



**GRAND VALLEY
STATE UNIVERSITY**

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CONTRACT FOR PROFESSIONAL SERVICES

FOR ALL FORMS OF PROFESSIONAL'S AGREEMENTS

CHAPTER 3

GENERAL TERMS AND CONDITIONS

INSERT PROJECT TITLE

SAMPLE

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CONTRACT FOR PROFESSIONAL SERVICES

CHAPTER 3 GENERAL TERMS AND CONDITIONS

ARTICLE 1 PROFESSIONAL'S GENERAL RESPONSIBILITIES

1.1 Professional's Services.

- 1.1.1 The Professional's services consist of those services performed by the Professional, the Professional's employees, and the Professional's Consultants.
- 1.1.2 The Professional shall determine and promptly notify the Owner in writing when extra services are necessary or desirable in connection with the Project.

1.2 Professional's Performance Of Services.

- 1.2.1 The Professional understands and acknowledges that time is of the essence in completion of the Project and the Owner will incur damages if the Project is not completed on time. The Professional shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the Project Design Schedule and all applicable schedules.
- 1.2.2 The Professional shall not offer or accept any bribes or kickbacks from or to any manufacturer, consultant, trade contractor, subcontractor, supplier or any other individual or entity in connection with the Project. The Professional shall not confer on any governmental, public or quasi-public official having any authority or influence over the Project any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised.
- 1.2.3 The Professional shall not, without the express written permission of the Owner, (i) engage or recommend to the Owner engagement of any Consultant, trade contractor, subcontractor or supplier to provide services on behalf of the Professional, Owner or Project in which the Professional has a direct or indirect proprietary or other pecuniary interest; or (ii) call for the use of or by exclusion require or recommend the use of products, materials, equipment, systems, processes or procedures in which the Professional or any Consultant has a direct or indirect proprietary or other pecuniary interest.
- 1.2.4 The Professional shall not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Professional, for any of the foregoing purposes, be deemed the agent of the Owner.
- 1.2.5 The Professional and its Consultants shall perform all services in accordance with the Owner's Planning and Design Standards, and shall perform no service that deviates from said standards unless the deviation is approved in writing by the Owner in advance of performance.

1.3 Professional's Duties.

- 1.3.1 The Professional shall cooperate and communicate with the Owner and all other persons or entities required for satisfactory completion of the Project.
- 1.3.2 When requested to do so by the Owner, the Professional shall process documents, and provide other reasonably required drawings, services and certifications, necessary to enable the Owner to obtain financing or insurance for the Project.
- 1.3.3 The Professional shall perform all services and prepare all documents in accordance with requirements of governmental agencies having jurisdiction over the Project.
- 1.3.4 The Professional shall provide documents to the Owner for review in accordance with schedule requirements and with sufficient lead time to allow the Owner reasonable time for review.
- 1.3.5 The Professional shall process documents and provide other reasonably required documents, services and personnel, necessary to (i) obtain construction and other required approval, permits and Certificates of Occupancy for the Project; and (ii) represent that the Professional's services and work product comply with requirements of governmental agencies having jurisdiction over the Project.
- 1.3.6 The Professional shall immediately make additions, changes and corrections to any documents prepared by the Professional necessitated by errors and omissions in the Professional's performance of its services, without cost to the Owner.

1.4 Professional's Personnel And Consultants.

- 1.4.1 All services rendered by the Professional for the Project shall be performed by or under the immediate supervision of experienced professional(s) licensed and registered in the state of Michigan possessing expertise in the discipline of the service being rendered. If the Professional chooses to subcontract or affiliate with another professional entity for all or any portion of the Professional's scope of services, the Professional shall subcontract with a professional firm with the requisite licensure, skill, experience and expertise to provide the required services. The Professional shall furnish professional services in accordance with the professional standards currently practiced by professional firms on projects similar in size, complexity and cost to the Project.
- 1.4.2 The Professional shall retain and compensate any Consultant(s) required in connection with the Professional's performance of Required Services. The obligations of the Professional's Consultant(s) shall inure to the benefit of the Owner. The Professional's agreements with its Consultant(s) shall require that in the event of default under, or



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termination of, this Contract For Professional Services, and upon request of the Owner, the Professional's Consultant(s) will perform services for the Owner.

1.4.3 The Professional shall be responsible for all services performed by its Consultant(s) and shall assure that the work of its Consultant(s) complies with all the requirements of this Contract For Professional Services. Fees for the Professional's Consultant(s) are included in the Professional Contract Price.

1.4.4 The Professional shall name a representative (the "Professional's Representative") to serve as the Owner's primary communication contact with the Professional.

1.5 Professional's Records.

1.5.1 The Professional shall, concurrently with performance of its services, prepare substantiating records regarding services rendered.

1.5.2 The Professional shall, for all services performed in connection with this Contract For Professional Services, retain in its records copies of all written communications, and any memoranda of verbal communications, related to the Project.

1.5.3 Unless otherwise provided, the Professional shall maintain substantiating records for five years after the Project date of Final Completion or for any longer period of time as may be required by law or good construction practice. If the Professional receives notification of a dispute or the commencement of litigation regarding the Project within this five-year period, the Professional shall continue to maintain all Project records until final resolution of the dispute or litigation.

1.5.4 Upon seven calendar days' written notice, from the date of this Contract For Professional Services to the latest date described in Subparagraph 1.5.3, the Professional shall make its records available during normal business hours to the Owner or its authorized representative(s). The Owner and its authorized representative(s) shall be entitled to inspect, examine, review and copy the Professional's records at the Owner's reasonable expense, within adequate work space at the Professional's facilities. Failure by the Professional to supply substantiating records shall be reason to exclude the related costs from amounts which might otherwise be payable by the Owner to the Professional pursuant to this Contract For Professional Services.

1.6 Contamination Claim And Incident Reporting.

1.6.1 The Professional shall immediately notify the Owner both orally and in writing of the presence and location of any environmental contamination of the Site of which it becomes aware or reasonably should become aware, including but not limited to Hazardous Substances and petroleum releases.

1.6.2 The Professional shall immediately notify the Owner both orally and in writing of the details of all incidents of which it becomes aware which adversely affect or have the potential to adversely affect the quality or progress of the Work including, but not limited to, union jurisdictional disputes, accidents, damages to Work and similar significant occurrences.

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

1.7 Changes To The Contract.

1.7.1 The Professional understands and agrees that this Contract For Professional Services cannot be changed except as provided herein.

1.7.2 No act, omission or course of dealing by the parties shall alter the requirement that modifications of this Contract For Professional Services can be accomplished only by written documents signed by the parties.

1.7.3 If the Professional disputes a decision (i) that a change has occurred in its scope of services; (ii) as to whether a change in its scope of services will result in adjustment of its compensation or applicable schedules; or (iii) as to the amount of any adjustment of compensation or applicable schedules, the Professional shall nevertheless continue to provide its services. However, by doing so, the Professional will not prejudice any claim that it may have with respect to that decision.

ARTICLE 2 OWNER'S RESPONSIBILITIES

2.1 Information.

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

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

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

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

2.1.5 The furnishing of information by the Owner to the Professional shall not relieve the Professional of the responsibility to evaluate the information provided by the Owner and to notify the Owner in writing of any additional information needed or services required from the Owner in order for the Professional to perform its services, nor shall it relieve the Professional of the responsibility to visit the site and/or existing structure(s) to verify information provided by the Owner and any other conditions pertinent to the Project. Any information and tangible material provided by the Owner to the Professional is furnished to the Professional only in order to make complete disclosure of such material in the possession of the Owner and for no other purpose. By furnishing such material, the Owner does not represent, warrant, or guarantee its accuracy either in whole, in part, implicitly or explicitly, and shall have no liability therefor.



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2.2 **Owner's General Duties.**

- 2.2.1 The Owner shall timely compensate the Professional in accordance with this Contract For Professional Services.
- 2.2.2 Unless otherwise required to be provided by the Professional in its scope of services, the Owner shall secure and pay for all Project testing.
- 2.2.3 The Owner shall review documents prepared by the Professional in a timely manner and in accordance with schedule requirements. Review by the Owner shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's intent. No review of such documents shall relieve the Professional of any of its responsibilities.

2.3 **Owner's Representative.**

- 2.3.1 The Owner shall name the Owner's Representative to serve as the Professional's primary communication contact with the Owner.

**ARTICLE 3
INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

- 3.1 **Nature And Use Of Information.** All information, documents, and electronic media furnished by the Owner to the Professional (i) belong to the Owner; (ii) are proprietary and confidential; (iii) are furnished solely for use on the Owner's Project; (iv) shall be kept confidential by the Professional; and (v) shall not be used by the Professional on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the Owner hereunder is specifically authorized in writing by the Owner in advance.
- 3.2 **Ownership Of Information.** The Construction Documents and any other documents or electronic media prepared by or on behalf of the Professional for the Project are the sole property of the Owner free of any retention rights of the Professional. The Professional hereby grants to the Owner an unconditional right to use, for any purpose whatsoever, the Construction Documents and any other documents or electronic media prepared by or on behalf of the Professional for the Project, free of any copyright claims, trade secrets or other proprietary rights with respect to such documents.
- 3.3 **Photographs And Images.** The Professional may take photographs, videotapes or other types of images during the course of construction of the Project for its own use. The Professional shall not print, publish, advertise or otherwise use any such photographs, videotapes or other types of images for any public or commercial use unless specifically authorized in writing by the Owner in advance.
- 3.4 **Logo Standards.** The Owner's logo consists of the "Circle G" (logomark) and the words "Grand Valley State University" (logotype). Both the logomark and the logotype are registered trademarks. The logomark may be used alone but the logo as a whole (mark and type) must be used somewhere else in the document. The logotype may never be used without the logomark. Appropriate depictions of Owner's logo may be downloaded from the following web site address: www.gvsu.edu/index.cfm?fuseaction=standards.standards and must be used in accordance with the Owner's guidelines, including use of the ™ designation.
- 3.5 **Disclosure Of Information.** The Professional shall not disclose any information it receives from the Owner to any other person or entity except to the extent necessary to allow it to perform its duties under this Contract For Professional Services.
- 3.6 **Instructions To Employees.** Because it is difficult to separate proprietary and confidential information from that which is not, the Professional shall instruct its employees and agents to regard all information which is not in the public domain as information which is proprietary and confidential.
- 3.7 **Non-Publication.** Submission or distribution of documents to meet official regulatory requirements or for other required purposes in connection with the Project is not to be construed as publication in derogation of the Owner's common law copyrights or other reserved rights.

**ARTICLE 4
PAYMENT TO PROFESSIONAL**

- 4.1 **General Invoicing Requirements.** Every thirty calendar days during the term of this Contract For Professional Services, the Professional shall submit invoices to the Owner requesting payment. Each invoice shall contain the Owner's Project identification and purchase order number, bear the signature of the Professional and have attached such documentation as may be required by the Owner.
 - 4.1.1 The invoice shall generally itemize or show a breakdown of the various phases or parts of the Professional Contract Price, the value of the various phases or parts, the previously invoiced and approved amounts for payment, and the amount of the current invoice.
 - 4.1.2 The invoice shall also include a certification signed by the Professional stating that the Professional has paid its consultants, subcontractors and suppliers their proportional share of all previous payments received from the Owner.
 - 4.1.3 The signature of the Professional on any invoice shall constitute the Professional's certification to the Owner that (i) the Professional has billed the Owner for all services rendered by it and any of the Professional's Consultants and subcontractors through the date of the invoice; (ii) as of the date of the invoice, no other outstanding amounts are due from the Owner to the Professional for services rendered; (iii) the services listed in the invoice have progressed to the



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level indicated and have been performed as required by this Contract Documents; (iv) that the reimbursable expenses have been reasonably incurred; and (v) that the amount requested is currently due and owing.

4.1.4 By acceptance of the Owner's payment of an invoiced amount, the Professional releases the Owner from any and all claims by the Professional and by Professional's Consultants and subcontractors for Work performed but not invoiced during the period for which payment was received

4.2 **Invoicing Pursuant To Compensation Schedule And Invoicing For Payment Of A Fixed Fee.** With respect to requests for payment of the Professional Contract Price pursuant to a lump sum fixed fee or for requests for payment of the Professional Contract Price in a series of lump sum amounts in accordance with a Compensation Schedule, the invoice shall, in addition to the invoice requirements contained in Paragraph 4.1 above, at a minimum:

- (i) state the total fee and expenses amount; and
- (ii) state the amount due pursuant to the Compensation Schedule.

4.3 **Invoicing For Compensation For Services Rendered On An Hourly Basis.** With respect to requests for payment of all or any portion of the Professional Contract Price or payment of services on an hourly basis, the invoice shall, in addition to the invoice requirements contained in Paragraph 4.1 above, at a minimum:

- (i) describe with reasonable particularity the type and nature of each service rendered;
- (ii) state the date each service was rendered;
- (iii) identify the technical classification and name of each person rendering each service;
- (iv) state the hours expended by each class of persons for each service;
- (v) state the hourly rate for each classification of service; and
- (vi) state the total amount charged for each service.

4.4 **Invoicing And Payment Of Expenses.** Invoices for expenses shall, in addition to the invoice requirements contained in Paragraph 4.1 above, be accompanied by such documentation or support data as the Owner may require. The Professional shall:

- (i) be reimbursed only for the following expenses directly related to the Project:
 - (a) transportation and Owner-authorized out-of-town travel expenses;
 - (b) long distance telephone, facsimile, postage / express mail charges, and similar communications charges;
 - (c) fees paid for securing approval of governmental authorities having jurisdiction over the Project;
 - (d) reproduction, copying and distribution expenses of document packets, and addenda or clarification documents, for Projects involving negotiated or bid Contracts For Construction between the Owner and a General Contractor;
 - (e) costs of placing Advertisements for Bids;
 - (f) reproduction and copying expenses, for items in excess of those included in Required Services; and
 - (g) items approved in advance by the Owner in writing.
- (ii) set forth with particularity on its invoice the nature and cost of the expense item being billed, and attach to its invoice the written authorization, if any, required for such item; and
- (iii) bill expenses at actual cost or prevailing rate and without addition of administrative charge, multiple or surcharge.

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

4.6 **Correction Of Past Payments.** All prior payments, whether based on estimates or otherwise, may be corrected and adjusted in any payment and shall be corrected and adjusted in the final payment. In the event that any invoice contains a defect or impropriety which would prevent payment by the Payment Date, the Owner shall notify the Professional in writing of such defect or impropriety. Any disputed amounts determined by the Owner to be payable to the Professional shall be due fourteen calendar days from the date the dispute is resolved.

4.7 **Interest On Outstanding Amounts Dues.** Interest shall accrue on amounts owed by the Owner to the Professional which remain unpaid thirty calendar days following the Payment Date. Said interest shall accrue at the discounted ninety day U.S. Treasury bill rate as established by the Weekly Auction and as reported in *The Wall Street Journal* on the weekday following each such Weekly Auction.

4.7.1 No interest shall accrue when payment is delayed because of a dispute between the Owner and the Professional, or a dispute as to the accuracy or completeness of any request for payment received. This exception to the accrual of interest shall apply only to that portion of a delayed payment which is actually the subject of the dispute and shall apply only for the duration of such disagreement. Nor shall interest accrue on retainage, which is withheld to assure performance of this Contract For Professional Services.

4.8 **Periodic Payments.** The Owner shall make payments to the Professional during each phase of the services based on the value of the services completed by the Professional on that phase. Each such payment shall be based on the Owner's opinion of the value of the services completed as of the date of the invoice. The Professional may invoice the Owner when the submittal for a particular



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design phase is complete. The Owner shall make payment of a cumulative amount of not more than 95% of the value of that phase. The Professional may invoice the Owner for the remaining 5% (balance of the value of that phase) when the submittal has been reviewed and approved.

ARTICLE 5 GENERAL INSURANCE REQUIREMENTS

5.1 **General Insurance Requirements.** Unless otherwise required, each insurance policy except the Professional's professional liability policy:

- (i) shall be issued by an insurance carrier acceptable to Owner;
- (ii) shall be kept in force throughout performance of the Professional's services and for one year after the end of such performance;
- (iii) shall be an occurrence policy;
- (iv) shall name the Owner as an Additional Named Insured; and,
- (v) shall be evidenced by a certificate of insurance acceptable to the Owner.

5.2 **Professional Liability Insurance Requirements.** The Professional's professional liability policy:

- (i) shall be issued by an insurance carrier acceptable to the Owner;
- (ii) shall be kept in force throughout performance of the Professional's services and for five years after the end of such performance;
- (iii) may be a claims-made policy; and
- (iv) shall be evidenced by a certificate of insurance acceptable to the Owner which provides that the coverage evidenced thereby shall not be substantially modified or canceled without thirty calendar days' prior written notice to the Owner.

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

5.3 **Certificates Of Insurance.**

- 5.3.1 Certificates of insurance shall be on the standard form published by ACORD, or in such other format acceptable to the Owner, and shall provide that the coverage evidenced thereby will not be substantially modified or canceled without thirty calendar days' prior written notice to the Owner.
- 5.3.2 The Professional agrees that the Owner shall have no responsibility to verify compliance by the Professional or its Consultants with any insurance requirements.
- 5.3.3 Prior to performance of any services on the Project, the Professional shall ensure that its required insurance coverage, and that of its Consultants, is in effect pursuant to this Contract For Professional Services, and shall provide to the Owner complete and appropriate certificates of insurance.

5.4 **Effect Of Insurance.** Compliance with insurance requirements shall not relieve the Professional of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of this Contract For Professional Services and the Owner shall be entitled to pursue any remedy in law or equity if the Professional fails to comply with this contractual provisions of this Contract For Professional Services. Indemnity obligations specified elsewhere in this Contract For Professional Services shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.

5.5 **Priority.** Insurance coverage (including any deductible or self-insured retention) required from persons or entities other than the Owner or the Owner's Related Parties shall be deemed primary to any coverage provided by the Owner or the Owner's Related Parties.

5.6 **Property Damage Disclaimer.** The Owner shall not be liable, and shall provide no insurance, for any loss or damage incurred by the Professional or its consultants, or by their agents and employees, to tools, machinery, equipment and other property owned by them, regardless of whether such losses are insured by them. The Professional hereby releases and discharges the Owner and its Related Parties of and from all liability to the Professional, and to anyone claiming by, through or under the Professional, by subrogation or otherwise, on account of any loss or damage to such tools, machinery, equipment or other property, however caused.

ARTICLE 6 TERMINATION OR SUSPENSION OF CONTRACT

6.1 **Professional's Default.** If the Professional defaults by failing to substantially perform, in accordance with the terms of this Contract For Professional Services, as determined by the Owner, the Owner may give written notice to the Professional (i) terminating this Contract For Professional Services effective seven calendar days from the date of notice; or (ii) setting forth the nature of the default and requesting the Professional initiate cure within seven calendar days from the date of notice. At any time thereafter, if the Professional fails to initiate cure upon the request of the Owner and continue such cure until complete, the Owner may give written notice to the Professional of immediate termination. If the Owner terminates this Contract For Professional Services pursuant to this



paragraph, and it is subsequently determined by a court of competent jurisdiction that the Professional was not in default, then in such event said termination shall be deemed a termination for convenience as set forth in Paragraph 6.3.

- 6.2 **Owner's Default.** If the Owner defaults by failing to substantially perform in accordance with the terms of this Contract For Professional Services, the Professional shall give written notice to the Owner setting forth the nature of the default and requesting cure within seven calendar days from the date of notice. If the Owner fails to cure within seven calendar days from the date of notice, the Professional may give written notice to the Owner of immediate termination.
- 6.3 **Termination Or Suspension For Convenience.** The Owner may at any time give written notice to the Professional terminating this Contract For Professional Services or suspending the Project, in whole or in part, for the Owner's convenience and without cause. If the Owner suspends the Project for convenience, the Professional shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of suspension.
- 6.4 **Payment In Case Of Termination.**
- 6.4.1 If this Contract For Professional Services is terminated by the Owner pursuant to Paragraph 6.1, no further payment shall be made to the Professional until completion of the Project. At such time, the Professional's compensation shall, at the Owner's option, be calculated (i) subject to the last sentence of this subparagraph, on the basis of services actually performed and expenses actually incurred prior to the effective termination date; or (ii) on the basis of the payment terms set forth elsewhere herein. In either case, the Professional's compensation shall be reduced by all costs and damages incurred by the Owner as a result of the default of the Professional.
- 6.4.2 If this Contract For Professional Services is (i) terminated by the Professional pursuant to Paragraph 6.2; (ii) terminated by the Owner pursuant to Paragraph 6.3; or (iii) suspended more than three months by the Owner pursuant to 6.3, the Professional's compensation shall be calculated on the basis of services actually performed and expenses actually incurred prior to the effective termination or suspension date and reasonable costs associated with termination or suspension.

ARTICLE 7 DAMAGES AND REMEDIES

- 7.1 **Services, Reimbursement And Deductions.** If the Professional fails to perform its duties the Professional shall, without compensation by the Owner, provide and process all documents, and provide other services, required as a result of the Professional's failure to perform; and shall promptly reimburse the Owner for any costs or damages incurred by the Owner. The Owner shall also have the right to deduct from payments to the Professional any costs or damages incurred, or which may be incurred, by the Owner as a result of the Professional's failure to perform.
- 7.2 **General Indemnity.** To the fullest extent permitted by law, the Professional shall defend, protect, hold harmless, and indemnify the Owner and the Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, and regardless of the legal theories upon which premised, including, but not limited to, those actually or allegedly arising out of bodily injury to, or sickness or death of, any person, or property damage or destruction (including loss of use), which may be imposed upon, incurred by or asserted against the Owner or the Owner's Related Parties allegedly or actually arising out of or resulting from the Professional's services, including without limitation any breach of contract or negligent act or omission (i) of the Professional; or (ii) of the Professional's consultants, subcontractors or suppliers; or (iii) of the agents, employees or servants of the Professional or its consultants, subcontractors or suppliers.
- 7.2.1 To the fullest extent permitted by law, the Professional, for itself and for its consultants, trade contractors, subcontractors and suppliers, if any, and their agents, employees and servants, expressly waives any and all immunity or damage limitation provisions available to them under any workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts, to the extent such statutory or case law would otherwise limit the amount recoverable by the Owner or the Owner's Related Parties pursuant to the indemnification provision contained in Paragraph 7.2.
- 7.3 **Intellectual Property Indemnity.** To the fullest extent permitted by law, the Professional shall defend, protect, hold harmless, and indemnify the Owner and the Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Owner in writing. If the Professional has reason to believe the use of a required design, process or product is an infringement of a patent, the Professional shall be responsible for such loss unless such information is promptly given to the Owner.
- 7.4 **Errors, Omissions And Deviations.**
- 7.4.1 The Professional shall pay 100% of all costs associated with required corrections to the Work if the Professional, or its consultants or suppliers,
- (i) fail to comply with, or deviate from, the Owner's Planning and Design Standards, or other specific Project requirements, without the prior written approval of the Owner;
 - (ii) fail to comply with applicable codes or State or Federal regulations applicable to the Project (except State Fire Marshal local field inspector interpretations); or
 - (iii) fail to correct deficiencies, errors, omissions or other Project requirements identified in writing by the Owner as a result of any Construction Document reviews;



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7.4.2 When an error, omission or deviation results in improper or incomplete Construction Documents or improper coordination not otherwise specified in subparagraph 7.4.1, the Professional shall pay the Owner all costs of correcting installed Work and providing omitted Work calculated as set forth in Paragraph 4.5 of Chapter 1.

7.4.3 In all circumstances, the Professional shall pay 100% of the costs for removal and replacement of Work already installed.

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

7.6 **Waiver Of Damages.** The Professional shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.

7.7 **Interest.** The Owner is entitled to interest on all amounts due from the Professional that remain unpaid thirty calendar days after the amount is deemed due, whether as a result of a resolution of a dispute or otherwise. Any such interest shall be calculated by the same method as set forth in Paragraph 4.7 above.

ARTICLE 8 APPLICABLE LAW AND DISPUTE RESOLUTION

8.1 **Applicable State Law.** This Contract For Professional Services has been entered into in, and shall be interpreted under the laws of, the state of Michigan.

8.2 **Court Actions.** Except as expressly prohibited by law:

- (i) all legal actions hereunder shall be conducted only in the Ottawa County Circuit Court or, if applicable, the United States District Court for the Western District of Michigan, except that any final judgment may be enforced in other jurisdictions in any manner provided by law;
- (ii) the choice of jurisdiction and venue described in the preceding paragraph shall be mandatory and not permissive in nature, thereby precluding the possibility of litigation or trial in any jurisdiction or venue other than that specified herein;
- (iii) the parties waive any right to assert the doctrine of *forum non conveniens* or to object to venue; and
- (iv) the parties waive any right to a jury trial, and agree that all legal actions shall be tried, both as to factual and legal issues, only to the Court.

8.3 **Mutual Discussion.** In case of any dispute, claim, question, or disagreement arising from or relating to the Project or arising out of this Contract For Professional Services or the breach thereof, the parties shall first attempt resolution through mutual discussion.

8.4 **Facilitative Mediation.** If the parties cannot resolve any dispute, claim, question, or disagreement arising from or relating to the Project or arising out of this Contract For Professional Services or the breach thereof through mutual discussion, as a condition precedent to litigation, the parties shall in good faith participate in private, non-binding facilitative mediation seeking a just and equitable solution satisfactory to all parties.

8.4.1 All parties to a mediation shall promptly provide all other parties to the mediation with copies of essential documents relevant to the support or defense of the matter being mediated.

8.4.2 The parties shall not be required to mediate for a period greater than ninety-one calendar days unless otherwise agreed to in writing by the parties. The parties shall share equally any administrative costs and fees of such proceedings, but shall each be responsible for expenses otherwise incurred.

8.4.3 In the event that the statute of limitations would run during the required mediation period, either party may institute litigation so as to avoid the running of such statute upon the condition that such party immediately seek a stay of such litigation pending the conclusion of the mediation period.

8.4.4 During the course of mediation, any party to the mediation may apply for injunctive relief from any court of competent jurisdiction until the mediation period expires or the dispute is otherwise resolved.

8.4.5 The Owner, the Professional, the Contractor, and any other parties involved in any way in the design or construction of the Project are bound, each to each other, by this requirement to mediate prior to commencement of any litigation, provided that they have signed this Contract For Professional Services or an agreement that incorporates this Contract For Professional Services by reference or signed any other agreement which binds them to mediate. Each such party agrees that it may be joined as an additional party to a mediation involving other parties under any such agreement. In the case where more than one mediation is begun under any such agreement and any party contends that the mediations are substantially related, the mediations may be conducted by the mediator selected in the first mediation which was commenced.

8.4.6 The Owner and the Professional shall each include an identical mediation paragraph in all agreements with Project contractors, subcontractors, consultants and suppliers, and shall by those agreements require such contractors, subcontractors, consultants and suppliers to include an identical mediation paragraph in agreements with their subcontractors, sub-consultants, suppliers and fabricators, thereby providing for facilitative mediation as the primary dispute resolution mechanism for the Project.

8.5 **Conflicting Dispute Resolution Provisions.** Neither party to this Contract For Professional Services shall enter into any contract with regard to the Project which directly or indirectly gives the right to resolve any dispute with, involving, or affecting the other to any other person or legal entity which is in conflict with the dispute resolution procedures required by this Article.



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- 8.6 **Arbitration Preclusion.** In case of a dispute relating to the Project, or arising out of this Contract For Professional Services, no party to this Contract For Professional Services shall be required to participate in or be bound by, any arbitration proceedings.

ARTICLE 9 MISCELLANEOUS PROVISIONS

- 9.1 **Integration.** This Contract For Professional Services represents the entire and integrated agreement between the Owner and the Professional, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project. This Contract For Professional Services may be amended only by written instruments signed by both the Owner and the Professional, and is subject to such reasonable modifications as may be required by the Owner's lender(s) or insurer(s), if any.
- 9.2 **Severability.** If any provision of this Contract For Professional Services, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions of this Contract For Professional Services shall remain valid and enforceable.
- 9.3 **Waiver.** No provision of this Contract For Professional Services may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Contract For Professional Services.
- 9.4 **Strict Compliance.** No failure of the Owner to insist upon strict compliance by the Professional with any provision of this Contract For Professional Services shall operate to release, discharge, modify, change or affect any of the Professional's obligations.
- 9.5 **Third-Party Beneficiaries.** This Contract For Professional Services shall inure solely to the benefit of the parties hereto and their successors and assigns, and, except as provided in Subparagraph 1.4.2, nothing contained in this Contract For Professional Services is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third party against either the Owner or the Professional.
- 9.6 **Survival.** All provisions of this Contract For Professional Services which contain continuing obligations shall survive its expiration or termination.
- 9.7 **Assignment.** Neither party shall assign any or all of its benefits or executory obligations under this Contract For Professional Services without the approval of the other party to this Contract For Professional Services, except in case of assignment solely for security or assignment by the Owner to a Related Party of the Owner. The Owner and the Professional bind their successors and assigns to the other party to this Contract For Professional Services.
- 9.8 **Execution Of Documents.** Upon the request of the Owner, the Professional shall execute documents required by the Owner's lender whereby the Professional agrees that in the event of the Owner's default under, or the termination of, any construction loan agreement, the Professional will complete the services required by this Contract For Professional Services under the terms and conditions contained herein so long as the lender fulfills the obligations of the Owner toward the Professional as set forth in this Contract For Professional Services.
- 9.9 **Non-Discrimination** For this Contract For Professional Services and for all contracts for goods or services which the Professional enters into in connection with performance of services under this Contract For Professional Services, the Professional agrees as follows:
- 9.9.1 The Professional shall not discriminate against any employee or applicant for employment because of age, color, disability, familial status, height, marital status, national origin, political affiliation, race, religion, sex/gender, sexual orientation, veteran status, or weight. The Professional shall take affirmative action to insure that applicants are employed and employees are treated during employment without regard to their age, color, disability, familial status, height, marital status, national origin, political affiliation, race, religion, sex/gender, sexual orientation, veteran status, or weight. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.
- 9.9.2 The Professional shall comply with all published rules, regulations, directives, and orders of the Michigan Civil Rights Commission ("the Commission") relevant to Section 6, 1976 PA 453 as amended, which may be in effect prior to the taking of bids for the Project.
- 9.9.3 The Professional shall furnish and file compliance reports within such time and upon such forms as provided by the Owner. Said forms may also elicit information as to the practices, policies, program and employment statistics of the Professional and any Consultant(s), and the Professional shall permit access to books, records and accounts by the Owner and/or its agent, for purposes of investigation to ascertain compliance with this Contract For Professional Services and with rules, regulations, and orders of the Commission relevant to Section 6, 1976 PA 453, as amended.
- 9.9.4 The Owner believes that it economically makes good business sense and contributes to the economic growth of West Michigan to make every reasonable, opportunity for minority / women / disabled-person business enterprises (M/W/DBE) to participate in Owner contracts as suppliers, contractors and subcontractors performing work for the Owner. Therefore, the Professional is strongly encouraged to actively locate and include M/W/DBE's in its procurement efforts and to increase the amount of business done with these enterprises. An M/W/DBE is defined as a privately or publicly owned business organization whose ownership is at least 51% owned, controlled and actively managed by one or more minority/women/disabled persons as defined by federal law. The Professional shall, upon request, provide reports within



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such time and upon such forms as provided by the Owner as to its good faith efforts to provide opportunities for M/W/DBE's.

9.9.5 The Professional shall include, or incorporate by reference, the provisions of the foregoing or orders of the Commission, and shall provide in every Consultant's subcontract or purchase order that said provisions shall be binding on its Consultant.

9.10 **Michigan Right-To-Know Law.** The Professional shall comply with the provisions of the Michigan Right-To-Know Law, 1986 PA 80, which requires employers to:

- (i) develop a communication program designed to safeguard the handling of hazardous chemicals through labeling of chemical containers, and development and availability of Material Safety Data Sheets ("MSDS's");
- (ii) provide training for employees who work with these chemicals; and,
- (iii) Respond to employee requests for copies of MSDS's.

Provisions of Michigan's Right-To-Know Law may be found in those sections of the Michigan Occupational Safety and Health Act ("MIOSHA") which contains Right-To-Know provisions, and the Federal Hazard Communications Standards, which is part of the MIOSHA Right-To-Know law through adoption.

9.11 **Provisions Required By Law.** Any term, condition or provision required by law to be in this Contract For Professional Services shall be deemed to be inserted as if fully set forth herein, and this Contract For Professional Services shall be read, interpreted and enforced as if such term, condition or provision were inserted.

ARTICLE 10 DEFINITIONS

When one of the following capitalized words, terms or phrases is used in this contract, it shall be interpreted or construed first as defined below, second according to its generally-accepted meaning in the construction industry, and third according to its common and customary usage.

Construction Price: The dollar amount for which a Contractor agrees to perform the Work set forth in a Contract For Construction.

Construction Documents: Plans, specifications, change orders, revisions, addenda, and other information which set forth in detail the Work.

Construction Schedule: The timetable which sets forth pertinent dates for timely completion of the Work.

Consultant: An independent contractor or supplier engaged and/or paid by a Professional to assist the Professional in providing design or engineering services.

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

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

Contractor: An entity, including but not limited to a general contractor, a trade contractor or a construction manager, engaged directly by the Owner pursuant to a Contract For Construction.

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

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

Hazardous Substances: The term "Hazardous Substance" shall have the same meaning and definition as set forth in the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 U.S.C. § 6901 *et seq.*, and regulations promulgated thereunder (collectively "CERCLA") and any corresponding state or local law or regulation, and shall also include: (i) any Pollutant or Contaminant as those terms are defined in CERCLA; (ii) any Solid Waste or Hazardous Constituent as those terms are defined by, or are otherwise identified by, the Resource Conservation and Recovery Act as amended, 42 U.S.C. § 6901 *et seq.*, and regulations promulgated thereunder (collectively "RCRA") and any corresponding state or local law or regulation; (iii) crude oil, petroleum and fractions of distillates thereof; (iv) any other material, substance or chemical defined, characterized or regulated as toxic or hazardous under any applicable law, regulation, ordinance, directive or ruling; and (v) any infectious or medical waste as defined by any applicable federal or state laws or regulations.

Owner: The Board of Control of Grand Valley State University or its expressly authorized representative.

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

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



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

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

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

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

Total Project Construction Cost: The total cost to the Owner to complete construction of the Project, including, without limitation, the Work, the cost of utilities, the cost of fees for permits and licenses, and modifications necessitated by local conditions.

Work: Any and all computers, construction machinery, documents, equipment, facilities, fixtures, furnishings, goods, heat, items, labor, licenses, management, materials, permits, products, services, supervision, supplies, systems, taxes, testing, tools, utilities, transportation, vehicles, and water, required to be performed or supplied and/or necessary for proper execution and completion of the Project, or some portion thereof, whether or not incorporated or to be incorporated into the Project; provided, however, that Work does not include performance of pre-construction services by a Construction Manager.

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