

**STANDARD FORM OF AGREEMENT BETWEEN  
OWNER AND CONSULTANT**

This **AGREEMENT** is made as of: \_\_\_\_\_[DATE]\_\_\_\_\_, **BETWEEN** the State of Montana, Montana State University, acting through its Director, Campus Planning, Design & Construction, hereinafter identified as the “**OWNER**”:

*State of Montana - Montana State University  
 Campus Planning, Design & Construction  
 Plew Building 6<sup>th</sup> & Grant,  
 PO Box 172760  
 Bozeman, Montana 59717-2760*

And the **CONSULTANT**:

*[FIRM NAME]  
 [ADDRESS]  
 [CITY, STATE, ZIP]  
 [PHONE, FAX]*

For the following Project:

***PROJECT TITLE**  
**PPA NO.** \_\_\_\_\_*

**SCOPE:**  
 (define here)

**DESIGN SCHEDULE:**

<b>Task</b>	<b>Start date or NA</b>	<b>Duration (wk or mo)</b>
Programming/Pre-design		
Schematic Design		
SD & Budget Review		
Geotech		
Site Survey		
Design Development		
Energy Analysis		
DD & Budget Review		
Construction Documents		
Commissioning Documents		
CD & Budget Review		
Local Jurisdiction Review		
Advertising/Solicitation		
Contract Award		
Construction		
<i>Other</i>		

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**CONSULTANT SCOPE CHECKLIST:**

BASIC SERVICES (check all that apply):

- Schematic Design
- Design Development
- Construction Documents
- Bidding
- Construction Administration
- Bid Document Reproduction (check here if fixed sum)
- Record Documents
- Warranty Inspection
- High-Performance Building Criteria applies
- Combine SD/DD into "Preliminary Design"

ADDITIONAL SERVICES (check all that apply):

- Site Planning
- Programming
- Fund-Raising & Marketing Assistance
- Deliverables shall include:
  - Character Sketches, # of perspectives: \_\_\_\_\_
  - Presentation Boards, # of perspectives: \_\_\_\_\_
  - Descriptive Project Booklets, # copies: \_\_\_\_\_
  - Project Brochures - # of copies: \_\_\_\_\_
  - Physical Presentation Model
  - 3-D Computer Graphic Animation
- Feasibility Study
- Value Engineering Analysis
- Energy Study
- Hazardous Materials Investigation
- Specialty Consultants requested by the Owner
 

<input type="checkbox"/> Acoustical	<input type="checkbox"/> Audio/Visual	<input type="checkbox"/> IT/Communications
<input type="checkbox"/> Correctional	<input type="checkbox"/> Cost Estimating	<input type="checkbox"/> Education/Demographics
<input type="checkbox"/> Interior Design	<input type="checkbox"/> Food Services	<input type="checkbox"/> Lab/Research
<input type="checkbox"/> Landscape	<input type="checkbox"/> LEED	<input type="checkbox"/> Security
<input type="checkbox"/> Other: _____		
- Site/Topographic Survey
- Geotechnical Investigation
- Commissioning
  - 3<sup>rd</sup> Party
  - Part of A/E Services

SUPPLEMENTAL SERVICES AND REIMBURSABLES (check all that apply):

- Reimbursable Expenses (check here only if NOT part of Basic Services)

**PART I – GENERAL PROVISIONS**

**1.1 COMPENSATION**

1.1.1 The Owner shall compensate the Consultant in accordance with the full Terms and Conditions of this Agreement as follows:

<b>BASIC SERVICES</b>	<b>AMOUNT</b>
Schematic Design (SD)	0.00
Design Development (DD) [or Preliminary Design (PD) for combined SD/DD]	0.00
Construction Documents (CD)	0.00
Bidding Phase (Bid)	0.00
Construction Contract Administration (CA)	0.00
Bidding Document Reproduction	0.00
Record Draw ings	0.00
Warranty Inspection	0.00
<b>Basic Services Total =</b>	<b>0.00</b>
<b>ADDITIONAL SERVICES</b>	<b>AMOUNT</b>
Programming/Pre-Design	\$0.00
Site Survey	\$0.00
Feasibility Studies	\$0.00
Fixtures, Furnishing, & Equipment Services	\$0.00
Life Cycle Cost Analysis	\$0.00
Value Engineering Studies	\$0.00
Energy Studies	\$0.00
Hazardous Materials Investigation	\$0.00
Specialty Consultants (provide list)	\$0.00
Commissioning	\$0.00
Geotechnical Investigation	\$0.00
<b>Additional Services Total =</b>	<b>\$0.00</b>
<b>SUPPLEMENTAL SERVICES</b>	<b>AMOUNT</b>
list here	\$0.00
list here	\$0.00
<b>Supplemental Services Total=</b>	<b>\$0.00</b>
<b>AMOUNT</b>	
<b>TOTAL SUM FOR ALL SERVICES =</b>	<b>\$0.00</b>

1.1.2 The compensation in this Agreement is [a **Lump-Sum, Fixed Fee**] or [an agreed upon hourly **Not to Exceed**] amount for all Services, Responsibilities, and Duties of the Architect/Engineer required to complete the Project. If there are services required beyond the scope of this Agreement, such services shall be negotiated with the Owner. Services beyond the scope of this Agreement must be authorized by the Owner prior to performance of such services or they shall be at the Architect/Engineer’s expense.

1.1.3 The Owner will make progress payments to the Architect/Engineer on account of services rendered. Any remaining amounts due after Substantial Completion will be paid to the Architect/Engineer upon completion of particular service items delineated in this Agreement or upon Final Acceptance of the Project, whichever is later.

1.1.4 Each request for payment submitted by the Architect/Engineer shall be on the Owner’s form. Pay requests shall be submitted to the Owner’s Project Accountant on not more than a monthly basis. The Owner has thirty (30) calendar days from the date of receipt to process payment to the Architect/Engineer of all undisputed amounts.

- 1.1.5 If the Owner determines that any representations on pay requests submitted by the Architect/Engineer are wholly or partially inaccurate, the Owner may withhold payment of amounts in dispute until the inaccuracy and its cause have been corrected to the Owner's satisfaction.
- 1.1.6 The Owner may make deductions or withhold payment of amounts in dispute or for damages to the Owner involving the Architect/Engineer or the Architect/Engineer's consultants.
- 1.1.7 By submission of the final pay request the Architect/Engineer certifies to the Owner that all bills for materials, supplies, utilities and for all other items or services furnished or caused to be furnished and used in the execution of this Agreement have been fully paid to date and that there are no unpaid claims or demands of State or Federal Agencies, consultants, employees, or any others resulting from or arising out of any work done under this Agreement.
- 1.1.8 Reimbursable Expenses.
  - 1.1.8.1 All reimbursable expenses for services as part of this Agreement are included in the Total Sum.
  - 1.1.8.2 Reimbursable Expenses are defined as:
    - 1.1.8.2.1 transportation in connection with the Project, out-of-town travel and subsistence, and electronic communications;
    - 1.1.8.2.2 document reproductions for other than bidding purposes, plots, standard form documents, telephone/cell phone, postage, handling and delivery;
    - 1.1.8.2.3 expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect/Engineer and the Architect/Engineer's consultants; and,
    - 1.1.8.2.4 other similar direct Project-related expenditures.
- 1.1.9 Records of expenses for all services performed, changes in service, reimbursable expenses, and other expenses shall be available to the Owner or the Owner's authorized representative at mutually convenient times.
- 1.1.10 Other expenses incurred by the Architect/Engineer may be compensated if authorized in advance by the Owner. All Other expenses shall be negotiated with and approved by the Owner prior to the Architect/Engineer incurring such expenses.

## **1.2 ENUMERATION OF AGREEMENT**

- 1.2.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect/Engineer and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect/Engineer. This Agreement is also comprised of:
  - 1.2.1.1 Owner's Initial Information document dated \_\_\_\_\_;
  - 1.2.1.2 Owner's *Performance and Document Requirements* document as posted under the Consultant section of the Owner's web site at <http://www.montana.edu/pdc/> in effect at the time of execution of this Agreement.
  - 1.2.1.3 Other documents enumerated as follows:
    - 1.2.1.3.1 [List other documents, if any, forming part of this Agreement]
  - 1.2.1.4 Special terms and conditions that form part of this Agreement are as follows:
    - 1.2.1.4.1 [List special terms and conditions]

- 1.2.2 By executing this Agreement the Architect/Engineer represents, acknowledges, and agrees that the Agreement incorporates all of the requirements of the documents and items enumerated above and agrees to be bound by the same.

### **1.3 PROJECT TEAM**

- 1.3.1 The Owner's project manager(s) shall be as defined in the Initial Information document or MSU supplied information.
- 1.3.2 The Owner's Project Manager (respective to the phase of the Project) is authorized to act on the Owner's behalf. The Owner or the Owner's Project Manager shall render decisions in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect/Engineer's services.
- 1.3.3 The Architect/Engineer shall communicate and coordinate with the Owner's Project Manager in all instances regarding the Project, Initial Information, Project Program, Project Schedule, Project Budget, transfers of information, scheduling meetings, and any Owner requests.
- 1.3.4 The Architect/Engineer shall communicate with the Owner's Project Manager unless given permission by the Project Manager to communicate and coordinate directly with the client.
- 1.3.5 The Architect/Engineer's representative shall be as defined in the Initial Information document or MSU supplied information. The Architect/Engineer's Designated Representative shall be authorized to act on the Architect/Engineer's behalf with respect to the Project and to bind the Architect/Engineer and the Architect/Engineer's consultants.

### **1.4 GENERAL TERMS AND CONDITIONS**

- 1.4.1 The Owner and Architect/Engineer shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain professional working relationships among all members of the Project Team.
- 1.4.2 Licensing Requirements. By signature on this Agreement, the declaration is made that the Architect/Engineer is professionally qualified, registered, and licensed to practice in the State of Montana. In accordance with Montana law, the Architect/Engineer shall stamp and sign the Contract Documents (drawings and specifications).
- 1.4.3 The Architect/Engineer shall be responsible for the professional quality, technical accuracy, and coordination of all concepts, programming, reports, designs, drawings, specifications, and other services furnished under this Agreement. The Architect/Engineer shall, without additional compensation, correct or revise any errors, deficiencies, or omissions in concepts, programming, reports, designs, drawings, specifications, estimates, and other services.
- 1.4.4 Neither the Owner's review, approval or acceptance of, nor payment for, the services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of services under this Agreement, and the Architect/Engineer shall be and remain liable to the Owner in accordance with applicable law for all costs and damages to the Owner caused by the Architect/Engineer's negligent performance of any of the services furnished under this Agreement.
- 1.4.5 Rights & Remedies. The rights and remedies of the Owner allowed by law are in addition to any rights and remedies provided in this Agreement.
- 1.4.6 Relationship. The relationship of the Architect/Engineer to the Owner under this Agreement is that of an Independent Contractor. The Architect/Engineer (and the Architect/Engineer's consultants) is not an employee of the Owner, is not carrying out the regular business of the Owner, and is not subject to the same employment regulations as applicable to employees of the Owner. Each of the parties will be solely and entirely responsible for their own acts and the acts of their employees. No benefits, special considerations, or employer/employee-type provisions are provided by the Owner to the Architect/Engineer, the Architect/Engineer's employees, or the Architect/Engineer's consultants, or the consultants' employees.

1.4.7 Successors and Assigns. The Owner and the Architect/Engineer each bind themselves, their partners, successors, legal representatives, and assigns to the other party to this Agreement and to the partners, successors, legal representatives and assigns of such other party in respect to all covenants of this Agreement. Neither the Owner nor the Architect/Engineer shall assign or transfer its interest in this Agreement without written consent of the other.

1.4.8 Records and Documentation:

1.4.8.1 The Architect/Engineer and the Architect/Engineer's consultants shall be aware that all documentation, including electronic correspondence, in the Owner's possession are public records and the Owner is obligated to make all such records available upon request to any party or individual unless such records meet statutory requirements or Montana Administrative Rules for confidentiality and non-disclosure.

1.4.8.2 The Owner shall have access to all records, documents, correspondence, and files of the Architect/Engineer, its employees, engineers, and consultants pertaining to the Project. This access shall be continuing and survive Final Acceptance of the Project or the termination of this Agreement for either cause or convenience. Such records shall be kept in a generally recognized format for a period of three (3) years from the effective date of termination of this Agreement or Final Acceptance of the Project by the Owner. All records shall be available to the Owner, Legislative Auditor, and the Legislative Fiscal Analyst or their authorized representatives. The Owner does not consider documents, files, and records in the Architect/Engineer's possession or the Architect/Engineer's consultants' possession to be public records unless determined to be so by law or unless they come into the Owner's possession. Access and review does not constitute possession by the Owner.

1.4.9 The Architect/Engineer warrants that he has not employed or retained any person, partnership, or corporation, other than a bona fide employee or principal owner working for the Architect/Engineer to solicit or acquire the Project described in this Agreement.

1.4.10 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 Architect/Engineer except as provided in the "Dispute Resolution" article of this Agreement.

## **1.5 RESPONSIBILITIES OF THE PARTIES**

1.5.1 Owner's Responsibilities:

1.5.1.1 Unless otherwise provided under this Agreement, the Owner shall provide information in a timely manner regarding requirements and parameters of the Project. The Owner shall furnish information, in conjunction with the Architect/Engineer's services, setting forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, special equipment, systems and site requirements as applicable to the Project.

1.5.1.2 The Owner shall examine documents submitted by the Architect/Engineer and shall render decisions pertaining thereto.

1.5.1.3 The Owner shall furnish the services of consultants other than those designated as part of the Architect/Engineer's responsibility or authorize the Architect/Engineer to furnish them as a change in service or scope.

1.5.1.4 The Owner shall furnish testing, inspections, and reports as necessary for the Project such as geotechnical, structural, mechanical, chemical, hazardous materials, and other laboratory tests, inspections, and reports not incorporated into this Agreement or shall authorize the Architect/Engineer to furnish them as a change in service or scope.

1.5.1.5 The Owner shall furnish accounting and auditing services as may be necessary for the Project as he may require to ascertain how or for what purposes the Architect/Engineer has used the funds paid under the terms of this Agreement.

- 1.5.1.6 If the Owner observes or otherwise becomes aware of any error, fault, omission, or defect in the Project or non-conformance with the documentation or Plans and Specifications, he shall give prompt notice thereof to the Architect/Engineer.
- 1.5.1.7 Upon request, the Owner shall prepare for the Architect/Engineer the necessary bidding information, wage rates, and the General and any Supplementary General Conditions of the Construction Contract, commonly called the "Boiler Plate", and other specifications deemed necessary by the Owner, for inclusion into the Contract Documents. Boiler plate and bidding information provided by the Owner shall be included in the bidding documents without modification by the Architect/Engineer unless changes are requested and/or approved by the Owner. Any changes made by the Architect/Engineer without consent of the Owner shall be the Architect/Engineer's responsibility.

#### 1.5.2 Architect/Engineer's Responsibilities:

- 1.5.2.1 The Architect/Engineer's services shall be performed as expeditiously as is consistent with professional skill and care, the essential orderly progress of the Project, and in accordance with the Project Schedule. The Architect/Engineer recognizes and agrees that time is of the essence of this Agreement in the performance of its services.
- 1.5.2.2 The Architect/Engineer shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law or create the risk of significant harm to the public. The Architect/Engineer shall require similar agreements of the Architect/Engineer's consultants to maintain the confidentiality of information specifically designated as confidential by the Owner.
- 1.5.2.3 Except with the Owner's knowledge and express written consent, the Architect/Engineer shall not engage in any activity, or accept any employment, other agreement, interest, or contribution that would reasonably appear to compromise the Architect/Engineer's professional judgment with respect to this Project.
- 1.5.2.4 The Architect/Engineer is expressly prohibited from participating in or bidding on any part of the Contract for Construction or multiple construction contracts, if any, let by the Owner.
- 1.5.2.5 The Architect/Engineer shall review laws, codes, and regulations applicable to the Architect/Engineer's services. The Architect/Engineer shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.
- 1.5.2.6 The Architect/Engineer shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner. The Architect/Engineer shall provide prompt written notice to the Owner if the Architect/Engineer becomes aware of any errors, omissions, or inconsistencies in such services or information.

### 1.6 **PROJECT BUDGET**

- 1.6.1 The Owner shall provide information regarding the Owner's Project Budget. While the Owner and Architect/Engineer shall endeavor to work cooperatively to establish the parameters and individual aspects of the Budget, the Architect/Engineer agrees that the Owner, at its sole discretion, retains the right to establish all parameters and aspects of the Project Budget. The Architect/Engineer shall perform its services in a manner consistent with the Project Budget.
- 1.6.2 The Architect/Engineer shall review the Initial Information document or MSU supplied information and Project Budget furnished by the Owner and make recommendations for the requirements of the Project. The Architect/Engineer shall establish the requirements and all design parameters in cooperation with the Owner that shall then become the Project Program and the basis of design of the Project. If Programming is part of the Architect/Engineer's services under this Agreement, the completed and approved Programming Documents shall become the Project Program and the basis of design of the Project.

- 1.6.3 The Architect/Engineer shall assist the Owner with monitoring, tracking, and adjusting the Project Budget throughout the design process. The Architect/Engineer shall assist the Owner with monitoring, tracking, and adjusting the Project Budget, at minimum, as follows:
- 1.6.3.1 "Soft" Costs:
- 1.6.3.1.1 Architect/Engineer fees and costs with a breakdown of Basic, Additional, and Supplemental Services as provided in this Agreement;
  - 1.6.3.1.2 Other design services, if under separate agreement to the Owner (e.g. 3<sup>rd</sup> party plan reviews, value engineering, etc.);
  - 1.6.3.1.3 Owner costs: furniture, fixtures, and equipment; technical equipment allowance; information technology, voice and data allowance; moving expenses; final hook-ups; owner project support costs; and, miscellaneous/other.
  - 1.6.3.1.4 Construction-related costs and services: advertising; plan review, building permit, and impact fees by building code jurisdiction; utilities; artwork; materials testing and inspections; on-site representation; commissioning; legal expenses, dispute resolution; owner's supervisory fee; and, miscellaneous/other.
- 1.6.3.2 "Hard" Costs: construction cost; design phase contingencies; inflation (compounded to the mid-point of the construction duration); and, construction phase contingencies.
- 1.6.4 Estimates of Construction Cost provided by the Architect/Engineer throughout the design process are not the Project Budget but do comprise part of the Project Budget. The Owner and Architect/Engineer shall endeavor to work cooperatively to adjust the Project Budget or the Project Program and scope as necessary based upon the Architect/Engineer's Estimates of Construction Cost to keep the Project within the Owner's available funding.
- 1.6.5 The Owner's increase to any part of the Project Budget during the design process based upon the Architect/Engineer's Estimate is not prima facie evidence that the Architect/Engineer is due additional fees nor does such an increase necessarily indicate a change in services to the Architect/Engineer as negotiated and agreed upon at the time of execution of this Agreement.

## **1.7 PROJECT SCHEDULE**

- 1.7.1 The Owner and Architect/Engineer shall cooperatively develop a Project Schedule consistent and compliant with the Initial Information document or MSU supplied information and the Owner's needs for timely delivery of the Project.
- 1.7.2 The Architect/Engineer shall submit a complete Project Schedule as described herein below which initially shall be consistent with the time periods established in this Agreement, the Initial Information document or MSU supplied information, and the Project Program. The Project Schedule shall be provided to the Owner in "Gantt" chart format.
- 1.7.3 Adjustments to the Project Schedule shall be made only as agreed upon by both parties and then documented as part of meeting minutes or other separate, schedule alteration documentation. The Architect/Engineer shall provide copies of all revised schedules to the Owner.
- 1.7.4 Time limits established by the Project Schedule approved by the Owner shall not be exceeded by the Architect/Engineer or Owner except as adjusted by the agreement of both parties and as documented.
- 1.7.5 At minimum, the Project Schedule shall include durations, allowances, and milestones for the following as applicable with the services to be provided under this Agreement:
- 1.7.5.1 Project Initiation: project kick-off and scope meeting; data gathering and investigations; programming and concept development; and, all project development meetings.
  - 1.7.5.2 Design: all design and coordination meetings; charrettes; schematic design; site survey and geotechnical investigation; design development (or preliminary design if combined SD/DD); construction documents; meetings with building code office having jurisdiction; reproduction of bidding documents; and, owner review and comment period for each phase of design.



- 1.7.5.3 Bidding: advertising; pre-bid walk-through; plan review by building code office having jurisdiction; bid opening date; and, contract award and return of bonding, insurance, and signed contract.
- 1.7.5.4 Construction: notice to proceed and pre-construction meeting; duration of construction; commissioning duration (if any); date for substantial completion; date for completion of punch list and final acceptance; and, warranty duration.

## **1.8 CHANGE IN SERVICES**

- 1.8.1 Change in services of the Architect/Engineer, including services required of the Architect/Engineer's consultants, may be accomplished after execution of this Agreement without invalidating the Agreement.
- 1.8.2 A change in the project scope or program is not prima facie evidence that the Architect/Engineer shall be due additional fees nor does such a change necessarily indicate a change in services.
- 1.8.3 The parties shall negotiate and enumerate changes in services by signed, written addendum to this Agreement except for Supplemental Services agreed to by the Owner. A supplemental service agreed to by the Owner may be billed directly as part of the Architect/Engineer's pay requests without addendum. Such supplemental services do not invalidate any portion of this Agreement.
- 1.8.4 The Architect/Engineer shall promptly notify the Owner prior to providing any services it considers to be a change from those enumerated in this Agreement.
  - 1.8.4.1 If the Owner deems that all or a part of such services are not required, the Owner shall give prompt notice to the Architect/Engineer, and the Architect/Engineer shall have no obligation to provide those services.
  - 1.8.4.2 If the Owner deems that all or a part of such services are required, the Owner shall give prompt notice to the Architect/Engineer, and the two parties shall negotiate an appropriate change in services addendum to this agreement.
  - 1.8.4.3 The Owner may determine that all or part of such services are required but is not obligated to agree that such services are a change in the services of the Architect/Engineer. All such instances shall be subject to the "Dispute Resolution" article of this Agreement. The Architect/Engineer shall continue faithful performance of services, including matters in dispute.
- 1.8.5 None of the following circumstances are prima facie evidence that the Architect/Engineer is experiencing a change in services for the Project, due adjustment to the schedule, or due additional compensation:
  - 1.8.5.1 change in the instructions or approvals given by the Owner that necessitate revisions in Initial Information document or MSU supplied information, Project Program, Project Budget, Project Schedule, design, or Contract Documents unless such changes are extensive, significantly alter the basic concepts of the Project, or are done so before completion of Design Development (or Preliminary Design);
  - 1.8.5.2 enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Contract Documents as the Architect/Engineer is charged with being familiar with all such items and with coordinating all issues with officials having jurisdiction;
  - 1.8.5.3 unless there is significant change in the Project size and complexity as a result of changes to the Project Program;
  - 1.8.5.4 performance or failure of performance on the part of the Owner or the Owner's consultants or contractors unless such performance or failure are demonstrated to have damaged the Architect/Engineer;

- 1.8.5.5 a dispute resolution proceeding or a legal proceeding related to the Project either during design, construction, warranty, or prior to the expiration of any applicable statute of limitations; or,
- 1.8.5.6 the Owner's increasing the Project Budget or the Estimated Construction Cost to adequately fund the Project Program or at any phase of design or bidding, or extension of the Project Schedule.

## **1.9 OWNERSHIP OF DOCUMENTS**

- 1.9.1 All documents developed under this Agreement are and shall become the property of the Owner whether the Project for which they are made is or is not executed.
- 1.9.2 The signing of this Agreement shall constitute a complete transfer of ownership, intellectual property, and copyright of all documents from the Architect/Engineer to the Owner upon Substantial Completion of the Project. Such transfer shall not be construed by the Architect/Engineer as a grant for usage by the Owner nor can it be revoked by the Architect/Engineer.
- 1.9.3 The Owner agrees to indemnify and hold harmless the Architect/Engineer from any and all claims, demands and causes of action of any kind or character arising separate from this Project as a result of reuse of the documents developed under this Agreement.
- 1.9.4 The Owner is restricted from using the Architect/Engineer's license seal/stamp/signature in any form or manner as part of any reuse of documents developed under this Agreement. The Architect/Engineer may not remove its license seal/stamp/signature from the Contract Documents used to construct the Project but may do so from electronic and hard copy Record Drawings delivered to the Owner.
- 1.9.5 The Architect/Engineer shall have the right to include photographic or artistic representations of the design and construction of the Project among the Architect/Engineer's promotional and professional materials. The Architect/Engineer shall be given reasonable access to the completed Project to make such representations. However, the Architect/Engineer's materials shall not include the Owner's confidential or proprietary information regardless of whether or not the Owner has previously advised the Architect/Engineer in writing of the specific information considered by the Owner to be confidential or proprietary.

## **1.10 DISPUTE RESOLUTION**

- 1.10.1 The Owner and Architect/Engineer shall endeavor to resolve controversies, claims, disputes, and other matters in question between them through good faith debate, discussion, and negotiation prior to submitting them to mediation, arbitration, or other legal proceeding.
- 1.10.2 During all debate, discussion, negotiation, mediation, and arbitration proceedings, the Architect/Engineer shall continue with performance of services in accordance with this Agreement, including matters in dispute. The Owner shall continue to make payment for services not in dispute in accordance with this Agreement.
- 1.10.3 Any and all controversies, disputes, claims, or other matters between the parties arising out of or related to this Agreement shall be decided and settled in accordance with this Agreement and with the Uniform Arbitration Act, Title 27, Chapter 5 of Montana Code Annotated.
- 1.10.4 City of Bozeman, Gallatin County, State of Montana, shall be the venue for all mediation and arbitration proceedings unless otherwise agreed upon in writing by both parties. State of Montana law shall govern this Agreement and all dispute resolution and legal proceedings.
- 1.10.5 In no event shall any claim or dispute be made after the date when institution of legal or equitable proceedings based on such claim, dispute, or other matter in question would be barred by the applicable statute of limitations.
- 1.10.6 Mediation:
  - 1.10.6.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of

legal or equitable proceedings by either party. However, the parties may mutually agree in writing to waive mediation and proceed directly to arbitration.

1.10.6.2 Request for mediation shall be filed in writing with the other party to the Agreement and the parties shall endeavor to agree upon a mediator and a location for the proceedings. Unless otherwise mutually agreed upon, mediation shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association, except Rule M-2 (filing with AAA). Requests for mediation shall not be filed with AAA unless agreed upon by both parties to do so.

1.10.6.3 A demand for arbitration shall not be made and no arbitration proceedings may occur until attempt at mediation has failed unless both parties have mutually waived mediation.

1.10.6.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in the venue specified in this Agreement.

#### 1.10.7 Arbitration:

1.10.7.1 Controversies, claims, disputes, or other matters in question between the parties that are not resolved by mediation shall be decided by arbitration. Unless otherwise mutually agreed upon, arbitration shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association, except Rule A-3 (filing with AAA). Demands for arbitration shall not be filed with AAA unless agreed upon by both parties to do so.

1.10.7.2 A demand for arbitration may only be made upon conclusion of mediation unless mediation is waived by agreement of the parties to do so.

1.10.7.3 No arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, an additional person or entity not a party to this Agreement, except by written consent containing a specific reference to this Agreement and signed by the Owner, Architect/Engineer, and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

1.10.7.4 The ruling or award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in the venue specified herein.

#### 1.10.8 Dispute Between Owner and Contractor:

1.10.8.1 In the event a dispute arises between the Owner and Contractor, or any other party, whether before, during, or after construction, the Architect/Engineer shall advise and consult with the Owner in attempting to resolve the dispute, whether informally or by mediation, arbitration, or other legal proceeding.

1.10.8.2 The Architect/Engineer will make himself and/or his consultants, agents, and employees available and shall permit inspection of his records by the Owner. In the event that it is ultimately determined that the Architect/Engineer did not cause or contribute to the dispute, damages, or expenses alleged, the Architect/Engineer shall be reimbursed by the Owner for all costs reasonably incurred upon final resolution of the dispute with the Contractor.

1.10.8.3 The Owner, at its sole discretion, may also enjoin the Architect/Engineer and/or consolidate any claim or dispute with the Architect/Engineer to any dispute between the Owner and

Contractor. This condition is the singular and sole exemption to needing written consent of the Owner, Architect/Engineer, and any other party seeking to be joined in a dispute or claim between the Owner and the Contractor, as defined in the Contract for Construction.

1.10.8.4 If there is no formal determination or finding of fault, the Architect/Engineer and Owner may negotiate terms for payment unless the Owner suffered loss as a result of the dispute and believes the Architect/Engineer was responsible for or contributed to the loss or cause of the dispute. In such event, any such dispute between the Owner and the Architect/Engineer shall be subject to resolution per the "Dispute Resolution" article of this Agreement.

1.10.8.5 The Owner will not be required to reimburse the Architect/Engineer for matters in dispute at any time prior to a final determination or resolution of any claim or dispute. In the event the Architect/Engineer caused, in whole or in part, the dispute or controversy, the Architect/Engineer shall bear his costs for participating in the resolution.

## **1.11 WAIVER OF CONSEQUENTIAL DAMAGES**

The Architect/Engineer and the Owner waive all consequential damages against each other that arise as a result any claims, disputes, or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages as a result of either party's termination in accordance with this Agreement.

## **1.12 MISCELLANEOUS PROVISIONS**

1.12.1 This Agreement shall be governed by the laws of the State of Montana and venue for all proceedings shall be City of Bozeman, Gallatin County.

1.12.2 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than the effective date of termination or of Final Acceptance of the Project per the General Conditions of the Contract for Construction.

1.12.3 To the extent damages are covered by either's insurance, the Owner and the Architect/Engineer waive all rights against each other and against contractors, consultants, agents, and employees of the other for damages, except such rights as they may have to the proceeds of such insurance current as of the date of this Agreement.

1.12.4 Insurance.

1.12.4.1 The Architect/Engineer shall procure and maintain through termination or Final Acceptance of the Project, Workers Compensation Coverage, and commercial general liability insurance for protection from claims, actions, damages, and liabilities due to or arising out of bodily injury, automobile accidents, personal injury, sickness, disease, death, or other incidents for himself and all his employees and from claims, action, damages, and liability to or destruction of property arising out of services provided under this Agreement.

1.12.4.2 The Architect/Engineer shall procure and maintain at its own expense professional liability coverage through termination or Final Acceptance of the Project.

1.12.4.3 No waivers of subrogation are granted or agreed. This non-waiver of subrogation supersedes statement granting waiver of subrogation in any insurance policy or certificate of insurance in place before or after the execution of this Agreement.

1.12.5 Indemnification and Hold Harmless.

- 1.12.5.1 The Architect/Engineer shall protect, defend, and save the Owner, its elected and appointed officials, agents, agencies, and employees, while acting within the scope of their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments whatsoever (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by third parties on account of damage to property, personal injury, or death which injury, death, or damage, arises out of services performed or omissions of services or in any way results from the negligent acts or omissions of the Architect/Engineer, its agents, or sub-consultants.
- 1.12.5.2 The Owner shall protect, defend, and save the Architect/Engineer, its agents and employees, while acting within the scope of their duties as such, harmless from and against all claims, liabilities, demands, causes of action, and judgments whatsoever (including the cost of defense and reasonable attorney fees) arising in favor of or asserted by third parties on account of damage to property, personal injury, or death which injury, death, or damage, arises out of or in any way results from the negligent acts or omissions of the Owner, its elected and appointed officials, agents, and employees.
- 1.12.6 Equal Opportunity Employment/Non-Discrimination. The Architect/Engineer shall be familiar with and be responsible for and adhere to all Federal and State requirements regarding employment practices. All hiring and other employment practices of the Architect/Engineer shall be in accordance with Federal and State Equal Employment Opportunity laws, executive orders, requirements and regulations and shall be nondiscriminatory, based on merit and qualifications without regard to race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status, or physical or mental disability by the persons performing this Agreement.
- 1.12.7 Compliance with the Affordable Care Act. Architect/Engineer is the employer and, therefore, responsible for providing healthcare benefits for its employees under the Patient Protection and Affordable Care Act. Architect/Engineer represents and warrants that all individuals who perform services for an agency of the State are and at all times shall remain Architect/Engineer's common law employees. Architect/Engineer further acknowledges and agrees that, throughout the term of this Agreement, Architect/Engineer retains the right to direct and control its employees. Architect/Engineer agrees and acknowledges that it, its agents or employees are not entitled to participate in any of the benefit plans or programs that the State now or hereafter maintains for its employees.
- 1.12.8 Personnel Expenses pertaining to mandatory or customary contributions and benefits related to employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans, and similar contributions are entirely the responsibility of the Architect/Engineer.

### **1.13 TERMINATION OR SUSPENSION OF THIS AGREEMENT**

- 1.13.1 The Owner or Architect/Engineer may terminate this Agreement upon giving written notice to the other that such party has defaulted and failed to fulfill its obligations under this Agreement. The written notice must contain an itemized description and accounting of default and failure. In the event of such default, the Architect/Engineer or Owner shall allow ten (10) calendar days for corrective action or submission of a corrective action plan by the other party. The ten (10) days shall be based upon the date of receipt of the notice by the other party. Should no satisfactory corrective action be taken or acceptable corrective action plan be provided by the defaulting party, the other shall have right to immediately terminate the Agreement through a subsequent written notice of termination.
- 1.13.2 The Owner may terminate this Agreement without cause or for convenience at any time upon giving written notice to the Architect/Engineer. If the Agreement is terminated without cause or for convenience, the Architect/Engineer shall be compensated for all services rendered prior to receiving the written notice.

- 1.13.3 If the Architect/Engineer fails to fulfill his obligations and the Agreement is terminated, the Owner may prosecute the Project to completion by contract or other means available. The Architect/Engineer shall be liable to the Owner for any and all additional costs incurred due to the Architect/Engineer's failure to perform. The rights and remedies available to the Owner provided herein are in addition to any and all other rights and remedies provided by law or equity.
- 1.13.4 If the Owner fails to make payments to the Architect/Engineer in accordance with this Agreement, such failure shall be considered substantial non-performance and cause for termination subject to the written notice provision above or, at the Architect/Engineer's option, cause for suspension of performance of services under this Agreement. If the Architect/Engineer elects to suspend services, prior to suspension of services the Architect/Engineer shall also give ten (10) days written notice to the Owner. In the event of a suspension of services, the Architect/Engineer shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. The Architect/Engineer shall resume services upon corrective action or submission of a corrective action plan by the Owner.
- 1.13.5 The Architect/Engineer cannot terminate this Agreement or suspend services if the Project is suspended or delayed by the Owner. The Owner shall notify the Architect/Engineer concerning any suspension or delay and may direct the Architect/Engineer to suspend services accordingly.
- 1.13.6 Any and all expenses, termination costs, anticipated overhead and profit, and consequential costs as a result of any delay, suspension, or termination of this Agreement are specifically excluded and shall not be due the Architect/Engineer.

## **2 PART 2**

### **2.1 PROJECT ADMINISTRATION AND MANAGEMENT (FOR PART 2)**

- 2.1.1 The Architect/Engineer shall be responsible for managing all the Architect/Engineer's services and administration of the Project in accordance with this Agreement. The Architect/Engineer shall consult with the Owner, research applicable design criteria, attend Project meetings, maintain a Project contact list, communicate with members of the Project team, issue progress reports and meeting minutes via email to the Owner unless another manner of distribution is agreed upon.
- 2.1.2 The Architect/Engineer shall establish the requirements and all design parameters in cooperation with the Owner. If Programming is part of the Architect/Engineer's services under this Agreement, the completed and approved Programming Documents shall become the Project Program and the basis of design of the Project. If Programming services are not part of the Architect/Engineer's services under this Agreement, the Owner's Initial Information document or MSU supplied information and any additionally documented and agreed upon parameters between the parties shall become the Project Program and will form the basis of design of the Project.
- 2.1.3 The Architect/Engineer shall coordinate the services provided by the Architect/Engineer and the Architect/Engineer's consultants with those services provided by the Owner and the Owner's consultants.
- 2.1.4 Upon request of the Owner, the Architect/Engineer shall make presentations to explain the Project Program, concepts, and design of the Project to other interested parties as coordinated by the Owner.
- 2.1.5 The Architect/Engineer shall submit documents to the Owner at intervals appropriate to the programming and concept process for purposes of evaluation and approval by the Owner. The Architect/Engineer shall be entitled to rely on approvals received from the Owner in the further development of the design.
- 2.1.6 The Architect/Engineer shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### **2.2 EVALUATION, DATA GATHERING, ANALYSIS, STUDIES, AND REPORTS**

- 2.2.1 The Architect/Engineer shall provide a preliminary evaluation of the Initial Information furnished by the Owner under this Agreement. The Architect/Engineer shall review such information to ascertain that it is

consistent with the requirements of the Project and shall notify the Owner of any other information or consultant services that may be reasonably needed for the Project.

- 2.2.2 The Architect/Engineer shall provide a preliminary evaluation of the Owner's site for the Project based on the information provided by the Owner regarding site conditions, and the Owner's Initial Information, schedule, and budget.
- 2.2.3 The Architect/Engineer shall perform a data gathering effort regarding the Owner's initial conditions for the Project. Such data gathering effort shall involve, but not be limited to, an initial meeting to define data gathering parameters, proposed site locations, potential utilities, traffic patterns, pedestrian flow, aesthetic and architectural aspects of other facilities in the area in order to provide essential input to the Project Program and the Owner's decision-making process.
- 2.2.4 For existing facilities to be renovated, demolished, or rehabilitated, data gathering shall consist of: initial meeting to define data gathering parameters; preparation of site drawings and complete as-built CAD drawings of the existing facility (or area affected by the work) of architectural, mechanical, electrical and structural conditions if none are provided by the Owner; establishment of project boundaries; code evaluation of the existing facility; determination of all utility connections; hazardous materials investigation and report; prepare and analyze existing data pertaining to the facility's function, location, and operation.
- 2.2.5 The Architect/Engineer shall prepare and maintain the information obtained in data gathering for presentation to the Owner and inclusion into the Project Program.
- 2.2.6 If feasibility studies are requested by the Owner, the Architect/Engineer shall perform a detailed investigation and analysis to determine the technical, financial, and functional viability of the proposed Project. Fees for feasibility studies shall be incorporated into the costs of Programming or indicated separately in the Architect/Engineer's compensation.

### **2.3 EVALUATION OF THE BUDGET AND ESTIMATE OF CONSTRUCTION COST**

- 2.3.1 When the Project Program requirements have been sufficiently identified, the Architect/Engineer shall prepare an Estimate of Construction Cost. This estimate may be based on current area, volume, similar conceptual or recent construction history estimating techniques. If Programming is included in the Architect/Engineer's services under this Agreement, the Architect/Engineer shall update and refine the Estimate of Construction Cost throughout the programming process. The Architect/Engineer shall advise the Owner of any adjustments to previous Estimates indicated by changes in Project requirements or general market conditions. If at any time the Architect/Engineer's Estimate of Construction Cost exceeds the Owner's budgeted construction cost, the Architect/Engineer shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget.
- 2.3.2 Evaluations of the Owner's budget for the Project, the Estimate of Construction Cost, and updated Estimates of Construction Cost prepared by the Architect/Engineer, are to represent the Architect/Engineer's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect/Engineer nor the Owner has control over the cost of labor, materials or equipment, the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect/Engineer cannot and does not warrant or present that bids or negotiated prices will not vary from the Owner's budget for the Project or from any Estimate of Construction Cost or evaluations prepared by the Architect/Engineer.
- 2.3.3 The Construction Cost is part of the Project Budget and shall be the total "Hard" costs or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project programmed, designed, or specified by the Architect/Engineer. Estimates of Construction Cost shall include the cost at projected market rates of labor and materials and equipment designed, specified, selected or specially provided for by the Architect/Engineer, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. The Estimate of Construction Cost does not include "Soft" costs as defined in the Agreement.

### **2.4 SITE PLANNING**

- 2.4.1 Site Planning shall commence with the execution of the Agreement and shall be complete with the Owner's approval and acceptance of the completed Master Planning Document.
- 2.4.2 The overall goals and functions of the Site Plan are: [enter description].
- 2.4.3 The Site Plan shall focus on five elements:
- 2.4.3.1 vision and direction of the owner and how the facilities master plan integrates and assists in the overall objectives and targets;
  - 2.4.3.2 documentation of existing facilities, utilities, themes, roads, sidewalks, campus access, and structures;
  - 2.4.3.3 available and potentially-available open space;
  - 2.4.3.4 transportation and circulation for all types of transit and pedestrians; and,
  - 2.4.3.5 defining potential future development and growth.
- 2.4.4 Open Space Objectives in the Site Plan. The Site Plan should conserve and enhance existing open spaces and views to and from facilities and look for opportunities to create additional safe and attractive open spaces. The Site Plan shall:
- 2.4.4.1 designate important open spaces and views and create policies to ensure their preservation and maintenance;
  - 2.4.4.2 identify areas that could become safe and pleasant new open spaces;
  - 2.4.4.3 propose opportunities to use landscape elements to strengthen the structure of the grounds;
  - 2.4.4.4 identify areas where links between open spaces could be improved in order to achieve a cohesive and accessible open space network;
  - 2.4.4.5 incorporate accessibility as an integral part of the design of propose design standards that will increase safety and comfort in campus open spaces; and,
  - 2.4.4.6 link the open space and circulation systems into the community and surrounding open space systems.
- 2.4.5 Transportation and Circulation Objectives in the Site Plan. The Site Plan should ensure access to and within the area by all modes of transportation and encouraging a safe and pleasant environment for pedestrians and bicyclists. The Site Plan shall:
- 2.4.5.1 improve the pedestrian experience;
  - 2.4.5.2 increase access for pedestrians and bicyclists, both to and within the area;
  - 2.4.5.3 minimize conflicts between pedestrians, bicycles, and vehicles;
  - 2.4.5.4 improve public transportation with the goal of minimizing vehicle trips and related parking requirements;
  - 2.4.5.5 minimize the amount of new parking facilities while still providing parking for a variety of users, including the disabled, with the least impact on the area and the surrounding street system;
  - 2.4.5.6 locate, landscape, and screen parking to prevent detracting from the overall quality of the campus/facility environment while promoting safety and security; and,



- 2.4.5.7 clearly identify access and improve signage around campus/facility.
- 2.4.6 Future Development Objectives of the Site Plan. Sites should be selected and developed to contribute to the enhancement of the campus/facility environment without detracting from the fundamental qualities of the area. Each potential site should be developed to:
  - 2.4.6.1 improve the environment with high quality architecture and open space integrated with the building design;
  - 2.4.6.2 enhance and strengthen its context and the campus as a whole;
  - 2.4.6.3 be in harmony with the immediate surroundings;
  - 2.4.6.4 facilitate accessibility and pedestrian circulation;
  - 2.4.6.5 accommodate service functions with minimal visual impact from pedestrian routes and open spaces, without causing safety conflicts;
  - 2.4.6.6 provide a more environmentally sustainable landscape that promotes conservation of natural resources and systems;
  - 2.4.6.7 provide an economically feasible and functional project, and,
  - 2.4.6.8 support greening and sustainability techniques.

## **2.5 PROGRAMMING AND CONCEPTS**

- 2.5.1 The Programming shall commence with the execution of the Agreement and shall be complete with the Owner's approval and acceptance of the Programming Documents.
- 2.5.2 The Programming effort shall meet the "Programming" section of the Owner's "*Performance and Document Requirements*" document posted under the Consultant Section of the Owner's web site at <http://www.montana.edu/pdc/> unless otherwise modified by the Initial Information document or MSU supplied information. Should certain disciplines identified in the "*Performance and Document Requirements*" not apply to the Project, those specific portions of the "Programming" section shall not be applicable under the terms of this Agreement. Disciplines shall be defined as architecture, structural engineering, mechanical engineering, electrical engineering, civil engineering, and commissioning.
- 2.5.3 The Architect/Engineer shall provide (2) set(s) and *electronic .pdf & MSWord files* of Programming Documents including Estimate of Construction for review and approval to the Owner.

## **2.6 FUND RAISING AND DELIVERABLES**

- 2.6.1 The Fund Raising Effort shall commence with the signing of the Agreement and shall be complete upon conclusion of the Owner's acceptance and approval of Fund Raising Deliverables.
- 2.6.2 The Architect/Engineer's assistance to the Owner for fund raising efforts includes: [enter description].
- 2.6.3 Fund Raising Deliverables shall include:
  - 2.6.3.1 Character Sketches - [number] perspectives;
  - 2.6.3.2 Presentation Boards - [number] perspectives;
  - 2.6.3.3 Descriptive Project Booklets - [number] copies;
  - 2.6.3.4 Project Brochures - [number] copies;
  - 2.6.3.5 A physical Presentation Model; and,
  - 2.6.3.6 3-D Computer Graphic Animation.

- 2.6.4 All computer presentation materials shall be able to be viewed by any user/viewer/presenter without the need to purchase or own any proprietary software. All web-based or disc-based presentation materials shall have all necessary software pre-loaded on the disc in order to operate any presentation materials.
- 2.6.5 The Architect/Engineer shall provide all Fund Raising Deliverables to the Owner point of contact.

## **2.7 SITE SERVICES**

- 2.7.1 Access and Protection of Property. The Architect/Engineer shall contact the Owner for information regarding access to the site and shall take all reasonable precautions to prevent damage to property, visible and concealed, and shall reasonably restore the site to the condition existing prior to the Architect/Engineer's entry, including, but not limited to, repair of curbs, sidewalks, lawns and plantings unless otherwise agreed to with the Owner.
- 2.7.2 Site and Topographical Surveys. The Architect/Engineer shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site unless such surveys are specifically provided by the Owner. 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; locations, dimensions and necessary data with respect 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 that is permanent and readily identifiable and incorporated into the Contract Documents. Provide two (2) copies of all surveys to the Owner.
- 2.7.3 Additional Requirements:
- 2.7.3.1

## **2.8 GEOTECHNICAL SERVICES**

- 2.8.1 Access and Protection of Property. The Architect/Engineer shall contact the Owner for information regarding access to the site and shall take all reasonable precautions to prevent damage to property, visible and concealed, and shall reasonably restore the site to the condition existing prior to the Architect/Engineer's entry, including, but not limited to, repair of curbs, sidewalks, lawns and plantings unless otherwise agreed to with the Owner.
- 2.8.2 Geotechnical Investigation and Reports. The Architect/Engineer shall furnish the services of a licensed geotechnical engineer. Services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, soil corrosion/resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations unless such services are specifically provided by the Owner. Provide two (2) copies of each Report to the Owner.
- 2.8.3 Additional Requirements:
- 2.8.3.1

## **2.9 HIGH-PERFORMANCE BUILDING STANDARDS, CRITERIA, AND SUSTAINABLE PLANNING**

- 2.9.1 In cooperation with the Owner, the Architect/Engineer shall integrate into the design all high-performance building attributes, standards, and criteria established by the Department of Administration, Architecture & Engineering Division. High-performance building standards apply to all new construction and major remodels and covers items such as, but is not limited to:
- 2.9.1.1 building design analysis and building performance as it relates to energy efficiency, sustainability concepts, durability, life-cycle performance of all systems, and occupant productivity;

- 2.9.1.2 energy use effectiveness including natural convection in HVAC, natural lighting and water use / recycling / integration;
  - 2.9.1.3 development of integrated systems for environmentally-responsible architecture; and,
  - 2.9.1.4 special equipment and systems for use of alternative energy and energy consumption modeling.
- 2.9.2 It is the Owner's intent that the Project be programmed to include sustainable architectural and engineering solutions, environmentally efficient materials, and shall include consideration of "state of the art" design solutions in all areas of the project design.
- 2.9.3 Should the Owner desire to pursue formal USGBC LEED certification of the Project, the Architect/Engineer shall then develop all necessary documentation for the level of certification sought by the Owner and shall assist with submission to the U.S. Green Building Council. The Owner and Architect/Engineer shall negotiate compensation for the formal certification effort commensurate with the level of certification being sought by the Owner and incorporate such by addendum to this Agreement.

### **3 PART 3**

*Articles under this Part 3 form an integral part of this Agreement if compensation is identified in Part 1 for any of the design, bidding, or construction administration phases indicated herein below, or if otherwise specifically noted to be included. Without compensation being identified in Part 1 or other specific indication is not provided, services are under Part 3 are not an integral part of this Agreement but may become so by execution of an Addendum to this Agreement.*

#### **3.1 PROJECT ADMINISTRATION AND MANAGEMENT (FOR PART 3)**

- 3.1.1 The Architect/Engineer shall be responsible for managing all the Architect/Engineer's services and administration of the Project in accordance with this Agreement. The Architect/Engineer shall consult with the Owner, apply all applicable design criteria, attend Project meetings, maintain a Project contact list, communicate with members of the Project team, issue progress reports and meeting minutes, maintain the project schedule and budget. Documents and correspondence shall be issued via email to the Owner unless another manner of distribution is agreed upon.
- 3.1.2 The Architect/Engineer shall coordinate the services provided by the Architect/Engineer and the Architect/Engineer's consultants with those services provided by the Owner and the Owner's consultants.
- 3.1.3 Upon request of the Owner, the Architect/Engineer shall make presentations to explain the design of the Project to other interested parties as coordinated by the Owner.
- 3.1.4 The Architect/Engineer shall submit documents to the Owner at intervals appropriate to the design and Construction Contract Administration process for purposes of evaluation and approval by the Owner. The Architect/Engineer shall be entitled to rely on approvals received from the Owner in the further development of the design and for Construction Contract Administration.
- 3.1.5 The Architect/Engineer shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. The Architect/Engineer shall specifically coordinate all building code issues and plan reviews with the permitting authority having jurisdiction.
- 3.1.6 The Architect/Engineer shall consider the value and suitability of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.

#### **3.2 EVALUATION OF THE BUDGET AND ESTIMATE OF CONSTRUCTION COST**

- 3.2.1 The Architect/Engineer shall prepare Estimates of Construction Cost. These estimates may be based on current area, volume, similar conceptual or recent construction history estimating techniques during

Schematic and Design Development but shall be based upon direct quantity take-offs with correlation to current market trends throughout the Construction Documents phase. The Architect/Engineer shall update and refine the Estimate of Construction Cost at each phase of design and as requested by the Owner. The Architect/Engineer shall advise the Owner of any adjustments to previous Estimates indicated by changes in Project requirements or general market conditions. If at any time the Architect/Engineer's Estimate of Construction Cost exceeds the Owner's Project Budget, the Architect/Engineer shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget, and shall make modifications that are mutually agreed upon with the Owner in making such adjustments.

- 3.2.2 Evaluations of the Owner's budget for the Project, the Estimate of Construction Cost and updated Estimates of Construction Cost prepared by the Architect/Engineer are to represent the Architect/Engineer's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect/Engineer nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect/Engineer cannot and does not warrant or present that bids or negotiated prices will not vary from the Owner's budget for the Project or from any Estimate of Construction Cost or evaluation prepared or agreed to by the Architect/Engineer.
- 3.2.3 The Construction Cost is part of the Project Budget and shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed and/or specified by the Architect/Engineer. Estimates of Construction Cost shall include the cost at projected market rates of labor and materials and equipment designed, specified, selected or specially provided for by the Architect/Engineer, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. The Estimate of Construction Cost does not include "Soft" costs as defined in the Agreement.
- 3.2.4 If bidding or negotiations have not commenced within ninety (90) days after the Architect/Engineer submits the final, completed Construction Documents to the Owner, the Estimate of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry.
- 3.2.5 Once the fixed limit of Construction Cost is established by the Owner in conjunction with the Project Program and the design, the Architect/Engineer shall determine, with the interaction of the Owner, what materials, equipment, components, systems, and types of construction are to be included in the Plans and Specifications, and to make reasonable adjustments in the Project Program and design to bring it within the fixed limit. The Architect/Engineer shall also include bid Alternates, with the interaction of the Owner, to the Base Bid to enable the bids to be within the fixed limit of Construction Cost.
- 3.2.6 If the final Estimate of Construction Cost provided at the end of Construction Documents exceeds the budgeted fixed limit of Construction Cost (including Alternates and bidding contingencies), the Owner may:
- 3.2.6.1 Give written approval of an increase in the fixed limit of Construction Cost; or,
  - 3.2.6.2 Confer with the Architect/Engineer in revising the Project to reduce the final Estimate of Construction Cost. Such revisions shall be performed without additional compensation to the Architect/Engineer.
- 3.2.7 If the lowest responsible bid or lowest negotiated proposal exceeds the fixed limit of Construction Cost (including any Alternates and bidding contingencies), the Owner may:
- 3.2.7.1 Give written approval of an increase in the fixed limit of Construction Cost;
  - 3.2.7.2 Negotiate deductive changes, not to exceed 7% of the total cost of the project with the lowest responsible bidder. Documenting such negotiated changes in the Construction Documents and/or by addenda shall be at the expense of the Architect/Engineer and shall constitute his sole responsibility to the Owner in this regard. Negotiated deductive changes shall be documented by the Architect/Engineer through either re-design of the Project or in a manner similar to bid addenda at the discretion of the Owner, and then formally priced and signed by the lowest responsible bidder; or,

- 3.2.7.3 Confer with the Architect/Engineer in revising the Project to reduce the final Estimate of Construction Cost and rebid the Project. Documenting such revisions in the Construction Documents and/or by addenda shall be at the expense of the Architect/Engineer, including all costs for re-bidding the project, and shall constitute his sole responsibility to the Owner in this regard.

### **3.3 DESIGN SERVICES**

- 3.3.1 The Architect/Engineer's design services consist of the phases described herein and are inclusive of the necessary structural, civil, mechanical, fire protection, electrical engineering, information technology, and other services as required for a complete and integrated design.

#### **3.3.2 SCHEMATIC DESIGN**

- 3.3.2.1 The Schematic Design Phase shall commence with the signing of this Agreement or upon the Owner's approval and acceptance of Part 2 Services if included in the Agreement, and shall be complete with the Owner's approval of the Schematic Design Documents.

- 3.3.2.2 The Schematic Design Phase effort shall meet the "Schematic Design" section of the Owner's "*Performance and Document Requirements*" document posted under the Standard Design and Construction Documents – Consultants Section of the Owner's web site at <http://www.montana.edu/pdc/>. Should certain disciplines identified in the "*Performance and Document Requirements*" not apply to the Project those specific portions of the "Schematic Design" section shall not be applicable under the terms of this Agreement. Disciplines shall be defined as architecture, structural engineering, mechanical engineering, electrical engineering, civil engineering, and commissioning.

- 3.3.2.3 The Architect/Engineer shall provide (2) paper set(s) and *electronic files* of Schematic Design Documents, including drawings (.pdf & .dwg files), specifications (.pdf & MSWord files) and the Estimate of Construction (.pdf & MS Excel files) for review and approval to the Owner.

#### **3.3.3 DESIGN DEVELOPMENT (OR PRELIMINARY DESIGN IF SD/DD ARE COMBINED)**

- 3.3.3.1 The Design Development Phase shall commence with the Owner's approval of the Schematic Design Documents and shall be complete with the Owner's approval of the Design Development Documents.

- 3.3.3.2 The Design Development Phase effort shall meet the "Design Development (or Preliminary Design)" section of the Owner's "*Performance and Document Requirements*" document posted under the Standard Design and Construction Documents – Consultants Section of the Owner's web site at <http://www.montana.edu/pdc/>. Should certain disciplines identified in the "*Performance and Document Requirements*" not apply to the Project those specific portions of the "Design Development (or Preliminary Design)" section shall not be applicable under the terms of this Agreement. Disciplines shall be defined as architecture, structural engineering, mechanical engineering, electrical engineering, civil engineering, and commissioning.

- 3.3.3.3 The Architect/Engineer shall provide (2) paper set(s) and *electronic files* of Design Development Documents, including drawings (.pdf & .dwg files), specifications (.pdf & MSWord files) and the Estimate of Construction (.pdf & MS Excel files) for review and approval to the Owner

#### **3.3.4 CONSTRUCTION DOCUMENTS**

- 3.3.4.1 The Construction Documents Phase shall commence with the Owner's approval of the Design Development (or Preliminary Design) Documents and shall be complete with the Owner's approval of the Construction Documents.

- 3.3.4.2 The Construction Documents Phase effort shall meet the “Construction Documents” section of the Owner’s “*Performance and Document Requirements*” document posted under the Standard Design and Construction Documents – Consultants Section of the Owner’s web site at <http://www.montana.edu/us/pdc/arch/DesignConstructionDocuments/>. Should certain disciplines identified in the “*Performance and Document Requirements*” not apply to the Project those specific portions of the “Construction Documents” section shall not be applicable under the terms of this Agreement. Disciplines shall be defined as architecture, structural engineering, mechanical engineering, electrical engineering, civil engineering, and commissioning.
- 3.3.4.3 The Architect/Engineer is expressly required to select and specify materials, supplies, equipment, and systems that are free and absent of all forms of asbestos.
- 3.3.4.4 At both 50% and 95% Construction Documents and prior to bidding, the Architect/Engineer shall provide (2) paper set(s) and *electronic files* of all Construction Documents including drawings (.pdf & .dwg files), specifications (.pdf & MSWord files) and the Estimate of Construction (.pdf & MS Excel files) for review and approval to the Owner.
- 3.3.4.5 The Owner may select to have the Plans and Specifications reviewed by a third-party review service (e.g. “Redi-Check”). Should the Owner select to have such a review performed, the Architect/Engineer shall fully cooperate in providing the requisite number of sets of Plans and Specifications to such third-party reviewer. The Owner and Architect/Engineer shall negotiate a percentage of responsibility each has for the compensation provided to the third-party reviewer based upon the quantity and type of review comments received, the completeness of the Plans and Specifications delivered to the third-party reviewer, any delays experienced by the Owner for redesign and/or incorporation of comments, and potential benefits to be experienced during construction administration for having had such a review conducted.
- 3.3.4.6 The total Construction Documents Phase shall constitute 100% of the design effort inclusive of any responses and alterations due to comments received upon review from the Owner, building codes officials, user groups or other interested third parties.

### **3.4 BIDDING SERVICES**

- 3.4.1 The Bidding Phase shall commence with the incorporation of final review comments and the Owner’s approval of the Plans and Specifications and the final Estimate of Construction cost and shall be complete with the issuance of the Notice to Proceed of the Construction Contract.
- 3.4.2 The Bidding Phase effort shall meet the “Bidding” section of the Owner’s “*Performance and Document Requirements*” document posted under the A/E Services area of the Owner’s web site at <http://www.montana.edu/pdc/>.
- 3.4.3 Unless approved by the Owner, the Architect/Engineer shall make all corrections, additions, or deletions to the final Plans and Specifications prior to distribution for bidding purposes and without the use addenda. No documents shall be distributed for bidding purposes without the express, written approval of the Owner.
- 3.4.4 The Architect/Engineer shall provide (2) paper set(s) and *electronic files* of all Construction Documents including drawings (.pdf & .dwg files), specifications (.pdf & MSWord files) and the Estimate of Construction (.pdf & MS Excel files) for review and approval to the Owner for bidding purposes, to the Owner.

### **3.5 CONSTRUCTION CONTRACT ADMINISTRATION SERVICES**

- 3.5.1 The Construction Contract Administration Phase shall commence with the issuance of the Notice to Proceed of the Construction Contract and shall be complete when the Contractor has completed the corrections from the warranty inspection.

- 3.5.2 Construction Contract Administration Services effort shall meet the “Construction Administration” section of the Owner’s “*Performance and Document Requirements*” document posted under the Consultant Section of the Owner’s web site at <http://www.montana.edu/pdc/>. Should certain disciplines identified in the “*Performance and Document Requirements*” not apply to the Project those specific portions of the “Construction Administration” section shall not be applicable under the terms of this Agreement. Disciplines shall be defined as architecture, structural engineering, mechanical engineering, electrical engineering, civil engineering, and commissioning.
- 3.5.3 The Architect/Engineer shall visit the project site a minimum of **[enter monthly, bi-weekly, or quantity]** and as appropriate to the stage of construction.

SAMPLE

**EXECUTION OF THIS AGREEMENT**

This Agreement entered into as of the day and year first written above:

**CONSULTANT:**

**NAME**  
**ADDRESS**  
**CITY, STATE ZIP**  
**PHONE/FAX**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Email)

Taxpayer's I.D. No.: \_\_\_\_\_

**OWNER:**

STATE OF MONTANA  
MONTANA STATE UNIVERSITY  
CAMPUS PLANNING, DESIGN & CONSTRUCTION

\_\_\_\_\_  
Walt Banziger, Director

\_\_\_\_\_  
(Date)