~~Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of the Work. Directed Change. Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment and shall be paid by Owner.~~

8.2.3. ~~If the Parties~~ If the Owner and the Design-Builder agree upon the adjustments in the Contract Price or the Date of Substantial Completion or the Date of Final Completion, and if appropriate, the compensation for Design services, for a change in the Work directed by an Interim ~~Directive, Directed Change,~~ such agreement shall be the subject of an appropriate Change Order. The Change Order shall include all outstanding Interim ~~Directives Directed Changes~~ issued since the last Change Order.

8.3. MINOR CHANGES IN THE WORK

8.3.1. The Design-Builder may make minor changes in the design and construction of the Project consistent with the intent of the Contract Documents which do not involve an adjustment in the Contract Price or the Date of Substantial Completion or the Date of Final Completion; and do not materially and adversely affect the design of the Project, the quality of any of the materials or equipment specified in the Contract Documents, the performance of any materials, equipment, or systems specified in the Contract Documents, or the quality of workmanship required by the Contract Documents.

8.3.2. The Design-Builder shall promptly inform the Owner in writing of any such changes and shall record such changes on the Design-Build Documents maintained by the Design-Builder.

~~8.4. CONCEALED OR UNKNOWN SITE CONDITIONS If a condition encountered at the Worksite are (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, Design-Builder shall stop affected Work after the concealed or unknown condition is first observed and give prompt written notice of the condition to Owner. Owner shall investigate and then issue an Interim Directive specifying the extent to which Owner agrees that a concealed or unknown condition exists and directing how Design-Builder is to proceed. Design-Builder shall not be required to perform any Work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the Contract Price or Contract Time as a result of the condition, including any dispute about its existence or nature, shall be determined as provided in this ARTICLE 8.~~

8.4. ~~8.5.~~ DETERMINATION OF COST

8.4.1. ~~8.5.1.~~ An increase or decrease in the Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

8.4.1.1. ~~8.5.1.1.~~ unit prices set forth in this Agreement or as subsequently agreed;

8.4.1.2. ~~8.5.1.2.~~ a mutually accepted, itemized lump sum; or

~~8.5.1.3. — COST OF THE WORK Cost of the Work as defined by this §8.3.1.3 plus []% for Overhead and []% for profit. "Cost of the Work" shall include the following costs reasonably incurred to perform a change in the Work:~~

~~8.4.1.3. if an increase or decrease cannot be agreed to as set forth in subsection 8.4.1.1 or 8.4.1.2 and the Owner issues a written order for the Design-Builder to proceed with the change, the adjustment in the Contract Price shall be determined by the reasonable expense incurred and savings realized in the performance of the Work resulting from the change. If~~



there is a net increase in the Contract Price, a reasonable adjustment shall be made in the Design-Builder's overhead and profit. In the case of a net decrease in cost, the amount of decrease in the Contract Price will not include a reduction in overhead and profit. The Design-Builder shall maintain a documented, itemized accounting evidencing the expenses and savings.

~~8.5.1.3.1. — Labor wages directly employed by Design-Builder performing the Work;~~

~~8.5.1.3.2. — Salaries of Design-Builder's employees when stationed at the field office to the extent necessary to complete the applicable Work, employees engaged on the road expediting the production or transportation of material and equipment, and supervisory employees from the principal or branch office as mutually agreed by the Parties in writing;~~

~~8.5.1.3.3. — Cost of applicable employee benefits and taxes, including but not limited to, workers' compensation, unemployment compensation, social security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under Design-Builder's standard personnel policy, insofar as such costs are paid to employees of Design-Builder who are included in the Cost of the Work in §8.5.1.3.4 and §8.5.1.3.2;~~

~~8.5.1.3.4. — Reasonable transportation, travel, and hotel expenses of Design-Builder's personnel incurred in connection with the Work;~~

~~8.5.1.3.5. — Cost of all materials, supplies, and equipment incorporated in the Work, including costs of inspection and testing if not provided by Owner, transportation, storage, and handling;~~

~~8.5.1.3.6. — Payments made by Design-Builder to Subcontractors for performed Work;~~

~~8.5.1.3.7. — Fees and expenses for design services procured or furnished by Design-Builder~~

~~8.5.1.3.8. — Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities, and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value or residual value; and cost less salvage value of such items used, but not consumed that remain the property of Design-Builder;~~

~~8.5.1.3.9. — Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the Worksite, whether rented from Design-Builder or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation, and delivery costs. Rental from unrelated third parties shall be reimbursed at actual cost. Rentals from Design-Builder or its affiliates, subsidiaries, or related parties shall be reimbursed at the prevailing rates in the locality of the Worksite up to eighty-five percent (85%) of the value of the piece of equipment;~~

~~8.5.1.3.10. — Cost of the premiums for all insurance and surety bonds which Design-Builder is required to procure or deems necessary, and approved by Owner including any additional premium incurred as a result of any increase in the cost of the Work;~~



- ~~8.5.1.3.11.—Sales, use, gross receipts or other taxes, tariffs, or duties related to the Work for which Design-Builder is liable;~~
- ~~8.5.1.3.12.—Permits, fees, licenses, tests, and royalties;~~
- ~~8.5.1.3.13.—Losses, expenses or damages to the extent not compensated by insurance or otherwise, and the cost of corrective work, provided that such did not arise from Design-Builder's negligence.~~
- ~~8.5.1.3.14.—Water, power, and fuel costs necessary for the changed Work;~~
- ~~8.5.1.3.15.—Cost of removal of all nonhazardous substances, debris, and waste materials;~~
- ~~8.5.1.3.16.—Costs directly incurred to perform a change in the Work which are reasonably inferable from the Contract Documents for the changed Work~~
- ~~8.5.1.3.17.—DISCOUNTS All discounts for prompt payment shall accrue to Owner to the extent such payments are made directly by Owner. To the extent payments are made with funds of Design-Builder, all cash discounts shall accrue to Design-Builder. All trade discounts, rebates and refunds, and all returns from sale of surplus materials and equipment, shall be credited to the Cost of the Work;~~
- ~~8.5.1.3.18.—COST REPORTING Design-Builder shall maintain complete and current records that comply with generally accepted accounting principles and calculate the Cost of Work. Owner shall be afforded access to Design-Builder's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to requested payment for Cost of the Work. Design-Builder shall preserve all such records for a period of three years after the final payment or longer where required by Law;~~
- ~~8.5.1.3.19.—COST AND SCHEDULE ESTIMATES Design-Builder shall use reasonable skill and judgment in the preparation of a cost estimate or schedule for a change to the Work, but does not warrant or guarantee their accuracy.~~
- ~~8.5.1.3.20.—Cost of the Work pursuant to §8.4.1.3 is determined net of savings from the change. Design-Builder's Overhead and profit shall be added to any net increase in Cost of the Work. No Overhead and profit shall be applied to any net decrease in the Cost of the Work that is less than ten (10) percent of the Contract Price. Overhead and profit shall be applied to any net decrease ten (10) percent or more. Design-Builder shall maintain a documented, itemized accounting evidencing expenses and savings.~~

8.4.2. ~~8.5.2.~~If unit prices are indicated in the Contract Documents or are subsequently agreed to by the Parties, but the character or quantity of such unit items as originally contemplated is so different in a proposed Change Order that the original unit prices will cause substantial inequity to the Owner or the Design-Builder, such unit prices shall be equitably adjusted.

8.4.3. ~~8.5.3.~~If the Owner and the Design-Builder disagree as to whether work required by the Owner is within the scope of the Work, the Design-Builder shall furnish the Owner with an estimate of the costs to perform the disputed work in accordance with the Owner's interpretations. If the Owner issues a written order for the Design-Builder to proceed, the Design-Builder shall perform the disputed work and the Owner shall pay the Design-Builder fifty percent (50%) of its



estimated cost to perform the work. In such event, both Parties reserve their rights as to whether the work was within the scope of the Work. The Owner's payment does not prejudice its right to be reimbursed should it be determined that the disputed work was within the scope of Work. The Design-Builder's receipt of payment for the disputed work does not prejudice its right to receive full payment for the disputed work should it be determined that the disputed work is not within the scope of the Work.

8.5. CONCEALED OR UNKNOWN SITE CONDITIONS If the conditions encountered at the Worksite are (a) subsurface or other physical conditions materially different from those indicated in the Contract Documents, or (b) unusual and unknown physical conditions materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, the Design-Builder shall stop affected Work after the condition is first observed and give prompt written notice of the condition to the Owner and the Design Professional. The Design-Builder shall not be required to perform any Work relating to the unknown condition without the written mutual agreement of the Parties. Any change in the Contract Price or the Contract Time as a result of the unknown condition shall be determined as provided in this article.

8.6. CHANGES NOTICE CLAIMS FOR ADDITIONAL COST OR TIME For any claim for an increase in the Contract Price or an extension in the Date of Substantial Completion or the Date of Final Completion, the Design-Builder shall give the Owner written notice of the claim within ~~twenty-one (21)~~Fourteen (14) Days after the occurrence giving rise to the claim or within ~~twenty-one (21)~~Fourteen (14) Days after the Design-Builder first recognizes the condition giving rise to the claim, whichever is later. Except in an emergency, notice shall be given before proceeding with the Work. Claims for design and estimating costs incurred in connection with possible changes requested by the Owner, but which do not proceed, shall be made within twenty-one (21) Days after the decision is made not to proceed. Thereafter, the Design-Builder shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties mutually agree upon a longer period of time. The Owner shall respond in writing denying or approving the Design-Builder's claim no later than fourteen (14) Days after receipt of the Design-Builder's documentation of claim. Owner's failure to so respond shall be deemed a denial of the Design-Builder's claim. Any change in Contract Price or the Date of Substantial Completion or the Date of Final Completion resulting from such claim shall be authorized by Change Order.

8.7. CHANGES IN LAW In the event any changes in laws or regulations affecting the performance of the Work, including taxes, were not reasonably anticipated and then enacted after the date of this Agreement, the Contract Price and the Date of Substantial Completion or the Date of Final Completion, and if appropriate the compensation for Design services, shall be equitably adjusted by Change Order.

8.8. ~~8.7.~~INCIDENTAL CHANGES The Owner may direct the Design-Builder to perform incidental changes in the Work upon concurrence with the Design-Builder that such changes do not involve adjustments in the Cost of the Work or Contract Time. Incidental changes shall be consistent with the scope and intent of the Contract Documents. The Owner shall initiate an incidental change in the Work by issuing a written order to the Design-Builder. Such written notice shall be carried out promptly and is binding on the Parties.

ARTICLE 9 PAYMENT

9.1. PROGRESS PAYMENT

9.1.1. ~~Before~~Prior to submitting the first application for payment, the Design-Builder shall provide a Schedule of Values satisfactory to the Owner, consisting of a breakdown of the Contract Price, with a separate line item for Design services.



9.1.2. On or before the ~~[]~~ Fifth (5th) Day of each month after the Work has commenced, the Design-Builder shall submit to the Owner an application for payment in accordance with the Schedule of Values based upon the Work completed and materials suitably stored on the Worksite or at other locations approved by the Owner. Approval of payment applications for such stored materials shall be conditioned upon submission by the Design-Builder of bills of sale and applicable insurance or such other procedures satisfactory to the Owner to establish the Owner's title to such materials, or otherwise to protect the Owner's interest including transportation to the site.

9.1.3. Within ~~seven (7)~~ Fourteen (14) Days after receipt of each monthly application for payment, the Owner shall give written notice to the Design-Builder of the Owner's acceptance or rejection, in whole or in part, of such application for payment. Within ~~fifteen (15)~~ thirty (30) Days after accepting such Application, the Owner shall pay directly to the Design-Builder the appropriate amount for which application for payment is made, less amounts previously paid by the Owner. If such application is rejected in whole or in part, the Owner shall indicate the reasons for its rejection. If the Owner and the Design-Builder cannot agree on a revised amount, then, within fifteen (15) Days after its initial rejection in part of such application, the Owner shall pay directly to the Design-Builder the appropriate amount for those items not rejected by the Owner for which application for payment is made, less amounts previously paid by the Owner. Those items rejected by the Owner shall be due and payable when the reasons for the rejection have been removed.

9.1.4. If the Owner fails to pay the Design-Builder at the time payment of any amount becomes due, then the Design-Builder may, at any time thereafter, upon serving written notice that the Work will be stopped within seven (7) Days after receipt of the notice by the Owner, and after such seven (7) Day period, stop the Work until payment of the amount owing has been received.

~~9.1.5.—Payments due but unpaid pursuant to §9.1.3, less any amount retained pursuant to §9.2 or 9.3, may bear interest from the date payment is due at the prime rate prevailing at the place of the Project.~~

9.1.5. ~~9.1.6.~~ The Design-Builder warrants and guarantees that title to all Work, materials, and equipment covered by an application for payment, whether incorporated in the Project or not, will pass to the Owner upon receipt of such payment by the Design-Builder free and clear of all liens, claims, security interests, or encumbrances, hereinafter referred to as "liens."

9.1.6. ~~9.1.7.~~ The Owner's progress payment, occupancy, or use of the Project, whether in whole or in part, shall not be deemed an acceptance of any Work not conforming to the requirements of the Contract Documents.

9.1.7. ~~9.1.8.~~ Upon Substantial Completion of the Work, the Owner shall pay the Design-Builder the unpaid balance of the Contract Price, less a sum equal to one hundred fifty percent (150%) of the Design-Builder's estimated cost of completing any unfinished items as agreed to between ~~The Parties~~ the Owner and Design-Builder as to extent and time for completion. The Owner thereafter shall pay the Design-Builder monthly the amount retained for unfinished items as each item is completed.

9.1.8. ~~9.1.9.~~ STORED MATERIALS AND EQUIPMENT Unless otherwise provided in the contract documents, applications for payment may include materials and equipment not yet incorporated into the Work but delivered to and suitably stored onsite or offsite, including applicable insurance, storage and costs incurred transporting the materials to an offsite storage facility. Approval of



payment applications for stored materials and equipment stored offsite shall be conditioned on submission by the Design-Builder of bills of sale and proof of required insurance, or such other procedures satisfactory to the Owner to establish the proper valuation of the stored materials and equipment, the Owner's title to such materials and equipment, and to otherwise protect the Owner's interests therein, including transportation to the site.

9.1.9. All pay applications shall be submitted via Oracle Primavera Unifier, using the Owner's business processes.

9.1.10. LIEN WAIVERS AND LIENS

9.1.10.1. PARTIAL LIEN WAIVERS AND AFFIDAVITS If required by the Owner, as a prerequisite for payment, the Design-Builder shall provide partial lien and claim waivers in the amount of the application for payment and affidavits from its Subcontractors and Material Suppliers for the completed Work. Such waivers shall be conditional upon payment. In no event shall the Design-Builder be required to sign an unconditional waiver of lien or claim, either partial or final, prior to receiving payment or in an amount in excess of what it has been paid.

9.1.11. RESPONSIBILITY FOR LIENS If the Owner has made payments in the time and amount required by this article, the Design-Builder shall, within thirty (30) Days after filing, cause the removal of any liens filed against the premises or public improvement fund by any party or parties performing labor or services or supplying materials in connection with the Work. If the Design-Builder fails to take such action on a lien, the Owner may cause the lien to be removed at the Design-Builder's expense, including bond costs and reasonable attorneys' fees. This subsection shall not apply if there is a dispute pursuant to ARTICLE 12 relating to the subject matter of the lien

9.2. RETAINAGE From each progress payment made ~~before~~ prior to the time of Substantial Completion, the Owner may retain [] ten percent ([] 10%) of the amount otherwise due after deduction of any amounts as provided in ~~§9.3~~ section 9.3, ~~provided and in no event shall~~ such percentage ~~doesn't~~ exceed ~~the Law. If any applicable statutory requirements.~~ If the Owner chooses to use this retainage provision:

9.2.1. after the Work is fifty percent (50%) complete, the Owner ~~shall~~ may withhold no additional retainage and pay the Design-Builder the full amount due on account of subsequent progress payments;

9.2.2. the Owner may, in its sole discretion, reduce the amount to be retained at any time;

9.2.3. the Owner may release retainage on that portion of the Work a Subcontractor has completed, in whole or in part, and which work the Owner has accepted;

~~9.2.4. in lieu of retainage, Design-Builder may furnish a retention bond or other security interest acceptable to Owner, to be held by Owner.~~

9.3. ADJUSTMENT OF ~~AN~~ DESIGN-BUILDER'S APPLICATION FOR PAYMENT The Owner may adjust or reject an application for payment or nullify a previously approved application for payment, in whole or in part, as may reasonably be necessary to protect the Owner from loss or damage based upon the following, to the extent that the Design-Builder is responsible under this Agreement:



9.3.1. the Design-Builder's repeated failure to perform the Work as required by the Contract Documents;

9.3.2. except as accepted by the insurer providing Builders Risk or other property insurance covering the project, loss or damage arising out of or relating to this Agreement and caused by the Design-Builder to the Owner, or ~~others-Others~~ to whom the Owner may be liable;

9.3.3. the Design-Builder's failure to pay ~~either Design Professional, Subcontractor or Supplier following receipt of payment from Owner for that portion of the Work or for supplies, provided that the Design Professional or Subcontractors for labor, materials, equipment, or supplies properly furnished in connection with the Work, provided that the~~ Owner is making payments to ~~Constructor~~ the Design-Builder in accordance with the terms of this Agreement;

9.3.4. Defective Work not corrected in a timely fashion;

9.3.5. reasonable evidence of delay in performance of the Work such that the Work will not be completed by the Date of Substantial Completion or the Date of Final Completion, and that the unpaid balance of the Contract Price is not sufficient to offset any direct damages that may be sustained by the Owner as a result of the anticipated delay caused by the Design-Builder;

9.3.6. reasonable evidence demonstrating that the unpaid balance of the Contract Price is insufficient to fund the cost to complete the Work;

9.3.7. uninsured third-party claims involving the Contractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Contractor furnishes the Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which are sufficient to discharge such claims if established; and

9.3.8. uninsured third-party claims involving the Design-Builder or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Design-Builder furnishes the Owner with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment sufficient to discharge such claims if established.

No later than seven (7) Days after receipt of an application for payment, the Owner shall give written notice to the Design-Builder, at the time of disapproving or nullifying all or part of an application for payment, stating its specific reasons for such disapproval or nullification, and the remedial actions to be taken by the Design-Builder in order to receive payment. When the above reasons for disapproving or nullifying an application for payment are removed, payment will be promptly made for the amount previously withheld.

9.4. OWNER OCCUPANCY OR USE OF COMPLETED OR PARTIALLY COMPLETED WORK

9.4.1. Portions of the Work that are completed or partially completed may be used or occupied by the Owner when (a) the portion of the Work is designated in a Certificate of Substantial Completion, (b) appropriate insurer(s) or sureties consent to the occupancy or use, and (c) appropriate public authorities authorize the occupancy or use. Such partial occupancy or use shall constitute Substantial Completion of that portion of the Work. The Design-Builder shall not unreasonably withhold consent to partial occupancy or use. The Owner shall not unreasonably refuse to accept partial occupancy or use, provided such partial occupancy or use is of value to the Owner.

9.5. FINAL PAYMENT



9.5.1. Final payment, consisting of the unpaid balance of the Contract Price, shall be due and payable when the Work is fully completed. Before issuance of final payment, the Owner may request satisfactory evidence that all payrolls, materials bills, and other indebtedness connected with the Work have been paid or otherwise satisfied.

9.5.2. In making final payment the Owner waives all claims except for:

9.5.2.1. outstanding liens;

9.5.2.2. improper workmanship or defective materials appearing within one year after the date of Substantial Completion;

9.5.2.3. Work not in conformance with the Contract Documents; and

9.5.2.4. terms of any special warranties required by the Contract Documents.

9.5.3. In accepting final payment, the Design-Builder waives all claims except those previously made in writing and which remain unsettled.

ARTICLE 10 INDEMNITY, INSURANCE, AND BONDS

10.1. INDEMNITY

10.1.1. To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, Owner's officers, directors, members, consultants, agents, and employees (the Indemnitees) from all claims for bodily injury and property damage, other than to the Work itself and other property required to be insured under ~~§10.3~~ section 10.2, including reasonable attorneys' fees, costs, and expenses that may arise from the performance of the Work, but only to the extent caused by the negligent ~~or intentionally wrongful~~ acts or omissions of the Design-Builder, Subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Design-Builder shall not be required to indemnify or hold harmless the Indemnitees for any negligent ~~or intentionally wrongful~~ acts or omissions of the Indemnitees. The Design-Builder shall be entitled to reimbursement of any defense costs paid above Design-Builder's percentage of liability for the underlying claim to the extent provided for by the subsection below.

10.1.2. To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, its officers, directors, or members, Subcontractors, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured under ~~§10.3~~ section 10.4, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Others, but only to the extent caused by the negligent ~~or intentionally wrongful~~ acts or omissions of Others. The Owner shall be entitled to reimbursement of any defense costs paid above the Owner's percentage of liability for the underlying claim to the extent provided for by the subsection above.

10.1.3. NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of the Design-Builder, anyone directly or indirectly employed by the Design-Builder or anyone for whose acts the Design-Builder may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Design-Builder under Workers' Compensation acts, disability benefit acts, or other employee benefit acts.



10.2. DESIGN-BUILDER'S LIABILITY INSURANCE

10.2.1. The Design-Builder shall not commence the Work before the effective date of insurance that is required to be provided by the Design-Builder or the Owner.

10.2.2. ~~10.2.1.~~ Before commencing the Work and as a condition ~~for precedent to~~ payment, the Design-Builder shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad form property damage. The Design-Builder shall maintain completed operations liability insurance for one year after Substantial Completion, or as required by the Contract Documents, whichever is longer. The Design-Builder's Employers' Liability, Business Automobile Liability, and CGL policies shall be written with at least the following limits of liability:

(1) Comprehensive or Commercial Form General Liability Insurance covering all Work done by or on behalf of the Design-Builder and providing insurance for bodily injury, personal injury, property damage, and Contractual liability. Except with respect to bodily injury and property damage included within the products and completed operations hazards, the aggregate limit shall apply separately to work required of the Design-Builder by these Contract Documents. This insurance shall include the contractual obligations assumed under the Contract Documents. Limits of liability shall not be less than \$2,000,000 per occurrence and general aggregate, which limits may be achieved under a single policy or by a combination of underlying and excess or umbrella policies.

(2) Business Automobile Liability Insurance on an "Occurrence" form covering owned, hired, leased, and non-owned automobiles used by or on behalf of the Design-Builder and providing insurance for bodily injury, property damage, and Contractual liability. Limits of liability shall not be less than \$1,000,000 per occurrence, which limits may be achieved under a single policy or by a combination of underlying and excess or umbrella policies.

(3) Worker's Compensation and Employer's Liability Insurance as required by Federal and Michigan law. The Design-Builder shall also require all of its Subcontractors to maintain this insurance coverage. Limits of liability shall not be less than statutory for worker's compensation insurance, and \$1,000,000 each accident for employer's liability insurance.

(4) The Umbrella Excess Liability insurance must be consistent with and follow the form of the primary policies, except that Umbrella Excess Liability insurance shall not be required for the Medical Expense Limit.

(5) Builder's Risk/Property Insurance. The Design-Builder shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest, whichever is later. This



insurance shall include interests of the Owner, the Design-Builder, Subcontractors, and Sub-Subcontractors in the Project.

- 10.2.3. Proof of Coverage: Certificates of Insurance, as evidence of the insurance required by these Contract Documents, shall be submitted by the Design-Builder to the Owner no later than five days after the execution of this agreement and in all cases, prior to the commencement of the work. The Certificates of Insurance shall state the scope of coverage and deductible, identify any endorsements to the policies and, except for the worker's compensation and employer's liability insurance, list the Owner as an additional insured. Any deductible shall be the Design-Builder's liability. The Certificates of Insurance shall provide for no cancellation or modification of coverage without thirty (30) days prior written notice to the Owner. Acceptance of Certificates of Insurance by the Owner shall not in any way limit the Design-Builder's liabilities under the Contract Documents. In the event the Design-Builder does not comply with these insurance requirements, the Owner may, at its option, provide insurance coverage to protect the Owner; the cost of such insurance shall be deducted from the Contract Sum or otherwise paid by the Design-Builder. Renewal certifications shall be filed in a timely manner for all coverage until the Project is accepted as complete. Upon the Owner's request, the Design-Builder shall provide copies of the Builder's Risk insurance policy obtained from the insurers.
- 10.2.4. Subcontractors' Insurance: The Design-Builder shall either require subcontractors to carry the insurance or the Design-Builder shall insure the activities of the subcontractors in the types and form of insurance required under the Contract Documents, and in such amounts as the Design-Builder shall deem appropriate.
- 10.2.5. Scope of Insurance Coverage: The Design-Builder's insurance as required by the Contract Documents (including subcontractors' insurance), by endorsement to the policies and the Certificates of Insurance, shall include the following and may be presented in the form of a rider attached to the Certificates of Insurance:
- (a) The Owner, its trustees, officers, employees, representatives and agents including the Design Professional, shall be included as additional insureds (except under worker's compensation and employer's liability insurance) for and relating to the Work to be performed by the Design-Builder and subcontractors.
- (b) A Severability of Interest Clause stating that, "The term 'insured' is hereby used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the insurer's or insurers' liability."
- (c) A Cross Liability Clause stating that, "In the event of claims being made under any of the coverages of the policy or policies referred to herein by one or more insured hereunder for which another or other insured hereunder may be liable, then the policy or policies shall cover such insured or insured against whom a claim is made or may be made in the same manner as if separate policies had been issued to each insured hereunder. Nothing contained herein, however, shall operate to increase the insurer's limits of liability as set forth in the insuring agreements."
- (d) Coverage provided is primary and is not in excess of or contributing with any insurance or self-insurance maintained by the Board of Trustees of Michigan State University, the Owner, their officers, employees, representatives and agents.

10.2.1.1.—Employers' Liability Insurance



- (a) \$[] bodily injury by accident per accident
- (b) \$[] bodily injury by disease policy limit
- (c) \$[] bodily injury by disease per employee

~~10.2.1.2. Business Automobile Liability Insurance per accident \$[].~~

~~10.2.1.3. Commercial General Liability Insurance~~

- ~~(a) Per occurrence \$[]~~
- ~~(b) General aggregate \$[]~~
- ~~(c) Products/completed operations aggregate \$[]~~
- ~~(d) Personal and advertising injury limit \$[]~~

10.2.6. ~~10.2.2.~~ Employers' Liability, Business Automobile Liability, ~~and Commercial General Liability coverage~~ and CGL coverages required under ~~§10.2.1 subsection 11.2.2~~ may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by Excess or Umbrella Liability policies.

10.2.7. ~~10.2.3.~~ The Design-Builder shall maintain in effect all insurance coverage required under ~~§10.2.1 subsection 11.2.2~~ with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located. If ~~the~~ Design-Builder fails to obtain or maintain any insurance coverage required under this Agreement, ~~the~~ Owner may purchase such coverage and charge the expense to ~~the~~ Design-Builder, or terminate this Agreement.

10.2.8. ~~10.2.4.~~ To the extent commercially available to ~~the~~ Design-Builder ~~and from~~ its current insurance company, insurance policies required under ~~§10.2.1 subsection 10.2.2~~ shall contain a provision that the insurance company or its designee must give ~~the~~ Owner written notice transmitted in paper or electronic format: (a) 30 Days before coverage is nonrenewed by the insurance company and (b) within 10 Business Days after cancellation of coverage by the insurance company. ~~Before~~ Prior to commencing the Work and upon renewal or replacement of the insurance policies, ~~the~~ Design-Builder shall furnish ~~the~~ Owner with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under ~~§10.2.1 subsection 11.2.2~~ is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, ~~the~~ Design-Builder shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

Pollution Legal Liability Insurance is required, with a minimum coverage limit of \$1,000,000. Coverage shall apply to sudden and gradual pollution legal liability including defense costs and completed operations. If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three years beginning from the time that work under this Contract is completed. Contractors or subcontractors responsible for remediation, including containerization, transportation, or disposal of any hazardous or toxic wastes, materials, or substances requiring permits or licenses by state or Federal Law or regulation shall maintain Pollution Liability Insurance with limit no less than \$5,000,000. Coverage shall extend for 3 years after completion of the Work and be evidenced by annual certificates of insurance.

10.3. PROPERTY INSURANCE ~~[Deleted]~~

10.4. OWNER'S INSURANCE



10.4.1. BUSINESS INCOME INSURANCE The Owner may procure and maintain insurance against loss of use of the Owner's property caused by fire or other casualty loss.

~~10.3.1. Unless otherwise directed in writing by Owner, before starting the Work, Design-Builder shall obtain and maintain a Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss, including existing structures. This insurance shall also: (a) name Design-Builder, Subcontractors, Subsubcontractors, Suppliers, and Design Professional as insureds; (b) be written in such form as to cover all risks of physical loss except those specifically excluded by the policy; and (c) insure at least against and not exclude:~~

~~10.3.1.1. —the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of the Contractor) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused;~~

10.4.2. OWNER'S LIABILITY INSURANCE The Owner shall either self-insure or obtain and maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including, without limitation, loss of use and claims, losses and expenses arising out of the Owner's acts or omissions.

~~10.3.1.2. —damage resulting from defective design, workmanship, or material;~~

~~10.3.1.3. —coverage extension for damage to existing buildings, plant, or other structures at the Worksite, when the Project is contained within or attached to such existing buildings, plant, or structures. Coverage shall be to the extent loss or damage arises out of Constructor's activities or operations at the Project;~~

~~10.3.1.4. —equipment breakdown, including mechanical breakdown, electrical injury to electrical devices, explosion of steam equipment, and damage to steam equipment caused by a condition within the equipment;~~

~~10.3.1.5. —testing coverage for running newly installed machinery and equipment at or beyond the specified limits of their capacity to determine whether they are fit for their intended use; and~~

~~10.3.1.6. —physical loss resulting from Terrorism.~~

~~10.3.2. —The Party that is the primary cause of a Builder's Risk Policy claim shall be responsible for any deductible amounts or coinsurance payments. If no Party is the primary cause of a claim, then the Party obtaining and maintaining the Builder's Risk Policy pursuant to §10.3.1 shall be responsible for the deductible amounts or coinsurance payments. This policy shall provide for a waiver of subrogation. This insurance shall remain in effect until final payment has been made or until no person or entity other than Owner has an insurable interest in the property to be covered by this insurance, whichever is sooner. Partial occupancy or use of the Work shall not commence until Design-Builder has secured the consent of the insurance company or companies providing the coverage required in this subsection. Before commencing the Work, Design-Builder shall provide a copy of the property policy or policies obtained in compliance with §10.3.1.~~

~~10.3.3. If Owner elects to purchase the property insurance required by this Agreement, including all of the same coverages and deductibles for the same duration specified in §10.3.1, then Owner shall give written notice to Design-Builder and the Design Professional before the Work is commenced~~



~~and provide a copy of the property policy or policies obtained in compliance with §10.3.1. Owner may then provide insurance to protect its interests and the interests of the Design-Builder, Subcontractors, Suppliers, and Subsubcontractors. The cost of this insurance shall be paid by Owner in a Change Order. If Owner gives written notice of its intent to purchase property insurance required by this Agreement and fails to purchase or maintain such insurance, Owner shall be responsible for costs reasonably attributed to such failure.~~

~~10.3.4. The Parties waive all rights against each other and their respective employees, agents, contractors, subcontractors and subsubcontractors, and design professionals for damages caused by risks covered by the property insurance except such rights as they may have to the proceeds of the insurance.~~

~~10.3.5. To the extent of the limits of Design-Builder's CGL specified in § or [] dollars (\$[]), whichever is more, Design-Builder shall indemnify and hold harmless Owner against any and all liability, claims, demands, damages, losses, and expenses, including attorneys' fees, in connection with or arising out of any damage or alleged damage to any of Owner's existing adjacent property that may arise from the performance of the Work, to the extent of the negligent acts or omissions of Design-Builder, Subcontractor, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.~~

~~10.3.6. RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Work shall be upon the Party obtaining and maintaining the Builder's Risk Policy pursuant to §10.3.1 until the Date of Final Completion.~~

10.5. ~~10.4.~~ ADDITIONAL GENERAL LIABILITY ~~LIABILITY~~ COVERAGE

10.5.1. ~~10.4.1.~~ The Owner ~~shall/ shall not require~~ the Design-Builder to purchase and maintain additional liability coverage, primary to Owner's coverage under subsection 10.4.2.

~~10.4.2. If required by the above subsection, the additional liability coverage required of Design-Builder shall be:~~

~~Additional Insured. Owner shall be named as an additional insured on Design-Builder's Commercial General Liability Insurance specified, for on-going operations and completed operations, excess/umbrella liability, commercial automobile liability, and any required pollution liability, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by the negligent or intentionally wrongful acts or omissions of Design-Builder, or those acting on Design-Builder's behalf, in the performance of Design-Builder's Work for Owner at the Worksite. The insurance of the Subcontractor shall be primary and non-contributory to any insurance available to the Additional Insureds.~~

~~OCP. Design-Builder shall provide an Owners' and Contractors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on Commercial General Liability Insurance specified, or limits as otherwise required by Owner.~~

~~Any documented additional cost in the form of a surcharge associated with procuring the additional liability coverage in accordance with this subsection shall be paid by Owner directly or the costs may be reimbursed by Owner to Design-Builder by increasing the contract price to correspond to the actual cost required to purchase and maintain the additional liability coverage.~~



~~Before commencing the Work, Design-Builder shall provide either a copy of the OCP policy, or a certificate and endorsement evidencing that Owner has been named as an additional insured, as applicable.~~

10.6. ~~10.5~~. ROYALTIES, PATENTS, AND COPYRIGHTS The Design-Builder shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods, or systems selected by the Design-Builder and incorporated in the Work. The Design-Builder shall indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to indemnify and hold the Design-Builder harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified by the Owner.

10.7. ~~10.6~~. PROFESSIONAL LIABILITY INSURANCE The Design-Builder shall obtain, either itself or through the Design Professional, professional liability insurance for claims arising from the negligent performance of professional services under this Agreement, which shall be:

Practice Policy or Project Specific Coverage

written for not less than \$ ~~2,000,000~~ per claim and in the aggregate ~~with a deductible not to exceed \$~~. The Professional Liability Insurance shall include prior acts coverage sufficient to cover all services rendered by the Design Professional. This coverage shall be continued in effect for ~~3~~ year(s) after the Date of Substantial Completion.

10.8. ~~10.7~~. BONDING

10.8.1. ~~10.7.1~~. Performance and Payment Bonds are / ~~are not~~ required of the Design-Builder. Such bonds shall be issued by a surety licensed in the state in which the Project is located and must be acceptable to the Owner. The Owner's acceptance shall not be withheld without reasonable cause.

10.8.2. ~~10.7.2~~. Such Performance Bond shall be issued in the penal sum equal to one hundred percent (100%) of the:

- ~~X~~ Contract price, including design and construction.
- Agreed estimated construction cost of the Project as reflected in the Schedule of Values.

Such Performance Bond shall cover the cost to complete the Work, but shall not cover any damages of the type specified to be covered by the insurance pursuant to ~~§10.2~~ sections 10.2 and §10.30, whether or not such insurance is provided or in an amount sufficient to cover such damages.

10.8.3. ~~10.7.3~~. The penal sum of the Payment Bond shall equal the penal sum of the Performance Bond. The Design-Builder's payment bond for the Project, if any, shall be made available by the Owner or the Design-Builder upon the Subcontractor's written request.

10.8.4. Any increase in the Contract Price that exceeds ten percent (10%) in the aggregate shall require a rider to the Bonds increasing penal sums accordingly. Up to such ten percent (10%) amount, the penal sum of the bond shall remain equal to one hundred percent (100%) of the Contract Price or as otherwise provided in subsection 10.8.2. The ~~10.7.4~~ Design-Builder shall endeavor to keep its surety advised of changes within the scope of the initial Agreement



potentially impacting the Contract Price or the Dates of Substantial Completion or Final Completion, though the Design-Builder shall require that its surety waives any requirement to be notified of any alteration or extension of time. A copy of the Design-Builder's Payment Bond for the Project, if any, shall be furnished by the Owner or Design-Builder upon the Subcontractor's written request.

ARTICLE 11 SUSPENSION, NOTICE TO CURE, AND TERMINATION

11.1. SUSPENSION BY THE OWNER FOR CONVENIENCE

11.1.1. The Owner may order the Design-Builder in writing to suspend, delay, or interrupt all or any part of the Work without cause for such period of time as the Owner may determine to be appropriate for its convenience.

11.1.2. Adjustments caused by suspension, delay, or interruption shall be made for increases in the Contract Price or the Date of Substantial Completion or the Date of Final Completion. No adjustment shall be made if the Design-Builder is or otherwise would have been responsible for the suspension, delay, or interruption of the Work, or if another provision of this Agreement is applied to render an equitable adjustment.

~~11.2. ——— NOTICE TO CURE A DEFAULT~~

11.2. OWNER'S RIGHT TO PERFORM DESIGN-BUILDER'S OBLIGATIONS AND TERMINATION BY THE OWNER FOR CAUSE

11.2.1. ~~If the Design-Builder persistently fails to supply enough qualified workers, proper materials, or equipment to maintain the approved ~~Construction~~ Schedule of the Work, or fails to make prompt payment to its workers, Subcontractors, or Material Suppliers, disregards Laws or orders of any public authority having jurisdiction, or is otherwise guilty of a material breach of a provision of this Agreement, the Design-Builder may be deemed in default.~~

If the Design-Builder fails within seven (7) Days after receipt of written notice to commence and continue satisfactory correction of such default, then the Owner shall give the Design-Builder a second notice to correct the default within a three (3) Day period.

11.2.2. ~~After receiving Owner's written notice, if the Design-Builder fails to promptly commence and continue satisfactory correction of the default following receipt of such second notice, then the Owner without prejudice to any other rights or remedies may:~~ (a) take possession of the Worksite; (b) complete the Work utilizing any reasonable means; (c) withhold payment due to the Design-Builder; and (d) as the Owner deems necessary, supply workers and materials, equipment, and other facilities for the satisfactory correction of the default, and charge the Design-Builder the costs and expenses, including reasonable Overhead, profit, and attorneys' fees.

11.2.3. In the event of an emergency affecting the safety of persons or property, the Owner may immediately commence and continue satisfactory correction of a default without first giving written notice to the Design-Builder, but shall give ~~e-prompt written notice of such action to the~~ Design-Builder prompt notice following commencing the action.

~~11.3. ——— OWNER'S RIGHT TO TERMINATE FOR DEFAULT~~

~~11.3.1. ——— TERMINATION BY OWNER FOR DEFAULT Upon expiration of the second notice for default period pursuant to §12.2 and absent appropriate corrective action, Owner~~



~~may terminate this Agreement by written notice. Termination for default is in addition to any other remedies available to Owner under §12.2. If Owner's costs arising out of Design-Builder's failure to cure, including the costs to complete the Work and reasonable attorneys' fees, exceed the unpaid Contract Price, Design-Builder shall be liable to Owner for such excess costs. If Owner's costs are less than the unpaid Contract Price, Owner shall pay the difference to Design-Builder. If Owner exercises its rights under this section, upon the request of Design-Builder, Owner shall furnish to Design-Builder a detailed accounting of the costs incurred by Owner.~~

11.2.4. ~~11.3.2.~~ If the Design-Builder files a petition under the bankruptcy code, this Agreement shall terminate if the Design-Builder or the Design-Builder's trustee rejects the Agreement or, if there has been a default occurs and, the Design-Builder is unable to give adequate assurance of required performance; or (c) that the Design-Builder is will perform as required by this Agreement or otherwise is unable to comply with the requirements for assuming this Agreement under the applicable provisions of the Bankruptcy Code.

~~11.3.3. ——— Owner shall make reasonable efforts to mitigate damages arising from Design-Builder's default, and shall promptly invoice Design-Builder for all amounts due.~~

11.2.5. In the event the Owner exercises its rights under subsections 11.2.1 or 11.2.2, upon the request of the Design-Builder the Owner shall provide a detailed accounting of the cost incurred by the Owner.

11.2.6. If the Owner terminates this Agreement for default, and it is later determined that the Design-Builder was not in default, or that the default was excusable under the terms of the Contract Documents, then, in such event, the termination shall be deemed a termination for convenience.

11.2.7. TERMINATION BY OWNER FOR CONVENIENCE ~~If Owner terminates this Agreement other than as set forth in §11.2, Owner shall pay~~

~~11.4.~~ If the Owner terminates this Agreement other than as set forth in section 11.2 through 11.2.6, the termination shall be for the Owner's convenience and the Owner shall pay the Design-Builder for all Work executed and for all proven loss, cost, or expense in connection with the Work, plus all demobilization costs. In addition, Design-Builder shall be paid an amount calculated as set forth below: []:

If the Owner terminates this Agreement before commencing construction, the Design-Builder shall be paid the unpaid balance of the Design-Builder's design costs as set forth in the Schedule of Values. A decision by the owner to stop the project before the Board of Trustees Step 2 Approval, shall be deemed a termination for convenience during design.

11.2.8. ~~11.4.1.~~ If the Owner terminates this Agreement before-after commencing construction, the Design-Builder shall be paid the unpaid balance of the Design-Builder's design costs as set forth in the Schedule of Values and a premium as set forth below: []:, and the Construction services provided to date.

~~11.4.2. If Owner terminates this Agreement after commencing construction, Design-Builder shall be paid the unpaid balance of Design-Builder's design costs as set forth in the Schedule of Values, the Construction services provided to date, reasonable attorneys' fees and costs related to termination, and a premium as set forth below: []:~~

11.2.9. ~~11.4.3.~~ The Owner shall also pay to the Design-Builder fair compensation, either by purchase or rental at the election of the Owner, for all equipment retained. The Owner shall



assume and become liable for obligations, commitments, and unsettled claims that the Design-Builder has previously undertaken or incurred in good faith in connection with the Work or as a result of the termination of this Agreement. As a condition of receiving the payments provided under this article, the Design-Builder shall cooperate with the Owner by taking all steps necessary to accomplish the legal assignment of the Design-Builder's rights and benefits to the Owner, including the execution and delivery of required papers.

11.3. ~~11.5~~. TERMINATION BY THE DESIGN-BUILDER

11.3.1. ~~11.5.1. Seven~~ Upon seven (7) Days' ~~after Owner's receipt of~~ written notice ~~from Design-Builder, to the Owner, the~~ Design-Builder may terminate this Agreement for any of the following reasons: ~~if the Work has been stopped for a thirty (30) Day period through no fault of the Design-Builder: (a) under court order or order of other governmental authorities having jurisdiction, or (b) as a result of the declaration of a national emergency or other governmental act emergency during which, through no act or fault of Design-Builder, materials are not available; (c) Work is suspended by Owner for Convenience;~~

~~11.5.2. In addition, upon seven (7) Days written notice to Owner and an opportunity to cure within three (3) Days, Constructor may terminate this Agreement if Owner: (a) fails to furnish reasonable evidence that sufficient funds are available and committed for the entire cost of the Project ;(b) assigns this Agreement over Design-Builder's reasonable objection; (c) fails to pay Design-Builder in accordance with this Agreement and Design-Builder stopped Work accordingly; or (d) otherwise materially breaches this Agreement.~~

11.3.1.1. if the Work has been stopped for a thirty (30) Day period (a) under court order or order of other governmental authorities having jurisdiction, or (b) as a result of the declaration of a national emergency or other governmental act emergency during which, through no act or fault of the Design-Builder, materials are not available; or

11.3.1.2. if the Work is suspended by the Owner for thirty (30) Days.

11.3.2. If the Owner has for thirty (30) Days failed to pay the Design-Builder pursuant to subsection 9.1.3, the Design-Builder may give written notice of its intent to terminate this Agreement. If the Design-Builder does not receive payment within seven (7) Days of giving written notice to the Owner, then upon seven (7) Days' additional written notice to the Owner, the Design-Builder may terminate this Agreement.

11.3.3. ~~11.5.3. Upon termination by Design-Builder in accordance with §11.5.1, Upon termination by the Design-Builder in accordance with subsection 11.3.1, the~~ Design-Builder shall be entitled to recover from the Owner payment for all Work executed and for all proven loss, cost, or expense in connection with the Work, plus all demobilization costs and reasonable damages. In addition, the Design-Builder shall be paid an amount calculated as set forth either in ~~§11.4.1 or 11.4.2~~ subsection 0 or 11.2.8, depending on when the termination occurs, and ~~§11.4.3. subsection 11.2.9.~~

ARTICLE 12 DISPUTE MITIGATION OR RESOLUTION

12.1. WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, the Design-Builder shall continue the Work and maintain the approved schedules during any dispute mitigation or resolution proceedings. If the Design-Builder continues to perform, the Owner shall continue to make payments in accordance with the Agreement.



12.2. DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of this Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who will record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) Business Days of the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that ~~a resolution could was not be reached~~affected. Upon receipt of such notice, the senior executives of the Parties shall meet within five (5) Business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit ~~such matter to the dispute mitigation and dispute resolution procedures selected below~~to the Dispute Resolution procedure in paragraph 12.3.

12.3. **Dispute Resolution:** All disputes, claims, or other matters relating to this Contract shall be submitted by the Design-Builder in writing to the Owner (University's Vice President for Strategic Infrastructure Planning and Facilities or designee) to review. Raised claims must be presented to the Owner's representative within 30 days of when the Design-Builder knows or should have known of the issue in controversy. This informal dispute process is in place to precede any formal litigation. If the Design-Builder is not satisfied with the outcome of the review, a dispute may be filed for resolution with the court of competent jurisdiction in Michigan. Claims and any appeals by the Design-Builder affecting the fee payment must be made before submitting the request for final payment. Unless otherwise instructed by the Owner, the Design-Builder shall continue to Work under this Contract without delaying the Project, or any portion thereof, pending the outcome of the dispute, claim, or question.

~~12.3. ——— MITIGATION If the Parties select one of the dispute mitigation procedures provided below, disputes remaining unresolved after direct discussions shall be directed to the selected mitigation procedure. The dispute mitigation procedure shall result in a nonbinding finding on the matter, which may be introduced as evidence at a subsequent binding adjudication of the matter, as designated in §12.5. The Parties agree that the dispute mitigation procedure shall be:~~

~~Project Neutral (Neutral) or Dispute Review Board (DRB)~~

~~12.4. ——— MITIGATION PROCEDURES As soon as practicable after Agreement execution, the Neutral or DRB shall be mutually selected and appointed by the Parties and shall execute a retainer agreement with the Parties establishing the scope of responsibilities, including requirements for nonbinding findings. Costs and expenses of the Neutral or DRB shall be shared equally by the Parties. The Neutral or DRB shall be available to either Party, upon request, throughout the course of the Project, and shall make regular visits to the Project so as to maintain an up-to-date understanding of the Project progress and issues and to enable the Neutral or DRB to address matters in dispute between the Parties promptly and knowledgeably.~~

ARTICLE 13 MISCELLANEOUS

~~12.4.1. If the matter remains unresolved following the issuance of the nonbinding finding or such findings are not made by the mitigation procedure or if the Neutral/Board fails to issue nonbinding findings within five (5) Business Days of the referral, the Parties shall submit the matter to the binding dispute resolution procedure designated in §12.5.~~

~~12.4.2. If the Parties execute a DRB Addendum, then the dispute mitigation procedures and time requirements in §12.4.1 and §12.4.2. shall be governed by that DRB Addendum.~~



~~12.4 MEDIATION If direct discussions pursuant to §12.2 do not result in resolution of the matter and no dispute mitigation procedure is selected under §12.3, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association (AAA), or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) Business Days of the matter first being discussed and shall conclude within forty-five (45) Business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session by written notice to the non-terminating Party and mediator. The costs of the mediation shall be shared equally by the Parties.~~

~~12.5. ——— BINDING DISPUTE RESOLUTION If the matter is unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected below.~~

~~12.6. ——— ARBITRATION.~~

~~The Parties choose binding arbitration for any claim or dispute arising out of or relating to this Agreement. **EACH PARTY WAIVES THEIR RIGHT TO BE HEARD IN A COURT OF LAW**, with or without a jury. Arbitration does not involve a judge or jury. Instead, an arbitrator with the power to award damages and other appropriate relief will decide claims and disputes. An arbitrator's award shall be final and binding upon the Parties, and judgment may be entered upon it in any court having jurisdiction.~~

~~12.6.1. ——— Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations. If, however, a state or federal court exercising jurisdiction over a timely filed claim or cause of action orders that the claim or cause of action be submitted to arbitration, the arbitration proceeding shall be deemed commenced as of the date the court action was filed, provided that the Party asserting the claim or cause of action files its demand for arbitration with the person or entity administering the arbitration within thirty (30) Days after the entry of such order.~~

~~12.7. ——— The arbitration shall use the following rules:~~

- ~~the current AAA Construction Industry Arbitration Rules and AAA administration. AAA Construction Fast Track Rules shall apply to all two-party cases when neither Party's disclosed claim or counterclaim exceeds \$250,000. If arbitration is selected but no rules are selected, then this subsection shall apply by default;~~
- ~~the current JAMS Engineering and Construction Arbitration Rules and Procedures and administered by JAMS; or~~
- ~~the current arbitration rules of [] and administered by [].~~

~~12.8. ——— LITIGATION~~

~~Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project~~

~~If not indicated, then litigation is default as opposed to arbitration.~~



~~12.8.1. COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.~~

~~12.8.2. VENUE The Project location shall serve as the venue.~~

~~12.9. MULTIPARTY PROCEEDING The Parties agree that all Parties necessary to resolve a matter shall be Parties to the same dispute resolution procedure, if possible. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the joinder or consolidation of such dispute resolution proceedings.~~

~~12.10. LIEN RIGHTS Nothing in this article shall limit any rights or remedies not expressly waived by Design-Builder that Design-Builder may have under lien laws.~~

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1. EXTENT OF AGREEMENT Except as expressly provided, this Agreement is solely for the benefit of the Parties, represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of ~~The Parties~~ the Owner and Design-Builder and not for the benefit of any third party.

13.2. ASSIGNMENT Neither the Owner nor the Design-Builder shall assign its interest in this Agreement without the written consent of the other except as to the assignment of proceeds. The terms and conditions of this Agreement shall be binding upon both Parties, their partners, successors, assigns, and legal representatives. Neither Party to this Agreement shall assign the Agreement as a whole without written consent of the other ~~except that Owner may assign the Agreement to a wholly owned subsidiary of Owner when Owner has fully indemnified Design-Builder or to an institutional lender providing construction financing for the Project as long as the assignment is no less favorable to Design-Builder than this Agreement. In the event of such assignment, Design-Builder shall execute all consents reasonably required. In such event, the wholly owned subsidiary or lender shall assume Owner's rights and obligations under the Contract Documents. If either Party attempts to make such an assignment, that Party shall nevertheless remain legally responsible for all obligations under the Agreement, unless otherwise agreed by the other Party.~~

13.3. GOVERNING LAW This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan; provided, however, no conflict of laws rule applicable in Michigan that would require the application of the laws of any other jurisdiction shall apply.

~~13.3. GOVERNING LAW The Law in effect at the location of the Project shall govern this Agreement.~~

13.4. SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

~~13.5. NOTICE Unless changed in writing, a Party's address indicated in Article 1 shall be used when delivering notice to a physical address. Except for Agreement termination and as otherwise specified in the Contract Documents, notice is effective upon transmission by any effective means, including U.S. postal service and overnight delivery service~~

13.5. ~~13.6.~~ NO WAIVER OF PERFORMANCE The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants, or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition, or right with respect to further performance.



13.6. ~~13.7.~~ TITLES AND GROUPINGS The title given to the articles and sections are for ease of reference only and shall not be relied upon or cited for any other purpose.

13.7. ~~13.8.~~ JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms ~~before~~ prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

13.8. RIGHTS AND REMEDIES The Parties' rights, liabilities, responsibilities, and remedies with respect to this Agreement, whether in contract, tort, negligence, or otherwise, shall be exclusively those expressly set forth in this Agreement.

13.9. CRIMINAL BACKGROUND CHECKS

- 13.9.1. The University strives to provide a safe and enjoyable environment for its students, faculty, staff, and visitors in support of its educational mission. In support of that goal, the University has set forth criminal background check requirements for specified University contractors. The policy requirements are available upon request or at MBP: <https://usd.msu.edu/mbp/mbp-270/index.html> (fourth paragraph down applies to the background checks)
In accordance with the policy, the Vice President for Strategic Infrastructure Planning and Facilities has approved implementing more stringent requirements. Accordingly, Constructors shall comply with the Criminal Background Check Requirements on all project on the East Lansing campus. On our For Suppliers page
<https://usd.msu.edu/for-suppliers/criminal-background-check/index.html>
Policy:
<https://usd.msu.edu/common/documents/criminal-back-ground-check.pdf>
- 13.9.2. These requirements apply to all the University contractors and their consultants for any project on campus. Constructor shall provide a certification of compliance annually.

DELETED

13.10. RESTRICTIONS ON CONSTRUCTION ACTIVITIES (REVISE AS REQUIRED FOR PROJECT) The Design Builder acknowledges that they are aware of the University's contract approval process for the authorization of design and construction activity for capital improvement projects, and more specifically, that the project identified in this agreement has been authorized for design only. The Design Builder is also aware that construction authorization is expected to be granted by the MSU Board of Trustees in XXXXXX DATE and that only design activity is permitted under the contract until the Board authorizes the project for construction. For the purposes of this project, the design activity by the Design Builder may include, as necessary to meet the Substantial Completion date, the solicitation of pricing and the issuing of purchase orders for long lead time equipment, provided that the equipment is not received prior to the Board's approval of the project for construction.

13.11. SEXUAL HARASSMENT POLICY

- 13.11.1. The Contractor shall assure that it, its employees and agents, all Subcontractors and their employees and agents, and all Sub-subcontractors and their employees and agents are aware of and comply with the Owner's policy prohibiting sexual harassment in the performance of this contract. Copies of this policy are available at the Engineering and Architectural Services Division, Purchasing Department.



13.11.2. The Contractor shall act promptly to stop any violation of the policy by any such persons, by removing the violator from the site or otherwise. Failure by the Contractor to promptly investigate complaints and take appropriate action to address violations of the policy shall be deemed a material breach of the Contract.

13.12. NONDISCRIMINATION AND INCLUSION

13.12.1. In performing under this Contract, the Contractor shall not discriminate against any employee, or applicant for employment, with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height or weight, marital or familial status or disability. Subcontracts with each Subcontractor will contain a provision requiring nondiscrimination in employment, as herein specified. Any breach of this covenant may be regarded as a material breach of this Contract.

13.12.2. Michigan State University is an equal opportunity employer and federal contractor or subcontractor. Consequently, the parties agree that, as applicable, they will abide by the requirements of 41 CFR 60-1.4(a), 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a) and that these laws are incorporated herein by reference. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability. The parties also agree that, as applicable, they will abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.

13.12.3. The University makes a continuous effort to broaden its business relationships with Minority Business Enterprise (MBE) contractors, Women Business Enterprise (WBE) contractors, and small business concerns (including veteran-owned small business, service-disabled veteran owned small business, HUB Zone small business, and small disadvantaged business concerns certified by the U.S. Small Business Administration). For the purposes of this provision, suppliers are considered subcontractors. If third parties are needed to fulfill contractual obligations, Contractors are strongly encouraged to consider all qualified sources, including WBE, MBE, and small business subcontractors. For purposes of this paragraph, MBE is defined as a business enterprise of which more than 50% of the voting shares or interest in the business is owned, controlled, and operated by individuals who are members of a minority and with respect to which more than 50% of the net profit or loss attributable to the business accrues to shareholders who are members of a minority. WBE is defined as a business enterprise of which more than 50% of the voting shares or interest in the business is owned, controlled, and operated by women and with respect to which more than 50% of the net profit or loss attributable to the business accrues to the women shareholders.

ARTICLE 14 CONTRACT DOCUMENTS

14.1. CONTRACT DOCUMENTS The Contract Documents are as follows:

- (a) This Agreement;
- (b) [The Design Builder's accepted proposal response: Exhibit A](#)



- (c) ~~(b)~~ Basis of Design/Owner's Program; Exhibit B as provided, and as defined by sub-section 2.3.16 of this Agreement;
- (d) Other Owner-provided ~~information pursuant to §3.6.3 and other~~(e) ~~Owner~~ information identified as intended to be a contract document;
- ~~(d) The Schematic Design Documents upon Owner approval pursuant to §2.4.17;~~
- (e) The Design Development ~~Documents upon Owner approval pursuant to §3.1;~~Documents upon Owner approval pursuant to section 3.1;
- (f) The Construction Documents upon Owner approval under section 3.1;
- (g) Responsible Contractor Policy, by reference to Board of Trustee Policy 02-06-06; <https://trustees.msu.edu/policy-manual/02-06-06.html>
- (h) The Owner Purchase Order is not considered a Contract Document
- (i) Other: N/A

14.2. INTERPRETATION OF CONTRACT DOCUMENTS

- 14.2.1. The drawings and specifications are complementary. If Work is shown only on one but not on the other, the Construction Manager shall perform the Work as though fully described on both consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.
- 14.2.2. In case of conflicts between the drawings and specifications, the specifications shall govern. In any case of omissions or errors in figures, drawings or specifications, the Design-Builder shall immediately submit the matter to the Owner and, if directed, to its Design Professional for clarification. The Owner's clarifications are final and binding on all Parties.
- 14.2.3. Where figures are given, they shall be preferred to scaled dimensions.
- 14.2.4. Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings, shall be interpreted in accordance with their well-known meanings.

- ~~(f) The Construction Documents upon Owner approval under §3.1;~~
- ~~(g) Change Order, Interim Directives, and amendments issues in accordance with this Agreement.~~
- ~~(h) Other: [_____].~~

14.3. ~~14.2.~~ ORDER OF PRECEDENCE In case of any inconsistency, conflict, or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement, including Amendment 1; (b) this Agreement; (c) design documents approved by the Owner pursuant to ~~§2.4.17 and §3.1.3 subsection 2.3.17 and section 3.1.3~~ in order of the most recently approved; (d) information furnished by the Owner pursuant to ~~§4.1 section 4.1~~ or designated as a contract document in ~~§14.1; section 14.1;~~ (e) other documents listed in this Agreement. Except as otherwise provided, among categories of documents having the same order of precedence, the term or provision that includes the latest date shall control. ~~Where figures are given, they shall be preferred to scaled dimensions. Unless otherwise specifically defined in this Agreement, any terms that have well-known technical or trade meanings shall be interpreted in accordance with their well-known meanings.~~ Information identified in one Contract Document and not identified in another shall not be considered a conflict or inconsistency.

OWNER: MICHIGAN STATE UNIVERSITY

OWNER: [_____]

BY: _____ NAME: _____
 TITLE: _____



DESIGN-BUILDER: XXXXXX Company Name

WITNESS: _____ BY: _____ NAME: _____
_____ -TITLE: _____

DESIGN BUILDER: [_____]

BY: _____ NAME: _____ TITLE: _____

WITNESS: _____ NAME: _____ TITLE: _____

END OF DOCUMENT.

