

AGREEMENT BETWEEN  
AND  
THE REGENTS OF THE UNIVERSITY OF MICHIGAN  
FOR PROFESSIONAL SERVICES

THIS AGREEMENT (“Agreement”) is effective from and after the 1<sup>st</sup> day of May, 2019, by and between THE REGENTS OF THE UNIVERSITY OF MICHIGAN, a Michigan Constitutional Corporation, Ann Arbor, Michigan (“the Owner”), and (“the Design Professional”).

The Design Professional agrees to provide professional services to the Owner under the following terms and conditions:

ARTICLE 1 – DEFINITIONS

- 1.1 Design Professional: The organization which either employs architects, engineers, planners, surveyors, designers, technicians, etc., or hires them as Sub-consultant(s) and which engages in performing the duties and responsibilities outlined in the Agreement.
- 1.2 Owner’s Representative: The individual(s) designated by the Owner in writing.
- 1.3 Deliverables: All Plans, Specifications, Reports, Recommendations, and other materials developed for or delivered to Owner by Design Professional under this Agreement.
- 1.4 Project Initiation Request (PID) (Exhibit C-PID): An authorization to meet with Owner and to do necessary work to prepare a CSA.
- 1.5 Continuing Service Agreement (CSA) Workbook (Exhibit D-CSA): A description of specific services or deliverables requested by the Owner that identify a “project”. In addition the CSA and forms included in Exhibits D-1 through D-3, and E will include such other terms and conditions as may be mutually agreeable between parties.
- 1.6 Additional Services Agreement (ASA) Workbook (Exhibit D-ASA): A description of specific services or deliverables requested by the Owner, that identifies additional work, or other changes to a Continuing Service Agreement. Exhibits D-1 through D-3 shall accompany the ASA upon submission.
- 1.7 Contract Administrator: The Owner’s representative (the Director of Facilities Planning and Development) who is custodian of this Agreement, performs needed audits, issues PID’s and reviews and processes CSA’s, ASA’s and invoices from the Design Professional.

## ARTICLE 2 – DURATION

- 2.1 Duration: This agreement shall become effective on May 1, 2019, and shall remain in effect until April 30, 2021, unless terminated as provided for in this agreement, or as extended with agreement of both parties. This agreement may be extended for up to two (2) additional one (1) year periods. Any work under any approved CSA may continue until satisfactorily completed or otherwise terminated. No new CSA's will be approved after April 30, 2019 unless this agreement is extended.

## ARTICLE 3 – SERVICES

- 3.1 Services: The Design Professional agrees to provide Basic Professional Services (Exhibit A) and provided by both parties, shall become part of this Agreement, and shall be performed in accordance with this agreement, and its described scope. The Owner retains the right to make changes to the quantities of service within the general scope of the agreement, or within a CSA, at any time by a written order. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original CSA and this agreement. The Design Professional understands that there is no guarantee, or implied promise (of any nature) that any CSA's will be issued under this agreement, and that the Owner is therefore under no obligation to issue or consent to any CSA's.
- 3.2 Other Laws: The Design Professional shall perform its Services for any approved CSA's in full compliance with all applicable local, state, and federal laws, ordinances, and regulations.
- 3.3 Design Guidelines, Standard Specifications and adopted codes: Unless otherwise noted in writing, the Design Professional shall perform its Services under this agreement, and any approved CSA's in accordance with the Owner's Design Guidelines, Standard Specifications, and the University adopted Codes as presented on the AEC & FPD websites with the following URL's:  
<http://www.umaec.umich.edu> and  
<http://www.med.umich.edu/facilities/plan/index.htm>
- 3.4 Please note that links are included on these websites that define, and/or show how the UMHHC requirements vary in certain particulars from the above noted documents when applied to University of Michigan, non-UMHHC buildings and facilities.
- 3.5 Owner Information: The Design Professional may not rely solely upon the accuracy of reports, drawings, surveys, and other documents provided to it by the Owner. The design professional shall provide on-site inspections, and take other actions as needed, to affirm the accuracy of the information provided.

## ARTICLE 4 – THE DESIGN PROFESSIONAL’S RESPONSIBILITIES

- 4.1 Coordination: The Design Professional agrees to cooperate fully with each of the consultants retained by the Owner, and with the Owner’s Representative, and to assist in the coordination and interface of all parties involved in the Project.
- 4.2 The Design Professional’s Representative: The Design Professional shall designate a single representative authorized to act on the Design Professional’s behalf in all interactions with all parties involved in the Project. Such individual must be listed within this proposal and cannot be changed without written permission by the Owner.
- 4.3 The Assigned project Team: The personnel and Sub-Consultants assigned to any project by the Design Professional shall be those noted in the RFP, which was the basis of this agreement. Existing work loads of other University CSA’s, and/or relocation of noted personnel are understandable reasons for a variance from the personnel noted in the RFP, but shall be noted to the owner in writing.
- 4.4 Licensing and applicable Standard of Care:
  - 4.4.1 The Design Professional warrants and represents to the owner that the Design Professional, and his sub-consultants, is/are fully licensed by the State of Michigan, to perform the services designated in this agreement.
  - 4.4.2 The Design Professional shall exercise the professional standard of care customarily provided in the performance of the types of services addressed in this Agreement (for projects of similar size, scope and complexity of each approved CSA).
  - 4.4.3 The Design Professional shall perform and complete all work in conformance with all applicable codes, rules, laws and regulations (see paragraph 3.2); as well as being in compliance with Owner Standards (see paragraph 3.3), applicable to the Project.
- 4.5 Design Professional Proposal: Except to the extent they conflict with the provisions of the document, the statements, representations and warranties in the Design Professional’s promotional material and Project proposal are incorporated, by reference, into this agreement.
- 4.6 Project Schedule: The Design Professional agrees to give the Owner detailed schedule information and milestone data on the design sequence of the Project, with sufficient lead-time to allow the Project schedule to be updated from time to time. The detailed schedule furnished by the Design Professional shall include reasonable allowances for periods of time required, to:
  - 4.6.1 Meet with “users”,
  - 4.6.2 For the reviewing and commenting of the Owner’s Representatives,

- 4.6.3 For submitting and receiving approvals from all authorities having jurisdiction over the Project,
- 4.6.4 Approval requirements required by the University Regents (and other like approval bodies), and
- 4.6.5 For all other commonly encountered tasks and steps in a normal design and construction project.

The Design Professional shall periodically inform the Owner of design progress in relation to target dates and shall control the design progress and staffing of the Design Professional to meet those target dates.

- 4.7 Responsibility for Accuracy and Adequacy of construction documents and Bid Documents: The Design Professional assumes and accepts full responsibility to the Owner for the accuracy, adequacy, consistency, buildability, code compliance result and completeness of the Construction Documents. Errors and omissions as a result of negligence with paragraph 3.5, the Owner, at its sole discretion, may request financial compensation from the Design Professional to correct such issues.
- 4.8 Special Testing or Inspections: The Design Professional may, when necessary or advisable to, require special inspection or testing of any Work in accordance with the provisions of the contract documents (whether or not such Work be then fabricated, installed or completed) – as long as the Design Professional has first received written authorization from the owner's Representative.
- 4.9 Ownership of documents Produced: The Owner shall own, and have rights to reproduce, and otherwise use the documents and other materials created under this agreement. In return, the Owner agrees not to modify and then re-issue these documents, unless one of the two conditions, blow noted, are met:
  - 4.9.1 The owner uses the same design professional to do this work, or
  - 4.9.2 The documents are modified, to remove Design Professional's name block and other identification, and to indemnify Design Professional, of any liability, for changes made to their documents.
- 4.10 Archiving Materials: The Design Professional's archive of Project materials such as hard copy, reproducible documents, computer data files on CD's disks and the like, of the final Project deliverables shall be available to the owner at reasonable prices for ten (10) years from the date of completion of the Project.
- 4.11 Hazardous Materials: The identification and removal of Hazardous Materials will not be the responsibility of the Design Professional, except to the extent the Design Professional causes the introduction of Hazardous Materials to the Project Site, or exacerbates contamination or a potentially hazardous situation such as asbestos-containing material already on the Project Site that was made known to or inadvertently discovered by the Design Professional.

- 4.12 Cooperation: The Design Professional shall reasonably cooperate with the contractor on all matters throughout the duration of the Project. With the following conditions and cautions:
- 4.12.1 The owner shall be informed of all interactions that may potentially affect scope, cost, or completions.
- 4.12.2 The Design Professional shall refrain from giving direction as to the process/procedures the contractor should use when constructing the work. Responding to direct contractor questions, however, is permissible and expected of the design professional.
- 4.12.3 Any question from the contractor, requesting interpretation, or change to the contract documents shall only be received, and responded to in writing.
- 4.13 Promptness: The Design Professional's response to requests for interpretation or for approval of submittals, requests for information, and like communications will be made with reasonable promptness and within any time limits agreed upon in writing. The parties recognize that timely response by the Design Professional is important to the success of the work. Accordingly, the owner, the contractor and the Design Professional shall meet promptly after execution of the Owner/contractor Agreement to establish mutually acceptable time lines for the Design Professional's responses.

#### ARTICLE 5 – COMPENSATION OF DESIGN PROFESSIONAL

- 5.1 Compensation: The Design Professional shall be paid based on reasonable time spent, at the rates and prices specified in this agreement, Exhibit B, B-1 and B-2 and /or in signed CSA's as may be agreed upon from time to time. All such compensation and reimbursements shall be in accordance with this agreement, and the general terms and conditions of the University.
- 5.1.1 Payment for a Deliverable shall normally be made within 60 days following acceptance of invoices.
- 5.1.2 Hourly fees for work done under a CSA shall be based on the direct payroll hourly rate of the Design Professional's staff members times the approved firm multiplier actually working on the project.
- 5.1.3 Work performed under a PID, when resulting CSA is not approved, will be paid for the time spent to that point but shall never exceed \$1,500.
- 5.1.4 No work will be compensated for work done before date of PID.
- 5.1.5 No work on a CSA, or an ASA shall begin, except under Owner's specific written release until the CSA or ASA is approved by the Contract Administrator.
- 5.2 Additional Services: The Design professional will be compensated for Services performed in addition to the Services described in a specific CSA.
- 5.2.1 The Owner shall be promptly notified when additional services are being requested, and/or otherwise required.
- 5.2.2 Only the additional services, detailed and approved in an Additional Services Agreement (ASA) shall be compensated. Any work performed prior to executing an approved ASA will not be paid.

- 5.2.3 The Contract Administrator shall be the sole arbitrator of what shall be considered “reasonable” under this provision.
- 5.2.4 The Owner may, at any time, by written Additional Services Agreement and without prior notice to the Design Professional, make changes to the scope of services to be performed by the Design Professional under any CSA. If any of the changes cause an increase or decrease in the compensation payable to the Design Professional, the Owner and the Design Professional shall mutually make an equitable adjustment in the compensation payable to the Design Professional, the delivery schedule, or both, and provide written record of the adjustment
- 5.3 Record Keeping: The Design Professional shall keep complete records of time spent and materials used on the Project so that the Owner may verify invoices submitted by the Design Professional.
  - 5.3.1 Such records shall be made available to the Owner upon request with each invoice
  - 5.3.2 All expenses for professional sub-consultant services shall have appropriate documentation and shall be attached to the invoice.
    - 5.3.2.1 Expenses shall not be marked-up
    - 5.3.2.2 Travel time, printing, postage, phone, parking, food, and other expenses, except for professional sub-consulting services as approved by the Owner, for all Design Professionals shall not be charged, but shall be considered part of the overhead covered in the mark-up on the labor rates.
      - 5.3.2.2.1 The Owner will directly pay for all contract document reproduction required for Owner review and construction only.

## ARTICLE 6 – INSURANCE AND INDEMNIFICATION

- 6.1 Indemnification: The Design Professional shall indemnify, and hold the Owner, including its Board of Regents, other university officers, and university employees, harmless from all claims, liabilities, demands, costs and expenses (including reasonable attorneys’ fees and court costs and related expenses) to work under and/or related to this agreement and all associated CSA’s and ASA’s. Said indemnification shall cover all issues that may arise from the Design Professional, or it’s Sub-consultants’ performance (negligent or otherwise), or failure to perform under this Agreement including, but not limited to:
  - 6.1.1 Claims for bodily injury, death and/or property damage;
  - 6.1.2 Contractor claims for additional compensation or damages (including claims for additional work, delays, and/or extended conditions); and/or
  - 6.1.3 Claims arising from, or relating, to the Design Professional’s breach of or performance under this Agreement.
- 6.2 Insurance Coverage’s: The Design Professional shall promptly obtain, and maintain the insurance coverage’s described below, plus any additional or different insurance as may be required within any CSA. The Design Professional will provide the Owner with proof of insurance before commencing services under this Agreement. The Design Professional agrees that this Agreement shall

not be in effect until all proof of required insurance has been provided to and approved by the Owner as may be required by this Agreement.

1. Commercial General Liability Insurance including products and completed operations insurance with limits of \$1 Million per occurrence and \$2 Million aggregate and name the Regents of the University of Michigan as an additional insured.
2. Auto Liability, for owned, hired, or leased vehicles with a combined single limit of \$1 Million.
3. Worker's Compensation at statutory limits in accordance with the appropriate State of jurisdiction including Employer's Liability Insurance with minimum limits of liability:  
Bodily Injury by Accident - \$500,000  
Bodily Injury by Disease - \$500,000 each employee, Bodily Injury by Disease - \$500,000 policy limit
4. Professional Liability, on a claims made basis, with limits as follows:

<u>Constructions Cost</u>	<u>Limits</u>
Less than \$1 Million	\$250,000 coverage
\$1-\$10 Million Dollars	\$1 Million coverage
\$10 Million or more	\$2 Million coverage

If any of the required insurance is on a claims made basis and is cancelled during the term of this agreement, the Design Professional agrees to purchase tail coverage or prior acts coverage so that such insurance is in effect from the date the Agreement is executed to three (3) years after its termination.

- 6.2.1 Cancellation: If the Design Professional's insurance coverage is cancelled or is reduced at any time, the Owner may (but need not) obtain the requisite coverage at the sole cost of the Design Professional and invoice the Design Professional for the cost. If the Design Professional does not pay the invoice promptly, the Owner may offset it against amounts next coming due to the Design Professional under this Agreement.
- 6.2.2 Self Insurance: Self-insurance for any of the insurance requirements is subject to the Owner's approval. To seek such approval, the Design Professional agrees to provide the Owner with a written description of the funding methodology and the Design Professional's most recent financial statements.
- 6.2.3 Insurance Rating: The Design Professional agrees that insurance carriers providing the above insurance must have an A.M. Best's Rating of "A" or better, except for the Professional Liability carrier which must be approved by the Owner's Risk Management Department.
- 6.2.4 Notice of Change: To help the Owner monitor the Design Professional's compliance with Paragraph 6.2; the Design Professional agrees that no reduction in stated limits or cancellation in insurance shall be made without sixty (60)

calendar days prior written notice to the Owner. Nor shall any change or cancellation in insurance be made unless it is replaced with comparable coverage.

- 6.2.5 Change In policy Requirements. If any policy form is claims-made and the Design Professional changes insurance companies, the new insurance must be retroactive to the beginning of this Agreement. The Design Professional's professional liability coverage is to continue for seven (7) years after the date of the Design Professional's certification of the Contractor's final payment for any Project, so long as similar coverage remains commercially available to five or more of the top ten architectural firms (based upon gross revenues) in the United States.
- 6.2.6 Relation to Indemnification: The insurance required in this section does not reduce or limit indemnification in Paragraph 6.1.

## ARTICLE 7 – MISCELLANEOUS

- 7.1 Sub-consultants: As part of its Basic Services, the Design Professional shall, provide services of all Sub-consultants (or sub-sub consultants etc) necessary, or reasonably required, in performance of work associated with any CSA.
- 7.1.1 Any Sub-consultant retained by the Design Professional in connection with the Services covered by this Agreement, must be specifically identified on the CSA, and agreed to by the Owner.
- 7.1.2 The Design Professional shall obtain the Owner's written consent before employing, or making any substitution, for such Sub-consultants.
- 7.2 Sub-consultant Responsibility: Should the Design Professional choose to retain a (or additional) Sub consultant after approval of CSA, for any design or testing services, written approval of that proposed Sub-consultant must first be obtained from the Owner.
- 7.2.1 Owner's approval does not in any way release the Design Professional from responsibility for the acts and omissions of the Sub-consultant; the Design Professional remains fully responsible to the Owner for the acts and omissions of any Sub-consultant.
- 7.2.2 The Design Professional must provide detailed information regarding the terms of any Sub-consultant agreement with each CSA to the Owner.
- 7.2.3 Costs associated with sub-consultants shall be processed as a project expense. All such billings must be in compliance with Paragraph 5.3 above.
- 7.3 Order of Procedure: The Design Professional shall proceed with the services set forth in this Agreement only to the extent authorized by the Owner in an approved CSA or ASA. Authorization must be received from the Owner's Representative prior to commencing any new phase of the services – see paragraph 5.2.
- 7.4 Changes: (See paragraph 5.2.4)



- 7.5 Nondiscrimination In Employment: The Design Professional agrees not to discriminate against any employee or applicant for employment in the performance of this Agreement, with respect to his/her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment, because of race, sex, color, religion, creed, national origin or ancestry, age, marital status, sexual orientation, disability, special disabled veteran, or Vietnam-era veteran status, and height or weight, except as allowed by the need for bona fide occupational qualifications, in employment, educational programs and activities, and admissions. The Design Professional further agrees to develop and maintain an Affirmative Action program for its firm and that every subcontract, relating to professional services entered into for the performance of this Agreement. Said Affirmative Action Program will contain a provision requiring nondiscrimination in employment, and the development and maintenance of an Affirmative Action Program as herein specified on the part of each sub-consultant with contracts in excess of ten thousand dollars. Breach of this provision may be regarded as a material breach of this Agreement.
- 7.6 Audits: The Design Professional shall keep accurate books and records with regard to its charges to the Owner, and if additional services are rendered. The Owner and its designated agents or representatives shall have the right to audit the same at all reasonable times during the performance of services under this Agreement and for a period of three (3) years thereafter.
- 7.7 Confidential Information: So that the Design Professional may effectively provide services under this Agreement, it may be necessary or desirable for the Owner to disclose or cause disclosure of confidential and proprietary information to the Design Professional pertaining to the owner's past, present and future activities.
- 7.7.1 Since it is difficult to separate confidential and proprietary information from that which is not, the Design Professional shall regard all information it gains because of services rendered hereunder as confidential and proprietary to the Owner and the information will not be disclosed to any organization or individual without the prior written consent of the Owner.
- 7.7.2 This Obligation of confidentiality does not extend to information which becomes available to the general public through no fault of the Design Professional, nor if the Design Professional is required to disclose the information pursuant to court order or other legal action.
- 7.7.3 The Design Professional shall so instruct its employees and Sub-consultants.
- 7.7.4 The Owner agrees that information provided to the Design Professional for purposes of designing the Project may be discussed with vendors, suppliers, contractors and other associated professionals to assist in making informed design decisions.
- 7.7.5 The Design Professional will endeavor not to disclose confidential and proprietary program information related to the Project.

- 7.8 Time: The Design Professional will use its best efforts to do everything possible to meet all deadlines reasonably established by the Owner and shall proceed as expeditiously as possible. Such efforts shall be undertaken in a manner consistent with the applicable standard of care set forth in this Agreement.
- 7.9 Successors and Assigns: This Agreement is binding upon the parties and their respective successors and assigns. Neither the Owner nor the Design Professional shall assign, sublet or transfer its interest in this Agreement without the written consent of the other.
- 7.10 Complete Agreement: This Agreement, the Exhibits A through E located on FPD website (see paragraph 3.3), and the University Of Michigan's Standard Terms And Conditions, represent the entire and integrated Agreement between the Owner and the Design Professional. All prior negotiations, representations and agreements, either written or oral, are merged herein.
- 7.11 Governing Law: This Agreement shall be governed by the laws of the State of Michigan. The Design Professional agrees that any disputes it has against the Owner shall be filed, in the Michigan court of claims, which has exclusive jurisdiction over the Owner.
- 7.12 Modification: This Agreement may be amended only by written instrument signed by both the Owner and the Design Professional.
- 7.13 Taxes: The fees, expenses and costs payable under this Agreement include all applicable taxes and shall not be changed as the result of the Design Professional's failure to include any applicable tax, or as a result of any changes in the Design Professional's tax liabilities.
- 7.14 Patents and Copyright: a. whenever any invention or discovery is made or conceived, by the Design Professional in the course of or in connection with this Agreement, the Design Professional shall furnish the Owner with complete information regarding the invention or discovery. The Owner shall have the sole power to determine whether, and where, a patent application shall be filed and to determine the disposition of title to and all rights under any application or patent that may result. The Design Professional shall, at the Owner's expense, execute all documents and do all things necessary or proper with respect to such patent application.
- b. Whenever any copyright is secured in connection with any work performed under this Agreement, including the transcription or publication of the results of any research financed by this Agreement, title and rights to such copyright will vest in the Owner.

- c. If this agreement is funded under a government prime contract or grant, which provides a different disposition for Items a. and b. above, the contract or grant, as appropriate, will govern.
  - d. The Design Professional to the best of its knowledge, information and belief warrants that the Design Professional's and/or the Owner's use of products, process, techniques and methodologies recommended by the Design Professional or developed by the Design Professional shall not infringe upon the copyright, patent or other proprietary rights of others. Regardless of the Design Professional's knowledge, information or belief, however, the Design Professional shall defend and indemnify the Owner against, and hold it harmless from, any and all loss, liability or damages it suffers or incurs as a result of or in connection with a claim that any aspect of the Design Professional's work infringes upon the copyright, patent or other proprietary rights of others.
- 7.15 Independent contractor Status: The Design Professional is an independent contractor and **not** the agent, representative, partner, or employee of the Owner. The Design Professional and the Design Professional's workers are not employees of the Owner and are not entitled to tax withholding, workers' compensation, unemployment compensation, or any employee benefits, statutory or otherwise. The Design Professional has no authority to enter into any contract or agreement to bind the owner and shall not represent to anyone that the Design Professional has such authority.
- 7.16 Use of the Owner's Name and Marks: The Design Professional shall not use the name of the Owner or any of its service marks, trademarks or trade names without the prior written permission of the Owner. Nor shall the publication of any articles, advertisements, news announcements, or the reproduction or publishing of pictures (or other audio/visual media), of the work done under this agreement, be allowed without prior written Owner approval.
- 7.17 Conflict of Interest: The Design Professional affirms that to the best of its knowledge, there exists no actual or potential conflict between the Design Professional, the Owner and the Design Professional's services. In the event of change in either its private interests or services, the Design Professional will inform the Owner regarding any possible conflict of interest which may arise as a result of such change. The Design Professional also affirms that there exists no actual or potential conflict between an employee of the Owner and the Design Professional
- 7.18 Affirmative Action: The Design Professional certifies that it is an equal opportunity employer and that, during the performance of this Agreement, it will comply with PL 101.507 and with Federal Executive Order 11246, as amended, The Rehabilitation Act of 1973, as amended, and the respective regulations thereunder, and the Michigan Civil Rights Act of 1976.

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

#### ARTICLE 8 – WARRANTIES BY THE DESIGN PROFESSIONAL

- 8.1 Standard of Care: The Design Professional warrants that the quality of its Services under this agreement shall conform to the level of professional quality defined in Articles 3 and 4.
- 8.2 Necessary Skills: the Design Professional warrants that it has all the skills, experience, and professional licenses necessary to perform the Services it is to provide pursuant to this agreement.
- 8.3 Sufficient Staff: The Design Professional warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services specified in this agreement.
- 8.4 Other Debt To Owner: The Design professional warrants that it is not and shall not become overdue or in default to the Owner for any contract, debt, or any other obligation to the Owner.

#### ARTICLE 9 – TERMINATION OF AGREEMENT

- 9.1 Breach: This agreement may be terminated, by either party without further notice, in the case of a breach of this agreement by the other party, if the breaching party has not corrected the breach within 15 days after notice of the breach.
- 9.2 No Breach: The Owner may terminate this agreement on 30 days notice for any, or no, reason. The Design Professional shall be compensated for reasonable time spent and reasonable quantities of materials used prior to notification of termination.

#### ARTICLE 10 – OBLIGATIONS OF THE OWNER

- 10.1 Facility Access: The Owner agrees to give the Design Professional access to the Project area and other Owner owned or leased properties as required to perform the necessary Services under this agreement.
- 10.2 Defect Notification: The Owner shall notify the Design Professional of any defects in the Services of which the owner's Representative has actual notice.

## ARTICLE 11 – ASSIGNMENT

- 11.1 Subcontracting: The Design Professional shall not subcontract or assign any portion of the services without prior written consent from the owner. Notwithstanding any consent by the Owner to any assignment, Design Professional shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirements, in writing, by the Owner.
- 11.2 Account Receivable: The Design Professional shall retain the right to pledge payment(s) due and payable under this agreement to third parties.

## ARTICLE 12 – NOTICE

- 12.1 Notice: All notices and submissions required under this agreement shall be by personal delivery or by first-class mail, postage prepaid, to the address stated in this agreement or such other address as either party may designate by prior written notice to the other. Notice shall be considered delivered under this agreement when personally delivered to the Owner's Representative or placed in the U.S. mail, postage prepaid to the University of Michigan, in care of the Owner's Representative.

## ARTICLE 13 – SEVERABILITY OF PROVISIONS

- 13.1 Severability: Whenever possible, each provision of this agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this agreement, or the application of any provision, to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition of invalidity without invalidating the remainder of the provisions of this agreement or the application of the provision to other parties or circumstances.

## ARTICLE 14 – OWNERSHIP OF DOCUMENTS

- 14.1 Ownership of Documents: The drawings, specifications, reports and supporting data, including that which may be stored on disks, on CD (or DVD's), in computer memory, or otherwise furnished by the Design Professional to the Owner, as well as the other Contract Documents, are instruments of service and shall become the property of the Owner upon payment in full of all monies due the Design Professional.. If the Owner modifies such instruments of service or reuses them for any other project without the Design Professional's written authorization, the Owner agrees that it does so at its own risk and without liability on the part of the Design Professional except to the extent the Design Professional

would otherwise be liable under this Agreement. To the extent permitted by law, and except to the extent the Design Professional is otherwise liable under this Agreement the Owner shall indemnify and hold harmless the Design Professional, including its officers, directors, employees, and Sub-consultants, for any damages, liabilities or costs, including reasonable attorneys' fees and defense costs arising from or connected with the Owner's modification of the instruments of service or reuse of such instruments on another project.

## **FINANCIAL ARRANGEMENT**

### **HOURLY BILLING RATE SCHEDULE**

<b><u>CLASSIFICATION</u></b>	<b><i>Flat Billing Rates</i></b>
Principal in Charge	\$ _____
Project Manager	\$ _____
Project Architect	\$ _____
Senior Architect	\$ _____
Architect	\$ _____
Intern Architect	\$ _____
Project Engineer	\$ _____
Senior Engineer	\$ _____
Engineer	\$ _____
Intern Engineer	\$ _____
Project Interior Designer	\$ _____
Senior Interior Designer	\$ _____
Interior Designer	\$ _____
Intern Interior Designer	\$ _____
Senior CADD Technician	\$ _____
CADD Technician	\$ _____
Intern Technician	\$ _____
Administrative Support	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

The University (Owner) will pay fees to Design Professional for services performed under this Agreement as listed above. Refer to Article 5 – COMPENSATION OF DESIGN PROFESSIONAL of this agreement for details related to Design Professional compensation.

**Price/Fee Increases.** The University (Owner) reserves the right to accept or reject all or any parts of Supplier's subsequent proposal to increase a price. At a minimum, any proposed increases in prices will:

- Be limited to one time annually (**Effective May 1<sup>st</sup> after approval by Owner**).
- Exhibit B-2 of this contract will serve as the mechanism for the Design Professional to submit Price/Fee Increases to the Owner (University).

This Agreement becomes binding when signed by both parties.

**FIRM NAME:**

**The Design Professional**

\_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

**FOR THE REGENTS OF THE  
UNIVERSITY OF MICHIGAN:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_