Michigan State University
As-Needed Design Professional Services Agreement
For Small to Midsize Quick Response Projects

CHAPTER 1
DESIGN PROFESSIONAL'S AGREEMENT

This As-Needed Design Professional Services Agreement establishes terms and conditions for individual projects under MSU's As-Needed Design Professional Services Agreement program. The As-Needed Design Professional Services Agreement does not authorize work on any project but will be incorporated into contract agreements to simplify authorizing work on projects.

This Agreement is made [XXth] Day of [XXX] in the year [202X], by and

between the OWNER
Michigan State University
c/o Infrastructure, Planning and Facilities
1147 Chestnut Rd.
East Lansing, MI 48824

And the

Design Professional:
XXX
123 EXAMPLE Dr.
Lansing, MI 489XX

for services in connection with the following
PROJECT, [Reserved for the Contract Agreement.]
Notice to the Parties shall be given at the above addresses.
The design professional's license number [Reserved for the Contract Agreement.]

ADDRESSES AND AUTHORIZED REPRESENTATIVES: The authorized representatives and addresses of the Owner and the Design Professional are as follows:

OWNER:

Authorized Representative:
Kimberly Hill
1147 Chestnut Rd.
East Lansing, MI 48824
Tel: 517-353-1760 FAX: 517-353-6358

Project Manager:
« Provide when assign projects »

OWNER'S PROJECT IDENTIFICATION INFORMATION:
« Provide when assign projects »

PERFORMANCE SCHEDULE:

A. Date when the Design Professional's services are to begin: « Provide when assign projects »

B. Anticipated Substantial Completion date of the Project: « Provide when assign projects »

C. Anticipated Final Completion date of the Project: « Provide when assign projects »

DEFINITIONS

When capitalized, the words, terms, or phrases used in this Contract are to be interpreted first as defined below, second according to its generally accepted meaning in the construction industry, and third according to its common usage.

Additional Services: Additional tasks beyond the original scope of this Contract.

Builder: The entity, including but not limited to a general contractor, a trade contractor, or a construction manager, hired by the Owner under a Contract for Construction.

Building Systems Operation Manuals: Operation and maintenance data provided by the Builder, including all information necessary for a skilled trades worker to understand and perform complete repair work and routine maintenance.

Construction Contract Price: The dollar amount for which a Builder agrees to perform the Work specified in a Contract for Construction.

Construction Cost: The cost to the Owner to complete construction of the Project, including the Work, cost of utilities, cost of fees for permits and licenses, and modifications due to local conditions.

Construction Documents: Plans, specifications, change orders, revisions, addenda, and other information that describe the Work in detail.

Construction Schedule: The timetable used to set pertinent dates for completion of the Work.

Construction Standards Exceptions Log: The form detailing design decisions made throughout the Project that deviate from the MSU Standard for Construction Projects manual. MSU Form and process can be found at

https://us.promapp.com/msu/Process/Minimode/Permalink/CfqsY2FBQx6wU7cPdBwKlH

Contract for Construction: The written agreement between the Owner and a Builder for providing the goods, products, materials, equipment, systems, management, supervision, labor, and services required to construct all or part of the Project.

Contract for Design Professional Services: The written agreement between the Owner and a Design Professional for providing the services and related items required to design or engineer all or part of the Project.

Declaration of Substantial Completion: Document declaring the Work substantially complete and suitable for occupancy or beneficial use by the Owner.

Design Professional: The entity, including but not limited to an architect, civil engineer, or geotechnical engineer, engaged by the Owner to provide design or engineering services.

Final Completion: The stage of construction when the Work has been completed in accordance with the Contract for Construction and the Owner has received all documents and items necessary for closeout of the Work.

FADE or F.A.D.E.: 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 Designer from fully executing the work required to compile the asset information and complete the Asset Log. Refer to the following website locations for the process outline and instructions:

FADE process during design phase:

https://us.promapp.com/msu/Process/Minimode/Permalink/HOzVv8orguVlqUncjtS9ya

FADE process during construction:

https://us.promapp.com/msu/Process/Minimode/Permalink/DzaiqsvBtvz2k8BweZaAf4

Hazardous Substance: The term "Hazardous Substance" has the same meaning and definition as in the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 USC § 6901 et seq., and subsequent regulations (collectively "CERCLA") and any corresponding state or local law or regulation, and includes the following: (a) any Pollutant or Contaminant as those terms are defined in CERCLA; (b) any Solid Waste or Hazardous Constituent as those terms are defined by, or are otherwise identified by, the Resource Conservation and Recovery Act as amended, 42 USC § 6901 et seq., and regulations promulgated thereunder (collectively "RCRA") and any corresponding state or local law or regulation; (c) crude oil, petroleum, and fractions of distillates thereof; (d) any other material, substance, or chemical defined, characterized, or regulated as toxic or hazardous under any applicable law, regulation, ordinance, directive, or ruling; and (e) any infectious or medical waste as defined by any applicable Federal or state laws or regulations.

Instruments of Service: Documents in any form prepared by the Design Professional or its consultants, including drawings and specifications, to be used by the Builder to perform the Work.

Michigan State University Standards for Construction Projects: The document that shows the suggested standards for design and construction to be followed "to achieve quality structures of maximum utility, requiring a minimum of maintenance and operating expenses, and prudent use of energy."

Owner's Related Parties: Any parent, subsidiary or affiliated entities of the Owner, including the respective officers, trustees, officeholders, directors, shareholders, partners, and employees of each.

Payment Date: The date on which the payment is due after the invoice has been submitted by the Design Professional.

Project: The planned construction undertaking as more specifically described immediately preceding the recitals in Chapter 1 of the *Contract for Design Professional Services* or in a Contract for Construction.

Project Design Schedule: The timetable which sets forth the required relationships between and pertinent dates for required completion of design and engineering services, documents, and related activities.

Site: The geographical location of a Project, usually defined by legal boundary lines and the location characteristics, including but not limited to grades and lines of streets, alleys, pavements and adjoining structures, rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, existing buildings and improvements, and service and utility lines.

Substantial Completion: The stage of construction when the Owner can occupy or beneficially use satisfactorily completed Work as intended.

Work: Any labor, material, items, or services reasonably necessary to achieve the objectives of the Owner when completing any or all portions of the Project.

RECITALS

A. The Owner intends to construct the Project and is engaging the Design Professional to perform certain services for the Project.

B. The Owner and Design Professional each acknowledges that it will act in good faith in carrying out its duties and obligations.

C. The Owner's engagement of the Design Professional is based upon the Design Professional's representations to the Owner of the following:

(i) it is an organization of professionals experienced in the type of services the Owner is engaging the Design Professional to perform;

(ii) it is authorized and licensed to do business in the state in which the Project is located;

(iii) it is qualified, willing and able to perform professional services for the Project; and

(iv) it has the expertise and ability to provide professional services to meet the Owner's objectives and requirements and comply with the requirements of all governmental, public, and quasi-public authorities and agencies having jurisdiction over the Project.

D. The Owner and Design Professional each acknowledges that it has reviewed and familiarized itself with this Contract, including the documents mentioned in Chapter 1, Article 1, and agrees to be bound by its terms and conditions.

THEREFORE, the parties agree as follows:

ARTICLE 1
THE CONTRACT DOCUMENTS

1.1 The Contract for Design Professional Services (Contract) between the parties sets forth the Design Professional's scope of services and is comprised of the following documents:

(i) Chapter 1 – "Design Professional's Agreement," including definitions, recitals A through D, and attached documents and appendices;

(ii) Chapter 2 – "Design Professional's Required Scope of Services" and attached documents and appendices;

(iii) Chapter 3 – "General Terms and Conditions" and attached documents and appendix;

(iv) Design Professional qualifications statement;

(v) Michigan State University Standards for Construction Projects;

(vi) Additional documents: identify all additional documents specifying the Design Professional's scope of work, including documents such as the Owner's request for proposal, the Design Professional's proposal, and letters clarifying scope.

ARTICLE 2
NOTICES

2.1 Unless otherwise provided, all notices shall be in writing and considered duly given if the original is hand delivered, delivered by facsimile, courier service, or by U.S. mail, postage prepaid. All notices shall be given to the addresses indicated on page 1. Notices hand delivered or delivered by facsimile or courier service shall be deemed given the next business day following the date of delivery. Notices given by U.S. mail shall be deemed given as of the second business day following the postmark date.

ARTICLE 3
COMPENSATION OF THE DESIGN PROFESSIONAL

3.1 The Owner shall compensate the Design Professional by one of the methods indicated below:

Design Professional – Part 1 of Fee:

3.1.1. **Lump-Sum Basis:** In accordance with the time schedule contained in the Design Professional's Payment Schedule, attached as Appendix A (Chapter 1), the Owner shall pay the Design Professional payments totaling $XXXXXX «Provide when assign projects».

3.1.2 **Hourly Rate Basis:** The Owner shall pay the Design Professional on an hourly rate basis as stated in the Design Professional's Payment Schedule, attached as item 2 in Appendix A (Chapter 1). The Design Professional Contract price shall not exceed «Hourly_Rate_dollar_figure».

3.1.3 **Formula Lump Sum with Provisional Hourly Billing:** The Owner shall pay the Design Professional based on a percentage of the anticipated authorized Construction Cost or a lump-sum fee. The percentage of the anticipated authorized Construction Cost is calculated on the basis of the formula [30/log(c/(Current BCI Index/36)] where the "C" is the anticipated authorized Construction Cost. To find the BCI index, go to http://enr.construction.com/features/coneco/recentindexes.asp. Until the fee is established, the Design Professional may bill on an hourly basis per the terms of the Contract. An amount not to exceed these billings will be applied to the Contract fee.

3.2 **Additional Services:** Before the Design Professional performs any Additional Services, the Owner and the Design Professional shall agree in writing as to whether the Additional Services will be performed on an hourly rate basis or a lump-sum basis. The Owner shall compensate the Design Professional for Additional Services as follows:

(i) if rendered on an hourly rate basis, at the rates set forth in the Design Professional's Payment Schedule, attached as Appendix A (Chapter 1); and

(ii) if rendered on a lump-sum basis, in an amount mutually agreed to in writing by the Owner and the Design Professional before such services are performed.

3.3 **Invoicing and Payment of Expenses:** Invoices for expenses must be accompanied by all documentation or support data as required by the Owner and discussed in Chapter 3, Article 3.

3.4 **Reimbursable Expenses:** Reimbursable Expenses on this project are estimated to be $ XXXXXX. The Design Professional shall provide an estimate of remaining costs at the end of each design phase and submit a request to update the amount as needed.

3.5 **Payment:** Payment for Design Professional services performed for each stage of the Project, expressed as a percentage of the total compensation agreed to in this Contract, will be computed as follows:

Stage	**Fee**	**Reimbursable Allowance**
A. Project Schematic Design		
B. Project Design Development		
C. Contract Documents		
D. Construction Administration		
Total		

ARTICLE 4
DESIGN NOT TO EXCEED TOTAL PROJECT CONSTRUCTION COST

4.1 The Design Professional acknowledges that the Owner's budget for the total Project Construction Cost may not exceed « $XXXXXX Provide when assign projects».

4.2 The Design Professional agrees to design the Project so that the actual total Project Construction Cost does not exceed the budget recited above.

4.3 When the total Project Construction Cost must be reduced to the budgeted total Project Construction Cost, the Owner may also request that the Design Professional provide these services at no additional cost to the Owner:

(i) provide additional design services to reduce the total Project Construction Cost to the budgeted total Project Construction Cost;

(ii) assist the Owner in redefining the scope of the Project; and

(iii) incorporate all scope reductions and Project modifications into the modified Construction Documents.

4.4 As discussed in this article, Construction Documents modified by the Design Professional due to delays on the part of the Owner or due to economic or other conditions beyond the

control of the Design Professional, may be considered as Additional Services as provided for in this Contract and must be approved by the Owner as provided in Chapter 1, Article 3.2.

ARTICLE 5
SPECIFIC INSURANCE REQUIREMENTS

5.1 **Insurance:** While performing specified services under the Contract, the Design Professional shall purchase and maintain the following insurance and include any subcontractor or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

(i) Worker's Compensation insurance, Coverage A, with limits statutorily required by any applicable Federal or state law and Employers Liability insurance, Coverage B, with a minimum limit of $500,000 per accident.

(ii) Automobile Liability insurance covering liability arising out of any owned, hired, and non- owned vehicles with a minimum limit of $1,000,000 each accident and Personal Injury Protection as required by statute.

(iii) Insurance, with a minimum limit of $1,000,000 covering the wrongful acts, errors, and/or omissions of the Design Professional for damage sustained by reason of or in the course of operations under the Contract. Coverage shall apply for three years after the Project is complete.

(iv) Commercial General Liability insurance with a minimum limit of $1,000,000 each occurrence/$2,000,000 general aggregate. Coverage shall include bodily injury, property damage, personal injury, products/completed operations, and liability assumed under an insured contract.

5.1.1 For projects valued at greater than $20,000,000 or placed in a high-risk category by the Owner, all of Article 5.1 applies except that the Professional Liability insurance minimum limit (item iii) is $5,000,000.

ARTICLE 6
PERSONNEL AND CONSULTANT CHARTS

6.1 The Design Professional shall prepare and attach as Appendix B (Chapter 1) to this Contract the Design Professional's Personnel Chart which lists by name, job category, and responsibility the Design Professional's primary employees who will work on the Project. The Design Professional shall promptly inform the Owner in writing of any proposed replacements, the reasons therefore, and the name(s) and qualification(s) of proposed replacement(s). The Owner has the right to reasonably reject any proposed replacement.

6.2 Before allowing consultants to begin work on the Project, the Design Professional:

(i) shall prepare and attach to this Contract, as Appendix C (Chapter 1), the Design Professional's Consultants Chart which lists by name and general duties each consultant retained by the Design Professional to provide services to the Project and the names of key team members in each consultant's firm who will be performing services on behalf of the consultant;

(ii) may not enter into any agreement with any consultant to which the Owner raises a timely objection:

(iii) shall promptly inform the Owner in writing of any proposed replacements, including names and qualifications and the reasons for their use; and

(iv) acknowledges that the Owner has the right to reasonably reject any proposed replacement.

6.3 The Owner shall provide and attach as Appendix D (Chapter 1) to this Contract the Owner's Consultants Chart, which lists by name and general duties each consultant retained by the Owner to provide services to the Project. During this Contract's term, the Owner reserves the right to engage any other consultants it deems necessary or desirable for the Project and to remove any consultant from the Project.

Owner: Michigan State University

By: _____

Name: Kimberly Hill

Title: Director of Planning Design and Construction

Design Professional:

By: _____

Name: _____

Title: _____

APPENDIX A
DESIGN PROFESSIONAL’S PAYMENT SCHEDULE

1. See Chapter 3, Article 3.5.

2. Hourly Rates for Compensation for Services Rendered on an Hourly Rate Basis:

((insert cost proposal))

APPENDIX B
DESIGN PROFESSIONAL'S PERSONNEL CHART

(Design Professional to attach as a separate document when project is assigned)

APPENDIX C
DESIGN PROFESSIONAL'S CONSULTANTS CHART

(Design Professional to attach as a separate document when project is assigned)

APPENDIX D
OWNER’S CONSULTANTS CHART

(Owner to attach as a separate document when project is assigned)

CHAPTER 2
DESIGN PROFESSIONAL'S REQUIRED SCOPE OF SERVICES

ARTICLE 1
GENERAL PROJECT SERVICES

1.1 **Essential Services:** The Design Professional agrees to provide all necessary architectural and engineering services required to accomplish its scope of services.

1.2 **Project Design Schedule and Design Professional Coordination Services:**

1.2.1 The Design Professional is responsible for working with all other Owner's design professionals and for keeping the Project on schedule. The Design Professional shall inform the Owner's design professionals of submittal dates necessary to meet Project deadlines. If it appears that any of these deadlines will not be met, the Design Professional shall promptly inform the Owner representative in writing.

1.2.2 The Design Professional shall, within 14 calendar days after executing the Contract, prepare and submit a Project Design Schedule for review and acceptance by the Owner. The Project Design Schedule shall include all pertinent Project dates and periods.

(i) The Project Design Schedule shall include the Project design completion date, any guidelines and milestone dates required by the Owner, at least a 2 week duration at completion of Design Documents and 90% Construction Documents for Owner review of documents and submittals, and the dates of Substantial Completion and Final Completion as required by the Owner.

(ii) The Project Design Schedule shall include and properly coordinate all dates for performance of services and tasks so that the Project design and the Project construction can be completed in a timely and orderly fashion to meet the required dates of Substantial Completion and Final Completion.

(iii) By reviewing the Project Design Schedule, the Owner does not assume any of the Design Professional's responsibility that the Project Design Schedule be coordinated or completed for orderly and timely completion of the Project design or the Project construction by the required dates of Substantial Completion and Final Completion.

(iv) Acceptance of the Project Design Schedule by the Owner does not relieve the Design Professional of any of its responsibilities.

1.2.3 If the Design Professional determines that the Project Design Schedule must be adjusted, the Owner shall be promptly notified in writing. However, adjustments are not effective unless approved in writing by the Owner.

1.2.4 Any additional required services or modified required services included in Project Design Schedule services are listed in Appendix A (Chapter 2) and incorporated herein by reference.

1.3 **Project Testing Services:** As required for the project, the Design Professional shall:

(i) prepare scopes of Work, including but not limited to preliminary testing parameters for geotechnical Work and topographic surveys, recommend Hazardous Substance surveys and environmental Site assessments, if advisable, and assist the Owner in securing all necessary preconstruction Project testing;

(ii) describe in the Construction Documents all appropriate and advisable Project testing requirements, including geotechnical, structural, hazardous materials, electrical, or mechanical tests and investigations, and construction materials testing;

(iii) estimate the cost of testing required during construction to be inserted into the Construction Documents as an allowance;

(iv) review all test results; and

(v) recommend additional Project testing that may be necessary and advisable.

1.3.1 Additional required services or modified required services included in Project testing services are listed in Appendix A (Chapter 2) and incorporated herein by reference.

1.4 **Project Approval Services:** As required for the Project, the Design Professional shall:

(i) promptly assist the Owner in securing all approvals from governing authorities with jurisdiction over the Project, including making timely applications for rezoning, Site plan approval, local variances, or other approvals, including completion of all necessary applications and supporting documentation;

(ii) attend any and all meetings required to secure all approvals from governing authorities with jurisdiction over the Project; and

(iii) as an Additional Service requiring additional compensation, assist the Owner in securing grants and gifts through special investigations and analyses, including developing drawings or documents not included in the Contract, preparing reports, attending conferences, and related activities connected with non-state agencies.

1.5 **Bid Document Drawings and Specifications:** Bid document drawings and specifications, as proposed by the Design Professional and approved in writing by the Owner, must reflect a reasonable investigation of Site conditions based on existing drawings and examination of existing conditions. Exploratory openings deemed necessary by the Design Professional and the Owner will be managed and funded by the Owner without additional compensation to the Design Professional.

1.6 **Facilities Asset Data Exchange:** The Design Consultant shall provide services necessary for the Owner's FADE program, including coordination with the Constructor. Should the Owner change the FADE process change in form or content, the Design Professional is not relieved of the responsibility to fully execute the work required to

compile the information and complete the Log.

ARTICLE 2
PROJECT PROGRAM ANALYSIS

2.1 The Design Professional will provide the following written and graphic studies to evaluate and confirm programmed requirements.

(i) Space assignment studies: verify room areas and confirm that each is consistent with listed tasks and activities.

(ii) Space relationships studies: indicate the interrelationships and their character and frequency between the various rooms and activities.

(iii) Building materials and construction systems studies: indicate interrelationships between building construction types and programmed functions.

(iv) Final programmed areas studies: submit a statement of final programmed areas and approximate Project costs.

(v) Energy impact studies: identify space relationships that unusually impact energy requirements.

(vi) Security and safety studies: describe the security and safety implications of space relationships and program requirements.

(vii) Review and comment on MSU Planning Principles (see Appendix C).

ARTICLE 3
PROJECT SCHEMATIC DESIGN

3.1 For the Project schematic design, the Design Professional will include the following in the graphic and written representation of the Site, building design, and cost based on a reasonable physical investigation of the existing conditions.

(i) Statement of areas (including comparisons of programmed areas to designed areas).

(ii) Area and/or Site development studies.

(iii) Basic floor plans, including a set provided to scale in AutoCAD DWG or DXF format. (Contact MSU Engineering and Architectural Services for the current AutoCAD version.)

(iv) Basic building sections.

(v) Block elevations and graphics describing the building's form and mass.

(vi) Description of materials and engineering systems.

(vii) Built-in equipment list by category or department.

(viii) Energy requirements, flows, and interrelationships: develop an energy budget and predict resource and energy use and annual costs.

(ix) Construction cost estimate based upon the anticipated bid date.

(x) Proposed schedule through occupancy.

ARTICLE 4
PROJECT DESIGN DEVELOPMENT

4.1 The Design Professional shall provide the Project design development information as indicated by the option that has been checked by the Owner. Also listed are duties to be performed by the Owner.

(i) The Design Professional will provide Site plans showing locations and sizes of related roadways, walkways, utility services, and topography. If the Design Professional does not have in-house staff with sufficient experience in utility and/or landscape design, the Design Professional will hire a qualified sub-consultant(s), approved by the Owner, as part of the basic services.

(ii) Dimensioned floor plans, including built-in equipment.

(iii) Basic sections, basic construction details, and primary elevations.

(iv) Plans showing location and sizes of primary structural members and utility systems components.

(v) Construction specification outline.

(vi) Revised area tabulation, if applicable.

(vii) Construction and Project cost estimates.

(viii) Proposed schedule through occupancy.

(ix) Complete energy impact statement (MSU standard form).

(x) The Owner will provide a topographic survey of the Site showing existing conditions.

(xi) Comment on the Project’s compliance with the Planning Principles (Appendix C) contained within the “Vision 2050, MSU's Integrated Facilities and Land Use Plan, adopted December 2023”.

ARTICLE 5
CONTRACT DOCUMENTS, BIDS, AND BID ANALYSIS

5.1 The Design Professional will complete the following bidding and Construction Documents, provide related information, and provide the general services required to obtain and analyze bid proposals. Bidding and Construction Documents must comply with applicable codes, regulations, and the Michigan State University Standards for Construction Projects. The Design Professional will lead the investigation of existing conditions.

(i) The mechanical and electrical design engineer shall draft an operation manual for building systems that describes the concept of operation for the systems, potential problem areas, trouble-shooting suggestions, and warnings. (This is not to consist of a file of manufacturers' publications.)

(ii) Prepare and include in the bid documents a log of operation and maintenance documents required by the contractor.

(iii) Prepare construction drawings.

(iv) Prepare specifications, proposals, and Contract for Construction forms.

(v) Submit cost estimates by major trade categories and project budgets.

(vi) Submit all documents and pre-bid cost estimates for the Owner to review and approve.

(vii) Correct documents according to the Owner's instructions.

(viii) Provide working drawings, specifications, and proposal forms as required for the Owner’s use when soliciting bids and for construction purposes.

(ix) Issue bid documents.

(x) Prepare and issue addenda.

(xi) Before releasing bid documents, alert the Owner to any known changes to the energy impact statement data.

(xii) Provide the Owner with a recommendation for awarding the Contract(s) for Construction and establish a Project budget after analyzing bids and reviewing the successful bidder's qualifications.

(xiii) Provide a complete set of “Bid Set” or “Construction Set” drawings in AutoCAD format according to “MSU Electronic Document Submittal Standards” (Appendix D).

(xiv) Maintain and keep current a Construction Standards Exception Log of proposed and/or approved deviations from the MSU Standards for Construction Projects. Include the entry date, describe and give a reason for the exception, indicate the

impact on the budget and/or schedule and note the approval status. Review the log at each design progress meeting and submit it with each progress payment.

(xv) Respond in writing to all review comments provided by MSU personnel before the following scheduled document submission: schematic design response is due before issuing the design development review set; 90% response is due before bid documents are issued; etc. Failure to provide timely responses may be grounds for withholding progress payments.

5.2 If the lowest responsive/qualified bid or negotiated total Project Construction Cost exceeds the Owner's budgeted authorized Construction Cost, and the parties agree that the excess price is not due to delays on the part of the Owner or due to economic or other conditions beyond control of the Design Professional, the Owner may choose the following options, in addition to other remedies provided in this Contract:

(i) accept the bid or negotiated total Project Construction Cost;

(ii) cancel the Work or any portion of the Work;

(iii) revise the scope of the Work, as required, to reduce the total Project Construction Cost; or

(iv) require the Design Professional, at no cost to the Owner, to modify the Construction Documents and rebid or renegotiate the Work to bring the bid or negotiated total Project Construction Cost within the budgeted total Project Construction Cost.

ARTICLE 6
CONSTRUCTION ADMINISTRATION

6.1 The Design Professional, either principals of the firm, or senior architects or senior engineers, will perform these tasks while administering the Contract for Construction. Begin with the award of the contract and terminate at whichever is the earliest, either the issuance to the Owner of the final certificate of payment or 60 days after the date of substantial completion of the Project.

(i) Maintain construction accounts, review contractors' payment applications, and prepare and issue certificates of payment.

(ii) Review and distribute shop drawings within two weeks of receipt. For complex shop drawings that cannot be reviewed in two weeks, provide a projected review completion date within one week of receiving shop drawings.

(iii) Prepare and issue bulletins and bulletin estimates, check quotations and recommend actions, and recommend and prepare change orders. Bulletins will be issued no less than monthly unless there are no outstanding bulletin items. Change orders normally will be prepared and forwarded within one week of the Owner accepting the quotations.

(iv) Prepare and issue large-scale detail drawings when needed.

(v) Check and approve materials, samples, and representative equipment items submitted by the contractor.

(vi) Evaluate specified test results and recommend additional testing or corrective actions precipitated by test results.

(vii) Assemble and transmit required waivers, guarantees, certificates, affidavits, operating instructions, manufacturers' brochures, and maintenance manuals to the Owner.

(viii) Prepare color and finish schedules for Owner approval.

(ix) Comment on the Owner's furnishing and equipment selection for the Project as they relate to the Design Professional's general design objectives.

(x) Prepare and issue certificates of completion and final certificates of payment.

(xii) Prepare and transmit reproducible record drawings to the Owner, recording major concealed changes and significant construction bulletins based on marked-up prints, drawings, and other data furnished by the contractor to the Design Professional provide one complete set of blue-line prints one complete set in AutoCAD DWG or DXF format. (Contact MSU Engineering and Architectural Services for the current AutoCAD version).

(xii) Prepare and transmit three updated and completed copies of the building systems operation manual to the Owner.

(xiii) Monitor Work performed by the various contractor trades for conformity with the Contract Documents by administering the Contract for Construction and by on-Site observation.

(xiv) Assist the contractor in interpreting Contract documents through conferences, meetings, and other appropriate communications. Within three days of receipt, provide a complete answer to requests for information (RFI) or indicate a reasonable time within which a complete response will be submitted to the Owner.

(xv) Provide support when the contractor is establishing and maintaining a construction progress schedule by attending appropriate meetings with different trades at the Site and through weekly (or other mutually agreed upon interval) joint progress meetings with all contractors.

(xvi) Take reasonable measures to protect the Owner against defects and deficiencies in the Work.

(xvii) Provide the field observation needed, including regularly walking, taking notes, and observing while on-Site, and attend meetings needed to properly execute the Project and complete a ready-to-use facility per the Contract for Construction.

ARTICLE 7
CONSTRUCTION CLOSEOUT

7.1 The following services are to be performed before the 1% closeout (final payment) will be paid by the Owner to the Design Professional.

(i) Prepare and issue certificates of completion and final certificates of payment.

(ii) Assemble and transmit required waivers, guarantees, certificates, affidavits, operating instructions, manufacturers' brochures, and maintenance manuals to the Owner.

(iii) Comment on the Owner's furnishing and equipment selection for the Project as they relate to the Design Professional's general design objectives.

(iv) Prepare and transmit reproducible record drawings to the Owner, recording all construction changes based on marked-up prints, drawings and other data furnished by the contractor. Provide one complete set of drawings on vellum, and one complete set of AutoCAD files. Label each drawing "Record Document" and date. Refer to the "MSU Electronic Document Submittal Standards" (Appendix D) when submitting the AutoCAD files.

(v) Certify completion of a complete building systems operation manual to the Owner.

ARTICLE 8
ADDITIONAL COMPENSATION

8.1 When performed by the Design Professional, the following are considered Additional Services for which additional compensation will be paid.

(i) Assisting with Project program development (as described in Appendix B, Chapter 2, and made a part of this Contract).

(ii) Assisting to secure grants and gifts through special investigations and analyses; includes developing drawings or documents not included in the Contract, preparing reports, attending conferences, and related activities connected with non-state agencies.

(iii) Revising specifications and drawings previously approved to make changes requested by the Owner after the schematic design stage has been completed.

(iv) Professional services associated with repairing or replacing Work damaged by fire or other causes during construction.

8.2 Additional Services shall be documented as instructed in Appendix A (Chapter 2).

APPENDIX A
ADDITIONAL AND MODIFIED REQUIRED SERVICES

The Owner is to insert and identify known Additional Services and modified required services that are required from the Design Professional at the time the agreement is executed, including but not limited to the list below. Any subsequent Additional Services or modified required services should be added by following the procedures outlined for modifying the Contract.

Project Design Schedule Services

Project Testing Services

Project Approval Services

General Project Services

Preliminary Design Services

Construction Documents Services

Pre-construction Services

Construction Services

APPENDIX B
PROJECT PROGRAM DEVELOPMENT

The Design Professional is to describe, in writing, the following needs of the Owner and the physical facilities proposed to meet those needs.

1. Purpose and objectives.

2. Activities to be accommodated, both initial and long term.

3. Scope and character of the various workstations, rooms and/or room groups, laboratories, equipment, etc., in the facility that are required to support programmed activities and their anticipated net assignable areas.

4. General Site relationships to other buildings and to activities, both immediate and long term.

5. Space to be vacated and its expected disposition due to the proposed construction.

6. Expected budgetary requirements and sources.

7. Anticipated timetable.

8. Room and workstation utilization studies to document that the number of rooms required to support programmed activities and the number of workstations in each satisfies the current and projected needs and objectives.

APPENDIX C
MSU PLANNING PRINCIPLES

The MSU Planning Principles can be found at
http://ipf.msu.edu/resources/campus-master-plan/index.html

CHAPTER 3
GENERAL TERMS AND CONDITIONS

ARTICLE 1
DESIGN PROFESSIONAL'S GENERAL RESPONSIBILITIES

1.1 **Design Professional's Services:**

1.1.1 The Design Professional's services are those services performed by the Design Professional, its employees, consultants and contractors.

1.1.2 As professional advisor and consultant to the Owner for the Project, the Design Professional accepts the relationship of trust and confidence established with the Owner and agrees to provide professional services to the Owner in an expeditious, economical and proper manner consistent with the Owner's interests and objectives.

1.1.3 The Design Professional shall determine and promptly notify the Owner in writing when Additional Services are necessary or desirable in connection with the Project.

1.2 **Design Professional's Performance of Services:**

1.2.1 The Design Professional acknowledges that time is of the essence and that the Owner will incur damages if the Project is not completed on time. The Design Professional shall always carry out its duties and responsibilities per the Project Design Schedule and all applicable schedules.

1.2.2 If the Design Professional or any of its principals, officers, employees, consultants, or agents has any direct or indirect financial interest in any material, product, system, equipment, design, process, or any other item included in the plans or specifications, it shall notify the Owner in writing of such interest when the plans and/or specifications are delivered to the Owner. The Owner may require the Design Professional to substantiate the reasons for including the item in the plans and/or specifications. The Owner may accept or reject the item. If the item is rejected, the Design Professional shall revise the plans and/or specifications to include an alternate or replacement at no cost to the Owner.

1.2.3 The Design Professional may not, without written permission of the Owner:

(i) engage or recommend that the Owner engage any consultant, trade contractor, subcontractor, or supplier to provide services on behalf of the Design Professional, Owner, or Project in which the Design Professional has a direct or indirect proprietary or other pecuniary interest;

(ii) require or recommend the use of products, materials, equipment, systems, processes, or procedures in which the Design Professional or any consultant, trade contractor, subcontractor, or supplier of the Design Professional has a direct or indirect proprietary or other pecuniary interest.

1.2.4 Unless otherwise directed or indicated by the Contract, the Design Professional may not control or be in charge of construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, nor may the Design Professional be deemed the agent of the Owner for any of the foregoing purposes.

1.3 **Design Professional's Duties:**

1.3.1 The Design Professional shall cooperate and communicate in a timely manner with the Owner and all other persons or entities required for completing the Project satisfactorily.

1.3.2 At the Owner's request, the Design Professional shall process documents and provide other reasonably required drawings, services, and certifications that are necessary for the Owner to finance or insure the Project.

1.3.3 The Design Professional shall abide by all applicable statutes and regulations, including but not limited to safety and environmental requirements and limitations.

1.3.4 The Design Professional will ensure that it and all of its subcontractors, consultants, and employees are properly licensed and certified for the tasks they are to perform under the agreement.

1.3.5 The Design Professional shall provide documents to the Owner for review per the schedule requirements and with at least 2 weeks for review.

(i) Consultants shall respond in writing to all review comments provided by MSU personnel before the following scheduled document submission: 30% response is due before issuance of 60% review set; 90% response is due before the bid documents are issued. Failure to provide timely responses will be grounds for withholding progress payments.

(iii) The Design Professional shall maintain and keep current a Construction Standards Deviation Log of proposed and/or approved deviations from the MSU Standards for Construction Projects. Include the entry date, description and reason for the proposed deviation, impact on the budget and/or schedule, and approval status. Review the log at each design progress meeting and submit it with each progress payment. (See Appendix B.) The log form can be found at

https://us.promapp.com/msu/Process/Minimode/Permalink/CfqsY2FBQx6wU7cPdBwKlH

1.3.6 The Design Professional shall process documents and provide other reasonably required documents, services, and personnel necessary for the following:

(i) to obtain construction and other required approval, permits, and certificates of occupancy for the Project; and

(ii) to show that the Design Professional's services and Work product comply with requirements of governmental agencies having jurisdiction over the

Project within the limits of the standard of care in Chapter 3, Article 1.4.1.

1.3.7 If the Design Professional makes any errors or omissions in any of its documents while performing its services, the Design Professional will immediately make changes, corrections, or additions to the documents without cost to the Owner.

1.4 **Design Professional's Personnel and Consultants:**

1.4.1 The Design Professional shall furnish professional services for the Project in accordance with the professional standards currently practiced by professional firms on projects similar in size, complexity, and cost to the Project. These professional services must be performed by or under the immediate supervision of experienced professional(s) licensed and registered in the state in which the Project is located and possessing expertise in the service being rendered. If the Design Professional chooses to subcontract or affiliate with another professional entity or organization for any of its scope of services, the Design Professional shall subcontract with a professional firm with the requisite licensure, skill, experience and expertise to provide the required services.

1.4.2 The Design Professional shall retain and compensate any consultant needed in connection with the Design Professional's performance of required services. Each of the of the Design Professional's agreements with consultant(s) shall:

(i) name the Owner as a third-party beneficiary of the consultant's service obligations;

(ii) specify that the Owner shall be entitled to enforce the Design Professional's agreement with the consultant; and

(iii) require that in the event of default under or termination of this Contract, the consultant will perform services for the Owner upon the Owner's request under the same terms and conditions as in the agreement with the Design Professional.

1.4.3 The Design Professional is responsible for all services performed by its consultant(s). Fees for the consultant(s) must be included in the Design Professional's Contract price.

1.4.4 The Design Professional shall name the "Design Professional's Representative" to serve as the Owner's primary contact with the Design Professional.

1.5 **Design Professional's Records:**

1.5.1 While performing its services, the Design Professional shall prepare records substantiating services rendered, including, but not limited to, records of all expenditures.

1.5.2 Unless otherwise provided, the Design Professional shall maintain substantiating records for seven years after the Project date of Final Completion or for any longer period of time as may be required by law or good construction practice. If the Design Professional receives notification of a dispute or the commencement of

litigation regarding the Project within this seven-year period, the Design Professional shall continue to maintain all Project records until the dispute or litigation is resolved.

1.5.3 Records of the Design Professional's staff time and reimbursable expense items connected with the Project and the records of account between the Owner and the construction contractors will be kept on a generally approved and recognized accounting basis. These records, and all others necessary to evaluate fees charged to the Project, will be available to the Owner's representatives for audit upon request during normal business hours for such period of time as they may be required to be maintained pursuant to section 1.5.2. In the event that any such audit discloses that the Design Professional misstated or miscalculated the compensation paid or expenses reimbursed to it by the Owner, the Design Professional shall promptly refund any overpayment it has received to the Owner.

1.6 **Contamination, Claim, and Incident Reporting:**

1.6.1 Promptly upon discovery, the Design Professional shall notify the Owner orally, of the presence and location of any environmental contamination of the Site of which it becomes aware, including but not limited to Hazardous Substances and petroleum releases. A written report of the incident must follow within 24 hours of discovery.

1.6.2 Promptly upon discovery, the Design Professional shall notify the Owner orally, of the details of all incidents of which it becomes aware which adversely affect or may adversely affect the quality or progress of the Work, including but not limited to union jurisdictional disputes, accidents, damages to Work, and similar significant incidents. A written report of the incident must follow within 24 hours of discovery.

1.6.3 The Design Professional shall promptly notify the Owner, both orally and in writing, of any claim of which it becomes aware made by anyone against the Owner, the Design Professional, the Builder, or any consultant, trade contractor, subcontractor, or supplier, or any of them with respect to the Project.

1.7 **Changes to the Contract:**

1.7.1 The Design Professional understands and agrees that the Contract cannot be changed except as provided herein.

1.7.2 The Contract can only be modified in writing by formal modification and signed by the parties.

1.7.3 If the Design Professional has a dispute with regard to one of the following decisions, it will continue to provide its services but, in doing so, will not prejudice any claim that it may have with respect to a final decision:

(i) that a change has occurred in its scope of services;

(ii) if a change in its scope of services will result in adjustment of its compensation or applicable schedules; or

(iii) the amount of any adjustment of compensation or applicable schedules.

ARTICLE 2
OWNER'S RESPONSIBILITIES

2.1 **Information:**

2.1.1 The Owner shall provide the Design Professional with information reasonably necessary to assist the Design Professional in performing its services, including, if applicable, the Site legal description and any required survey.

2.1.2 If the Project involves an existing structure, the Owner shall provide the Design Professional with available as-built and record drawings, plans, specifications, and structure system information in the Owner's possession with respect to the structure.

2.1.3 The Owner shall provide the Design Professional with the Owner's pertinent Project dates and key milestone dates.

2.1.4 The Owner shall provide the Design Professional with all written and tangible material in its possession concerning conditions below ground at the Project Site.

2.1.5 The Owner's furnishing of information to the Design Professional shall not relieve the Design Professional of the responsibility to evaluate the information and to notify the Owner in writing of additional information needed or services required from the Owner for the Design Professional to perform its services. Any information and tangible material provided by the Owner to the Design Professional is furnished only to make complete disclosure of such material in the Owner's possession and for no other purpose. By furnishing such material, the Owner does not guarantee its accuracy.

2.2 **Owner's General Duties:**

2.2.1 The Owner shall timely compensate the Design Professional per the Contract.

2.2.2 The Owner shall secure and pay for all pre-construction Project testing unless it is to be provided by the Design Professional in its scope of services.

2.2.3 Documents prepared by the Design Professional shall be reviewed by the Owner in a timely manner and based on the schedule requirements. The review shall be for the sole purpose of determining whether such documents are generally consistent with the Owner's intent. A review of such documents shall not relieve the Design Professional of any of its responsibilities.

2.3 **Owner's Representative:** The Owner shall name the Owner's representative as the Design Professional's primary contact with the Owner.

ARTICLE 3
PAYMENT TO THE DESIGN PROFESSIONAL

3.1 **General Invoicing Requirements:** During the term of this Contract, the Design Professional must submit invoices to the Owner at intervals of not less than once per month and generally in the form defined in Oracle Unifier Payment Applications. Each invoice must contain the Owner's Project identification, be reviewed by the Design Professional, and have attached documentation as required by the Owner.

3.1.1 The invoice must generally itemize or show a breakdown of the various phases or parts of the Design Professional Contract price, the value of the various phases or parts, the previously invoiced and approved amounts for payment, and the amount of the current invoice. Basic services are to be invoiced separately from Additional Services and reimbursable.

3.1.2 The invoice must also include a certification signed by the Design Professional stating that the Design Professional has paid its consultants, subcontractors and suppliers their proportional share of all previous payments received from the Owner.

3.1.3 By submitting the invoice, the Design Professional designated as in charge of the Project certifies as follows:

"I certify that I have reviewed this invoice and believe it to be a true and correct statement of all of the services rendered and the expenses incurred under the Contract for the period covered by this invoice, except as noted in Attachment 1 to this invoice."

3.1.4 By accepting the Owner's payment of an invoiced amount, the Design Professional releases the Owner from any and all claims by the Design Professional and its consultants and subcontractors for Work performed but not invoiced during the period for which payment was received. However, claims raised in Chapter 3, Article 5.2, are not subject to this clause.

3.2 **Invoicing Based on a Compensation Schedule and Invoicing for Payment of a Fixed Fee:** Invoices for payment under a fixed fee per a compensation schedule will, in addition to the invoice requirements contained in Chapter 3, Article 3.1:

(i) state the total fee and expenses amount; and

(ii) state the amount due in accordance with the Contract.

3.3 **Invoicing for Compensation for Services Rendered on an Hourly Basis:** When requesting payment of all or any portion of the Design Professional Contract price or payment of services on an hourly basis, in addition to the invoice requirements of Chapter 3, Article 3.1, the invoice will:

(i) describe the type and nature of each service rendered;

(ii) state the date each service was rendered;

(iii) identify the technical classification and the name of each person rendering each service;

(iv) state the hours expended by each class of persons for each service;

(v) state the hourly rate for each classification of service; and

(vi) state the total amount charged for each service.

3.4 **Invoicing and Payment of Expenses Directly Related to the Project:** In addition to the invoice requirements of Chapter 3, Article 3.1, invoices for expenses must be accompanied by documentation or support data required by the Owner. The Design Professional shall:

(i) be reimbursed only for the following expenses:

(a) transportation and travel expense to the Project Site or other designated place incurred by the Design Professional's personnel while performing Project duties and traveling beyond a radius of 100 miles from the firm's office at rates not to exceed those paid the Owner's employees;

(b) renderings or models required by the Owner;

(c) topographic surveys, soil borings, hazardous materials surveys, environmental Site assessments, and similar tasks requested by the Design Professional and authorized in writing by the Owner;

(a) other expenditures, including consultants who have been approved in writing by the Owner, for services outside the scope of the professional services in this Contract; and

(b) reproduction of drawings and specifications and postage and handling of the documents for bidding purposes or construction of the Project, except those for use by the Design Professional and those necessary for the Owner's review, approval, or record. Also excluded are preliminary or progressive documents prepared during or upon completing each phase of the services;

(c) long distance phone and facsimile charges, except those made on mobile/cell phones.

(ii) itemize the nature and cost of the expense item being billed and attach any written authorization required for the item; and

(iii) bill expenses at actual cost or prevailing rate without adding an administrative charge, multiple, or surcharge.

3.5 **Time for Payment:** Within 30 calendar days after receiving the Design Professional's invoice, the Owner shall pay the Design Professional the amount approved unless there is a dispute about the compensation due the Design Professional, including but not limited to claims by the Owner against the Design Professional. The date on which payment is due will be referred to as the Payment Date. In the event of disputes, payment will be made on or before the Payment Date for amounts and services not in dispute, subject to any setoffs claimed by the Owner. Payments will be deemed timely if postmarked at least two business days before the Payment Date.

3.6 **Periodic Payments:** The Owner shall make payments to the Design Professional during each phase of the services based on the value of the services completed by the Design Professional for that phase. Each payment will be based on the Owner's opinion of the value of the services completed as of the invoice date.

ARTICLE 4
DOCUMENT OWNERSHIP

4.1 **Nature and Use of Information:** The Design Professional grants the Owner a nonexclusive license to use and reproduce its Instruments of Service to construct, use, and maintain the Project. The Design Professional shall obtain similar nonexclusive licenses from its consultants consistent with this Contract. If this Contract is terminated before the Project is complete, the foregoing license will be deemed modified to a nonexclusive license permitting the Owner, at its sole risk, to authorize other similarly credentialed Design Professionals to reproduce and to make legal changes, corrections, or additions to the Instruments of Service solely for purposes of completing, using, and maintaining the Project.

ARTICLE 5
APPLICABLE LAW AND DISPUTE RESOLUTION

5.1 **Applicable State Law:** This Contract is to be interpreted under the laws of the state of Michigan.

5.2 **Dispute Resolution:** All disputes, claims, or other matters relating to this Contract shall be submitted by the Design Professional in writing to the Owner (University's Vice President for Finance and Operations or designee) to review. Raised claims must be presented to the Owner's representative within 30 days of when the Design Professional 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 Professional 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 Professional affecting the fee payment must be made before submitting the request for final payment. Unless otherwise instructed by the Owner, the Design Professional shall continue to Work under this Contract without delaying the Project, or any portion thereof, pending the outcome of the dispute, claim, or question.

ARTICLE 6
TERMINATION OR SUSPENSION OF THE CONTRACT

6.1 **Termination for Cause:** The Owner may, by written notice to the Design Professional, terminate this Contract in whole or in part at any time if the Design Professional fails to fulfill Contract obligations. Upon receiving such notice, the Design Professional shall immediately discontinue all services affected (unless the notice directs otherwise) and deliver to the Owner all information and materials that the Design Professional has accumulated in performing this Contract, whether completed or in process.

6.1.1 The Owner may take over the work and complete it by Contract or otherwise. The Design Professional will be liable for any reasonable and necessary costs to the Owner.

6.1.2 If it is determined that the Design Professional had not failed to fulfill Contract obligations, the termination shall be deemed for the Owner's convenience. In such an event, an adjustment to the Contract price shall be made as provided in this article.

6.1.3 The rights and remedies of the Owner provided in this article are in addition to any other rights and remedies provided by law or under this Contract.

6.2 **Termination for Convenience:** The Owner may, by written notice to the Design Professional, terminate this Contract in whole or in part at any time for the Owner's convenience. Upon receiving such notice, the Design Professional shall immediately discontinue all services affected (unless the notice directs otherwise) and deliver to the Owner all information and materials that the Design Professional has accumulated in performing this Contract, whether completed or in process.

6.2.1 If the termination is for the Owner's convenience, an equitable adjustment in the Contract price will be made, but no amount will be allowed for anticipated profit or unperformed services.

6.2.2 The rights and remedies of the Owner provided in this article are in addition to any other rights and remedies provided by law or under this Contract.

6.3 **Suspension:** The Owner may, upon written notice to the Design Professional, suspend, delay, or interrupt the Work of the Design Professional for such period of time that the Owner may determine. The Design Professional shall only be entitled to compensation for the Work completed before the effective date of the suspension.

6.3.1 If the Owner elects not to proceed with the Work, the suspension shall be considered a termination for convenience pursuant to Chapter 3, Article 6.2, of this Contract unless otherwise noted by the Owner.

6.3.2 If the Owner provides written direction to the Design Professional to proceed following the period of suspension, delay, or interruption, the Design Professional may be entitled to an equitable adjustment of the Contract price for the increases in

the direct costs of performing the Work attributable solely to the suspension, delay, or interruption.

6.3.3 No adjustment to the Contract price shall be allowed to the extent that the Design Professional was responsible for or contributed to any suspension, delay, or interruption of the Work.

6.3.4 No adjustment to the Contract price shall be allowed to the extent that any equitable adjustment is made or denied under any other provision of this Contract.

ARTICLE 7
MISCELLANEOUS PROVISIONS

7.1 **Integration:** The Contract represents the entire and integrated agreement between the Owner and the Design Professional and supersedes all prior negotiations, representations, or agreements, either written or oral, for the Project. The Contract may be amended in writing only and must be signed by the Owner and the Design Professional. It is subject to reasonable modifications as may be required by the Owner's lender(s) or insurer(s).

7.2 **Severability:** If any provision of the Contract, or its application, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions of this Contract remain valid and enforceable.

7.3 **Waiver:** Provisions of this Contract may not be waived except by written agreement of the parties. A waiver of any provision on one occasion may not be deemed a waiver of that provision on any subsequent occasion, unless stated in writing. A waiver of any provision does not affect or alter the remaining Contract provisions.

7.4 **Strict Compliance:** Failure of the Owner to insist upon strict compliance by the Design Professional with any provision of this Contract does not relieve the Design Professional of its contractual obligations.

7.5 **Third-Party Beneficiaries:** This Contract is solely for the benefit of the Owner and the Design Professional and their successors and assigns. Except as provided in Chapter 3, Article 1.4.2, nothing contained in this Contract is intended to create a contractual relationship with any third party.

7.6 **Survival:** All Contract provisions containing continuing obligations will survive the Contract’s expiration or termination.

7.7 **Assignment:** Neither party may assign any or all of its benefits or executory obligations under this Contract without the approval of the other party, except in case of assignment solely for security or assignment by the Owner to a related party of the Owner. The Owner and the Design Professional bind their successors and assigns to the other party of this Contract.

ARTICLE 8
DAMAGES AND REMEDIES

8.1 **Services, Reimbursement and Deductions:** If the Design Professional fails to perform its duties, it shall, without compensation by the Owner, provide and process all documents and provide other services that may be required due to its failure to perform. The Owner also reserves the right to recover from the Design Professional any costs or damages incurred, or which may be incurred, by the Owner as a result of the Design Professional's failure to perform.

8.2 **General Indemnity:** The Design Professional is responsible for any loss or damage to property or personal injury, damage, or death to the extent caused by the negligence or intentional misconduct of the Design Professional, its employees or agents, while performing this Contract. The Design Professional shall indemnify, defend, and hold the Owner harmless against costs, losses, or damages arising from the negligent acts, errors, and/or emissions or the intentional misconduct of the Design Professional, its employees, or agents.

8.3 **Intellectual Property Indemnity:** To the fullest extent permitted by law, the Design Professional shall defend, protect, hold harmless, and indemnify the Owner and the Owner's Related Parties from and against any liability, loss, claims, demands, suits, costs, fees and expenses (including fees and expenses of attorneys, expert witnesses, and other consultants), by whomever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Owner in writing. If the Design Professional has reason to believe that the use of a required design, process, or product is an infringement of a patent, the Design Professional shall be responsible for such loss unless such information is promptly given to the Owner.

8.4 **Non-Exclusivity of Owner's Remedies:** The Owner's selection of one or more remedies for breach of this Contract shall not limit the Owner's right to invoke any other remedy available to the Owner under this Contract or by law.

ARTICLE 9
GENERAL INSURANCE REQUIREMENTS

9.1 **Insurance:** The Design Professional shall purchase and maintain insurance with limits as outlined specifically in Chapter 1, Article 5. The Design Professional's insurers shall comply with the following general requirements.

(i) Insurance policies must be issued by companies licensed or approved to do business within the State of Michigan.

(ii) All insurance carriers shall possess a minimum A.M. Best rating of A VII.

(iii) The insurance policies, except for Worker's Compensation and Professional Liability, must be endorsed to name Michigan State University, its Board of Trustees, officers, employees, and volunteers as "Additional Insureds."

(iv) In the event that any insurance policy(ies) required by this Contract is written on a claims- made basis, coverage shall extend for three years past completion and

acceptance of the contractor's Work or services and must be evidenced by annual certificates of insurance.

(v) A minimum 30 days written notice of cancellation or non-renewal of policies required under the Contract must be provided by certified mail to the University.

(vi) General Liability and Auto policies of insurance must be on a primary basis, non-contributory with any other insurance and/or self-insurance carried by the University.

(vii) A renewal certificate must be provided at least 15 days before expiration.

9.2 Before commencing Work or services, the Design Professional shall furnish the University with certificates of insurance evidencing the required coverage, conditions, limits, and additional insureds and other applicable endorsements required by this Contract. The completed certificate of insurance must contain the following:

Name and address of agent, phone number and fax number;
Name of insurance company and policy number(s); Policy period;
Name and address of insured;
Description of coverage(s);
Name/number of the Project;
Policy limits;
Special instructions (e.g., addition of Michigan State University as additional insured, waivers of subrogation, identification of Project or operations with respect to the certificate being issued;
Michigan State University as the certificate holder; and
Signature of the insurer's agent or representative and date of signature.

9.3 The Design Professional agrees that the insurance requirements specified in the Contract do not limit the liability the Design Professional has assumed in the indemnification/hold-harmless section of the Contract.

9.4 If any professional liability insurance is canceled or not renewed, any substitute policy shall have a commencement date retroactive to the date upon which the Design Professional commenced performance of its services under the Contract.

9.5 Before performing services on the Project, the Design Professional shall ensure that its required insurance coverage and that of its consultants is in effect in accordance with the Contract. The Design Professional agrees that the University is not responsible for verifying compliance by the Design Professional or its consultants, contractors, subcontractors, or suppliers with any insurance requirements.

9.6 MSU reserves the right to approve the security of the insurance coverage regarding the terms, conditions, and the certificate of insurance provided by any insurance company. Failure of the Design Professional to fully comply with these requirements during the term of the Contract will be considered a material breach of contract and will be cause for immediate termination of the Contract at the option of the University.

ARTICLE 10
ELECTRONIC TRANSACTIONS

The owner reserves the right to require that any or all transactions and submissions be conducted and delivered electronically through their Capital Project Management System (CPMS), a web-based project management software system. If the owner requires the use of the CPMS, the owner will provide the necessary licenses for access into the CPMS and the initial training necessary to use the CPMS. Access to the CPMS will be password restricted, and any proposal, acceptance, quote or other information submitted through the CPMS through the use of a party's password shall be deemed to be the submission of such party and any proposal, acceptance, quote or other information in the submission shall be binding on such party as if such proposal, acceptance, quote or other information was in a writing signed by such party. Owner shall not be required to verify the validity of any such submission or inquire as to the authority of the user gaining access to the CPMS through the use of a party's password.

The selected Design Professional shall utilize the MSU-designated platform to manage and maintain project documentation and communications, including, but not limited to, project drawings, Requests for Information (RFIs), submittals, design reviews, design and construction comments, and the preparation and maintenance of the submittal log.

The selected Design Professional shall ensure that its personnel and consultants utilize the designated platform in accordance with MSU IPF's established procedures and requirements.

ARTICLE 11
CRIMINAL BACKGROUND CHECKS

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 the following websites:

- MBP: https://usd.msu.edu/mbp/mbp-270/index.html
- 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

These requirements apply to Design Professionals working on any on-campus project.

Compiled from the Construction Owners Association of America document *Contract for Professional Services* (COAA Document #P-100A, Copyright 2000 and 2003 by the Construction Owners of America and used by permission) and the MSU document *Contract for Architectural/Engineering Services.*