

UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY



ADDENDUM NO. 1

TO

**REQUEST FOR PROPOSALS
ARCHITECTURAL AND ENGINEERING SERVICES**

FOR

**NEW PARKING GARAGE / PUBLIC SAFETY UNIT
FOR THE UNIVERSITY OF MASSACHUSETTS – BOSTON**

PROJECT NO. UMBA 13-B2

Wednesday October 7, 2015

Proposals Due: Wednesday, October 21, 2015 at 2:00 PM



University of Massachusetts Building Authority
UMass Boston New Parking Garage / Public Safety Unit
RFP for Architectural and Engineering Services – Addendum No. 1

ADDENDUM NO. 1

NOTICE TO RESPONDENTS In accordance with the Request for Proposals (the “RFP”) issued by the University of Massachusetts Building Authority (the “Authority”) on Wednesday September 23, 2015 for Architectural and Engineering Services for the New Parking Garage / Public Safety Unit at the University of Massachusetts Boston (the “Project”), the Authority is issuing this Addendum No. 1, which includes modifications to the RFP, responds to questions received and the Pre-Proposal Conference sign-in sheet.

Except as specifically modified by the information contained in this Addendum No. 1, the RFP remains unchanged.

Attachment 4 of the RFP: “Form of Agreement for Professional Services Between Owner and Architect” is hereby deleted and replaced with Attachment C of this addenda.

- A. Attachment A to this addendum contains the questions received in response to the RFP and Pre-Proposal Briefing. Answers are provided accordingly.

- B. Attachment B to this addendum contains the sign in sheets from the Pre Proposal Briefing

- C. Attachment C to this addendum contains revised Attachment 4 of the RFP: Form of Agreement for Professional Services Between Owner and Architect.

END OF ADDENDUM NO. 1



University of Massachusetts Building Authority
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Attachment A to Addendum 1

- Q 1 Can an Engineering Firm be the prime consultant for this project?
- A 1 Contractually an Architectural or Engineering Firm can be the prime, however the prime's experience and ability to lead and manage the Design Team's effort regarding the overall design as well as the aesthetic design of the Parking Garage and the functional design of the Public Safety Unit are important considerations the Selection Committee will be looking for in the recommendation of the design firm.
- Q 2 I attended the proposal briefing meeting yesterday and understand that the current parking supply and fast track schedule to meet the Fall 2017 opening date are significant factors on this project. Is there any interest in a turn-key design build fast track solution?
- A 2 No.
- Q 3 When will a designer be selected?
- A 3 We expect to conduct interviews of the short listed firms mid November and award the contact late November.
- Q 4 Can you explain the anticipated design schedule?
- A 4 Design will start immediately following contract award. We expect to have certain early packages available in late Spring 2016 and full Contract Documents by Summer 2016.
- Q 5 Relative to the RFP for Project No UMBA 13-B2, A/E Services for a New Parking Garage/Public Safety Unit at UMass Boston, the Form of Agreement in Attachment 4 references an Energy Producing Facility as well as the Garage/Public Safety Unit project. Is a revised Form of Agreement for just the Garage/Public Safety Unit project going to be issued?
- A 5 Attachment 4 of the RFP: "Form of Agreement for Professional Services Between Owner and Architect" is hereby deleted and replaced with Attachment C of this addenda.
- Q 6 Is commissioning part of the scope?
- A 6 No, commissioning will be by a third party hired by the owner.

- Q 7 Is survey part of the Basic Services or Additional Services?
- A 7 Additional Services.
- Q 8 Are the University Design Standards and Guidelines referenced in the RFP available for review?
- A 8 The university's Architectural and Landscape Design Guidelines can be found at https://www.umb.edu/editor_uploads/images/university/masterplan/Design_Guidelines_120604FINAL.pdf
- Q 9 Is the \$5,000,000 Professional Liability required for all sub-consultants?
- A 9 Professional Liability minimum limits are required from Prime, UMBA does not hold contracts with sub-consultants.
- Q 10 With regards to the request to provide certain cost data (estimated/actual, total & percentage of change orders) for each project; such information may in part or whole, not be made available to the design team members. Is it acceptable to include projects comparable in size and nature where such information is not available along with projects where the information is available?
- A 10 Yes
- Q 11 How will information with regards to total percentage of change orders be viewed by the selection committee? Successful projects concluded under budget have in some instances incorporated a series of supplement items that augment the final project(s) utilizing change order procedures. In addition, project contingencies for subsurface and environmental components which are anticipated but not wholly defined during the design phase have been handled in a similar manner. The use of change orders under these circumstances, if interpreted incorrectly, may lead to an inference of substandard performance by the design team. Can the request for change order totals be removed?
- A 11 No. The selection committee will use this information as part of overall review of past performance on projects. Provide explanation in those cases.

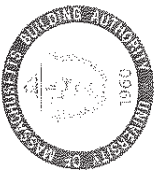
End of Questions.



University of Massachusetts Building Authority
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Attachment B to Addendum 1

Pre-Proposal Briefing Sign in Sheets



University of Massachusetts Building Authority University of Massachusetts - Boston

Wednesday, September 30, 2015 at 12:00 Noon

Sign-in Pre-Proposal Briefing

Designer Services for New Parking Garage / Public Safety Unit UMBA # 13-B2

UMB Integrated Science Complex Room 3300
University of Massachusetts Boston

Firm	Name	Email Address
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STV Incorporated	Robert Connors	CONNORR@STVINC.COM
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PERL & ASSOCIATES	TOM GUSTAFSON	gustafson@perlpc.com



University of Massachusetts Building Authority

University of Massachusetts - Boston

Sign-in Pre-Proposal Briefing

Wednesday, September 30, 2015 at 12:00 Noon

Designer Services for New Parking Garage / Public Safety Unit UMBA # 13-B2

UMB Integrated Science Complex Room 3300
University of Massachusetts Boston

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University of Massachusetts Building Authority
UMass Boston– New Parking Garage / Public Safety Unit
RFP for Architectural and Engineering Services – Addendum No. 1

Attachment C to Addendum 1

**Attachment 4 of the RFP: Form of Agreement for Professional Services Between
Owner and Architect**

UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY



AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN OWNER AND ARCHITECT

This AGREEMENT made and entered into as of the ___ day of _____ 2014 by and between the Owner and the Architect in connection with the Project, all as defined below.

Owner: UNIVERSITY OF MASSACHUSETTS BUILDING AUTHORITY, an entity established by Chapter 773 of the Acts of 1960, as amended, having its usual place of business at 225 Franklin Street, 12th floor, Boston, Massachusetts 02110

Architect: _____, having a principal place of business at _____

Project: New Parking Garage / Public Safety Unit, University of Massachusetts, Boston (the "Project")

Project No.: 13-B2

Attachments: (N.B. Attachments will be added to the execution contract once the Architect has been selected.)

- Attachment A:** Project Design Schedule to be inserted pursuant to Section 1.4
- Attachment B:** List of Architect's Consultants
- Attachment C:** Key Project Team Members
- Attachment D:** Current Billing Rates of the Architect and Consultants
- Attachment E:** Owner's Construction Management at Risk Procedures
- Attachment F:** Form of Contract Amendment
- Attachment G:** Authority's Minority and Women Project Participation Requirements



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Agreement for Professional Services between Owner and Architect

The Owner and the Architect enter into this Agreement for Professional Services (the “Agreement”) on the terms and conditions hereinafter set forth and specifically incorporate into this Agreement the Attachments referenced above.

Whereas the Architect understands that the execution of this Agreement authorizes the Architect to perform only Part One of the Basic Services; and that the Architect may be further authorized to perform Part Two of the Basic Services only upon receipt of a written notice to proceed from the Owner specific to Part Two of the Basic Services. As explicitly identified in the Request for Proposals issued September 23, 2015, the Owner makes no guarantee that the Agreement will be extended beyond Part One of the Basic Services provided in this Agreement.

ARTICLE 1. DEFINITIONS AND PROJECT INFORMATION

§ 1.1 Architect’s Services. The Architect shall provide the professional services and all other services and perform all other obligations as set forth in this Agreement pursuant to the terms and conditions hereof. The Architect acknowledges and accepts the relationship of trust and confidence established by this Agreement between the Owner and the Architect in connection with the Project and undertakes to protect and further the interests of the Owner with respect to the Project. The Architect’s services consist of those services performed by the Architect, the Architect’s employees, and the Architect’s consultants.

Furthermore, the Architect understands that the execution of this Agreement authorizes the Architect to perform only Part One of the Basic Services as defined herein; and that the Architect may be further authorized to perform Part Two of the Basic Services only upon receipt of a written notice to proceed from the Owner specific to Part Two of the Basic Services. As explicitly identified in the Request for Proposals issued September 23, 2015, the Owner makes no guarantee that this Agreement will be extended beyond Part One of the Basic Services as defined herein.

§ 1.2 Project Description. The Project involves **INSERT PROJECT IDENTIFICATION**.

§ 1.3 Standard of Care. The Architect shall exercise due care and diligence in the rendering of all services under this Agreement in accordance with the applicable professional standards and practice applicable to design professionals engaged in performing comparable services. The Architect’s services shall be performed as expeditiously as is consistent with such standards, the Owner’s approved schedule for design services, and the orderly progress of the Project.

§ 1.4 Schedule for Design Services. Within seven (7) days of the award of the contract, the Architect shall submit, for the Owner’s approval, a schedule for the performance of the Architect’s services which, when approved, shall be attached hereto and incorporated herein and marked **Attachment A - Project Design Schedule**. The Project Design Schedule shall conform to the milestone dates set forth in the Request for Proposals for the Project, dated September 23, 2015, and shall be developed using commercially available Critical Path Method (CPM) scheduling software compatible with Primavera® software, or such other software approved by



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the Owner, and, all submissions shall be provided electronically in both executable and PDF format.

The Project Design Schedule shall be acceptable to the Owner in form, substance, and detail and shall be based on an orderly, reasonable, efficient, and economical progression of the Architect's services, allowing adequate time for each phase of the Architect's work and for the performance of services by the Owner's other consultants and contractors. The Architect's schedule for design services shall include design milestone dates, anticipated dates when cost estimates or design reviews will occur, and allowances for periods of time required (1) for the Owner's review, (2) for the performance of the Owner's other consultants and contractors, and (3) for approval of submissions by authorities having jurisdiction over the Project. The Architect shall update the approved schedule for design services no less frequently than monthly and shall submit such updates to the Owner, along with a schedule narrative explaining any changes made from the approved schedule as well as the prior month's submission, with each payment application. The Project Design Schedule may be adjusted by the Owner as the Project proceeds. The Architect shall consult with the Owner regarding the Owner's desired Project milestone dates, which milestone dates shall be subject to modification by the Owner at any time and for any reason. To the extent Project milestone dates are known at the time of execution of this Agreement, they shall be set forth in the Project Design Schedule.

§ 1.5 Staffing, Time of the Essence. The Architect shall provide sufficient personnel to complete the services required by this Agreement in a continuous and timely manner and shall meet the approved Project Design Schedule, and all other dates and time requirements established pursuant to this Agreement. Time limits established by the Project Design Schedule as approved by the Owner shall not, except for causes beyond the Architect's reasonable control, be exceeded by the Architect. In the event the Architect recognizes that such time limits may be exceeded, the Architect shall promptly notify the Owner in writing. The Architect shall explain in detail the reasons why the time limits may be exceeded and propose steps, for review and approval by the Owner, to accelerate the design schedule to recover the original milestones or minimize the delay. The Architect acknowledges that time, including each design and construction milestone date, is of the essence of this Agreement.

§ 1.6 Responsibility for Architect's Consultants. Subject to the provisions of this Agreement, whenever the services of consultants to the Architect are required, the Architect shall employ them and be responsible for their work, payment, and the coordination and supervision thereof in all respects. The Architect shall be fully responsible for the professional and technical accuracy of the services rendered by all consultants, whether listed in **Attachment B** or otherwise engaged pursuant to this Agreement, and for the coordination of all designs, drawings, specifications, estimates, reports, analyses and other services whether furnished by the Architect or the Architect's consultants.

§ 1.7 Employment of Consultants. The Architect shall retain the Consultants identified in **Attachment B** to this Agreement. Except as specifically provided in this Agreement, the Architect shall not employ any consultants, or sublet, assign or transfer any part of its services, obligations, or responsibilities under this Agreement without the prior written approval of the



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Owner. The Architect shall provide the Owner with complete copies of its contracts with each of its consultants within fourteen (14) calendar days of the execution of any such contracts. No agreement between the Architect and any of the Architect's consultants may include any limits of liability unless approved in writing by the Owner prior to the execution of the consultant agreement. In all respects, the Architect shall bind its consultants in the same manner as the Architect is bound to the Owner. If, at any time during the course of the Project, the Owner has an objection to any one or more of the Architect's consultants for any reason, the Architect shall, after receiving written direction from the Owner, replace the consultant(s) with new consultant(s) acceptable to the Owner. The Architect's compensation shall be equitably adjusted for the increase or decrease in the cost of the new consultant's services. The Architect shall not replace any consultant without the Owner's prior written approval, which approval shall not be unreasonably withheld.

§ 1.8 Licensure. Architect's employees and consultants engaged on the Project shall be registered in Massachusetts in their respective disciplines if registration is required by Applicable Laws, as hereinafter defined. The Architect represents and warrants that its employees and consultants are duly qualified, licensed, and authorized by law to perform the services required under this Agreement. Each of Architect's employees and consultants shall also be experienced and competent in the work assigned to them.

§ 1.9 Architect's Key Project Team Members. The Architect has designated its key project team members ("Key Project Team Members") including a Principal-in-Charge and Project Manager who will have overall responsibility for the delivery of services and completion of the Project (the Key Project Team Members being identified in **Attachment C** of this Agreement), and all other team members identified in the Architect's proposal. The Key Project Team Members shall be available to devote the time and attention necessary to ensure complete and timely delivery of all services under this Agreement. The Architect has also designated one of the Key Project Team Members as the authorized representative to bind the Architect with respect to contract modifications and other legal matters, such designated person also being identified on **Attachment C**. The Architect shall not replace any Key Project Team Member or the representative authorized to bind the Architect without the Owner's prior written approval, which approval shall not be unreasonably withheld.

§1.10 Participation by Minority Business Enterprises/Women Business Enterprises. The Authority is committed to equal employment opportunity and non-discrimination on all of its projects and will take affirmative action to ensure equal employment opportunity and to eliminate discriminatory barriers. The Project will have the following participation goals for minority business enterprises (MBE) and women business enterprises (WBE) and for workforce utilization:

- Design: Combined MBE/WBE participation goal 17.9%
- Construction: Combined MBE/WBE participation goal 10.4%
- Construction workforce: Minorities: 15.3%; Women: 6.9%



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All provisions related to the participation of MBE/WBE set forth in the RFP, including all attachments and addenda thereto, are incorporated in their entirety as if fully restated in the body of the Agreement.

§ 1.11 Construction Delivery Method. The Owner intends to procure construction services for this Project in accordance with: (i) the Owner's Enabling Act, c. 773 of the Acts of 1960, as amended; (ii) M.G.L. c. 149A, §§ 1-13; (iii) the Owner's Construction Management at Risk Procedures under M.G.L. c. 149A (the "CM at Risk Procedures," attached hereto as **Attachment E**); and (iv) all other Applicable Laws.

§ 1.12 Definitions. Where appearing in this Agreement, the terms identified below shall have the following definitions.

Applicable Laws – Applicable statutes, acts, rules, regulations, requirements, executive orders, directions, ordinances, by-laws, codes, judgments, decrees, and injunctions of or by the United States of America, the Commonwealth of Massachusetts, and any political subdivisions of either of them, and any agency, department, commission, board, bureau, or instrumentality of any of them, that are in any way applicable to the Project.

Basic Compensation – The amount of fee specified in Section 7.2 of this Agreement to be paid to the Architect for performance of Basic Services in accordance with the terms and conditions of the Agreement.

Basic Services – All services required to be performed by the Architect as described in Article 2 of this Agreement in accordance with the terms and conditions of this Agreement. As part of Basic Services, the Architect is also obligated to perform those services described in Section 3.1 of this Agreement for which the Architect will receive additional compensation beyond Basic Compensation.

Construction Contract – The contract for construction management at risk services, or firm fixed price contract, executed between the Owner and the Construction Manager or the Construction Contractor, including all general, supplementary, and technical conditions applicable thereto.

Construction Contractor – The general contractor holding a firm fixed price construction contract or cost plus fixed fee with a guaranteed maximum price contract with the Owner for the Project. Throughout this document, the terms Construction Contractor and Construction Manager shall be interchangeable.

Construction Documents – As described in Section 2.6.

Construction Manager – The construction management firm holding a construction management at risk contract with the Owner for the Project. Throughout this document, the terms Construction Contractor and Construction Manager shall be interchangeable.

Contract Amendment – A written modification to this Agreement executed by the Owner and the Architect. Contract Amendments shall be in the form attached hereto as **Attachment F**.

Contract Documents – The Agreement and General Conditions between Owner and Construction Manager for Construction Management at Risk Services, the GMP Amendment, the OCIP



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Insurance Manual, the specifications and drawings. The Contract Documents shall also include all Contract Modifications.

Contract Modification – Any properly issued and executed contract amendment, addendum, Change Order, Construction Change Directive, or written order for a minor change in the Work not impacting the GMP or the Master Project Schedule.

Cost of the Work – The Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include the Construction Manager’s general conditions costs, bonds, insurance, overhead, and profit. The Cost of the Work shall not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the work or other Project-related soft costs that are the responsibility of the Owner.

Day – Calendar day unless otherwise indicated.

Independent Engineer/Commissioning Agent – The entity holding a contract with the Owner to provide independent engineering and/or commissioning agent services on the Project.

Owner’s Project Manager (“OPM”) – The Owner’s Project Manager for the Project is: Skanska Integrated Solutions, 253 Summer Street, Boston, MA 02210. The primary contact at the office of the OPM for this Project is Neil Davis, Neil.Davis@skanska.com. The OPM has been retained by the Owner to administer and manage the Project on behalf of the Owner as the Owner’s authorized representative. Wherever in this Agreement, reference is made to the “Owner” it shall be understood that the Owner may act by and through the OPM. Wherever notice may or must be given by the Owner, such notice may be given by the OPM. Wherever notice may or must be given to the Owner, such notice shall be given to both the Owner and the OPM.

Part One – Includes the project phases listed in Sections 2.3 (Programming and Feasibility Phase) and 2.4 (Schematic Design Phase) of this Agreement.

Part Two – Includes the project phases listed in Sections 2.5 (Design Development Phase), 2.6 (Construction Documents Phase), 2.7 (Bidding and Negotiation Phase) and 2.8 (Construction Administration Phase) of this Agreement.

Permits – Governmental, quasi-governmental and other necessary permits and approvals, including the filing of notices or information with governmental or quasi-governmental entities and authorities, that are necessary for the implementation of the Project at the Project site. The term shall include permits and approvals from utility companies and may also include permissions, approvals and consents by private parties necessary for the design and construction of the Project, such as an approval by a landlord or other holder of an interest in the Project site.

Reimbursable Expenses – Expenses that are incurred by the Architect that are eligible for reimbursement by the Owner in addition to the Basic Compensation. Reimbursable Expenses are limited to those set forth in Section 7.7 of this Agreement, and all require the Owner’s prior written approval. All other expenses of the Architect shall be included in the Basic Compensation and shall not be eligible for reimbursement.



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Capitalized terms not defined in this Agreement shall have the meanings defined elsewhere in the Construction Documents or the Construction Contract.

§ 1.13 Attachments. All Attachments, and each one of them, referenced in this Agreement are incorporated in their entirety as if fully restated in the body of the Agreement. Any term, condition, or limitation of any nature contained in any Attachment to this Agreement prepared or generated by the Architect shall not be binding on the parties hereto if such term, condition, or limitation conflicts with any term, condition, or limitation contained in the body of this Agreement.

ARTICLE 2. SCOPE OF ARCHITECT'S BASIC SERVICES

§ 2.1 Overview. The Architect's Basic Services consist of those described in this Article 2 and include usual and customary architectural, geotechnical engineering, code compliance, accessibility, sustainability, structural engineering, mechanical engineering, electrical engineering, plumbing engineering, fire protection engineering, acoustic engineering, lighting design, interior design, telecommunications, civil engineering, landscape design, all permitting, cost estimating and scheduling, any other services described in this Agreement, and any other services customarily performed by architects on projects of similar size, type, scope, and complexity.

Notwithstanding the foregoing, the services described in Section 3.1 as Additional Services shall be compensated as Additional Services in accordance with Section 7.5 or 7.6 of this Agreement. The Owner reserves the right in its sole discretion to adjust the Architect's scope of services and the Architect's fee for Basic Services based on the findings and outcome of any phase of work, the decision on the method of procurement of construction services, or any other factors that may affect the Project.

§ 2.2 General Obligations (All Phases). During each phase of the Project, the Architect shall perform the services set forth in this Section 2.2 as a part of Basic Services, unless otherwise indicated.

§ 2.2.1 Coordination and Collaboration. The Architect shall manage and coordinate the Architect's services and the services of the Architect's consultants, consult with the Owner, research and establish applicable design criteria, attend and facilitate Project meetings, communicate with members of the Project team, and report progress to the Owner. The Architect shall fully coordinate its services with those services provided by the Owner and the Owner's other consultants and contractors. The Architect shall also continuously cooperate and collaborate with the Owner, the University, and the Owner's other consultants and contractors, including but not limited to, the Construction Manager, the Independent Engineer/Commissioning Agent, and their respective subconsultants and subcontractors, throughout the duration of the Project to the extent appropriate given the phase of the Project to ensure close collaboration and appropriate exchange of information regarding all aspects of the design and construction of the Project. The Architect shall endeavor to promote harmony and effective communication between and among all Project participants for the duration of the Project.



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§ 2.2.2 Information Exchange. The Architect shall provide to the Owner and each of the Owner's other consultants and contractors, and their respective subconsultants and subcontractors, all necessary documents, analyses, data, and information, regardless of physical form, to enable such parties to timely and efficiently perform their services under their respective contracts with the Owner.

§ 2.2.3 Sustainable Design. The Project shall be designed so that it is certifiable according to LEED standards at no less than a LEED Silver for New Construction certification level; however, the Authority has not yet determined whether the project will be submitted to the USGBC for certification. Therefore, the Architect shall be responsible for coordinating the delivery of all LEED and associated sustainable design services required for the Project but shall NOT register the project with the USGBC or submit any documentation to the USGBC unless specifically directed by the Authority. The Architect shall perform such services in a timely fashion as early as practicable during the Project to allow the Owner to make decisions regarding sustainable design elements in the most efficient manner so as to not delay the Project or cause the Architect to re-render any services. All LEED and sustainable design services necessary to obtain LEED Silver certification, including the Architect's written comparative analysis of achieving, as an alternative, LEED Gold or higher certification, shall be included as a part of Basic Services including identification of cost to obtain each higher level of LEED certification. If a higher level of LEED certification is selected by the Owner, any incremental services required of the Architect shall be performed as Additional Services on a negotiated fixed fee basis. All LEED-related registration fees shall be paid as reimbursable expenses and shall be limited to the actual fees incurred without any premium or markup by the Architect. In performing Basic Services relating to LEED, the Architect shall, at a minimum:

- (a) Provide at least one LEED Accredited Professional approved by the Owner ("LEED AP") to serve as the LEED team leader to develop and implement the LEED program for the Project.
- (b) Review the University's Green Building Design Guidelines (if applicable);
- (c) Assemble a sustainable "Green Team" composed of members of the Architect's design team, the Owner, the University, and other Project stakeholders (subject to the approval of the Owner) who will establish and implement the sustainable design goals for the Project;
- (d) Conduct a sustainable design charrette with the Green Team at the inception of the Project to identify alternative sustainable design strategies and establish LEED goals for the Project;
- (e) Recommend to the Owner a plan for achieving LEED Silver, or higher, certification. This plan will include, but may not be limited to: (i) a comparative analysis of the requirements to achieve LEED Silver, or higher, certification including an explanation of why each LEED credit is or is not feasible or cost effective; (ii) an analysis of the design and construction cost impacts, life-cycle cost impacts, and performance benefits of each LEED credit requirement; (iii) an analysis of the incremental LEED-related costs for each



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higher certification level compared with a LEED Silver design and a non-LEED design; and (iv) the schedule impact, if any, of each higher level of LEED certification;

- (f) During each phase of design, perform the required calculations, conduct the required energy modeling, and compile and review the required information needed to meet the LEED prerequisites and credit requirements. Prior to the expiration of one year from the date of Substantial Completion, perform an energy analysis to compare the final model with the actual data on energy usage, and conduct any necessary review to reconcile actual energy usage with the model;
- (g) Fully integrate the LEED process, goals, and budget into all phases of the design and construction documents;
- (h) Prepare drawing and specifications that incorporate LEED requirements and design elements in the Contract Documents to define the Construction Manager's responsibilities and documentation requirements related to LEED certification; and
- (i) Provide LEED certification services throughout the duration of the Project.

If the Authority determines to submit the Project for LEED certification, the following services will be required of the Architect as Additional Services:

- (a) If directed by the Authority, register the Project with the U.S. Green Building Council ("USGBC");
- (b) If directed by the Authority, submit all appropriate documentation, including all required calculations and documentation, throughout the design and construction process to the USGBC;
- (c) If directed by the Authority, prepare responses and submit additional documentation required by comments or questions received from the USGBC after review of the documentation submitted by the Architect;
- (d) If directed by the Authority, submit all prerequisites and credits for review by the USGBC at the completion of the Project and oversee all matters pursuant to the issuance (or denial) of certification including any appeals which may be filed after either review period;
- (e) Work with the Owner to apply for and administer the receipt of any and all state, local and private sector initiatives that may result in grant or rebate monies to be applied to the Project's LEED initiative;
- (f) If directed by the Authority, prepare a final LEED certification report documenting the LEED rating the Project achieved, including the LEED certification plan, LEED certification documentation submitted, and LEED certification reviews received from the USGBC, together with the specific LEED credits that the Project is recognized as having received. The final LEED certification report shall include a detailed summary of the Owner's post-commissioning obligations with regard to the LEED-certified elements of the Project, including any ongoing operations, maintenance, re-certification, or other similar obligations.



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§ 2.2.4 Coordination with Governmental Entities. In collaboration with the Owner and the University, the Architect shall, at appropriate times commencing in the Schematic Design Phase, contact and coordinate with the governmental entities required to approve the Construction Documents and the other entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental and non-governmental authorities and by such entities providing utility services.

§ 2.2.5 Other Projects. The Architect shall render its services in coordination with all other projects on the University campus that may impact, or be impacted by, this Project.

§ 2.2.6 Environmental Analysis, Permitting, and Design. Unless otherwise set forth herein or agreed to in writing, with the exception of the standard building permits customarily obtained by the general contractor/construction manager, the Architect shall obtain all other permits required to implement Architect's design as part of Basic Services required under the Agreement. The Architect shall obtain the prior approval of the Owner of all permit applications, notices, and accompanying documentation before filing them with the appropriate governmental entity or other party. The Architect shall provide the Owner with a list of all permits required to implement the design at the site as soon as possible during design development, shall schedule target dates for the procurement of such permits, and shall regularly update such list and schedule during the term of this Contract. The Architect shall certify in writing at the time that construction documents (or changes thereto) are submitted to the Owner that the Architect has identified all permits required to implement the Project and that those not identified in writing as being the responsibility of the Owner have been identified in the specifications as being the general contractor's/construction manager's responsibility. The Architect shall also provide to the Owner a written certification of all Permits required to implement change order work at the site when the Architect submits for approval any change order request to the Owner during the construction phase of the Project, whether the change order request was made by the Architect, Owner, or the general contractor/construction manager. Notwithstanding the foregoing, for the following services that may be required in connection with the permitting activities, the Architect shall be compensated as follows:

- a. With respect to environmental permitting, the Architect shall conduct an environmental permitting analysis as required in each phase of the Project (and update in each phase as necessary) and shall assist the Owner and the University in connection with their responsibilities for filing documents required with respect to environmental permitting as part of Basic Services. It is anticipated that the Owner will prepare and file Environmental Notification Forms (ENF) and Environmental Impact Reports (EIR) during the Design Development phase of the Project. To the extent that the Owner requests the Architect to prepare and submit such ENF or EIR for the Project, the Architect shall be compensated as Additional Services. The Architect's provision of information and documentation within the technical expertise of the Architect and its Consultants that is necessary for the Owner to file such Environmental Notification Forms, Environmental Impact Reports shall be included in Basic Services.



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- b. To the extent that it is determined that the Project requires a Project Notification Form (PNF) to be submitted to the Massachusetts Historical Commission, it is anticipated that the Owner will prepare and submit the PNF. To the extent that the Architect is required to prepare and submit the PNF on behalf of the Owner, then the Architect shall be compensated as Additional Services. The Architect's provision of information and documentation within the technical expertise of the Architect and its Consultants that is necessary for the Owner to file such PNF forms shall be included in Basic Services.
- c. Any required attendance by the Architect at any public hearing in connection with any permit shall be considered an Additional Service to be compensated in accordance with Section 7.5 of this Agreement.

Any permit application fee shall be considered a Reimbursable Expense to be reimbursed in accordance with the provisions of Section 7.7 of this Agreement.

§ 2.2.7 Procurement of Additional Consultants. Whenever the services of a special consultant or expert, which is not a part of the Architect's consultant team at the beginning of the Project, are requested by the Owner or, in the opinion of the Architect, required on the Project, the Architect shall prepare, with the prior written approval of the Owner, requests for qualifications, requests for proposals, and such other documents as may be necessary in the opinion of the Owner to procure the required services. The Architect shall obtain a minimum of three (3) competitive proposals from qualified consultants or experts and shall deliver same to the Owner, together with the Architect's written recommendation as to which consultant or expert should be selected and the reasons for such recommendation. The Architect shall retain such consultants or experts only upon written approval of the Owner and shall be compensated for same as Additional Services in accordance with Section 7.6.

§ 2.2.8 Procurement of Construction Inspection and Materials Testing Services. The Architect shall retain the services of a construction inspection and materials testing company, approved by the Owner, which shall provide all independent inspection services and materials testing and analysis required during the construction of the Project, including, but not limited to soil, concrete, masonry, steel, and fireproofing. The Architect shall procure such services using the procedures set forth in Section 2.2.7, and shall be compensated for same as Additional Services in accordance with Section 7.6. The Architect's services required to coordinate and administer testing and inspection services, review and comment on testing reports, etc. shall be considered base contract scope and included in Basic Services.

§ 2.2.9 Review of Information. Throughout the Project, the Architect shall review all data, information, materials and reports submitted by the Architect's consultants listed on **Attachment B**, by the Construction Manager, and by all other consultants, experts and consulting companies, including those described in Sections 2.2.7 and 2.2.8, that provide services in connection with the Project, making recommendations to the Owner regarding appropriate response actions with respect thereto, and implementing such actions.



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§ 2.2.10 Owner's Consultants. If the Owner directly employs an independent cost estimator, project manager, and/or other consultant(s) or advisor(s), the Architect and its consultants shall work directly with the Owner's consultant(s), at no additional cost to the Owner, to ensure that Project objectives are met and the Scope of Services is delivered in accordance with the requirements of this Agreement.

§ 2.2.11 Procurement of Construction Services. The Architect shall assist the Owner in the procurement of construction services for the Project, regardless of the mode of procurement selected. In the event that construction services are procured pursuant to Mass. Gen. Laws c. 149A, §§ 1-13 and the Owner's CM at Risk Procedures, then the Architect shall serve on the Pre-Qualification Committee and the Selection Committee in connection with the qualification and selection of a Construction Manager at Risk for the Project, and shall participate in the selection of trade contractors by serving on the Trade Contractor Prequalification Committee.

§ 2.2.12 Independent Engineer/Commissioning Agent. The Architect shall, if requested by the Owner, support the Owner's procurement of Independent Engineer/Commissioning Agent services for the Project, including providing all documents that may be necessary to facilitate the procurement. As appropriate and necessary during each stage of the Project, the Architect shall fully cooperate and support the work of the Independent Engineer/Commissioning Agent. The Architect shall fully coordinate its services with the Independent Engineer/Commissioning Agent to ensure that the Independent Engineer/Commissioning Agent can timely, effectively, and efficiently perform its scope of services under its contract with the Owner. The Architect shall participate in meetings to resolve programming, design, and construction issues that bear on the commissioning of the Project. The Architect shall provide the Independent Engineer/Commissioning Agent with full information and data about the design of the Project reasonably requested by the Independent Engineer/Commissioning Agent.

§ 2.2.13 Quality Assurance. Upon execution of the Agreement, the Architect shall submit to the Owner a written description of the quality assurance procedures the Architect will implement in the performance of all services required under this Agreement. The Architect shall identify individual(s) responsible for document preparation, bid document review, and cost estimating, as well as methods utilized to determine the completeness, accuracy, and coordination of drawings, specifications, cost estimates, and other data and documentation.

§ 2.2.14 Proprietary Specifications. The Architect shall not incorporate specifications for proprietary items in the Construction Documents without the express prior written authorization of the Owner. Without limitation, the Architect, the Architect's employees, and the Architect's consultants shall adhere to the provisions of M.G.L. c. 30, § 39M, which provides in part:

"Specifications for such contracts, and specifications for contracts awarded pursuant to the provisions of said sections forty-four A to forty-four L of said chapter one hundred and forty-nine, shall be written to provide for full competition for each item of material to be furnished under the contract; except, however, that said specifications may be otherwise written for sound reasons in the public interest stated in writing in the public records of the awarding authority or promptly given in writing by the awarding



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authority to anyone making a written request therefor, in either instance such writing to be prepared after reasonable investigation. Every such contract shall provide that an item equal to that named or described in the said specifications may be furnished; and an item shall be considered equal to the item so named or described if, in the opinion of the awarding authority: (1) it is at least equal in quality, durability, appearance, strength and design, (2) it will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchased, and (3) it conforms substantially, even with deviations, to the detailed requirements for the item in the said specifications. For each item of material the specifications shall provide for either a minimum of three named brands of material or a description of material which can be met by a minimum of three manufacturers or producers, and for the equal of any one of said name or described materials."

The Architect shall refer to the law and consult with the Owner for procedures regarding proprietary specifications. The Architect shall conduct and fully document any investigations that the Owner may require with respect to proprietary items and shall provide such documentation to the Owner along with the Architect's written recommendation with regard to proposed proprietary items.

§ 2.2.15 Applicable Laws Pertaining to Accessibility. The Architect hereby assumes the obligations of the Owner and the University, including those that exist under the Massachusetts Architectural Access Board ("MAAB") regulations (521 CMR 1.1 et seq.), the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.), and any other Applicable Laws to design facilities accessible to and usable by people with disabilities. The Architect shall provide the Owner with designs that provide access to all programs, activities and services to be conducted within the facilities to be designed in accordance with the scope of services of the Agreement and to document compliance with the above referenced standards, as well as any variance or waivers of the above requirement the Architect may obtain. The Architect shall not seek any such variance or waiver of the above requirements without the express, prior written authorization of the Owner.

§ 2.2.16 Coordination with Owner's Insurers. Prior to commencing Design Development, the Architect shall become thoroughly familiar with the design and engineering standards of the Owner's property insurance provider, FM Global, and shall at all times incorporate such standards into the design of the Project and the Construction Documents. During the Design Development and Construction Documents Phases, the Architect shall submit copies of the specifications, drawings and other documents to the Owner's insurers for their review and comment, and shall make such modifications to the drawings, specifications, and other documents prepared by the Architect as the insurers may require at no additional cost to the Owner.

§ 2.2.17 Owner's Information. The Architect shall thoroughly review all documents and information provided by the Owner in accordance with the Standard of Care applicable to this Agreement, and shall promptly advise the Owner in writing of any inadequacies, errors, omissions, inconsistencies, or conflicts in the documents or information supplied, including any



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services provided by the Owner or any of its other consultants or contractors. The Owner does not warrant the accuracy of information furnished to the Architect, and the Architect shall satisfy itself as to the correctness and completeness of all documents and information, except in instances where written exception to the contrary is specifically indicated by the Owner.

§ 2.2.18 Building Information Modeling. The Architect shall advise the Owner on the use of building information modeling (BIM) on the Project and, at no additional cost to the Owner, prepare all design documents, data, and other information in a form suitable for use in a BIM model for design, construction, commissioning, and building operations and maintenance. The Architect shall provide the Owner with options on how to apply BIM on the Project and shall make recommendations on alternative methods of BIM implementation. Implementation and use of BIM shall not relieve the Architect from any of its obligations under this Agreement as the entity responsible for the design of the Project. The Owner may require that the implementation of BIM be subject to execution of a separate agreement between, at a minimum, the Owner, the Architect, and the Construction Manager, which agreement shall be in all respects acceptable to the Owner. All source documentation, data, and other information generated for the Project will be provided to the Owner and shall become the property of the Owner upon completion of the Project.

§ 2.2.19 Life Cycle Costs. At each phase of design, the Architect shall conduct a life cycle cost analysis of all major components and systems to be included in the Project. As design options and value engineering items are developed, a revised life cycle cost analysis shall be provided to assist the Owner in decision making.

§ 2.2.20 Basis of Design. The Architect shall develop a complete written basis of design document (“Basis of Design”), in executive summary narrative format, which shall be a stand-alone document, that includes at a minimum, all architectural, structural, mechanical, electrical, plumbing, fire protection systems, building controls, and equipment meeting the most current American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) Building Commissioning Standards. The Basis of Design shall be delivered to the Owner for review at the completion of the Schematic Design Phase, and a modified Basis of Design shall be delivered at the completion of the Design Development Phase.

§ 2.2.21 Electronic Information. The Architect shall provide to the Owner and the Owner’s other consultants and contractors, including, but not limited to, the Independent Engineer/Commissioning Agent and the Construction Manager, with useable CADD, BIM and/or other electronic information of drawings to assist in the performance of their respective services including, but not limited to, the preparation of the coordination drawings and to provide the basis for as-built drawings.

§ 2.2.22 Deliverables. The Architect shall provide six (6) hard copies of all deliverables, including, but not limited to, all studies, reports, and each set of progress design documents, to the Owner for review and approval at the completion of each phase of services. The Architect shall provide one (1) electronic copy of all deliverables in native format (or such other format as shall be agreed upon with the Owner) to be posted on the Architect’s FTP site, and/or provided



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to the OPM on disc. In addition to the six (6) hard copies, all drawings shall be provided electronically in both AutoCAD and PDF format.

§ 2.2.23 Available Rebates. The Architect shall work with the Owner to identify all Federal, State and Utility rebates (including tax credits for energy efficient design) available. The Architect shall develop and submit to the Owner for review all documents necessary to obtain all available rebates and shall file and administer all such applications upon the Owner's approval.

§ 2.3 Programming and Feasibility Phase Services. During the Programming and Feasibility Phase, the Architect's scope of services shall include, but not be limited to, the following services:

§ 2.3.1 The Architect shall manage and administer the Programming and Feasibility Phase services. The Architect shall consult with the Owner and the University, coordinate Project meetings, and communicate with members of the Project team to ensure the Programming and Feasibility Phase is advanced in accordance with the Owner's objectives and schedule. The Architect shall prepare, and periodically update, a schedule for Programming and Feasibility Phase services that identifies milestone dates for decisions required of the Owner, services furnished by the Architect, and completion of documentation to be provided by the Architect during this phase of work. The Architect shall coordinate the Programming and Feasibility Phase schedule of services with the Owner-approved Project Design Schedule.

§ 2.3.2 The Architect shall meet with the Owner and the University, as necessary, to review Project objectives and information. The Architect shall establish a protocol for and shall conduct all necessary interviews and programming meetings to identify Project objectives and programmatic requirements.

§ 2.3.3 The Architect shall compile and review all available plans, documents, studies, reports, conceptual space programs, building codes, ordinances, University planning and design guidelines and standards, and any and all other documents provided by the Owner or the University that pertain to the Project.

§ 2.3.4 The Architect shall develop options for the functional and spatial requirements for all anticipated program spaces, including general support spaces in the proposed facilities. The Architect shall propose specific space requirements for the Project including, but not limited to, identifying required spaces, establishing alternative size and space relationships, and identifying space requirements for major building systems and equipment. The Architect shall right-size each space type in the conceptual space program using benchmarks and industry standards in conjunction with the programmatic goals and the University's space requirements. In consultation with the Owner and the University, the Architect shall analyze and confirm that the mix of program spaces for the Project meets the pedagogical, programmatic, and scheduling needs of the University.

§ 2.3.5 The Architect shall advise the Owner and make specific recommendations regarding further investigations and analyses that may be necessary or desirable to undertake and complete prior to selection of the final facilities program.



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§ 2.3.6 The Architect shall develop options for the scale, massing, and building configuration of the Project on the site. The Architect shall develop alternatives for the “blocking and stacking” of programmatic elements and public spaces in an effort to optimize program affinities and the use of building amenities.

§ 2.3.7 The Architect shall analyze and develop schemes for interior circulation including accessibility considerations of the preferred building configuration.

§ 2.3.8 The Architect shall prepare an analysis of the building’s operational efficiency including operating costs, energy costs, and staffing requirements.

§ 2.3.9 The Architect shall prepare conceptual cost estimates of various building configuration options and develop a matrix to summarize the analysis.

§ 2.3.10 The Architect shall develop a detailed building program in consultation with the Owner and the University, based on the Architect’s review of existing facilities, user group interviews, site visits to facilities on other college campuses that are similar to the proposed facilities, and the Architect’s knowledge and expertise in the design of this type of facility.

§ 2.3.11 The Architect shall develop formal design intent documents that establish the performance goals and design guidelines of the Project, and shall update these documents at each phase of design.

§ 2.3.12 The Architect shall prepare drawings and calculations with the configuration, footprint, height and size of each option; provide a matrix that delineates the favorable and unfavorable factors of each option; and provide a cost-benefit analysis associated with each option. As often as necessary, the Architect shall meet with representatives of the Owner and the University to review options. The Architect’s cost estimator shall attend these meetings as appropriate to provide input on the review and analysis of design options.

§ 2.3.13 The Architect shall provide a thorough written analysis of all environmental permitting and other regulatory approvals required for the Project.

§ 2.3.14 The Architect shall advise the Owner and make specific recommendations regarding further investigations and analyses that may be necessary or desirable to undertake and complete prior to selection of the final facility program.

§ 2.3.15 The Architect shall conduct a sustainable design/LEED charrette for the Project, or at the option of the Authority, conduct the sustainable design/LEED charrette during the Schematic Design Phase.

§ 2.3.16 The Architect shall develop a conceptual cost estimate for the various configuration options and develop a matrix to summarize the analysis.

§ 2.3.17 The Architect shall prepare site plans and other materials to describe pedestrian and vehicular access and circulation, service areas, utility requirements, including, but not limited to, electrical service and distribution, water supply and distribution, site drainage, sanitary sewer collection and disposal, storm water collection and disposal, central-plant mechanical system connections, fire systems, emergency systems, security, pollution control, site illumination, wetlands, required set-backs, easements, height limits, and communications systems. The



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Architect shall also analyze the availability of existing utility mains, transmission, and distribution lines.

§ 2.3.18 After consultation with the Owner and the University, the Architect shall develop specific detailed recommendations for the preferred development option for the Project site.

§ 2.3.19 The Architect shall develop a final Programming and Feasibility Report as a record of all work and services completed during this phase, which report shall contain, at a minimum: (1) stacking diagrams, preliminary floor layouts, and narratives to describe options for the Project's physical space layout; (2) diagrams and narratives to describe the Project's systems and major equipment, including the mechanical, electrical, plumbing, elevator, fire protection, security, telecommunications, and information technology systems; and (3) specific recommendations, and supporting rationale, regarding the facility program, layout, building systems and major equipment, and other relevant factors. The Architect shall also include in the Programming and Feasibility Report its specific recommendations regarding all features of the Project, including the size, height, footprint, configuration, building systems, site improvements, and all other relevant factors, together with a rationale for its specific recommendations. The Architect shall also identify any unresolved programming or site selection issues and considerations and discuss options, and present recommendations, for their resolution.

§ 2.4 Schematic Design Phase Services. Based on the Owner's approval of the preferred development option or options identified during the Programming and Feasibility Phase, the Architect's scope of services during the Schematic Design Phase shall include, but not be limited to, the following services.

§ 2.4.1 The Architect shall prepare Schematic Design Documents for the Owner's review and approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations, and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings and described in writing. The Architect shall prepare the following to the extent such is applicable to this Project:

- (a) drawings and narrative descriptions of building systems including architectural, structural, mechanical, electrical, plumbing, fire protection, elevator, telecommunications, information technology, and other relevant systems;
- (b) floor plans of all building levels including the roof;
- (c) exterior and interior building elevations, cross-sections, and three-dimensional views, as required to provide a full visual description of the proposed Project;
- (d) furniture and equipment layouts of all spaces within the structure;
- (e) an outline specification of all site and building components, systems requirements and performance criteria;
- (f) a detailed code review of all proposed construction to ensure compliance with applicable building, fire, and other codes including the Americans with Disabilities Act and MAAB regulations, and a life safety plan for each building level indicating



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allowable area for construction type proposed, location of fire separation walls, means of egress paths, and required exit widths for doors, stairs and corridors;

- (g) a site assessment of the applicable Project site, and a thorough written review and assessment of all environmental permitting and other regulatory approvals required for the Project, including the entities responsible for obtaining each permit and approval;
- (h) site plans and diagrams showing pedestrian, handicapped, and vehicular access and circulation, service areas, utilities, wetlands, required set-backs, height limits, environmental factors, easements, site drainage, landscaping, site amenities, and all other relevant factors. The Architect shall identify the location of existing utilities and infrastructure, and review and evaluate any new utilities and infrastructure and their impact on the Project. The Architect shall provide drawings that identify the proposed routing and tie-in points to campus utilities and infrastructure;
- (i) information and documentation to support Owner's preparation of and submission of an Environmental Notification Form, Environmental Impact Report, Notice of Project Change, and any other filings which may be required pursuant to MEPA regulations or any other Applicable Laws;
- (j) information and documentation to support Owner's preparation and submission of a Project Notification Form for submission to the Massachusetts Historical Commission; and
- (k) a detailed project schedule and phasing strategy, outlining the time required to obtain all necessary permits and approvals, complete all design work, conduct procurement of construction services, award contracts, and complete construction and commissioning.

§ 2.4.2 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 2.4.3 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work. The Architect shall prepare a comparative analysis of significant characteristics of each building system, including a comparison of construction costs, maintenance costs, and all other relevant factors, such as rebates and utility operating expenses, in order to provide the Owner with information adequate to assess the options presented.

§ 2.4.4 Throughout the Schematic Design Phase, the Architect shall meet with the Owner on a regular basis, which shall be no less frequently than every two (2) weeks, to review and discuss the development of the design. At the request of the Owner, the cost estimators shall attend these meetings to provide input on the evaluation of materials, systems, and equipment as noted in Section 2.4.3, and on the review and analysis of design options. The Architect shall submit the Schematic Design Documents to the Owner for review and approval.

§ 2.4.5 At the end of the Schematic Design Phase, the Architect shall prepare a full and complete cost estimate for the Project including, but not limited to, information technology,



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telecommunications, furniture, fixtures, and equipment. All cost estimates shall be provided in form, substance, and detail acceptable to the Owner (Construction Specification Institute (“CSI”) or similar). The Architect shall compare its Schematic Design cost estimate to the cost estimate prepared at the completion of the Programming and Feasibility Phase and recommend appropriate actions to modify, correct, or value engineer (“VE”) the design in order to avoid potential cost overruns. The Architect shall implement all such actions approved by the Owner and shall, at the Architect’s sole cost and expense, modify the design and all associated plans, specifications, and other contract documents as necessary until such time as the cost estimates for the current phase are equal to or less than the last cost estimate approved by the Owner.

§ 2.4.6 Prior to the end of the Schematic Design Phase, the Architect’s team shall meet at least once with state building, state plumbing, and local fire department authorities having jurisdiction over the Project.

§ 2.5 Design Development Phase Services. During the Design Development Phase, the Architect’s scope of services shall include, but not be limited to, the following services.

§ 2.5.1 Based on the Owner’s approval of the Schematic Design Documents, and on the Owner’s authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.4, the Architect shall prepare Design Development Documents for the Owner’s review and approval. The Design Development Documents shall consist of drawings, specifications and other documents to fix and describe the size, character and quality of the Project with respect to architectural, structural, mechanical, electrical, plumbing and fire protection systems, materials and such other elements as may be appropriate, and that fully define the scope, quality, and quantities of all proposed components of the Project including, but not limited to, building materials, building systems, furniture, fixtures, equipment, and anticipated construction methods. The Architect shall prepare the following:

- (a) descriptions of proposed structural, mechanical, electrical, plumbing, fire protection, and other building systems;
- (b) detailed interior layouts and configurations based upon consultations with the Owner;
- (c) appropriate data and illustrations for furniture, fixtures, and equipment necessary to further develop interior layouts and configurations, including specially designed items or elements, to indicate finished appearance and functional operation;
- (d) recommendations as to colors, materials, and finishes not otherwise specified;
- (e) detailed exterior and interior building elevations, cross-sections, and three-dimensional views, as required to provide a full visual description of the proposed Project;
- (f) a 3-dimensional presentation model of the selected design;
- (g) recommendations for furniture, fixtures, and equipment to be procured for approval by the Owner and recommendations on the method of procurement including separate bidding if appropriate and/or inclusion in the prime construction contract;
- (h) construction phasing strategies as necessary or appropriate;



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- (i) recommendations to the Owner with respect to long lead-time procurement items and early bid packages;
- (j) applications for any required environmental and other regulatory approvals, including any required MEPA filings, submission of applications, and attendance at review and other meetings and hearings required by governmental authorities and others having jurisdiction over the Project;
- (k) initial mechanical, electrical, and plumbing systems design intent document that defines the performance expectations and objectives for the MEP systems;
- (l) Project schedule updates and phasing strategy, outlining the time required to obtain all necessary permits and approvals, complete the final design, bid the Project, award contracts, and complete construction and commissioning; and
- (m) a detailed update to the cost estimate and project budget for construction of the proposed design, including furniture, fixtures and equipment recommended for the Project, based upon quantity and unit costs.

§ 2.5.2 Throughout the Design Development Phase, the Architect shall meet with the Owner on a regular basis, which shall be no less frequently than every week, to review and discuss the development of the design. The Architect's cost estimator shall attend design review meetings as appropriate to provide input on the review and analysis of design options. The Architect shall submit the Design Development Documents to the Owner for review and approval.

§ 2.5.3 At the end of the Design Development Phase, the Architect shall prepare a full and complete cost estimate for the Project including, but not limited to, information technology, telecommunications, furniture, fixtures, and equipment. All cost estimates shall be provided in form, substance, and detail acceptable to the Owner (CSI or similar). The Architect shall compare its Design Development cost estimate to the cost estimate prepared at the completion of the Schematic Design Phase and recommend appropriate actions to modify, correct, or value engineer the design in order to avoid potential cost overruns. The Architect shall implement all such actions approved by the Owner and shall, at the Architect's sole cost and expense modify the design and all associated plans, specifications, and other Contract Documents as necessary until such time as the cost estimates for the current phase are equal to or less than the last cost estimate approved by the Owner.

§ 2.5.4 Throughout the Design Development Phase, the Architect shall meet with the Construction Manager, if engaged, to review and reconcile cost estimates and schedules, discuss project constructability issues, and assist the Construction Manager with preconstruction services.

§ 2.6 Construction Documents Phase Services. During the Construction Documents Phase, the Architect's scope of services shall include, but not be limited to, the following services.

§ 2.6.1 Based on the Owner's approval of the Design Development Documents, the Owner's authorization of any adjustments in the Project requirements, and the budget for the Cost of the Work, the Architect shall prepare complete and fully coordinated Construction Documents for the Owner's review and approval. The Construction Documents shall illustrate and describe the



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further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Construction Documents shall include complete drawings and specifications that establish in detail the quantity and quality of all materials, systems and equipment required to construct a fully complete and operational Project.

§ 2.6.2 The Architect shall incorporate into the Construction Documents the applicable design requirements of governmental authorities having jurisdiction over the Project.

§ 2.6.3 During the development of the Construction Documents, the Architect shall, with the assistance of the Owner, prepare all trade contractor prequalification, bidding, and procurement information and documents that may be required by laws, rules, regulations, and procedures applicable to the Project. The Architect shall review and become fully familiar with the Owner's form of agreement and general conditions (General, Supplementary and other Conditions) between the Owner and Construction Manager and between the Construction Manager and the trade contractors. All Construction Documents prepared by the Architect shall be fully integrated with the Owner's forms of agreement and general conditions and comply with applicable law in all respects. The Architect shall also compile a project manual that includes the conditions of the Construction Contract and Specifications and may include prequalification requirements, bidding requirements, and sample forms.

§ 2.6.4 The Architect shall submit the Construction Documents, cost estimates, and project schedules to the Owner for review and approval at the fifty percent (50%) and ninety percent (90%) stages of completion. Copies of such documents shall also be furnished to the Construction Manager, Independent Engineer/Commissioning Agent, the University, and any other entities directed by the Owner. The Architect shall respond in writing to all comments on the 50% and 90% complete Construction Documents, identifying action taken on each comment. All comments shall be incorporated in the Construction Documents unless doing so would require the Architect to violate the applicable standard of care.

§ 2.6.5 The Architect shall assist the Owner in the identification of bid alternates, if required, and shall prepare all necessary Construction Documents in support of same.

§ 2.6.6 Upon completion of the Architect's cost estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 5.4 and request the Owner's approval of the Construction Documents. The Architect shall assist in the development of VE items and alternatives as a part of this effort.

§ 2.6.7 The Architect shall develop a final Basis of Design document (each of which shall be a stand-alone document) at the fifty percent (50%), ninety percent (90%), and one hundred percent (100%) stages of completion of Construction Documents, which shall include all code review, design calculations, life cycle cost analysis, value engineering documents and all required information necessary to meet the most current ASHRAE building commissioning standards.

§ 2.6.8 The Architect shall submit ninety percent (90%) complete Construction Documents to the Owner's property insurer for review and comment. The Architect shall respond to such comments in writing and incorporate any comments as directed by the Owner.



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§ 2.6.9 Upon approval of the ninety percent (90%) plans, cost estimates, and Project schedule by the Owner, the Architect shall develop final Construction Documents for the Project.

§ 2.6.10 At the completion of Construction Documents Phase, the Architect shall prepare a final update to the detailed estimate of construction costs, including a breakdown by trade. The Architect shall assist the Owner in updating the Project budget including the final total Project costs.

§ 2.6.11 In support of commissioning, the Architect shall provide, at a minimum, the following documents: Sequence of Operations, Commissioning Specifications, Start-up and Testing Protocol, Functional Testing Performance criteria, Performance Testing Specification, Training Specification, and System Turnover Requirements. All such documents shall be provided in form, substance, and detail satisfactory to the Owner and its commissioning agent.

§ 2.7 **Bidding and Negotiation Phase Services.** During the Bidding and Negotiation Phase, the Architect's scope of services shall include, but not be limited to, the following services.

§ 2.7.1 Consistent with the fast-tracked method of delivery, the Architect shall assist the Owner and, as appropriate, the Construction Manager in the preparation of the necessary bidding information and bidding forms for all required trade contractors and subcontractors.

§ 2.7.2 The Architect shall provide Construction Documents for bidding with division of work clearly defined between all required publicly bid sub-trades and alternate bid items. All Construction Documents shall be prepared to conform to the bidding requirements of the Owner with input from the Construction Manager.

§ 2.7.3 Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner and, as appropriate, the Construction Manager in connection with the trade contractor and subcontractor prequalification and bidding process in conformance with the requirements of the procurement method selected by the Owner. The Architect shall, at a minimum:

- (a) review and confirm responsiveness of bids or proposals;
- (b) participate in determining the successful bid or proposal, if any;
- (c) perform a detailed reconciliation of the bid prices received to the cost estimate developed as part of the Construction Documents Phase Services. This reconciliation shall include an explanation by the Architect of major variances (e.g. greater than +/- 5%) and the reasons why the Architect thinks the bid price varied from the construction estimate provided by the Architect; and
- (d) perform all other services reasonably necessary in connection with the procurement of construction services by the Owner and, as appropriate, the Construction Contractor.
- (e) serve on the Trade Contractor Prequalification Committee as indicated in Section 2.2.11;
- (f) compile and review all trade contractor prequalification documents;
- (g) prepare all bidding documents, including technical specifications and information for trade contractors and subcontractors and addenda as needed;



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- (h) provide Construction Documents with division of work clearly defined between all required publicly bid trades and alternate bid items; and
- (i) issue a minimum of three (3) early construction bid packages as design, permitting, and Project sequencing allow and the Owner may direct. For each bid package, the Architect shall prepare and deliver preliminary and final submissions of Construction Documents, and revisions as necessary, that shall include the following: drawings showing in detail the work to be performed by contractors, including plans, drawings, specifications (consisting of all CSI Division 1 through 16 specifications) and other design-related documents required to support the Owner's and Construction Manager's construction procurement proposals (e.g., special conditions and technical specifications) as required by the Owner and the Construction Manager.

§ 2.7.4 The Architect shall assist the Owner in negotiating all contract amendments with the CM relating to early construction packages and all interim and final guaranteed maximum price amendments. The Architect shall prepare all Construction Documents necessary for such amendments and shall review all submissions from the Construction Manager relating to same and continuously advise the Owner on such negotiations until they are completed.

§ 2.7.5 The Architect shall consider, in accordance with Applicable Laws, requests for substitutions, if the Construction Documents permit substitutions. Substitutions shall be allowed only on an "approved equal" basis as expressly authorized by the Owner in advance and in writing.

§ 2.8 Construction Administration Phase Services. During the Construction Administration Phase, the Architect's scope of services shall include, but not be limited to, the following services.

§ 2.8.1 General

§ 2.8.1.1 The Architect shall provide administration of the contract between the Owner and the Construction Manager as set forth below and in the Agreement and General Conditions between the Owner and the Construction Manager.

§ 2.8.1.2 The Architect shall advise and consult with the Owner and the University during the Construction Administration Phase. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Construction Manager's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Construction Manager or of any other persons or entities performing portions of the Work.

§ 2.8.1.3 The Architect's responsibility to provide Construction Administration Phase Services shall commence with the Owner's notice to the Construction Manager to proceed with construction and shall terminate on the date the Architect issues the final Certificate for Payment



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provided that: (i) usual and customary assistance in the utilization of equipment and systems, such as start-up, testing, commissioning, adjusting and balancing, shall be provided as a part of Basic Services, whether before or after the date of the final Certificate for Payment; (ii) inspections and other services of the Architect made necessary by reason of the acts, errors, or omissions of the Architect shall be performed by the Architect as a part of Basic Services, whether before or after the date of the final Certificate for Payment; (iii) if the Architect's final inspection and close-out services shall be delayed, for reasons beyond the control of the Architect, the Architect shall be entitled to compensation for Additional Services, but only for services performed and costs incurred by the Architect beyond those services and costs that would have been performed and incurred had such services been timely performed; and (iv) the Architect shall perform all other services required, whether explicitly or by reasonable inference, to be performed after the issuance of a final Certificate for Payment to the Construction Manager.

§ 2.8.1.4 The Architect shall perform all functions required to be performed by a registered professional architect under the Massachusetts State Building Code and other laws and regulations applicable to the Project.

§ 2.8.1.5 The Architect shall attend and facilitate weekly Project meetings and prepare and distribute minutes of such meetings in a timely manner.

§ 2.8.1.6 The Architect shall review all reports of independent testing agencies and provide timely written notification to the Owner and Construction Manager of observed deficiencies in the Work.

§ 2.8.2 Evaluations of the Work

§ 2.8.2.1 The Architect shall visit the site at least once per week and at more frequent intervals as appropriate to the stage of construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect shall also require each of its consultants to conduct similar site visits at least once weekly during the construction of each respective consultant's work. The Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.

§ 2.8.2.2 The Architect shall also ensure that, during the periods when the Construction Manager is performing a significant segment of the Work designed by a particular consultant to the Architect, such consultant shall visit the site at least once a week and at more frequent intervals as appropriate to become generally familiar with the progress and quality of the completed portion of such segment of the Work and to determine in general if such Work is being performed in a manner indicating that such Work when completed will be in accordance with the Construction Documents. Whenever any significant issue or change in the Work is expected to be discussed at a site visit or job meeting, the Architect shall ensure that the appropriate members of the design team, and all appropriate consultants and subconsultants who contributed to the design of the affected portion of the Work, participate in the site visit or job meeting



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§ 2.8.2.3 On the basis of the site visits by the Architect and its consultants, the Architect shall keep the Owner informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work. The Architect shall document (and shall require its consultants to document) each site visit with a written narrative Site Report describing Work in place, specific inspections conducted (including reference to applicable CSI specification sections), Work in place that does not meet the requirements of the Contract Documents, and an appropriate number of photographs (no less than 12) of the general site and all Work observed to not be in conformance with the requirements of the Contract Documents. In addition, the Architect shall provide at least two (2) photos of each item of non-complying Work, which photos shall clearly indicate the manner in which the Work is not in compliance with the Contract Documents. The Architect shall submit Site Reports, with photos, to the Owner within forty-eight (48) hours after each site visit.

§ 2.8.2.4 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Construction Manager, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 2.8.2.5 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Construction Manager. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 2.8.2.6 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing and, as appropriate, in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both the Owner and the Construction Manager, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 2.8.2.7 The Architect shall render initial decisions on Claims between the Owner and Construction Manager as provided in the Construction Contract.

§ 2.8.2.8 The Architect shall monitor progress of the Work performed by the Construction Manager relative to established schedules and, on a monthly basis or more frequently if requested by the Owner, make status reports to the Owner regarding the progress of the Work.

§ 2.8.2.9 The Architect shall attend and facilitate weekly job meetings, and shall prepare and distribute in a timely manner minutes of such meetings.

§ 2.8.3 Certificates for Payment to Construction Manager



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§ 2.8.3.1 The Architect shall review and certify the amounts due the Construction Manager and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 2.8.2 and on the data comprising the Construction Manager's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the Work is in accordance with the Contract Documents. The Architect shall consult with the OPM in its review of the Construction Manager's monthly Applications for Payment prior to certification of same.

§ 2.8.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Construction Manager's right to payment, or (4) ascertained how or for what purpose the Construction Manager has used money previously paid on account of the Contract Sum.

§ 2.8.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 2.8.4 Submittals

§ 2.8.4.1 The Architect shall provide prompt and timely performance of construction administration services so as to cause no delay to the progress of the Work, including, but not limited to, processing of all submittals, including receipt, review of, and appropriate action on Shop Drawings, Product Data, Samples and other submittals; timely response to Requests for Information (RFI), and issuing of Architect's Supplemental Information, as needed.

§ 2.8.4.2 The Architect shall review the Construction Manager's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review, which time period shall not exceed fourteen (14) calendar days. Should the Architect require additional time to review a submittal, the Architect shall inform the Owner and the Construction Manager of the reasons that additional time is required.

§ 2.8.4.3 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Construction Manager's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Construction Manager's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.



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§ 2.8.4.4 If the Construction Contract or the Construction Documents specifically require the Construction Manager to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Construction Manager that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 2.8.4.5 The Architect shall promptly review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific drawings or specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness so as to cause no delay to the progress of the Work. If appropriate, the Architect shall prepare and issue supplemental drawings and specifications in response to requests for information.

§ 2.8.4.6 The Architect shall maintain a record of submittals and copies of submittals supplied by the Construction Manager in accordance with the requirements of the Construction Contract and the Contract Documents.

§ 2.8.5 Changes in the Work

§ 2.8.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Any change that has an additive and a deductive amount that results in a net no cost shall not be considered "minor" and must be approved by the Owner before being issued. The Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Construction Contract.

§ 2.8.5.2 The Architect shall maintain detailed and complete records relative to changes in the Work.

§ 2.8.5.3 For Architect proposal requests and Construction Manager proposed change orders, the Architect shall prepare and distribute supplemental drawings, instructions, and/or specifications describing the Work to be added, deleted or modified, review the proposals from the Construction Manager(s) for quantities and the costs of labor and materials, review and make recommendations relative to changes in time for completion of the Project and prepare Change Orders and Construction Change Directives for the Owner's approval, review Construction Manager submitted time impact analyses and make recommendations on any Construction Manager requests for extension of time for any Change Order or Construction Change Directive, and coordinate all communications, approvals, notifications and record keeping relative to changes in the Work. Prior to the issuance to the Construction Manager of any Change Order, Construction Change Directive, Field Change Request, or other similar document, the Architect shall provide to the Owner for review a written estimate of the impact on cost and schedule the



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change will have on the Work, a brief written description of what the change is and an explanation of the reasons why the change is required.

§ 2.8.5.4 If the Architect determines that implementation of the requested changes in the Work would result in a substantial and material change to the Work that may cause an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation, and based upon information gathered by the Owner, the Architect shall review and advise the Owner concerning the additional cost and time that might result from such change.

§ 2.8.6 Project Completion

§ 2.8.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, issue Certificates of Substantial and Final Completion, receive from the Construction Manager and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Construction Contract and assembled by the Construction Manager, and issue a final Certificate for Payment based upon a final inspection indicating that the Work complies with the requirements of the Construction Documents. The Architect shall perform all Project closeout services required by this Agreement as well as all services required of the Architect under the Construction Contract.

§ 2.8.6.2 Upon notice from the Construction Manager that Work is substantially complete, the Architect shall perform a comprehensive and detailed inspection for conformity of the Work to the Contract Documents and verification of the list of items to be completed or corrected which has been submitted by the Construction Manager. The Architect shall promptly notify the Construction Manager of all deficiencies in the Work. After development of the deficient work list the Architect and MEP Engineer shall meet with the Commissioning Agent and University to review the Basis of Design, compare the actual equipment performance and commissioning report to that anticipated in the Basis of Design, and develop corrective action recommendations for equipment that is not performing as anticipated in the Basis of Design.

§ 2.8.6.3 The Architect's inspections shall be conducted with the Owner to check conformance of the Work to the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Construction Manager of Work to be completed or corrected.

§ 2.8.6.4 The Architect shall assemble a single combined punch list, in a format approved by the Owner, which includes all outstanding Work, including, though not limited to, architectural, hardware, site, and mechanical, electrical, plumbing and fire protection; and monetize the punch list to determine a recommendation for the Owner of amounts to be withheld until final acceptance of the Work.

§ 2.8.6.5 The Architect shall determine the date of Substantial Completion and the date of Final Completion in accordance with the detailed requirements of the Construction Contract and shall prepare affidavits required by the Building Inspector for issuance of a Certificate of Occupancy. The Architect shall issue a final Certificate for Payment upon the Construction Manager's compliance with the requirements of the Contract Documents.



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§ 2.8.6.6 The Architect shall forward to the Owner the following information received from the Construction Manager: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or to the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Construction Manager under the Contract Documents. The Architect shall also receive from the Construction Manager, review, and transmit to the Owner all warranties, affidavits, invoices, record drawings (including as-builts), and related documents that are required by the Contract Documents and assembled and submitted by the Construction Manager.

§ 2.8.6.7 Upon receipt of the as-built drawings from the Construction Contractor, the Architect shall develop and submit to the Owner a consolidated record set of drawings (e.g. record drawings) that incorporates all Change Orders, Construction Change Directives, revisions, sketches and as-built information.

§ 2.8.6.8 Prior to the expiration of one year from the date of Substantial Completion, the Architect shall, conduct a meeting with the Authority, Independent Engineer/Commissioning Agent, and, as necessary University personnel to review the facility operations and performance and to conduct a post-construction evaluation. Additionally, prior to the expiration of two years from the date of Substantial Completion, the Architect shall, conduct two additional meetings with the Authority and, as necessary, the Independent Engineer/Commissioning Agent, and/or University personnel to address problems with material / equipment that have been discovered / occurred during the normal course of building operations. No additional compensation shall be provided for the Architect to conduct these three (3) meetings.

ARTICLE 3. ADDITIONAL SERVICES

§ 3.1 General. The Additional Services described in this Section 3.1 shall be paid for by the Owner as provided in this Agreement in addition to the compensation for Basic Services set forth in Section 7.2 and shall be provided by the Architect if requested and authorized by the Owner.

- (a) Additional Project Representation. If more extensive representation at the site than is described in Section 2.8.2 is required, the Architect shall provide one or more project representatives to assist in carrying out such additional on-site responsibilities. Project representatives shall be selected, employed and directed by the Architect. Through the observations by such project representatives, the Architect shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Architect as described elsewhere in this Agreement;
- (b) Preparation of measured drawings and detailed surveys of existing facilities;
- (c) Providing services made necessary by the default of the Construction Manager, by major defects or deficiencies in the work of the Construction Manager, or by failure of performance by the Construction Manager under its contract with the Owner;
- (d) Providing consultation concerning replacement of construction work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such work;



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- (e) Preparation of final environmental permitting applications and supporting documentation;
- (f) Providing services required because of substantial and material changes in the Project (other than changes which, in the reasonable judgment of the Owner, should have been anticipated by the Architect) that fundamentally change the nature of the design services required;
- (g) Construction testing and inspection services (the Architect's effort required to coordinate and administer testing and inspection services is considered Basic Services and is included in the base design fee);
- (h) Consultation concerning replacement of Work resulting from fire or other cause during construction;
- (i) Preparation of final applications, studies, analyses, and other documents necessary to secure required environmental permits and approvals;
- (j) Design and construction administration services for hazardous material assessments and remediation;
- (k) Geotechnical engineering when such services are required by the Architect in order to perform its duties under this Agreement. Such services may include, but are not limited to, providing test borings, test pits, percolation tests, and other similar tests, as well as the analysis of test results as required in order to assess soil bearing values, and to develop reports and appropriate professional recommendations;
- (l) Environmental engineering when such services are required by the Architect in order to perform its duties under this Agreement. Such services may include, but are not limited to, wetlands mapping, flood plain analysis, environmental site assessments, evaluations of hazardous materials, including recommendations regarding the handling, removal, disposal of or exposure of persons to hazardous materials in any form at the Project site, which hazardous materials shall include, but not be limited to, asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions with reports and appropriate professional recommendations;
- (m) Land surveying including detailed topographical surveys describing physical characteristics, legal limitations and utility locations for any alternative development site and a written legal description of any such site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site (at maximum one foot increments); locations, dimensions and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. All such work is to be done in accordance with sound engineering practices;
- (n) Making revisions in drawings, specifications, or other documents when such revisions are: (1) requested by the Owner and inconsistent with approvals or instructions



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previously given by the Owner, including revisions required by adjustments in the scope or quality of the Project or in the Construction budget; or (2) required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents;

- (o) Design, selection, and procurement of furniture, furnishings, and equipment;
- (p) Providing services in connection with a legal proceeding except where the Architect is party thereto;
- (q) Providing any other services not otherwise included in this Agreement if mutually agreed to in advance and in writing by the Owner and the Architect; and
- (r) The time associated with any travel outside of the state necessary to observe factory testing (if any) and/or perform site visits of comparable facilities is considered Basic Services. Travel costs, including meals and lodging, are considered Reimbursable Expenses.

§ 3.2 Written Contract Amendment. Additional Services may be provided only upon the prior written agreement of the Owner and the Architect with regard to the scope of the Additional Services and the Architect's fee for such services, which may, at the option of the Owner, be a lump sum or on the basis of hourly rates attached hereto as **Attachment D**. If Additional Services are proposed by the Architect, upon recognizing the need for Additional Services, the Architect shall promptly notify the Owner and explain in writing the facts and circumstances giving rise to the need for such Additional Services and provide a cost proposal in form, substance, and detail required by the Owner to permit the Owner to evaluate the added cost, but at a minimum shall include labor classification (or names of individuals) of those who will work on the additional scope, estimated level of effort (e.g. hours) per labor classification (or individual) and labor rate per labor classification (or individual). The Architect shall not proceed to render any services that it believes may constitute Additional Services without the prior written approval of the Owner, which shall be set forth in a fully executed Contract Amendment. Notwithstanding the foregoing, in the event of a disagreement between the Owner and Architect as to whether any particular service constitute Additional Services under this Agreement, the Architect shall nonetheless perform such services, upon written direction by the Owner.

§ 3.3 Duty to Anticipate Required Services. The Architect shall not be compensated for any additional services required to incorporate additional or changed work in the Project that, in the reasonable opinion of the Owner, could have been anticipated by the Architect in the preparation of the Contract Documents.

ARTICLE 4. OWNER'S RESPONSIBILITIES

§ 4.1 Owner's Information. The Owner shall provide full information regarding requirements for the Project, including a program which shall set forth the Owner's objectives, schedule, constraints and criteria, which objectives, schedule, constraints and criteria are subject to modification by the Owner at any time prior to the approval of the Programming and Feasibility Report and commencement of the Schematic Design Phase. The Architect shall thoroughly review all documents provided by the Owner and promptly advise the Owner in writing of any inadequacies in the information supplied.



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§ 4.2 Accuracy of Owner's Information. The Owner does not guarantee the accuracy of information furnished, and the Architect must satisfy himself as to the correctness of such information, except in instances where written exception to the contrary is specifically indicated by the Owner. If the above information is not available or is, in the opinion of the Architect, insufficient, the Architect, upon request, may be given authorization to obtain the services of a consultant or perform the work with its own employees. In no case shall the Architect commence such work without prior written authorization of the Owner.

§ 4.3 Owner's Representative. The Owner has designated its OPM as its authorized representative, who, in addition to the Owner, is authorized to act on the Owner's behalf with respect to the Project. The Owner or its authorized representative shall endeavor to render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 4.4 Payment for Services Rendered. The Owner shall compensate the Architect for satisfactory performance of the scope of services required hereunder pursuant to the terms and conditions set forth in this Agreement. If the services rendered by Architect under this Agreement are unsatisfactory to the Owner, the Architect shall, at the sole discretion of the Owner and at no cost to the Owner, render the unsatisfactory services again until satisfactory to the Owner, or the Owner may withhold payment, or offset other monies due to Architect, for such unsatisfactory services.

§ 4.5 Project Budget. Based on information from the Architect, the Construction Manager, and the Owner's other consultants and contractors, the Owner shall establish and periodically update the Owner's budget for the Project. If the Owner significantly increases or decreases the Project budget, the Owner will notify the Architect and shall, thereafter, work with the Architect to appropriately modify the Project scope and, if appropriate in the sole discretion of the Owner, the Architect's Scope of Services and Basic Compensation.

§ 4.6 Project Communications. The Owner shall endeavor to communicate with the Construction Manager and the Architect's consultants through the Architect about matters relating to the Contract Documents and shall endeavor to notify the Architect regarding any such direct communications. The Architect shall promptly notify the Owner of any direct communications with the Construction Manager, trade contractors, subcontractors, or any of the Owner's other consultants, including providing the Owner contemporaneous copies of all written and electronic communication with such entities.

§ 4.7 Site Access. The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall require the Construction Manager to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 5. COST OF THE WORK

§ 5.1 Generally. Evaluations of the Owner's budget for the Cost of the Work and all cost estimates prepared by the Architect represent the Architect's judgment as a design professional.



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The Cost of the Work shall be based on current market rates for labor and materials furnished, which shall be no less than the prevailing wage rates, and equipment specified by the Architect.

§ 5.2 Contingencies. The Owner may require the Architect to include in its estimates of the Cost of the Work appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions.

§ 5.3 Submission of Cost Estimates. At the end of the Programming and Feasibility Phase, the Schematic Design Phase, the Design Development Phase, and at the fifty (50%) percent and ninety (90%) percent stages of completion of the Construction Documents during the Construction Documents Phase, the Architect and, when and if selected, the Construction Manager, shall, within Basic Services, prepare full and complete cost estimates for review and approval by the Owner. All estimates shall be provided in form, substance, and detail acceptable to the Owner (CSI or similar) and shall be fully reconciled with any other cost estimate(s) prepared by the Owner or the Construction Manager, if any.

§ 5.4 Reconciliation of Cost Estimates. At the end of the Programming and Feasibility Phase, the Architect shall evaluate its estimate against any previously developed estimates that may be provided by the Owner and shall reconcile the estimates to the satisfaction of the Owner. At the end of each succeeding phase, the Architect shall evaluate the estimate for that phase against the estimate completed during the previous phase. At the end of each cost estimate evaluation, and otherwise as necessary in the Owner's judgment, the Architect shall recommend and, with the Owner's prior approval, implement appropriate actions to modify, correct, or value engineer ("VE") the design in order to avoid potential cost overruns. The Architect shall also identify potential VE items and alternates. If, in any phase of the Architect's services, following the Programming and Feasibility Phase, the cost estimates for the then current design exceed the cost estimates for the previous phase, the Architect shall, using any modifications, changes, and VE proposals approved by the Owner, modify the design and all associated plans, specifications, and other Instruments of Service as necessary, and at no additional cost to the Owner, until such time as the cost estimates for the current phase are equal to or less than the last cost estimate approved by the Owner. In addition, based upon the proposed GMP, if the aggregate cost estimate for the Cost of the Work exceeds the final estimated cost approved by the Owner by more than five (5%) percent, then the Architect shall, at no additional cost to the Owner, promptly modify the design and all associated plans, specifications, and other Instruments of Service as necessary until the cost estimate for the Cost of the Work is equal to or less than the sum of the last Owner-approved cost estimate plus five (5%) percent.

ARTICLE 6. INTELLECTUAL PROPERTY RIGHTS

§ 6.1 Grant of License by Architect. The Architect hereby grants to the Owner an irrevocable royalty-free license to use for any purpose the following items developed or made part of the services performed under this Agreement by the Architect and its consultants: all drawings, designs, specifications, photographs, images, notes, reports, analyses, studies, models, materials and other work and ideas of the Architect and its consultants related to the performance of this Agreement which are or may be covered by copyright, patent, or other intellectual property laws



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or as to which the Architect and its consultants may assert any rights or establish any claim under any Applicable Law. The Architect agrees on behalf of itself and its consultants that the Owner shall have unlimited royalty-free rights, for the benefit of the Owner and any public entity, including, but not limited to, the University, to which the Owner may grant the right to share such rights, in any and all drawings, designs, specifications, photographs, images, notes, reports, analyses, studies, models, materials and other work and ideas developed in the performance of this Agreement, including the right to use the same on any other project. The Architect shall incorporate this provision by reference into all contracts with its consultants on this Project including, but not limited to, architects, engineers, estimators, designers, surveyors, planners, and photographers. The Architect and its consultants shall not be responsible for changes made in the documents without the Architect's authorization, nor for the Owner's use of the documents on building projects other than the Project, unless this is a contract for design services intended to serve as the basis for a follow-on design contract. The Owner assumes the risk resulting from any such changes made in the documents without the Architect's authorization, and for the Owner's use of the documents on building projects other than the Project if the Architect is not retained for such other projects.

§ 6.2 Reproduction of Design. The Architect agrees that it will not reproduce the design of the Project for other clients in whole or in substantial part, but it is agreed that the Architect may reuse details, specification sections, and individual design concepts which, taken together, do not reproduce the design of the Project in whole or in substantial part.

§ 6.3 Use of Documents on Other Projects. In the event the Owner uses the Architect's work product prepared pursuant to this Agreement in connection with a different building project without retaining the author of such work product or receiving written authorization of such use, the Owner shall release the authors from all claims and causes of action by the Owner arising from such unauthorized use.

§ 6.4 Consent to Use Electronic Information. In no event shall the Architect require, without the Owner's prior written approval, the Construction Manager or any of the Owner's other consultants or contractors to execute any waivers, releases, acknowledgements, or any similar document purporting to establish terms of use of the Architect's electronic information required or permitted to be furnished by the Architect under this Agreement.

§ 6.5 Use of Project Renderings. In the event the Architect makes any renderings of the Project, whether photographic or otherwise, for use in promotional or informational materials, the Architect shall deliver to the Owner and the University copies of all such renderings regardless of physical or electronic medium, in reproducible form, and grant to the Owner a nonexclusive, royalty-free license to use such renderings for any purpose deemed appropriate by the Owner or the University.

ARTICLE 7. PAYMENT AND COMPENSATION

§ 7.1 Direct Personnel Expenses. Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory



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and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits. The Architect warrants and represents that the hourly billing rates set forth on **Attachment D**, as set in accordance with the provisions of Section 7.5, include all Direct Personnel Expenses.

§ 7.2 Fixed Fee Compensation for Basic Services. This Agreement is a fixed-fee contract. FOR PART One of BASIC SERVICES, as described in Article 2, Basic Compensation shall be a fixed fee of _____ Dollars (\$ _____), and the Basic Compensation FOR PART TWO of BASIC SERVICES, as described in Article 2, if authorized to perform by the Owner, shall be a fixed fee of _____ Dollars (\$ _____), which in the aggregate shall be the Owner’s maximum obligation to the Architect and shall include the Architect’s Direct Personnel Expenses, all fees for the services of all consultants that form a part of Basic Services, overhead, profit, all expenses of the Architect and each of its consultants (except for Reimbursable Expenses as defined in this Agreement), the costs of all travel, telephone and fax correspondence, postage and deliveries, insurance, and the cost of reproduction of one (1) electronic copy in a format suitable to the Owner and hard copies (as defined in Article 2.2.22 “Deliverables” above) of all materials required to be provided to the Owner under the Agreement. The Basic Compensation shall compensate Architect for all of Architect’s obligations specified in this Agreement, except as otherwise specifically provided herein.

§ 7.3 Allocation of Basic Compensation. The Basic Compensation shall be paid to the Architect in accordance with the following schedule. As explained elsewhere in this Agreement and in the Request for Proposals issued on _____, 2014, this Agreement only authorizes the Architect to perform Part One of the Basic Services. If at the Owner’s option the Architect receives a written notice to proceed with Part Two of the Basic Services, the Architect will be compensated for Part Two in accordance with this Section. The Basic Compensation allocated to a particular phase may not be adjusted without the prior written consent of the Owner.

Part One		
Programming and Feasibility Phase	\$ _____	____ percent
Schematic Design Phase	\$ _____	____ percent
Subtotal – Part 1	\$ _____	____ percent
Part Two		
Design Development Phase	\$ _____	____ percent
Construction Documents Phase	\$ _____	____ percent
Bidding or Negotiation Phase	\$ _____	____ percent
Record Drawings (price is no less	\$ _____	____ percent



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than 20% of Construction Administration Phase total)		
Construction Administration Phase	\$ _____	_____ percent
Subtotal – Part Two	\$ _____	_____ percent
Total Basic Compensation	\$ _____	100 percent

§ 7.4 Entitlement to Additional Compensation. The Architect acknowledges and agrees that it shall not be entitled to any additional compensation for its work on the Project based solely upon either: (1) any increases in the construction cost of the Project without any corresponding increase in the scope of services requested or required of the Architect, which increase must be documented in the Contract Amendment to this Agreement executed by both parties hereto; or (2) any increases in the Architect’s personnel, office, or general business expenses.

§ 7.5 Compensation for Additional Services of the Architect. For Additional Services performed by the Architect, which are agreed upon in advance in writing by the parties, compensation shall be computed on the basis of the billing rates set forth in **Attachment D**. The Architect’s billing rates, and those of its consultants, set forth in **Attachment D** shall be fixed for the entirety of the Project.

§ 7.6 Compensation for Additional Services of Consultants. For Additional Services performed by the Architect’s consultants, which are agreed upon in advance in writing by the parties, the Owner shall compensate the Architect a multiple of One and One-Tenth (1.10) times the amount billed to and paid by the Architect for such consultant’s services.

§ 7.7 Reimbursable Expenses. Reimbursable Expenses are in addition to compensation for Basic Services and Additional Services and include expenses incurred by the Architect and Architect’s employees and consultants in the interest of the Project. All Reimbursable Expenses are subject to the Owner’s prior written approval in order to be eligible for reimbursement by the Owner. Reimbursable Expenses are limited to the following:

- (a) Expense of reproduction of any of the materials required to be delivered by the Architect in connection with the Project in excess of that indicated in section 2.2.22 above;
- (b) Expense of additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of the limits required by Article 8 of this Agreement; and
- (c) Any other expenses that the Owner and the Architect agree in advance in writing shall be reimbursed as a Reimbursable Expense in addition to the Basic Compensation.

§ 7.8 Invoicing and Payment. Payments for Basic Services, as approved by the Owner, shall be made no more frequently than monthly and, where appropriate, shall be in proportion to services performed within each phase of the Architect’s services. Payments on account of the Architect’s Additional Services and for Reimbursable Expenses, as approved by the Owner, shall be made



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no more frequently than monthly after presentation of the Architect's invoice for Additional Services rendered or Reimbursable Expenses incurred. All invoices for Additional Services payable on a time and materials basis shall be submitted promptly after the services are rendered with the next submitted monthly payment application and shall include calculations of the fees for Additional Services using hourly billing rates then in effect under the terms of the Agreement and receipts for all expenses eligible for reimbursement. All invoices submitted by the Architect shall be in form, substance, and detail acceptable to the Owner and shall not be deemed received until received in full, complete, and proper form.

§ 7.9 Accounting Records. Records of Reimbursable Expenses and expenses pertaining to Additional Services performed by the Architect or its consultants on the basis of a multiple of hourly billing rates shall be available to the Owner or the Owner's authorized representative upon reasonable notice to the Architect.

§ 7.10 Compensation for Defective Performance. The Architect and its consultants shall not be compensated for any services involved in preparing changes that are required for additional work that should have been anticipated by the Architect in the preparation of Construction Documents, as reasonably determined by the Owner.

§ 7.11 Right to Offset. If the Owner finds that services previously paid for by the Owner contained deficiencies, errors or omissions then the Owner may withhold from any future payment an amount reasonably calculated by the Owner to cover the cost of correcting the deficiency, error or omission until the services have been corrected. The Owner may also offset against any payment due, or that may become due, to the Architect the amount of any costs incurred, or that may reasonably be expected to be incurred, by the Owner arising from the Architect's failure to provide required services in accordance with the provisions of this Agreement or arising from any deficiencies, errors or omissions in the Architect's services. If the Owner shall discover that the charge for any previously paid-for services was calculated based upon incorrect hourly rates or other incorrect information, the Owner may offset any overcharges against any future payment. Any disputes related to offsets taken by the Owner shall be subject to resolution pursuant to Article 10 of this Agreement. Nothing in this Section shall limit any legal remedies of the Owner against the Architect for default, errors, omissions, erroneous claims, false claims, tort claims, or any breach by the Architect of the terms of this Agreement or any Applicable Law.

§ 7.12 Withholding of Payment. In the event that the Owner shall be entitled to withhold payment to the Architect under the terms of this Agreement, the Architect shall not be permitted to suspend services, if, in the judgment of the Owner, the withheld amounts are reasonable or necessary to secure the Owner's claims against the Architect.

ARTICLE 8. INSURANCE

§ 8.1 Insurance. The Architect shall purchase and maintain insurance of the type and limits listed in this Article 8 with respect to the services to be performed under this Agreement. Except as otherwise specifically provided in this Agreement, such insurance shall be provided at the



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Architect's sole cost and expense and shall be in force and effect for the full term of the Agreement or for such longer period as this Article may require. With respect to each such required insurance coverage and policy, the following shall apply:

§ 8.2 General Insurance Requirements.

§ 8.2.1 Certificates of Insurance. Simultaneously with its execution of the Agreement, the Architect shall deliver to the Owner three (3) original copies of a properly endorsed Certificate or Certificates of Insurance acceptable to the Owner as evidence that each of the required insurance coverages (with no less than the required limits) as hereinafter set forth have been purchased and are in full force and effect. Certificates shall show each type of insurance, insurance company, policy number, amount of insurance, deductibles/self-insured retentions, and policy effective and expiration dates. Throughout the period that the Architect is required to maintain any policies of insurance hereunder, the Architect shall submit updated certificates prior to the expiration of each of the policies referenced in the Certificates so that the Owner shall at all times possess Certificates indicating current coverage. Failure by the Architect to obtain all policy renewals and to provide the respective insurance certificates as required shall constitute just cause for termination of Architect's services under this Agreement. The Owner reserves the right to request, and upon request, the Architect agrees to furnish, a copy of each insurance policy and all endorsements thereto.

§ 8.2.2 Additional Insured Status. The Owner, the University, and the Commonwealth of Massachusetts will be named as additional insureds on all policies, with the exception of the Workers' Compensation and Professional Liability Policies. Additional Insured status with respect to the comprehensive general liability (CGL), automobile liability, and umbrella or excess liability policies shall be provided for the Owner, the University of Massachusetts, and the Commonwealth with the CGL coverage under endorsements no less broad than CG 2026 (7/04 version) and CG 2037 (7/04 version), and such status shall continue through the 6-year extended reporting period described in Section 8.3. Copies of such endorsements shall be provided to the Owner with each required Certificate of Insurance.

§ 8.2.3 Financial Capacity. All required insurance coverages shall be placed with a company or companies licensed and qualified to do business in the Commonwealth of Massachusetts (unless agreed upon in advance in writing by the Owner) and certified by an agent licensed and qualified to do business in the Commonwealth of Massachusetts. Each insurer shall have a financial strength rating of A, VIII or better by A.M. Best, or an equivalent rating assigned by a similar rating agency acceptable to the Owner, or otherwise acceptable to the Owner.

§ 8.2.4 Limitations on Modifications of Coverage. Cancellation, non-renewal or material modification of any insurance required by the Agreement, whether by the insurer or the insured, shall not be valid unless written notice thereof is given to the Owner at least thirty (30) days prior to the effective date thereof, which shall be expressed in said notice. Each Certificate of Insurance shall state that the insurer will provide to the Owner prior written notice of cancellation of the policy as provided in the policy. In addition to such notice from the insurer,



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the Architect shall provide to the Owner written notice of any such cancellation, non-renewal or material modification of the policy within two (2) business days of its receipt by the Architect.

§ 8.2.5 Primary and Non-Contributory. All insurance policies maintained by the Architect pursuant to the requirements of this Agreement other than professional liability insurance shall provide that the insurance, as it applies to the Owner, shall be primary, and any insurance maintained by the Owner shall be non-contributing.

§ 8.2.6 Deductibles. The Architect shall be responsible for the payment of any and all deductibles under all of the insurance required herein, and the Owner shall not be responsible for the payment of any deductibles, self-insured retentions or any portion thereof.

§ 8.2.7 No Limitation of Liability. Insufficient insurance shall not release the Architect from any liability for breach of its obligations under this Agreement. Without limitation, the Architect shall bear the risk of any loss not covered by the insurance policies that it maintains.

§ 8.3 Professional Liability Insurance. The Architect shall purchase and maintain at its sole cost and expense during the term of this Agreement and the extended reporting period as hereinafter provided professional liability insurance in a minimum amount of Five Million and 00/100 Dollars (\$5,000,000.00) covering negligent acts, errors or omissions and negligent acts of the Architect, and of any person or entity for whose performance the Architect is legally liable, arising out of the performance of this Agreement. Unless the Architect is specifically required to provide project specific insurance in the documents incorporated by reference into this Agreement, the policy may be in a “claims made” format. If the policy is a “claims made” policy, it shall include a retroactive date that is no later than the effective date of this Agreement, and either continuous coverage shall be maintained or an extended reporting period will be exercised, for a period of at least six (6) years after the earlier of: (1) the date of official acceptance of the completed Project by the Owner; (2) the date of the opening of the Project to public use; (3) the date of acceptance by the Construction Manager of final payment under the Construction Contract; or (4) the date of final completion of the Project and the taking of possession of the Project for occupancy by the Owner. Throughout the term of this Agreement and the six-year period, the Architect shall provide renewal certificates of professional liability insurance to the Owner as evidence that this coverage is being maintained.

§ 8.4 Other Insurance. The Architect shall purchase and maintain at its sole cost and expense during the term of this Agreement the following insurance:

(a) Workers’ Compensation Insurance as required under the Massachusetts Workers’ Compensation Reform Act (M.G.L. Chapter 152), as amended), with Employers’ Liability limits of One Million and 00/100 Dollars (\$1,000,000.00) each accident/each employee/policy limit. Such policy shall be endorsed with a waiver of subrogation in favor of the Owner, the University, and the Commonwealth of Massachusetts. The Architect’s employees, servants and agents shall be deemed not to be the Owner’s employees for either worker’s compensation or unemployment insurance purposes.



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(b) Commercial General Liability (CGL) Insurance, with a minimum limit of One Million and 00/100 Dollars (\$1,000,000.00) each occurrence, and minimum General Aggregate Limit on a per project basis of Two Million and 00/100 Dollars (\$2,000,000.00). The CGL insurance shall include coverage for death, bodily injury, property damage and personal injury, including coverage for contractual liability on an occurrence basis. Copies of such endorsements shall be provided to the Owner with each required Certificate of Insurance. The following exclusionary endorsements may be attached to the standard CGL form: Asbestos, Nuclear Hazard, War, Employment Practices Liability, and Fungus. No other exclusionary endorsements shall be attached without the prior written consent of the Owner, which consent the Owner shall have no obligation to provide. Notwithstanding the foregoing provision regarding permitted exclusionary endorsements for the Architect's CGL coverage, any consultant engaged by the Architect to undertake work for the Project with respect to hazardous materials shall be required to maintain commercial general liability insurance and umbrella or excess liability insurance of the same type and the same limits as the Architect, and the CGL coverage for any such consultant **may not** include any exclusion for asbestos, fungus, pollution, or any other hazardous condition, and in any event, the Owner shall determine on an individual basis which exclusions are acceptable for each such consultant.

(c) Automobile Liability Insurance commercial automobile insurance for owned, non-owned, leased, hired and rented vehicles with a combined single limit and aggregate of One Million and 00/100 Dollars (\$1,000,000.00) per accident for bodily injury and property damage.

(d) Umbrella or Excess Liability Insurance covering over the CGL, the Automobile Liability, and the Employers' Liability coverages in an amount not less than Five Million and 00/100 Dollars (\$5,000,000.00).

(e) Valuable Papers insurance in an amount sufficient to assure the restoration of any plans, drawings, computations, field notes, or other similar data relating to the work covered by this Agreement in the event of loss or destruction while in the custody of the Architect until the final fee payment is made or all data is turned over to the Owner, and this coverage shall include coverage for relevant electronic media including, but not limited to, documents stored in computer aided design drafting (CADD) systems and building information models (BIM) maintained by the Architect.

ARTICLE 9. INDEMNIFICATION

The Architect shall, to the fullest extent of the law, indemnify, defend, and hold harmless the Owner, the University, and the Commonwealth and all of their respective members, trustees, officers, employees, agents, consultants, contractors, successors, assigns, and other representatives (the "Indemnified Parties") from and against any and all claims, demands, losses, damages, injuries, liabilities, actions, causes of actions, costs and expenses (including reasonable attorneys' fees) for or on account of any injuries to persons (including death), damage to property, or any other financial loss to the extent caused by the Architect's breach of this Agreement or any fraudulent, wrongful, negligent, or willful act, error, omission, breach of contract, infringement of any patent or intellectual property right, or other misconduct of or by the Architect or any of its consultants, subconsultants, contractors, employees, agents or other representatives. The Architect's duty to defend the Indemnified Parties shall not extend to



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claims covered by Architect's professional liability insurance policy required by this Agreement. The Architect shall cause its indemnity obligations hereunder to be insured under its general liability and professional liability insurance policies, as applicable. Such obligation shall not be construed to negate or abridge any other obligation of indemnification running to the Owner which would otherwise exist. The extent of the foregoing indemnification and hold harmless agreement shall not be limited by any provision of insurance required pursuant to Article 8 of this Agreement and shall survive the termination of the Agreement.

ARTICLE 10. DISPUTE RESOLUTION

§ 10.1 Governing Law and Venue. All claims and disputes between the parties to this Agreement arising out of or relating to this Agreement or the Project, whether in contract, tort, or otherwise, shall be submitted for resolution to a court of competent jurisdiction in Suffolk County, Massachusetts, unless otherwise agreed by the parties, and shall be governed by the laws of the Commonwealth of Massachusetts.

§ 10.2 Limitation on Commencement of Legal Actions. No litigation shall be brought, however, until the completion of all services required to be rendered by the Architect under this Agreement or the earlier termination of this Agreement pursuant to its terms, unless the continued deferral of filing such action would result in such claim, dispute, or other matter in question being barred by applicable statutes of limitations or repose. In no event shall the Architect suspend or delay the performance of its services, including its consultants' services, under this Agreement due to the existence of pending claims or disputes between the Owner and the Architect.

§ 10.3 Mediation. Prior to the commencement of litigation of any claim, dispute, or any other matter arising out of this Agreement or the Project, the Owner and the Architect shall, at the Owner's option, mediate any such claim, dispute, or other controversy as a condition precedent to litigation. A request for mediation shall be made in writing and delivered to the other party no less than sixty (60) days before the commencement of litigation. Should either party fail or refuse to participate in mediation in good faith within a reasonable time after the other party's request for mediation, the participating party shall not be barred from proceeding with litigation. The parties shall share equally the mediator's fees and filing fees, if any. The mediation shall be held in Boston, Massachusetts unless another location is mutually agreed upon. Any settlement agreements reached in mediation shall be enforceable in any court having jurisdiction thereof.

ARTICLE 11. SUSPENSION AND TERMINATION

§ 11.1 Termination by Either Party. This Agreement may be terminated by either party upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. Failure of the Owner to make payments to the Architect in accordance with the terms of this Agreement shall be considered substantial nonperformance and cause for termination.



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§ 11.2 Suspension by Owner. If the Project is suspended by the Owner for more than ninety (90) consecutive days, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Architect's services, and any estimate of Construction Cost established prior to such suspension shall be adjusted to reflect changes in the general level of prices in the construction industry, if any, during the period of such suspension.

§ 11.3 Termination by Owner For Cause. If this Agreement is terminated due to the failure of the Architect to fulfill its contractual obligations, the Owner may assume the design work and replace the Architect and/or prosecute the Project to completion by contract with a replacement architect or otherwise. In such case, the Architect shall be liable to the Owner for any damages incurred by the Owner thereby (including, but not limited to, attorneys' fees and costs) to the extent resulting from Architect's breach. These rights and remedies of the Owner are in addition to any other rights and remedies provided by law or under this Agreement. In the event of termination for cause by the Owner, no compensation shall be paid to the Architect until the completion of the Project. Upon completion, any monies remaining due to the Architect shall be promptly paid by the Owner less the sum of Owner's damages incurred as a result of Architect's breach.

§ 11.4 Termination by Owner For Convenience. This Agreement may also be terminated by the Owner upon seven (7) days written notice, without regard to any fault or failure to perform by any party, and solely for the Owner's convenience. In the event of such termination, the Architect shall be compensated for services performed in accordance with the terms and conditions of the Agreement prior to termination including any Reimbursable Expenses then due, and the Owner shall have no further liability for compensation, expenses, or fees to the Architect hereunder, except as set out under Section 11.5.

§ 11.5 Architect's Duties Upon Termination. In the event of any termination under this Article 11, the Architect consents to the Owner's selection of another architect of the Owner's choice to assist the Owner in any way in completing the Project. The Architect further agrees to cooperate and provide any information and documents, regardless of physical form, requested by the Owner in connection with the completion of the Project and consents to and authorizes the making of any reasonable changes to the design of the Project by the Owner and such other architect as the Owner may desire; and the Owner agrees that, in such circumstances, the Architect shall not be responsible to it for any claims, suits, or damages of any nature arising from such changes. Any services provided by the Architect which are requested by the Owner after termination shall be compensated by the Owner as if such services were Additional Services, and any expenses shall be compensated in accordance with Section 7.5.

ARTICLE 12. MISCELLANEOUS PROVISIONS

§ 12.1 Severability. If any provision of this Agreement is adjudged by any court of competent jurisdiction to be invalid or unenforceable, then such provision shall be modified only to the



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extent necessary to preserve the original intentions of the parties, and the validity or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

§ 12.2 Assignment. The Owner and Architect, respectively, bind themselves, their agents, partners, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the prior written consent of the other, except that the Owner may assign this Agreement, or any portion thereof, to the University as the Owner may deem appropriate at its sole discretion.

§ 12.3 Construction of Agreement. The section headings, captions, or other titles contained within this Agreement are for reference and convenience only, and are not to be construed in any way as a part of this Agreement in the event of any suits and actions with respect to this Agreement and enforcement of its terms.

§ 12.4 No Intended Third Party Beneficiaries. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or the Architect.

§ 12.5 Hazardous Materials. Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site unless placed or left on the site by the Architect or one of its consultants or subconsultants.

§ 12.6 Promotional Rights. The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information. The Owner shall endeavor to provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 12.7 Owner's Information Confidential. The Architect shall keep the Owner's and the University's information relating to the Project strictly confidential and shall not disclose it to any third party except to: (1) its employees working on the Project, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of the Owner's information. The Architect shall not make any disclosure of the Owner's or the University's information relating to the Project to any third party unless the Architect is compelled to do so by order of a court of competent jurisdiction.

§ 12.8 Applicable Laws. The Architect shall perform the services required under this Agreement in conformity with all Applicable Laws in effect at the time of the completion of the Construction Documents. The cost of such compliance shall be included in the Architect's Basic Compensation.

§ 12.9 Public Construction. The Architect shall thoroughly acquaint its employees and consultants with all provisions of the Massachusetts General Laws governing the conduct of



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public construction projects, including, but not limited to, M.G.L. c. 30, 149, and 149A, including, without limitation, M.G.L. c. 30, § 39M, which sets forth requirements for the description of material specifications and proprietary items in construction bid documents.

§ 12.10 Waiver of Claims. The Owner's review, approval, acceptance of, or payment for, any of the services furnished by the Architect shall not be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement. The Owner's approval shall not in any way relieve the Architect from its responsibility for the professional and technical accuracy and coordination of all data, designs, drawings, specifications, cost estimates and other work or materials furnished by the Architect or its consultants.

§ 12.11 Registration/Licensing. The Architect hereby certifies that: (a) if an individual, the individual is a registered Architect; (b) if a partnership, a majority of all the partners are persons who are registered Architects; (c) if a corporation, sole proprietorship, joint stock company or other entity, the majority of the directors or a majority of the stock ownership and chief executive officer are persons who are registered Architects or registered civil engineers, and the person to have the Project in his or her charge is a registered Architect; and (d) if a joint venture, each joint venturer satisfies the requirements of this Section, where in each case "registered" means registered in the Commonwealth of Massachusetts.

§ 12.12 No Gifts or Other Inducements. The Architect hereby certifies under the penalties of perjury that the Architect has not given, offered or agreed to give any person, corporation, or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this contract; no consultant to or subcontractor for the Architect has given, offered or agreed to give any gift, contribution or offer of employment to the Architect, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a contract by the Architect; and no person, corporation or other entity, other than a bona fide full-time employee of the Architect has been retained or hired by the Architect to solicit for or in any way assist the Architect in obtaining this contract for design services upon a contract or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this contract to the Architect.

§ 12.13 Corrections by Owner. The Architect shall furnish appropriate competent professional services for each of the phases of the Project such that detail checking or reviewing by the Owner is not necessary. Any changes, corrections, additions, or deletions made by the Owner shall be incorporated into the design of the Project by the Architect unless specific written objections thereto are made by the Architect. The decision of the Owner shall be final in matters pertaining to this Section, but the Architect shall not be responsible for any such decision by the Owner that is inconsistent with generally accepted standards of care provided that the Architect advised the Owner in writing of the inconsistency at the time the decision was made.

§ 12.14 Financial Interest in Construction Work. The Architect shall not employ in any element of design, specification, estimating, evaluation, or other work under this Agreement any person or firm that expects to be a bidder, contractor, subcontractor, or supplier for the



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construction of the Project or any part thereof. The Architect shall obtain from every consultant a written representation that such consultant is aware that it is prohibited from serving as a bidder, contractor, subcontractor, or supplier for the construction of the Project or any part thereof.

§ 12.15 Entire and Integrated Agreement. This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and the Architect.

§ 12.16 Certification of Tax Compliance. The Architect hereby certifies under penalties of perjury that the Architect has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting of child support, as set forth in M.G.L. c. 62C, § 49A (b).

ARTICLE 13. INTERNAL ACCOUNTING CONTROLS

§13.1 Audited Financial Statements. The Architect hereby certifies that it has internal accounting controls which conform to the requirements of subsection (c) of M.G.L. c. 30, § 39R and that the Architect has filed and will continue to file an audited financial statement as referred to in subsection (d) of said § 39R.

§13.2 Financial Books and Records. The Architect shall maintain all books, records and accounts related to the Project in compliance with M.G.L. c. 30, § 39R, as set forth in this Section 13.2, and all terms used herein shall have the same meaning as those in the statute:

§13.2.1 The Architect shall make, and keep for at least six (6) years after final payment, books, records and accounts which in reasonable detail accurately and fairly reflect the transactions and dispositions of the Architect.

§13.2.2 Until the expiration of six (6) years after final payment, the Owner shall have the right to examine any books, documents, papers or records of the Architect and of its consultants and subcontractors that directly pertain to, and involve transactions relating to, the Architect or its consultants or subcontractors.

§13.2.3 The Architect shall describe any change in the method of maintaining records or recording transactions which materially affects any statements filed with the Owner, including in the Architect's description the date of the change and reasons therefor, and shall accompany said description with a letter from the Architect's independent certified public accountant approving or otherwise commenting on the changes.

§13.2.4 The Architect has filed a statement of management on internal accounting controls as set forth in Section 13.2.6 below prior to the execution of this Agreement.

§13.2.5 The Architect has filed prior to the execution of this Agreement and will continue to file annually, an audited financial statement for the most recent completed fiscal year as set forth in Section 13.2.8 below.



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§13.2.6 The Architect shall file with the Owner a statement of management as to whether the system of internal accounting controls of the Architect and its subsidiaries reasonably assures that:

- (a) transactions are executed in accordance with management's general and specific authorization;
- (b) transactions are recorded as necessary:
 - (i) to permit preparation of financial statements in conformity with generally accepted accounting principles, and
 - (ii) to maintain accountability for assets;
- (c) access to assets is permitted only in accordance with management's general or specific authorization; and
- (d) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any difference.

§13.2.7 The Architect shall also file annually with the Owner a statement prepared and signed by an independent certified public accountant, stating that such accountant has examined the statement of management on internal accounting controls, and expressing an opinion as to:

- (a) whether the representations of management in response to this Section and Sections 13.2.1 through 13.2.5 above are consistent with the result of management's evaluation of the system of internal accounting controls; and
- (b) whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the Architect's financial statements.

§ 13.2.8 The Architect shall annually file with the Owner during the term of this Agreement a year-end financial statement prepared by an independent certified public accountant on the basis of an audit by such accountant. The final statement filed shall include the date of final payment. All statements shall be accompanied by an accountant's report. Such statements shall be made available to the Owner upon request.

§ 13.2.9 Records and statements required to be made, kept or filed in compliance with the provisions of this Section 13.2 shall not be public records (as that term is defined in M.G.L. c. 4, §7) and shall not be open to public inspection, except as provided in Section 13.2.2.



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IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Professional Services as of the date first written above, and the individual executing this Agreement on behalf of the Architect makes the representations and certifications set forth in this Agreement under the pains and penalties of perjury.

OWNER:

ARCHITECT:

**University of Massachusetts
Building Authority**

By: _____
Patricia G. Filippone
Its Executive Director

By: _____

Its _____

#1521816.7



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ATTACHMENT A

PROJECT DESIGN SCHEDULE



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ATTACHMENT B

LIST OF ARCHITECT'S CONSULTANTS



University of Massachusetts Building Authority
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	Name of Entity and Authorized Representative	Business Address	Contact Information
Consultants Performing Basic Services (Included in Basic Compensation Amount)			
Structural Engineer			Main Office Phone: Office Phone (AR): Email (AR):
Mechanical Engineer			Main Office Phone: Office Phone (AR): Email (AR):
Electrical Engineer			Main Office Phone: Office Phone (AR): Email (AR):
Plumbing Engineer			Main Office Phone: Office Phone (AR): Email (AR):
Fire Protection Engineer			Main Office Phone: Office Phone (AR): Email (AR):
Civil Engineer			Main Office Phone: Office Phone (AR): Email (AR):
Geotechnical Engineer (Design Services)			Main Office Phone: Office Phone (AR): Email (AR):
Interior Designer			Main Office Phone: Office Phone (AR): Email (AR):
Telecommunications Consultant			Main Office Phone: Office Phone (AR): Email (AR):
Cost Estimating Consultant			Main Office Phone: Office Phone (AR): Email (AR):
Scheduling Consultant			Main Office Phone: Office Phone (AR): Email (AR):



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Lighting Consultant			Main Office Phone: Office Phone (AR): Email (AR):
Building Code Consultant			Main Office Phone: Office Phone (AR): Email (AR):
Accessibility Consultant			Main Office Phone: Office Phone (AR): Email (AR):
Landscape Architect			Main Office Phone: Office Phone (AR): Email (AR):
Sustainability Consultant			Main Office Phone: Office Phone (AR): Email (AR):
Acoustic Engineer			Main Office Phone: Office Phone (AR): Email (AR):
Other (Specify)			Main Office Phone: Office Phone (AR): Email (AR):
Consultants Performing Basic Services (Paid for as Additional Services under Section 3.1)			
Land Surveyor			Main Office Phone: Office Phone (AR): Email (AR):
Environmental Permitting Consultant			Main Office Phone: Office Phone (AR): Email (AR):
Industrial Health Hygienist, certified in Asbestos and PCB (Testing & Monitoring)			Main Office Phone: Office Phone (AR): Email (AR):
Parking Consultant			Main Office Phone: Office Phone (AR): Email (AR):
Traffic Engineer			Main Office Phone:



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			Office Phone (AR): Email (AR):
Geotechnical Engineer (Construction Monitoring)			Main Office Phone: Office Phone (AR): Email (AR):
Building Envelope Consultant			Main Office Phone: Office Phone (AR): Email (AR):
Audio Visual Consultant			Main Office Phone: Office Phone (AR): Email (AR):
Information Technology Consultant			Main Office Phone: Office Phone (AR): Email (AR):
Security Consultant			Main Office Phone: Office Phone (AR): Email (AR):
FF&E Consultant			Main Office Phone: Office Phone (AR): Email (AR):
Other (Specify)			Main Office Phone: Office Phone (AR): Email (AR):



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ATTACHMENT C

KEY PROJECT TEAM MEMBERS



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ATTACHMENT D

CURRENT BILLING RATES OF THE ARCHITECT AND CONSULTANTS

DATED _____



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ATTACHMENT E

OWNER'S CONSTRUCTION MANAGEMENT AT RISK PROCEDURES



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ATTACHMENT F

FORM OF CONTRACT AMENDMENT



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ATTACHMENT G

AUTHORITY'S MINORITY AND WOMEN PROJECT PARTICIPATION