

**UNIVERSITY SYSTEM OF NEW HAMPSHIRE
STANDARD FORM OF AGREEMENT
FOR
PROFESSIONAL PLANNING AND/OR DESIGN SERVICES**

BETWEEN

Name: **University System of New Hampshire** (hereinafter referred to as OWNER)

Address: **c/o**

Telephone:

Facsimile:

AND

Name: _____, (hereinafter referred to as Design Consultant)

Address:

Telephone:

Facsimile:

FOR THE FOLLOWING PROFESSIONAL PLANNING AND/OR DESIGN SERVICES:

_____, as described hereinafter,

ASSOCIATED WITH THE FOLLOWING PROJECT:

Campus:

Project Title: **include project # and title**

Project Description:

TERM OF ENGAGEMENT

Month/Day, Year – Month/Day, Year

NOTES:

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ARTICLE 1 – GENERAL INFORMATION

1.1 PROJECT PARAMETERS. This Agreement is based on the following:

1.1.1 The intent of the project is:

1.1.2 The physical parameters are:

1.1.3 The legal parameters are:

1.1.4 The financial parameters are as follows:

Funding source:

Owner's budget amount for the Cost of the Work, as defined in Paragraph 3.1, is: \$

Fixed limits for the Cost of the Work are:

Maximum: \$

Minimum: \$

1.1.5 The time parameters are:

1.1.6 The proposed procurement or delivery method for the Project is:

Select from Drop Down List . . .

1.1.7 Other parameters are:

1.1.8 The general scope of services to be provided under this Agreement is as follows:

Specific Services.

Boundary survey.

Topographic / location survey.

Geotechnical subsurface evaluation and recommendations.

Study of historical, cultural, or archeological features or related efforts.

Analysis of alternative sites and formation of site selection recommendation.

Preparation of environmental assessments or reviews.

Program development **{pull down to select . . .}**.

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- Feasibility study and preliminary cost estimate preparation.
- Concept design.
- Other:
- Design Services.
 - Pre-Design services.
 - Schematic Design documents.
 - Design Development documents.
 - Construction documents.
 - Construction Procurement Services.
- Construction Administration (construction award through project closeout and 1-year warranty).

1.1.9 For the services indicated above and as defined below and in the Attachments to this Agreement, the Design Consultant's fee, exclusive of reimbursable expenses as defined in Paragraph 5.3, shall be **{pull down to select . . .}** sum of \$ (dollars).

If a stipulated fee, this fee is allocated to the project phases as follows (the values indicated in parentheses reflect guidelines for fee allocation relative to a full service design agreement exclusive of additional specific services):

<u>Description</u>	<u>Fee</u>
Total of Specific Services; provide breakdown in Attachment 4	
Pre-design Services (3%).....	
Schematic Design Preparation (17%, except 20% if no pre-design)	
Design Development Preparation (25%)	
Construction Document Preparation (25%).....	
Construction Procurement Services (5%).....	
Const. Admin. (to Substantial Completion) (20%, except 25% if no procurement).....	
Construction Administration (Final Completion and Warranty Phase) (5%)	

1.1.10 The hourly rates stated in Attachment 5 shall **{pull down to select . . .}**.

1.1.11 In addition to the above fee, an allowance for bulk printing and extraordinary expenses as defined in Paragraph 5.3 is established in an amount not to exceed \$.

1.2 PROJECT TEAM

1.2.1 The Owner's Designated Representatives are:

Project Manager:

Design Manager:

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1.2.2 As necessary, the persons or entities, in addition to the Owner's Designated Representatives, who are expected to review the Design Consultant's submittals to the Owner are:

University Architect
Campus Planner
Facilities representatives
End-user representatives
Office of the State Fire Marshal
Other applicable State of New Hampshire code enforcement officials

1.2.3 The Owner's other design consultants and contractors are:

1.2.4 The Design Consultant's Designated Representatives are:

Principal in Charge:
Project Architect:
Project Manager:
Job Captain:
Field Representative(s):

1.2.5 The subconsultants to be retained at the Design Consultant's expense are:

1.2.6 Other important initial information is:

1.2.7 When the services under this Agreement include contract administration services, the general conditions of the contract for construction shall be the University System of New Hampshire General Conditions of the Contract for Construction as set forth in Attachment 2 to this Agreement.

1.2.8 The information contained in this Article 1 may be reasonably relied upon by the Owner and Design Consultant in determining the Design Consultant's compensation. Both parties, however, recognize that such information may change and, in that event, the Owner and the Design Consultant shall negotiate appropriate adjustments in schedule, compensation and Change in Services in accordance with Paragraph 3.3.

1.3 RESPONSIBILITIES OF THE PARTIES

1.3.1 The Design Consultant and Owner jointly acknowledge the relationship of trust and confidence established between them by this Agreement, and both agree to act at all times in a manner consistent with this relationship. The Owner and the Design Consultant shall cooperate with one another to fulfill their respective obligations under this Agreement. Both parties shall endeavor to maintain good working relationships among all members of the Project team.

1.3.2 OWNER

1.3.2.1 Owner's provision of information to Design Consultant:

- .1 The Owner shall provide information in a timely manner regarding requirements for and limitations on the Project.
- .2 The Owner shall furnish to the Design Consultant, within 15 days after receipt of a written request, information necessary and relevant for the Design Consultant to evaluate, give notice of or enforce lien rights.

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- 1.3.2.2 The Owner shall not significantly increase or decrease the budget for the Cost of the Work without the agreement of the Design Consultant to a corresponding change in the Project scope and quality.
- 1.3.2.3 The Owner's Designated Representatives identified in Paragraph 1.2.1 shall be authorized to act on the Owner's behalf with respect to the Project. The Owner or the Owner's Designated Representatives shall furnish information, render decisions, and provide services as reasonably required by the Design Consultant in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Design Consultant's services.
- 1.3.2.4 The Owner shall furnish the services of design consultants other than those designated in Paragraph 1.2 or authorize the Design Consultant to furnish them as a Change in Services when such services are required due to circumstances which could not reasonably have been anticipated prior to execution of this Agreement and are requested in writing by the Design Consultant.
- 1.3.2.5 Unless otherwise provided in this Agreement, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.
- 1.3.2.6 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.
- 1.3.2.7 The Owner shall provide prompt written notice to the Design Consultant if the Owner becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Design Consultant's Instruments of Service.
- 1.3.2.8 The Owner may, at its sole option and expense, hire and direct the activities of a full or part-time Clerk of the Works reasonably acceptable to the Design Consultant for the Project.
- 1.3.3 DESIGN CONSULTANT
- 1.3.3.1 The services performed by the Design Consultant, Design Consultant's employees and Design Consultant's sub-design consultants shall be as enumerated in Article 2. The Design Consultant shall satisfy the requirements for the lawful practice of architecture or engineering in the State of New Hampshire and shall perform its services in a professional manner consistent with the level of care and skill exercised by other practicing design consultants performing such services within the limits prescribed by the Owner.
- 1.3.3.2 The Design Consultant's services shall be performed as expeditiously as is consistent with the professional standards required by Subparagraph 1.3.3.1 and the orderly progress of the Work. Prior to commencement of the Design Consultant's services required by Article 1 of this Agreement, the Design Consultant and Owner shall jointly establish a written schedule for the performance of the Design Consultant's services which shall include allowances for periods of time required for the Owner's review, for the performance of other design consultants retained by the Owner's Design Consultant, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule shall not, except for reasonable cause, be exceeded by the Design Consultant or Owner. The Design Consultant and Owner shall promptly notify each other in the event that any changes to the established schedule are required or anticipated, and the Design Consultant shall promptly revise and reissue the schedule accordingly.
- 1.3.3.3 The Design Consultant's Designated Representatives shall be the person or persons identified in Subparagraph 1.2.4 who shall be authorized to act on the Design Consultant's behalf unless otherwise stated therein, and shall not be changed prior to completion of the Project without the written consent of the Owner, which shall not be unreasonably withheld.
- 1.3.3.4 The Design Consultant shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Design Consultant from establishing a claim or defense in an adjudicatory proceeding. The Design Consultant shall require of the Design Consultant's sub-design consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

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- 1.3.3.5 Except with the Owner's knowledge and written consent, the Design Consultant shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Design Consultant's professional judgment with respect to this Project.
- 1.3.3.6 The Design Consultant shall design the Project to comply with all applicable federal, state and local laws, statutes, ordinances, codes, orders, rules and regulations, and shall assist the Owner in obtaining required written approval of all governmental authorities having jurisdiction over the Project prior to execution of the Contract for construction. Review or approval of the Design Consultant's documents by the Owner shall not relieve the Design Consultant of any obligations for such compliance or for assistance in obtaining governmental approval. The Owner shall be responsible for any additional costs due to subsequent retraction or modification of written approval by a governmental authority, unless such retraction or modification is the result of an error or omission in the Contract Documents discovered after the original approval.
- 1.3.3.7 The Design Consultant shall be entitled to rely reasonably on the accuracy and completeness of services and information furnished by the Owner. The Design Consultant shall provide prompt written notice to the Owner if the Design Consultant becomes aware of any errors, omissions or inconsistencies in such services or information.
- 1.3.3.8 Prior to execution of any sub-design consultant agreements, the Design Consultant shall submit to the Owner a list of all proposed sub-design consultants, together with the proposed scope of services for each, in order to establish to the Owner's reasonable satisfaction that all aspects of the Project will be designed and managed by qualified professionals. The Design Consultant shall not enter into any sub-Design Consultant agreement to which the Owner has a reasonable objection. Sub-design consultants shall be those named in Subparagraph 1.2.5, and shall not be changed prior to completion of the Project without written consent of the Owner, which shall not be unreasonably withheld.
- 1.3.3.9 The Design Consultant shall review information provided by design consultants retained directly by the Owner and shall coordinate the work of such design consultants with the Design Consultant's work so as to produce a complete and consistent product at each Phase. The Design Consultant shall be entitled to rely on the accuracy and completeness of the information provided by design consultants retained by the Owner without having to verify such information independently.
- 1.3.3.10 The Design Consultant shall meet with the Owner and make presentations to Owner's review groups as reasonably requested during Schematic Design, Design Development and Construction Documents Phases of the Work, to ensure that Owner's requirements are being met.

ARTICLE 2 – PROFESSIONAL SERVICES

2.1 PROJECT ADMINISTRATION SERVICES

- 2.1.1 The Design Consultant shall manage the Design Consultant's services and administer the Project. The Design Consultant shall consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and issue progress reports. The Design Consultant shall coordinate the services provided by the Design Consultant and the Design Consultant's Design Consultants with those services provided by the Owner and the Owner's Design Consultants.
- 2.1.2 The Design Consultant shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program, budget and aesthetics in developing the design for the Project.
- 2.1.3 The Design Consultant 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.

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2.1.4 EVALUATION OF BUDGET AND COST OF THE WORK

2.1.4.1 Estimates of the Cost of the Work prepared by the Design Consultant are those of the Design Consultant and not of the Owner, and represent the Design Consultant's judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Design Consultant 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, marketing or negotiating conditions. Therefore the Design Consultant cannot and does not warrant or represent that bids or negotiated prices will not vary from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Design Consultant. Notwithstanding the preceding sentence, however, it remains the responsibility of the Design Consultant to design and specify the work so that the Cost of the Work is within the Maximum and Minimum Fixed Limits of the Cost of the Work as provided in Subparagraph 1.1.4.

2.1.4.2 In preparing estimates of the Cost of the Work, the Design Consultant shall be permitted to include contingencies for design, bidding and price escalation; to make reasonable adjustments in the scope of the Project materials, component systems and types of construction, and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work.

2.1.4.3 If bidding or negotiation has not commenced within 90 days after the Design Consultant submits the Construction Documents to the Owner, the budget for the Cost of the Work shall be adjusted to reflect changes in the General level of prices in the construction industry.

2.1.4.4 If the lowest bona fide bid or negotiated proposal for the Cost of the Work is more than the Maximum or less than the Minimum Fixed Limit of Cost of the Work stated in Paragraph 1.1.4, the Owner shall:

- .1 give written approval of an increase or decrease in the Fixed Limit of the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Work within a reasonable time;
- .3 terminate in accordance with Subparagraph 3.7.5; or
- .4 cooperate in revising the Project scope and quality to decrease or increase the Cost of the Work to be within the Limits stated in Paragraph 1.1.4.

2.1.4.5 If the Owner chooses to proceed under Clause 2.1.4.4.4, the Design Consultant, without additional compensation, shall modify the documents for which the Design Consultant is responsible under this Agreement as necessary to comply with the budget for the Cost of the Work. The modification of such documents shall be the limit of the Design Consultant's responsibility under this Paragraph 2.1.4.5. The Design Consultant shall be entitled to compensation in accordance with this Agreement for all services performed whether or not construction is commenced.

2.2 SUPPORTING SERVICES [If the scope of work includes programming, this Section 2.2 does not pertain.]

2.2.1 Unless otherwise provided in this Agreement, the services in this Article 2.2 shall be provided by the Owner or the Owner's design consultants and contractors.

2.2.1.1 The Owner's program setting forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, special equipment, systems and site requirements is appended hereto as Attachment 3.

2.2.1.2 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project and, where applicable, a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; 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.

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2.2.1.3 Unless otherwise provided in this Agreement, the Owner shall furnish services of geotechnical engineers which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate recommendations.

2.3 EVALUATION AND PLANNING SERVICES

2.3.1 [If the scope of work includes programming, this paragraph does not pertain.] The Design Consultant shall review the Owner's Architectural Program, appended as Attachment 3 to this Agreement, to ascertain the functional requirements, review requirements, schedule and budget for the Cost of the Work. The Design Consultant shall consult with the Owner and others designated by the Owner to establish any additional or modified criteria, requirements or information which the Design Consultant reasonably requires for the design of the Project, and shall confirm such additional or modified criteria, requirements or information to the Owner in a written memorandum which shall, upon Owner's approval, amend and be incorporated into the Architectural Program.

2.3.2 [If the scope of work includes programming, this paragraph does not pertain.] The Design Consultant shall provide a preliminary evaluation of the Owner's site for the Project based on the information provided by the Owner of site conditions, and the Owner's program, schedule and budget for the Cost of the Work.

2.3.3 The Design Consultant shall review the Owner's proposed method of contracting for construction services and shall notify the Owner of anticipated impacts that such method may have on the Owner's program, financial and time requirements, and the scope of the Project.

2.4 DESIGN SERVICES

2.4.1 General Requirements

2.4.1.1 The Design Consultant's design services shall include the services required under this Agreement of all design subconsultants identified in Subparagraph 1.2.5.

2.4.1.2 [For a KSC or PSU contract, this paragraph is NOT USED] Unless otherwise authorized in writing by the Owner, all design services and documentation in connection with projects for the University of New Hampshire shall incorporate all applicable requirements of the latest edition of University of New Hampshire Planning, Design and Construction Guidelines, which is hereby made a part of this Agreement by reference.

2.4.1.3 The Design Consultant shall assist the Owner in connection with the Owner's responsibility for filing documents required for approval of governmental authorities having jurisdiction over the Project.

2.4.2 SCHEMATIC DESIGN DOCUMENTS

2.4.2.1 On fulfillment of the requirements of Article 2.3 the Design Consultant shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components. Such Documents shall be in all respects consistent with the project schedule required in Subparagraph 1.3.3.2 and the amended Architectural Program required in Paragraph 2.3.1, and shall include as a minimum all documentation required in Attachment 1 to this Agreement.

2.4.2.2 The Design Consultant shall submit to the Owner an Estimate of the Cost of the Work based on the completed Schematic Design Documents. The Estimate shall be in the Construction Specification Institute (CSI)'s 33 Division format or other format approved in advance by the Owner, and shall include separate line item costs, projected to the scheduled construction dates, for all major systems and components of the Work. The Estimate shall be accompanied by an updated project schedule if any changes from the last distributed version thereof have occurred or are anticipated.

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- 2.4.2.3 The Design Consultant shall respond in writing to all written comments from the Owner regarding the Design Consultant's Schematic Design Phase submittal, and shall secure Owner's final written approval of such submittal. Schematic Design Documents shall, if reasonably required by the Owner, be revised and resubmitted incorporating modifications needed to obtain such approval.
- 2.4.3 DESIGN DEVELOPMENT DOCUMENTS
- 2.4.3.1 Upon receipt of Owner's written approval of Schematic Design Documents and written authorization to proceed, the Design Consultant shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials, and such other elements as may be appropriate. The Design Development Documents shall be consistent with the Architectural Program and the approved Schematic Design submittal, and shall include as a minimum all documentation required in Attachment 1 to the Agreement.
- 2.4.3.2 The Design Consultant shall prepare and submit an updated Estimate of the Cost of the Work based on and incorporating the additional information and level of detail represented by the completed Design Development Documents. The Estimate shall be in the same format as required by Paragraph 2.4.2.2, and shall be accompanied by an updated schedule as required thereby.
- 2.4.3.3 The Design Consultant shall respond in writing to all written comments from the Owner regarding the Design Consultant's Design Development Phase submittal, and shall secure Owner's final written approval of such submittal. Design Development Documents shall, if reasonably requested by the Owner, be revised and resubmitted incorporating modifications needed to obtain such approval.
- 2.4.4 CONSTRUCTION DOCUMENTS
- 2.4.4.1 Upon receipt of the Owner's written approval of Design Development Documents and written authorization to proceed, the Design Consultant shall prepare, for approval by the Owner, Construction Documents consisting of Drawings, Specifications and other documents setting forth in detail the requirements for the construction of the Project and describing all materials, standards of workmanship, finishes, equipment, and conditions under which the Work is to be performed. Such documents shall be consistent with the approved Design Development submittal and shall include as a minimum all documentation required in Attachment 1 to this Agreement.
- 2.4.4.2 The Design Consultant shall assist the Owner in preparation of the necessary construction procurement information. The general conditions of the contract for construction shall be the University System of New Hampshire General Conditions of the Contract for Construction as set forth in Attachment 2 to this Agreement. No provision of these General Conditions shall be deleted, changed or contravened by any other provision of the Construction Documents without the Owner's express written consent.
- 2.4.4.3 The Design Consultant shall prepare and submit an updated Estimate of the Cost of the Work based on and incorporating the additional information and level of detail represented by ninety percent (90%) completion of the Construction Documents. The Estimate shall be in the same format as required by Paragraph 2.4.2.2, and shall be accompanied by an updated schedule as required thereby.
- 2.4.4.4 All proposed Alternates must be approved by the Owner in writing prior to inclusion in the Construction Documents. Preparation of Alternates proposed by the Design Consultant shall be included in Design Consultant's basic services and shall not be compensated as a Change in Service.

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2.4.4.5 The Design Consultant shall conduct a thorough check of all Construction Documents for errors, omissions, inconsistencies, conformance to Owner's standards required by Subparagraph 2.4.1.2 if applicable, and for adequacy of space to permit proper installation and maintenance of all plumbing, fire protection, mechanical and electrical systems within the confines of the building's structural and architectural elements, as described in the approved Quality Control Program required by Paragraph 4.5. Upon completion of this check in accordance with such Program, and correction of all deficiencies identified thereby to the Design Consultant's full satisfaction, the Design Consultant shall certify completion and correction of the Construction Documents to the Owner in writing. The Construction Documents shall not be released for bidding until such certification is received and approved by Owner.

2.4.4.6 All room numbers shown on Construction Document plans, schedules and other documents shall be established in collaboration with the Owner, and shall reflect Owner's standard guidelines therefor.

2.5 CONSTRUCTION PROCUREMENT SERVICES

2.5.1 The Design Consultant shall assist the Owner in obtaining either competitive bids or negotiated proposals.

2.5.2 If requested by the Owner, the Design Consultant shall assist the Owner in identifying and/or prequalifying prospective bidders, contractors or construction managers, shall assist the Owner in bid validation or proposal evaluation, and determination of the successful bid or proposal, if any.

2.5.3 COMPETITIVE BIDDING/PROPOSALS (non-negotiated)

2.5.3.1 Documents shall consist of bidding/proposal requirements in addition to the documents required by Paragraph 2.4.4. Owner shall provide bidding requirements and proposed contract forms.

2.5.3.2 Following Owner's approval of the certification required by Subparagraph 2.4.4.5, the Design Consultant shall either (a) deliver the approved Construction Documents in electronic format to USNH Purchasing and Contract Services, 11 Brook Way, Durham, NH 03824 for posting on its web site if the proposed procurement process or delivery method for the Project designated in Subparagraph 1.1.6 is competitive bidding or competitive bidding with prequalification, or (b), deliver them in electronic format as well as a minimum of six sets of originals in print format, as the construction management firm may request, to the Owner's construction management firm if the proposed procurement process noted in subparagraph 1.1.6 is construction management.

2.5.3.3 The Design Consultant shall consider requests for substitutions, if permitted by the Bidding Documents, and shall prepare addenda identifying approved substitutions which shall be posted by Owner on the USNH Purchasing and Contract Services web site (<http://www.unh.edu/purchasing/bid-docs.html>).

2.5.3.4 The Design Consultant shall participate in or, at the Owner's direction, shall organize and conduct a pre-bid conference for prospective bidders.

2.5.3.5 The Design Consultant shall prepare responses to questions from prospective bidders and provide clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda which shall be posted by Owner on the USNH Purchasing and Contract Services web site (<http://www.unh.edu/purchasing/bid-docs.html>).

2.5.3.6 The Design Consultant shall participate in or, at the Owner's direction, shall organize and conduct the opening of the bids. If the Design Consultant conducts the bid opening, the Design Consultant shall subsequently document and distribute the bidding results, as directed by the Owner.

2.5.3.7 If requested by the Owner, the Design Consultant shall participate in selection interviews for any proposal process.

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2.5.4 **NEGOTIATED PROPOSALS**

2.5.4.1 Proposal Documents shall consist of proposal requirements in addition to the documents required by Paragraph 2.4.4. Owner shall provide proposal requirements and proposed contract forms.

2.5.4.2 If requested by the Owner, the Design Consultant shall participate in selection interviews.

2.5.4.3 The Design Consultant shall consider requests for substitutions, if permitted by the Proposal Documents, and shall prepare addenda identifying approved substitutions which shall be posted by Owner on the USNH Purchasing and Contract Services web site (<http://www.unh.edu/purchasing/bid-docs.html>).

2.5.4.4 If requested by the Owner, the Design Consultant shall assist the Owner during negotiations with prospective contractors or construction managers. The Design Consultant shall subsequently prepare a summary report of the negotiation results, as directed by the Owner.

2.6 CONTRACT ADMINISTRATION SERVICES

2.6.1 **GENERAL ADMINISTRATION**

2.6.1.1 The Design Consultant shall provide administration of the Contract between the Owner and the Contractor as set forth below and in the University System of New Hampshire General Conditions of the Contract for Construction as set forth in Attachment 2 to this Agreement.

2.6.1.2 The Design Consultant's responsibility to provide the Contract Administration Services under this Agreement commences with the award of the initial Contract for Construction and terminates at the issuance to the Owner of the final Certificate for Payment.

2.6.1.3 The Design Consultant shall be a representative of and shall advise and consult with the Owner during the provision of the Contract Administration Services. The Design Consultant shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written amendment.

2.6.1.4 Duties, responsibilities and limitations of authority of the Design Consultant under this Article 2.6 shall not be restricted, modified or extended without written agreement of the Owner and Design Consultant.

2.6.1.5 The Design Consultant shall review properly prepared requests by the Contractor for additional information about the Construction Documents. A properly prepared request for additional information about the Construction Documents shall be in a form prepared or approved by the Design Consultant and shall include a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested.

2.6.1.6 If deemed appropriate by the Design Consultant, the Design Consultant shall prepare, reproduce and distribute supplemental Drawings and Specifications in response to requests for information by the Contractor.

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

2.6.1.8 Interpretations and decisions of the Design Consultant shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Design Consultant shall endeavor to secure faithful performance by both Owner and Contractor, and shall not show partiality to either.

2.6.1.9 The Design Consultant shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents.

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2.6.2 EVALUATIONS OF THE WORK

2.6.2.1 The Design Consultant shall visit the site at intervals appropriate to the stage of the Contractor's operations, or as otherwise agreed by the Owner and the Design Consultant, (1) to observe all reasonably apparent conditions at the site and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Design Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Design Consultant shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. The Design Consultant shall prepare and submit notes of its observations to the Owner within five days after each site visit. The Design Consultant shall schedule, attend and chair all job meetings, which shall be held weekly unless otherwise provided in the Contract Documents or mutually agreed by the Design Consultant, Owner and Contractor, and shall prepare and distribute minutes of each such meeting to the Owner, Contractor, Clerk of the Works if any, design consultants and others as appropriate not later than five days after the meeting. The Design Consultant shall secure the attendance at job meetings of Design Consultant's sub-design consultants and others as appropriate and as reasonably requested by the Owner.

2.6.2.2 The Design Consultant shall report to the Owner known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. However, the Design Consultant shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Design Consultant shall be responsible for the Design Consultant's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

2.6.2.3 The Design Consultant shall at all times have access to the Work wherever it is in preparation or progress.

2.6.2.4 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor through the Design Consultant about matters arising out of or relating to the Contract Documents. Communications by and with the Design Consultant's design consultants shall be through the Design Consultant. Communications by and with the Owner's design consultants and separate contractors shall be through the Owner.

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

2.6.3 CERTIFICATION OF PAYMENTS TO CONTRACTOR

2.6.3.1 Upon presentation of the Contractor's Application for Payment, the Design Consultant shall review and certify the amounts due and shall issue Certificates for Payment in such amounts. The Design Consultant's certification for payment shall constitute a representation to the Owner, based on the Design Consultant's evaluation of the Work as provided in Paragraph 2.6.2 and on the data comprising the Contractor's Application for Payment, which shall include waiver of lien notices, that the Work has progressed to the point indicated and that, to the best of the Design Consultant's knowledge, information and professional judgment, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Design Consultant.

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- 2.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Design Consultant has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.
- 2.6.3.3 The Design Consultant shall maintain a record of the Contractor's Applications for Payment.
- 2.6.4 SUBMITTALS
- 2.6.4.1 The Design Consultant shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples. The Design Consultant's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Design Consultant's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details not within the intended scope of the submittal, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Design Consultant's review shall not constitute approval of safety precautions or, unless otherwise provided in the Contract Documents, of any construction means, methods, techniques, sequences or procedures. The Design Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 2.6.4.2 The Design Consultant shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.
- 2.6.4.3 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Design Consultant shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor shall bear such professional's written approval when submitted to the Design Consultant. The Design Consultant shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.
- 2.6.5 CHANGES IN THE WORK
- 2.6.5.1 The Design Consultant shall prepare Change Orders for signature by Owner and Design Consultant. The Design Consultant or the Owner may prepare Construction Change Directives for signature by the Design Consultant and Owner or by the Owner alone, in accordance with the Contract Documents. The Design Consultant may authorize minor changes in the Work not involving reduction in the scope of the Work, an adjustment in Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents.
- 2.6.5.2 The Design Consultant shall review, analyze and recommend appropriate action to the Owner with respect to all change proposals and cost estimates submitted by the Contractor. The Design Consultant shall revise Contract Documents, prepare supplementary documents including drawings, specifications or other written instructions as reasonably necessary to establish the appropriateness of and to implement the Work incorporated in the Contract by Change Orders or Change Directives. The cost of such services by the Design Consultant shall be included in Design Consultant's basic services except to the extent that such services are directly attributed to changes requested in writing by the Owner, which shall be Changes in Services and compensated as provided in Paragraph 3.3.
- 2.6.5.3 If the Design Consultant determines that implementation of the requested changes would result in a material change to the Contract that may cause an adjustment in the Contract Time or Contract Sum, the Design Consultant shall make a recommendation to the Owner, who may authorize further investigation of such change. Upon such authorization, and based upon information furnished by the Contract, if any, the Design Consultant shall estimate the additional cost and time that might result from such change, including any additional costs attributable to a Change in Services of the Design Consultant. With the Owner's approval, the Design Consultant shall incorporate those estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Contractor.

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2.6.5.4 The Design Consultant shall maintain records relative to changes in the Work.

2.6.6 PROJECT COMPLETION

2.6.6.1 The Design Consultant shall conduct reviews and inspections to determine the Date or Dates of Substantial Completion and shall prepare and submit to Owner the Certificate or Certificates of Substantial Completion, all as required by Paragraph 9.8 of the University System of New Hampshire General Conditions of the Contract for Construction as set forth in Attachment 2 to this Agreement, and shall receive, review, approve and forward to the Owner for the Owner's records all written warranties and related documents required by the Contract Documents. The Design Consultant shall conduct inspections and issue a final Certificate for Payment as required by Paragraph 9.10 of Attachment 2 upon Contractor's full compliance with the requirements of the Contract Documents.

2.6.6.2 The Design Consultant shall, within 30 days after issuance of the final Certificate for Payment, prepare and deliver to the Owner a complete set of all original Contract Drawings modified to incorporate all changes directed by "SK" and other supplementary instructions prepared by the Design Consultant or the Design Consultant's design consultants and issued after execution of the construction contract, all changes in the Work, including detail and dimensional changes and the final locations of all plumbing, storm drainage, fire protection, mechanical and electrical lines, outlets, manholes, etc., both inside and outside the building, as recorded on the Contractor's record drawings required by Attachment 2 to this Agreement, and any other changes of which the Design Consultant may be aware. These modified drawings shall be dated and labeled "As-built Record Set" shall be submitted on 3 mil double-sided matte drafting film (or other appropriate media) suitable for dry contact print reproduction, and shall in addition be submitted in an electronic format using current storage technology (e.g., CD, DVD, flash drive etc.) and the latest version of AutoCAD, or in an AutoCAD-compatible DWG format, or other format approved in advance by the Owner. 3D renderings shall be provided in same format as used by Design Consultant when creating them (e.g., SketchUp, REVIT, 3D Max, etc.) Hard copy drawings shall be in architectural units and standard architectural scales. Electronic storage submittal shall be prepared using standardized blocks throughout and in professional layer format for all architectural, plumbing, fire protection, mechanical, electrical and other drawings, and shall be accompanied by a hard copy listing of layers and their contents. Room numbers shall be provided as attributes of a block. North arrow shall be shown on all drawings where appropriate.

2.6.6.3 The Design Consultant shall assist as reasonably requested by the Owner during the warranty period set forth in the Contract Documents in identifying defects in the Project and in determining and implementing appropriate corrective measures in accordance with the requirements of the Construction Contract. Approximately one month before expiration of the Contractor's warranty period, the Design Consultant shall conduct an inspection of the Project together with the Owner's representatives, and shall report in writing any observed discrepancies under warranties or guarantees required by the Contract Documents.

2.6.6.4 The Design Consultant shall receive from the Contractor and forward to the Owner: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment, and (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens.

ARTICLE 3 – TERMS AND CONDITIONS

3.1 COST OF THE WORK

3.1.1 The Cost of the Work 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 or specified by the Design Consultant.

3.1.2 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Design Consultant, 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. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

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3.1.3 The Cost of the Work does not include the compensation of the Design Consultant and the Design Consultant's design consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner.

3.2 INSTRUMENTS OF SERVICE

3.2.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Design Consultant and the Design Consultant's design consultants are Instruments of Service for use solely with respect to this Project. The Design Consultant and the Design Consultant's design consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights. Neither the Owner nor the Design Consultant or Design Consultant's design consultants shall use the documents produced pursuant to this Agreement for any other Project. However, the Owner may use such Instruments of Service at any time to expand, correct any deficiencies to, or make any renovations or repairs to this Project. Any such use without written verification or adaptation by the Design Consultant for the specific purpose intended shall be at the user's sole risk and without liability or legal exposure to the Design Consultant or its independent contractors or design consultants.

3.2.2 Except for the Record Documents required by Paragraph 2.6.6.2, and prior to the Design Consultant providing to the Owner any Instruments of Service in electronic form or the Owner providing to the Design Consultant any electronic data for incorporation into the Instruments of Service, the Owner and the Design Consultant shall by separate written agreement set forth the specific conditions governing the format of such Instruments of Service or electronic data, including any special limitations or licenses not otherwise provided in this Agreement.

3.3 CHANGE IN SERVICES

3.3.1 Change in Services of the Design Consultant, including those of the Design Consultant's design consultants, may be accomplished after execution of, and without invalidating this Agreement, either at the written request of the Owner, or if the changes are required by any circumstances beyond the Design Consultant's control, as stated in Subparagraph 1.3.3.2. If the Design Consultant believes that such circumstances beyond its control exist, the Design Consultant shall promptly so notify the Owner in writing, stating the reasons for such belief and stating, insofar as can then be determined or estimated, the amount of any adjustment to the Design Consultant's compensation or time for performance or both which may be required. The Owner shall promptly respond in writing to the Design Consultant's notice, either authorizing the Change in Services in its entirety, or stating that all or a part of such Change is not authorized. Except in an emergency which significantly threatens life safety, property damage or delay to the Project, the Design Consultant shall have no obligation to provide, and shall not be entitled to any additional compensation for, any services which the Owner states are not authorized. Except for changes due to errors, omissions or inconsistencies in the Contract Documents or other fault of the Design Consultant, an authorized Change in Services of the Design Consultant shall entitle the Design Consultant to an adjustment in compensation pursuant to Paragraph 5.2.

3.3.2 If the Design Consultant's services are materially changed as a result of any of the following circumstances, the compensation or time for performance or both for rendering the Design Consultant's services under this Agreement shall be adjusted in accordance with the provisions of Subparagraph 3.3.1:

3.3.2.1 Making revisions in Drawings, Specifications or other documents when such revisions are:

- .1 inconsistent with written approvals or instructions previously given by the Owner, including revisions made necessary by adjustments in the Owner's program or budget for the Cost of the Work;
 - .2 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents;
- or
- .3 due to changes required as a result of the Owner's failure to render decisions within a reasonable time after receipt of written notice from the Design Consultant.

3.3.2.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Subparagraph 2.1.4.5.

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- 3.3.2.3 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work, unless required due in significant part to the Design Consultant's error, omission or negligence.
- 3.3.2.4 Providing services made necessary by the default of the Contractor, by major defects or deficiencies in the Work of the Contractor, or by failure of performance of either the Owner or Contractor under the Contract for Construction, to the extent that such default, defects, deficiencies, or failure of performance result in an increase of more than [percentage to be determined by agreement] percent in the Construction Contract Time.
- 3.3.2.5 Failure of performance on the part of the Owner or the Owner's design consultants or contractors.
- 3.3.2.6 Unless otherwise provided, providing services in connection with a public hearing, mediation proceeding, arbitration proceeding or legal proceeding except where the Design Consultant is party thereto.

3.4 MEDIATION

- 3.4.1 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. If such matter relates to or is the subject of a lien arising out of the Design Consultant's or the Owner's rights and obligations under this Agreement, the lien party may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by arbitration.
- 3.4.2 The Owner and Design Consultant shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.
- 3.4.3 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 any court having jurisdiction thereof.
- 3.4.4 At the request of the Owner, any claims between Owner and Contractor, Owner and Design Consultant, Contractor and Design Consultant, Contractor and its Surety, or Contractor and its Subcontractors or suppliers, shall be submitted for mediation as provided in this Paragraph 3.4, and any or all of the parties named above shall at the Owner's request be joined or consolidated therein.

3.5 ARBITRATION (Applicable only if checked)

- 3.5.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with Paragraph 3.4.
- 3.5.2 Claims, disputes and other matters in question between the parties that are not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association.
- 3.5.3 A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration 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.

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- 3.5.4 At the request of the Owner, any Claims between Owner and Contractor, Owner and Design Consultant, Contractor and Design Consultant, Contractor and its Surety, or Contractor and its Subcontractors or suppliers shall be submitted for arbitration as provided in this Paragraph 3.5, and any or all of the parties named above shall at the Owner's request be joined or consolidated therein.
- 3.5.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.
- 3.6 MISCELLANEOUS PROVISIONS**
- 3.6.1 This Agreement shall be governed by the law of the State of New Hampshire, unless otherwise provided in Paragraph 4.1.
- 3.6.2 Terms in this Agreement shall have the same meaning as those in the University System of New Hampshire General Conditions of the Contract for Construction as set forth in Attachment 2 to this Agreement.
- 3.6.3 Causes of action between the parties to this Agreement pertaining to acts or failure to act shall be deemed to have accrued and the applicable statutes of limitations shall commence on the dates for such accrual and commencement required between the Owner and the Contractor by Paragraph 13.7 of the University System of New Hampshire General Conditions of the Contract for Construction, as set forth in Attachment 2 to this Agreement.
- 3.6.4 To the extent damages are covered by property insurance during construction, the Owner and the Design Consultant waive all rights against each other and against the contractors, design consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in the University System of New Hampshire General Conditions of the Contract for Construction, as set forth in Attachment 2 to this Agreement. The Owner or the Design Consultant, as appropriate, shall require of the contractors, design consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.
- 3.6.5 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 Design Consultant.
- 3.6.6 Unless otherwise provided in this Agreement, the Design Consultant and Design Consultant's design consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.
- 3.6.7 The Design Consultant shall have the right to include photographic or artistic representations of the design of the Project among the Design Consultant's promotional and professional materials and awards programs. The Design Consultant shall be given reasonable access to the completed Project to make such representations. However, the Design Consultant's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Design Consultant in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Design Consultant in the Owner's promotional materials for the Project.
- 3.6.8 If the Owner requests the Design Consultant to execute certificates, the proposed language of such certificates shall be submitted to the Design Consultant for review at least 14 days prior to the requested dates of execution. The Design Consultant shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.
- 3.6.9 The Owner and Design Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Design Consultant shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Design Consultant shall execute all consents reasonably required to facilitate such assignment.

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3.7 TERMINATION OR SUSPENSION

- 3.7.1 If the Owner fails to make payments to the Design Consultant in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design Consultant's option, cause for suspension of performance of services under this Agreement. If the Design Consultant elects to suspend services, prior to suspension of services, the Design Consultant shall give seven days' written notice to the Owner. In the event of a suspension of services, the Design Consultant shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.
- 3.7.2 If the Project is suspended by the Owner for more than 30 consecutive days, the Design Consultant shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Design Consultant shall be compensated for expenses incurred in the interruption and resumption of the Design Consultant's services. The Design Consultant's fees for the remaining services and the time schedules shall be equitably adjusted. This paragraph is not applicable if Owner suspends the project under the conditions noted in ¶1.1.5.
- 3.7.3 If the Project is suspended or the Design Consultant's services are suspended for more than 90 consecutive days, the Design Consultant may terminate this Agreement by giving not less than seven days' written notice. This paragraph is not applicable if Owner suspends the project under the conditions noted in ¶1.1.5.
- 3.7.4 This Agreement may be terminated by either party upon not less than seven day's written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.
- 3.7.5 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Design Consultant for the Owner's convenience and without cause.
- 3.7.6 In the event of termination not the fault of the Design Consultant, the Design Consultant shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and expenses directly attributable to termination for which the Design Consultant is not otherwise compensated.

ARTICLE 4 – OTHER SPECIAL TERMS AND CONDITIONS

- 4.1 Enumeration of Parts of the Agreement.** This Agreement represents the entire and integrated agreement between the Owner and the Design Consultant 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 Design Consultant. This Agreement comprises the documents listed below.
- 4.1.1 University System of New Hampshire Standard Form of Agreement for Professional Planning and/or Design Services.
- 4.2 INSURANCE**
- 4.2.1 The Design Consultant shall secure and maintain for the life of this Agreement the insurance listed below:
- .1 Workers' compensation at statutory limits and employer's liability insurance at \$500,000 each accident, \$500,000 disease each employee and \$500,000 disease, policy limit for all of its employees to be engaged in the Project.
 - .2 Commercial general liability insurance with coverage of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate and automobile liability insurance with bodily injury and property damage coverage not less than \$1,000,000 per occurrence and \$1,000,000 aggregate.
- 4.2.2 The Design Consultant shall secure professional liability (errors & omissions) insurance in the amount of \$3,000,000 per claim and \$3,000,000 aggregate. The Design Consultant shall maintain such insurance continuously in effect, if commercially available, for at least eight years after the Date of Substantial Completion of the Project.

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4.2.3 Additional Insured – The University System of New Hampshire, its trustees, officers, agents, and employees shall be listed as additional insured on all certificates and policies, except workers' compensation and professional liability policies.

4.2.4 Certificates of Insurance for all required policies shall be filed with and approved by the Owner prior to commencement of the Design Consultant's Services. Every Certificate shall contain an endorsement stating that the insurance company will not, prior to completion of the Design Consultant's Services (or, in the case of professional liability insurance, prior to eight years after the Date of Substantial Completion of construction), terminate the Policy, allow it to expire, or change any coverage therein without first notifying the Owner of such action by registered mail at least seven days prior to termination for nonpayment of premium, or thirty days prior to termination or change for any other cause. All Certificates and notices shall be sent to the USNH Purchasing and Contract Services Office, 11 Brook Way, Durham, NH 03824-3509.

4.3 SUCCESSORS AND ASSIGNS

4.3.1 The Owner and Design Consultant each binds itself, its partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party in respect of all covenants of this Agreement. Neither the Owner nor the Design Consultant shall assign, sublet or transfer its interest in this Agreement without the written consent of the other.

4.4 ADDITIONAL PROVISIONS

4.4.1 The Design Consultant agrees to indemnify and save harmless the University System of New Hampshire, its trustees, officers and employees from claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Design Consultant's negligent acts, errors, omissions, or breach of this Agreement, in performance of this Agreement. This provision shall not apply to any claims or losses resulting from an inappropriate use of any data or materials produced by the Design Consultant pursuant to this Agreement.

4.4.2 The Design Consultant and the agents and employees of the Design Consultant, in the performance of this Agreement, shall act in an independent capacity and not as employees or agents of the University System of New Hampshire and are not entitled to any of the fringe benefits of employment, including but not limited to medical and dental benefits, life insurance, workmen's compensation, disability insurance, liability insurance or unemployment compensation.

4.4.3 The Design Consultant shall not utilize information, not a matter of public record, which is received by it by reason of this Agreement, for pecuniary gain not contemplated by the terms of this Agreement, regardless of whether the Design Consultant is or is not under contract at the time such gain is realized.

4.4.4 The Design Consultant and the agents and employees of the Design Consultant acknowledge that they may be excluded in any resulting competitive or noncompetitive bid and award process for the supply of goods or services specified as a result of this Agreement.

4.4.5 In signing this Agreement, the Design Consultant certifies that neither it nor any of its principals is an employee of the Federal Government, or an employee of a contractor to the Federal Government providing any services which comprise a part of this Agreement, and that the Design Consultant is therefore not receiving dual compensation for any services provided hereunder.

4.4.6 Compliance with Equal Employment Opportunity Laws and Regulations

- .1 In connection with the performance of this Agreement, the Design Consultant shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Design Consultant, including but not limited to civil rights and equal opportunity laws.
- .2 During the term of this Agreement, the Design Consultant shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap or national origin and shall take affirmative action to prevent such discrimination.
- .3 If this Agreement is funded in any part by monies of the United States, the Design Consultant shall comply with all the provisions of Executive Order No.11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60) and with all rules, regulations and

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guidelines issued by the State of New Hampshire or the United States to implement these regulations. The Design Consultant further agrees to permit the University System of New Hampshire, the State, the United States, or any designated representative of any of them, to have access to any of the Design Consultant's books, records and accounts for the purpose of ascertaining compliance with the aforesaid rules, regulations and orders, and the covenants and conditions of this Agreement.

4.4.7 Time is of the essence in this Agreement.

4.4.8 This Agreement represents the complete and integrated agreement between the parties, supersedes all prior agreements, may be amended only in writing and signed by the parties hereto, and is binding upon the parties, their successors, assigns and legal representatives.

4.5 QUALITY CONTROL PROGRAM

4.5.1 Prior to providing any of the services required by Article 2.4, the Design Consultant shall submit to the Owner a written Quality Control Program for quality assurance with respect to all plans, specifications and other documents provided under this Agreement. At a minimum, the Program shall provide for systematic checking of all such documents by persons other than those preparing them who are trained in the specific discipline represented by each, with the intent to determine the completeness of the product delivered to the Owner and to avoid change orders to construction contracts which are caused by errors, omissions, conflicts or ambiguities within each document and within each set of documents. The Program shall describe in detail the specific methodology proposed to check each document, to cross check all plans of the various disciplines with one another, and to cross check all plans and specifications for completeness and accuracy at each submittal phase. The Design Consultant shall not proceed with the work required by Article 2.4 until the Owner has approved this Quality Control Program in writing.

ARTICLE 5 – COMPENSATION

5.1 Payments shall be made monthly, based on the progress made in each phase of the Project. Interim payments for any phases shall not exceed 90% of the portion of the Design Consultant's total fee applicable to such phase until that phase is satisfactorily completed. No deductions shall be made from the Design Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Design Consultant has been adjudged to be liable.

5.2 If the services of the Design Consultant or Design Consultant's design consultants are changed as described in Subparagraph 3.3.1, the Design Consultant's compensation shall be adjusted as mutually agreed by the Design Consultant and Owner. If the Design Consultant and Owner are unable to agree, the adjustment shall be calculated on the basis of the Schedule of Hourly Rates appended to this Agreement as Attachment 5.

5.3 If authorized in advance by the Owner, the net cost to the Design Consultant of bulk printing, and of any extraordinary out of pocket expenses not normally incurred in similar projects, shall be reimbursable upon presentation of the Design Consultant's invoice. No reimbursement shall be provided to the Design Consultant under the terms of this Agreement for any other expenses, including but not limited to purchase, rental or use of computer hardware or software, local or long distance telephone calls, FAX transmissions, electronic messages, postage and express charges, photocopies, reproduction of documents for review or approval purposes, travel between the Design Consultant's and Design Consultant's sub-design consultants' places of business and the Owner's offices or Project site, other travel or subsistence expenses not authorized in advance by the Owner, office supplies, rent, utilities, general clerical and secretarial services, and depreciation.

5.3.1 Records of Reimbursable Expenses, of expenses pertaining to a Change in Services, and of services performed on the basis of hourly rates shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

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- 5.4 The Design Consultant, by submittal of an invoice, certifies that all services invoiced therein have been completed. The Design Consultant shall submit all reports, drawings, models, or other documents and materials and shall have performed all services required by this Agreement prior to issuance of final payment.
- 5.5 Except for amounts disputed in writing by the Owner, payments are due and payable 30 (thirty) days after the date of receipt of the Design Consultant's invoice by the Owner. Undisputed amounts which are unpaid 90 (ninety) days after receipt by the Owner of the Design Consultant's invoice shall bear interest at the legal rate then prevailing in the State of New Hampshire.

ARTICLE 6 – ATTACHMENTS

- 6.1 Attachments incorporated into this Agreement are as follows:

- Attachment 1: Design Documentation Requirements (Revised Edition – August 2007 and October 2012)
- Attachment 2: University System of New Hampshire General Conditions of the Contract for Construction (Revised 6/01/2011) incorporated by reference and available at this web site: <http://www.unh.edu/purchasing/forms.html> in the “construction forms” section.
- Attachment 3: Project Program
- Attachment 4: Design Consultant’s Scope of Services Statement
- Attachment 5: Design Consultant’s Schedule of Hourly Compensation Rates
- Attachment 6: Amended Terms and Conditions

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EXECUTION

This Agreement shall become effective as of the date of the last person signing the agreement as indicated by the date noted under that person's signature.

FOR THE UNIVERSITY SYSTEM OF NEW HAMPSHIRE

FOR THE DESIGN CONSULTANT

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

ATTACHMENT 1

DESIGN DOCUMENTATION REQUIREMENTS

Revised August 2007 and October 2012

1. **Minimum Schematic Design Documentation Requirements** (Paragraphs 1.1 – 1.7 are applicable to the following purchasing/contracting/construction contracts: design/bid/build; construction management; and design/build part 1A submission)
 - 1.1 Preliminary graphic materials as required to describe the proposed design of the entire building in three dimensions. These materials will typically include architectural plans of all floor levels at a scale not smaller than 1/16" = 1'-0", showing arrangement, area and use of all rooms, internal horizontal and vertical circulation arrangement, provisions for compliance with ADA and life safety codes, location of mechanical, electrical, telecommunications, building maintenance and other service spaces; transformer location; air intake and exhaust locations; typical layouts of major spaces; provisions for future expansion; typical schematic layouts of principal mechanical, electrical and structural systems; exterior elevations of all sides; and longitudinal and transverse building sections.
 - 1.2 Preliminary graphic materials are required to describe in general the proposed development of the entire project site, including vehicular and pedestrian circulation; parking; fire equipment access; buildings including entrance points for general public, deliveries and persons with disabilities; existing and proposed site structures and significant natural features; wetlands, flood plains and floodways; new and existing overhead and underground utilities; existing and proposed grades; views; sun and wind orientation; vegetation, and relationship of all elements of the project to neighboring buildings or other significant features.
 - 1.3 Tabular comparison of all programmed and designed areas.
 - 1.4 Preliminary written cost and performance analysis of alternative structural, mechanical and electrical systems considered, including determination and evaluation of required structural, HVAC, and electrical loads, structural loading capacities of existing buildings, capacities of existing steam, water, waste water, electrical and other services available to the project, and reasons for selection of recommended systems.
 - 1.5 Written analysis of the probable impact on the project of code, environmental, scheduling, jobsite safety, security, access, labor, and materials availability, and other potential requirements or problems.
 - 1.6 Narrative description of and performance criteria for all principal construction materials and systems proposed for the project, including exterior and interior building materials and finishes; structural system; plumbing and piping systems and fixtures; HVAC systems including major equipment items and control systems; lighting concept and fixture types; electrical power and telecommunications systems; and other significant building or site components.
 - 1.7 Cost estimates based on quantities and criteria established by the Schematic Design documentation required by Paragraphs 1.1 through 1.6 (see Subparagraph 2.4.2.3 of the USNH Standard Form of Agreement for Professional Planning and/or Design Services).
2. **Design Development Submission Requirements** (Paragraphs 2.1 – 2.7 are applicable to a design development submission for either a design/bid/build or construction management contract or a design/build 1B submission)
 - 2.1 Summary: The Design Development submission may be described as an incomplete Contract Documents set. The submission should consist of a set of drawings that includes every page ultimately anticipated to be included in the final Contract Document drawings (even if those pages contain little substantive information) and a specification manual(s) including draft language for every anticipated specification section.

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- 2.2 The goal of the Design Development phase is to identify and make every design decision in every applicable discipline necessary to complete the project. It is desirable to communicate these decisions in graphic or written form as part of the submission, although it is recognized that due to the inherent nature of the submission this is not always possible. However, the design team working on the project should be able to refer to notes, calculations, or other materials that have been prepared or obtained previously to answer any question about the intended design.
- 2.3 The submission will be reviewed for compliance to program and previous schematic design submission(s), as well as adherence to previous decisions and directions given, and to the University standards for construction. In addition, the submission will be critiqued for conflicts, concerns, coordination issues, and opportunities for improvement.
- 2.4 Content: The minimum acceptable content will vary with the nature of the project and will require discussions between the designer and design manager to determine what will be required. Likewise, a judgment call needs to be made by the design manager as to whether the intent of the submission has been achieved by the design team. In general, though, a complete Design Development Submission will contain the following:
- 2.5 Minimum Design Development Documentation Requirements
- 2.5.1 Fully developed preliminary graphic materials including the elements described herein and in Paragraph 2.6, Drawings, below, describing the entire proposed building or buildings, typically including architectural plans of all levels and elevations of all exterior wall surfaces at a scale not smaller than 1/8" = 1'0", showing all interior partitions, doors, fenestration, stairs, ramps, elevators, utility rooms, closets, and plumbing fixtures; building sections at a scale not less than 1/4" = 1'0"; typical interior elevations; furniture and equipment layouts of all typical and unique spaces sufficient to illustrate their functional suitability; typical wall sections; typical window, door, interior partition and roof edge details; structural foundation plan, typical floor framing plan and framing sections showing main member sizes; plumbing and piping plans with header diagrams; HVAC plans with preliminary calculations, single line duct layout, equipment list and locations, and control diagram showing sequence of operation; fire protection plans with riser diagram and single line piping and head layout; lighting plans with fixture and switching layout and light level calculations; electrical power plans with panel schedule and locations, equipment sizes and layouts, riser diagram and load estimate; fire alarm drawings showing zones, device locations and riser diagram; and telecommunications plans with conduit and cable tray layouts, riser diagrams and locations of voice and data outlets. Room numbers in accordance with campus standards, column lines, scale and north arrow should be shown on plans for all disciplines.
- 2.5.2 Fully developed preliminary graphic materials describing the entire proposed development of the site, typically including separate dimensioned site circulation, utilities, grading, lighting and planting plans, and typical details or manufacturers' cuts of site lighting fixtures, signage, furnishings and structures.
- 2.5.3 Tabular comparison of all room areas as programmed, as shown in the Schematic Design submittal, and as shown in the Design Development submittal.
- 2.5.4 Study models and/or perspective sketches illustrating the proposed architectural design in detail.
- 2.5.5 Fully developed written analysis of the initial and life cycle costs, performance characteristics, and operating/maintenance requirements of proposed structural, mechanical, electrical, electronic and other technical systems, including their impact on existing steam, water, waste water, electrical and other services provided to the project.
- 2.5.6 Draft specifications and manufacturers' data sheets for all principal construction materials, equipment, fixtures and systems proposed for the project, including exterior and interior building materials and finishes, structural system, plumbing and piping systems, HVAC systems including control systems,

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lighting, electrical power and telecommunications systems, and other significant building or site components.

- 2.5.7 Cost estimate based on quantities and criteria established by the Design Development documentation required by Subparagraphs 2.5.1 through 2.5.6 (see Subparagraph 2.4.3.2 of the USNH Standard Form of Agreement for Professional Planning and/or Design Services).
- 2.5.8 Comprehensive synopsis of regulatory requirements for the project, identifying salient design criteria and requirements of all applicable codes, laws and regulations.

2.6 Drawings

- 2.6.1 The designer's normal title and index page naming the project and "Design Development Submission", and dated, including:
 - 2.6.1.1 Index of proposed final list of drawings
 - 2.6.1.2 Other elements customarily a part of designer's standard title and index page such as list of abbreviations, key plans, symbolization keys, general notes, etc.
- 2.6.2 Scalable site drawings as will be necessary to describe the sitework of the project, including:
 - 2.6.2.1 Existing conditions
 - 2.6.2.2 Proposed conditions (drawing in progress sufficient to describe final intent)
 - 2.6.2.3 Utility work (drawings in progress sufficient to describe final intent)
 - 2.6.2.4 Hardscapes and landscapes (drawings in progress sufficient to describe final intent)
 - 2.6.2.5 Space allotted for relevant details (detail drawings not required but desirable to the extent known and possible to provide)
 - 2.6.2.6 Relevant schedules (schedule detail not required but desirable to the extent known and possible to provide)
- 2.6.3 Scalable architectural drawings as necessary to describe the project, including:
 - 2.6.3.1 Demolition requirements (drawings in progress sufficient to describe final intent)
 - 2.6.3.2 Hazardous material abatement requirements (drawings sufficient to describe final intent)
 - 2.6.3.3 Floor plans
 - 2.6.3.4 Roof plans (drawings in progress sufficient to describe final intent)
 - 2.6.3.5 Reflected ceiling plans (drawings in progress sufficient to describe final intent)
 - 2.6.3.6 Exterior Elevations
 - 2.6.3.7 Wall Sections
 - 2.6.3.8 Door, finish, and other planned schedules (schedule detail not required but desirable to the extent known and possible to provide)
 - 2.6.3.9 Space allotted for relevant details, interior elevations, etc. (detail drawings not required but desirable to the extent known and possible to provide)
- 2.6.4 Scalable structural drawings as necessary to describe the project, including:
 - 2.6.4.1 Key to structural abbreviations and symbols, and general notes (if not provided on title and index pages)
 - 2.6.4.2 Foundation plans (drawings in progress sufficient to describe final intent)
 - 2.6.4.3 Framing plans for all floors and roofs (drawings in progress sufficient to describe final intent)
 - 2.6.4.4 Space allotted for relevant details, etc. (detail drawings not required but desirable to extent known and possible to provide)
- 2.6.5 Mechanical drawings as necessary to describe the project, including:
 - 2.6.5.1 Key to mechanical abbreviations and symbols, and general notes (if not provided on main title and index pages)
 - 2.6.5.2 HVAC demolition plans (drawing in progress sufficient to describe final intent)
 - 2.6.5.3 HVAC plans (drawings in progress sufficient to describe final intent)

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- 2.6.5.4 HVAC schedules (schedule detail not required but desirable to the extent known and possible to provide)
- 2.6.5.5 HVAC details and diagrams (detail drawings not required but desirable to the extent known and possible to provide)
- 2.6.5.6 Plumbing demolition plans (drawings in progress sufficient to describe final intent)
- 2.6.5.7 Plumbing plans (drawings in progress sufficient to describe final intent)
- 2.6.5.8 Plumbing schedules, details, and diagrams (detail drawings and schedule details not required but desirable to the extent known and possible to provide)
- 2.6.5.9 Fire protection drawings, details, and/or schedules (drawing in progress sufficient to describe final intent)
- 2.6.6 Electrical drawings as necessary to describe the project, including:
 - 2.6.6.1 Key to electrical abbreviations and symbols, and general notes (if not provided on main title and index pages)
 - 2.6.6.2 Electrical demolition plans (drawings in progress sufficient to describe the final intent)
 - 2.6.6.3 Electrical power distribution plans (drawings in progress sufficient to describe the final intent)
 - 2.6.6.4 Lighting plans (drawings in progress sufficient to describe final intent)
 - 2.6.6.5 Lighting schedules (schedule detail not required but desirable to the extent known and possible to provide)
 - 2.6.6.6 Communications systems plans (Telephone/data, drawings in progress sufficient to describe the final intent)
 - 2.6.6.7 Special purpose systems plans (Fire alarm, A-V, security, BAS, CATV, CCTV, PA, central clock, etc., drawings in progress sufficient to describe final intent)
 - 2.6.6.8 Communications and special systems details and/or schedules (detail drawings and schedule details not required but desirable to the extent known and possible to provide)
- 2.6.7 Other
 - 2.6.7.1 If it is customary or anticipated for the designer to utilize a separate small detail set, such an in-progress set should also be issued with the Design Development Submission.
- 2.7 Specifications
 - 2.7.1 A first edit draft of a full set of bound or loose leaf detailed specifications (Divisions 1 thru 33), with all applicable specification division sections including:
 - 2.7.1.1 Dated cover page indicating project name and "Design Development Submission"
 - 2.7.1.2 Table of contents
- 3. **Minimum Construction Documents Documentation Requirements** (Paragraphs 3.1 – 3.3 apply to either a design/bid/build or construction management contract but do not apply to a USNH Standard Form of Agreement between Owner and Design/Builder contract)
 - 3.1 Complete final working drawings and specifications, prepared and checked in accordance with the Quality Control Program required by Paragraph 4.5.1 of the USNH Standard Form of Agreement for Professional Planning and/or Design Services, fully describing all parts of the Work. These will typically include, in addition to the documentation required by Section 2, Design Development Submission Requirements, site piping diagrams, pipe sizes, connection details and design calculations; construction area limits; protection and guying details for existing and proposed trees; building construction and site development phasing; building envelope flashing; exterior, roof and roof mounted equipment details; structural framing and foundation details, beam and column schedules, notes and calculations; fully dimensioned plans of each building level; demolition plans; interior finish, door and hardware schedules; interior elevations; reflected ceiling plans; interior finish and partition details; elevator and hoistway details; pipe sizes, riser diagrams, header diagrams, and calculations for all plumbing, fire protection and radiation systems; coil, convector,

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valve, plumbing fixture and water heater details and specifications; HVAC duct layouts including complete plans, plus cross sections where required to show installation requirements clearly, dimensioned and drawn to scale; control system diagrams; HVAC equipment, hood, damper, louver, grille and register details; HVAC design calculations; lighting fixture schedule, control diagrams, installation details and design calculations; electric panel schedules, load summary, connections to other systems and design calculations; fire alarm riser diagram and connection details to HVAC and other systems; telecommunications systems backboard layouts, connection diagram and details, voice and data outlet and cable tray locations and details, and cabling schedule; and details for all special facilities such as loading docks, handicapped access provisions, materials handling or safety devices, etc.

- 3.2 Detailed analysis of the projected quantities of electrical power, gas, heating oil, steam, hot water, and any other applicable energy or utilities consumption, expressed in energy units per square foot per year, and estimated annual cost for each such utility.
- 3.3 Cost estimate based on 90% completion of the documentation required by Paragraph 3.1 (see Subparagraph 2.4.4.3 of the USNH Standard Form of Agreement for Professional Planning and/or Design Services). Submit two complete sets to the Owner for review purposes at 90% completion.