

**MASTER DESIGN AGREEMENT**

by and between

**Massachusetts Institute of Technology,  
as “Owner”**

**and**

**XXXXXXXXXXXXXXXXXX  
as “Landscape Architect”**

**Dated: \_\_\_\_\_, 20\_\_**

## **TABLE OF ARTICLES**

<b>ARTICLE 1.</b>	<b>MASTER AGREEMENT TERM; PARTY REPRESENTATIVES; DEFINED TERMS</b>
<b>ARTICLE 2.</b>	<b>LANDSCAPE ARCHITECT'S RESPONSIBILITIES</b>
<b>ARTICLE 3.</b>	<b>SERVICES; ARCHITECT RELEASES</b>
<b>ARTICLE 4.</b>	<b>ADDITIONAL SERVICES</b>
<b>ARTICLE 5.</b>	<b>OWNER'S RESPONSIBILITIES</b>
<b>ARTICLE 6.</b>	<b>COPYRIGHTS AND LICENSES</b>
<b>ARTICLE 7.</b>	<b>CLAIMS AND DISPUTES</b>
<b>ARTICLE 8.</b>	<b>TERMINATION OR SUSPENSION OF SERVICE AGREEMENTS</b>
<b>ARTICLE 9.</b>	<b>COMPENSATION</b>
<b>ARTICLE 10.</b>	<b>MISCELLANEOUS PROVISIONS</b>
<b>ARTICLE 11.</b>	<b>SPECIAL TERMS AND CONDITIONS</b>
<b>ARTICLE 12.</b>	<b>CONFIDENTIALITY; PUBLIC ANNOUNCEMENT</b>
<b>ARTICLE 13.</b>	<b>SCOPE OF THIS MASTER AGREEMENT</b>
<b>ARTICLE 14.</b>	<b>AUTHORITY</b>
<b>Exhibit A</b>	Architect Release
<b>Exhibit B</b>	Audit Requirements
<b>Exhibit C</b>	Owner's Reimbursable Expense Policy
<b>Exhibit D</b>	Equal Employment Opportunity Requirements

This Master Design Agreement between Owner and Landscape Architect (this “**Master Agreement**”) is made as of **DATE** by and between **Massachusetts Institute of Technology, a Massachusetts** charitable corporation (“**Owner**”) with an address of 77 Massachusetts Avenue, Building NW23, Cambridge, MA 02142, Attn: Department of Facilities, and **XXXXXXXXXXXX** with an address of **XXXXXXXXXXXXXXXXXXXX** (“**Landscape Architect**”). Landscape Architect shall from time to time, coordinate, supervise and perform landscape architectural services (the “**Landscape Architectural Services**” or the “**Services**”) for Owner on various projects at and within Owner’s facilities.

In order to simplify the contracting process, Owner and Landscape Architect expressly agree, so long as this Master Agreement remains in effect, that this Master Agreement sets forth the general conditions and terms that will apply to any work order executed by Owner and Landscape Architect pursuant to this Master Agreement (“**Architect Release**”) for Landscape Architectural Services for a particular project (a “**Project**”).

Owner and Landscape Architect agree as follows:

#### **ARTICLE 1      MASTER AGREEMENT TERM; PARTY REPRESENTATIVES; DEFINED TERMS**

**§ 1.1** This Master Agreement shall be effective commencing on the date first written above (the “**Effective Date**”) and expiring on June 30, 2026.

**§ 1.2** This Master Agreement shall apply to all Architect Releases agreed to by Owner and Landscape Architect within the term of this Master Agreement until completion of Architect Release. An agreed upon Architect Release together with this Master Agreement (as may be amended from time to time) forms a “**Service Master Agreement**”. A Service Master Agreement represents the entire and integrated agreement between the parties, and supersedes prior negotiations, representations, or agreements, either written or oral. A Service Master Agreement may be amended or modified only by the written agreement of both Owner and Landscape Architect.

**§ 1.3** This Master Agreement will automatically renew for a period of twelve (12) months commencing on July 1, 2026 and expiring on June 30, 2027, unless either party provides notice of their intent not to renew this Master Agreement. Notice must be provided at least 60 days prior to the renewal date. In the event either party elects not to renew this Master Agreement, the terms of this Master Agreement shall remain applicable until all Architect Releases under this Master Agreement are completed or terminated. Each Architect Release shall be governed by the Master Agreement in effect at the time of the execution and delivery of such Architect Release, except as otherwise provided in a subsequent amendment to such Master Agreement or Architect Release.

**§ 1.4** Owner identifies the following representative authorized to act on Owner’s behalf with respect to this Master Agreement:

Christos Maravelias, Director of Campus Construction

or

Joe Higgins, Vice President for Campus Services and Stewardship

In each Architect Release, Owner will identify a representative authorized to act on Owner’s behalf with respect to Architect Release.

**§ 1.5** Landscape Architect identifies the following representative authorized to act on Landscape Architect's behalf with respect to this Master Agreement:

**XXXXXXX – XXXX@XXXX.COM**

In each Architect Release, Landscape Architect will identify a representative authorized to act on behalf of Landscape Architect with respect to such Architect Release.

## **ARTICLE 2 LANDSCAPE ARCHITECT'S RESPONSIBILITIES**

**§ 2.1** Landscape Architect may refuse to agree to any Architect Release issued by Owner.

**§ 2.2** Landscape Architect shall perform all of its services consistent with the professional standards of skill, care and diligence ordinarily expected of landscape architectural firms in the greater Boston or Cambridge area with experience in projects of comparable scope and complexity (the "Standard of Care"). Landscape Architect shall perform its services as expeditiously as is consistent with the Standard of Care and the orderly progress of the Project and in accordance with the progress schedule, if any, attached to any Architect Release.

**§ 2.3** Except with Owner's knowledge and consent, Landscape Architect shall not engage in any activity, or accept any employment, interest, or contribution that would reasonably appear to compromise Landscape Architect's professional judgment with respect to this Master Agreement or any Service Master Agreement.

**§ 2.4** Landscape Architect shall provide and maintain, and shall require its consultants and sub-consultants to maintain, the following insurance at all times during the term of this Master Agreement and such extended period as may be required pursuant to this Master Agreement. Immediately upon execution of this Master Agreement, Landscape Architect shall deliver to Owner Certificates of Insurance (along with copies of any endorsements specifically applicable to Owner) evidencing that Landscape Architect has obtained the insurance required by this Section.

**§ 2.4.1** Professional Liability insurance for claims arising out of the performance of professional services under this Master Agreement. Professional Liability insurance shall have the minimum limit of liability set forth in an Architect Release for each claim and annual aggregate per annual policy period. Landscape Architect shall provide to Owner a "prior acts endorsement" to such coverage, plus a certificate of insurance upon request of Owner annually for a total of six (6) consecutive years after Substantial Completion of the Project or, at Landscape Architect's option, tail coverage for a total of six (6) years after Substantial Completion. Promptly following Owner's written request, Landscape Architect shall disclose to Owner the aggregate of claims asserted against Landscape Architect's professional liability insurance during the prior twelve (12) month period and the coverage applicable to such claims;

**§ 2.4.2** Commercial General Liability (CGL) with those limits of insurance set forth in an Architect Release form. CGL coverage shall be written on ISO Occurrence form or a substitute form providing equivalent coverage and shall include all standard forms of coverage, including but not limited to Premises (including X-C-U), Broad Form Property Endorsement,

Completed Operations, Independent Contractor's, Products, and personal and advertising injury. The policy shall include ISO Additional Insured Endorsement CG 20 10 (11 85) or CG2033 (10 01) and CG2037 (10 01) or an endorsement providing equivalent coverage to the Additional Insureds. This insurance for the Additional Insureds shall be as broad as the coverage provided for the named insured;

**§ 2.4.3** Automobile Liability with limits set forth in an Architect Release for each accident, including coverage for liability arising out of all owned, leased, hired and non-owned automobiles;

**§ 2.4.4** Commercial Umbrella with limits set forth in an Architect Release for per occurrence/annual aggregate. Umbrella coverage must follow the form of the CGL, include as additional insureds all entities defined above as Additional Insureds on the CGL and shall be subject to same terms as stated above;

**§ 2.4.5** Workers Compensation with statutory limits and Employers Liability with limits set forth in an Architect Release for each accident for bodily injury by accident and each employee for injury by disease; and

**§ 2.4.6** All insurance companies shall have an AM Best Rating of "A- VII" or better.

**§ 2.5** Landscape Architect shall coordinate its services with those services provided by Owner and Owner's consultants. Landscape Architect shall be entitled to rely on the accuracy and completeness of the services and information furnished by Owner and Owner's consultants. Landscape Architect shall provide prompt written notice to Owner if Landscape Architect becomes aware of any error, omission or inconsistency in such services or information.

**§ 2.6** Landscape Architect acknowledges that Owner may enter into a construction contract for a Project (the "**Construction Contract**"). If Owner enters into such Construction Contract, then the form of Construction Contract shall be provided to Landscape Architect and Landscape Architect agrees that Landscape Architect shall administer such Construction Contract as part of the Services for such Project in accordance with Section 3.7 of this Master Agreement and that such administration services shall not be deemed to be Additional Services (as defined below). In the event of any inconsistency between the Construction Contract and this Master Agreement with respect to the rights, responsibilities and duties of Landscape Architect, the provisions of this Master Agreement shall control; provided, however, that if Landscape Architect becomes aware of any material inconsistency, Landscape Architect shall promptly notify Owner.

### **ARTICLE 3 LANDSCAPE ARCHITECTURAL SERVICES; ARCHITECT RELEASE**

Landscape Architect's Services shall be governed by this Master Agreement. Landscape Architect acknowledges and agrees that for each Project, Landscape Architect shall perform the Services set forth in an Architect Release executed by Owner and Landscape Architect, which Architect Release shall be substantially in the form attached hereto as Exhibit A. For purposes of a Service Master Agreement, the Services shall be defined as follows:

### § 3.1 General Responsibilities

**§ 3.1.1 Licensure.** If any Governmental Authority requires licenses or registrations for the performance of the Services, or any part thereof, Landscape Architect and the consultants and advisors to be retained by Landscape Architect as part of its Services ("**Landscape Architect's Advisors**") shall obtain and hold, or employ persons or entities holding, such valid licenses or registrations.

**§ 3.1.2 Landscape Architect's Advisors.** Landscape Architect's Advisors shall be identified by Landscape Architect in an Architect Release, which shall include all engineering and other consulting services customarily associated with projects of comparable size and complexity. In the event that Landscape Architect or Owner believes that Landscape Architect must retain Landscape Architect's Advisors other than those listed therein, Landscape Architect shall disclose such Landscape Architect's Advisors to Owner with such supporting information and documentation as Owner may require. Such Landscape Architect's Advisors shall be subject to Owner's acceptance in its sole discretion. Landscape Architect shall be responsible for the acts and omissions of its personnel, Landscape Architect's Advisors of all tiers, and persons and entities directly or indirectly employed by them.

§ 3.1.2.1 Fully executed copies of all consulting agreements shall be provided to Owner within thirty (30) days of execution and before including Landscape Architect's Advisors services in an invoice to Owner.

§ 3.1.2.2 Landscape Architect shall require that Landscape Architect's Advisors consult and cooperate with Owner, Owner's consultants for a Project ("**Owner's Consultants**"), Owner's contractor for a Project ("**Contractor**"), and one another as necessary to perform their own portions of the Services and to avoid delays and disruptions to a Project or Owner's other projects and operations.

§ 3.1.2.3 Landscape Architect shall require Landscape Architect's Advisors to be bound by the terms of this Master Agreement, and to assume toward Owner all the contractual obligations and responsibilities that Landscape Architect has assumed toward Owner with respect to services provided by such Landscape Architect's Advisors. Landscape Architect shall not limit or waive rights or remedies against, or the liability of, any of Landscape Architect's Advisors, by agreement or otherwise, unless such limitation or waiver is expressly authorized in advance in writing signed by Owner. This Master Agreement shall control in the event of conflicts or discrepancies between such consulting agreements and the Service Master Agreement.

§ 3.1.2.4 Landscape Architect hereby assigns, transfers and conveys to Owner all of its right, title and interest in and to any consulting agreement for a portion of the Services. Such assignment shall only become effective as of the effective date of Architect Release to which such agreement applies, and enforceable only after a termination of this Master Agreement as a whole or of the Project to which such agreement applies, and only as to those consulting agreements

that Owner expressly accepts by written notification from Owner to Landscape Architect.

§ 3.1.2.4 (a) Any agreements assigned to, and accepted by, Owner in accordance herewith may, in turn, be assigned by Owner, in its sole discretion, without recourse to Owner, in which event such assignee shall assume Owner's rights and obligations under the consulting agreement.

§ 3.1.2.4 (b) Landscape Architect shall, at Owner's option, assign all of its right, title and interest in and to any consulting agreement(s) directly to Owner's designee.

**§ 3.1.3 Required Information.** At the earliest possible date, Landscape Architect shall provide Owner with a list of information or documentation required from Owner for the performance of the Services. Landscape Architect shall assemble, review and coordinate documents furnished from Owner's record storage and return such documents.

**§ 3.1.4 Meetings.** At the intervals set in any Architect Release, Landscape Architect and Landscape Architect's Advisors, as applicable to Landscape Architect's Advisors' scope, shall attend meetings by phone, web/online, or in-person as reasonably necessary in all phases with representatives of Owner and Contractor, and as required by Owner, and shall be represented at such meetings by persons having knowledge of the matters to be addressed and authorized to act for such entities at all times. Prior to the Construction Phase, Landscape Architect shall prepare the agenda, preside over and record written minutes of all meetings and shall provide Owner and meeting attendees with an electronic and hard copy of such minutes within a reasonable time after such meeting. Any exceptions taken or clarifications to the minutes shall be submitted to Landscape Architect and Contractor within seven (7) days or prior to the next meeting, or the minutes shall be deemed accepted, and such exceptions or clarifications shall be taken up at the next meeting. Any such clarifications or exceptions shall be noted in the meeting minutes for the next regular meeting.

**§ 3.1.5 Presentations.** Landscape Architect shall attend, make presentations and participate in meetings as Owner may direct in connection with the Services. In addition to the Instruments of Service to be prepared by Landscape Architect hereunder, Landscape Architect shall assist Owner in the preparation of documentation, records and submissions required by Governmental Authorities or Owner.

**§ 3.1.6 Coordination.** Landscape Architect shall be solely responsible for coordinating all portions of the Services under this Master Agreement, including those Services performed by its personnel and Landscape Architect's Advisors within the scope of this Master Agreement, to ensure that the Drawings and Specifications are integrated into a complete and coordinated set of documents, are compatible with existing conditions and fully describe the entirety of the Work to be performed in a constructible, unified, and coherent manner consistent with the Standard of Care. To the extent that any portion of the Services is interdependent upon the services of third parties, including Owner's Consultants, Landscape Architect shall coordinate with such persons or entities as part of its Services.

However, Landscape Architect shall not be responsible for the accuracy, timeliness or technical sufficiency of the services provided by such other parties.

**§ 3.1.7 Recordkeeping.** Landscape Architect acknowledges that Owner has particular requirements with respect to accounting, billing, reimbursement and administration of the Work, and it agrees to fully cooperate in keeping, organizing and maintaining project documentation in accordance with the requirements of Owner's audit requirements attached hereto as Exhibit B.

§ 3.1.7.1 Landscape Architect and Landscape Architect's Advisors of all tiers shall keep and maintain detailed, organized documents and data relating to the Services for a period of at least six (6) years after the date of Final Completion of the Work on a Project or off-season Commissioning of all equipment, whichever is later.

§ 3.1.7.2 Landscape Architect and Landscape Architect's Advisors of all tiers shall grant reasonable access to Owner, or its representatives, to inspect, audit and copy all their documents, data, records and files, electronic or otherwise pertaining to the Services, at any reasonable time during or after completion of the Services.

§ 3.1.7.3 Owner may direct Landscape Architect to use E-Builder (or such other software as Owner may choose) in the performance of the Services subject to additional terms, conditions and instructions that Owner shall provide to Landscape Architect. Landscape Architect shall cause its personnel and those of Landscape Architect's Advisors to take any training courses required by Owner, at no additional cost to Owner. Owner shall provide a license for E-Builder for Landscape Architect and Landscape Architect's Advisors as necessary for Landscape Architect to furnish the Services. Landscape Architect acknowledges and agrees that Landscape Architect's use of E-Builder shall not alter any notice requirement or obligation set forth in this Master Agreement.

**§ 3.1.8 Hazardous Materials.** If Landscape Architect or Landscape Architect's Advisors know or become aware of Hazardous Materials at a Project Site other than those introduced by those performing the Work, or if they become aware of any spill or release of Hazardous Materials at a Project Site, Landscape Architect shall immediately notify Owner and where applicable denote in project documents. Unless otherwise agreed in writing, Landscape Architect and Landscape Architect's Advisors shall have no responsibility for the presence, handling, removal or disposal of, or exposure of persons to Hazardous Materials at a Project Site unless Landscape Architect or those for whom it is responsible fails to provide such notice or introduces the Hazardous Materials to the Project Site. Landscape Architect shall not specify any product that uses or incorporates materials containing asbestos, mercury, lead or PCBs in any Project or Project Site.

**§ 3.1.9 Standards.** Landscape Architect and Landscape Architect's Advisors shall familiarize themselves with each Project and Owner's requirements and perform the Services in accordance with this Master Agreement (including but not limited to the provisions of



Section 2.2), all applicable laws, ordinances, rules, regulations, statutes, by-laws, court decisions, and orders and requirements of all public authorities (collectively, "**Applicable Law**"), and all of the following:

- § 3.1.9.1 Design standards provided to Landscape Architect by Owner, as may be updated from time to time ("**Owner's Design Standards**"), to the extent applicable to the Services. If, at any point during a Project, Landscape Architect judges a portion of the Design Standards to be in conflict with a Project or design requirement or is otherwise detrimental to a Project, Landscape Architect shall provide an explanation and seek written permission from Owner to deviate from the Design Standards. If Landscape Architect deviates from the Design Standards without specific written permission from Owner, Owner may, regardless of the time of discovery, instruct Landscape Architect to modify the Instruments of Service as necessary, without additional compensation, to comply with the Design Standards.
- § 3.1.9.2 Owner's CAD Guidelines, current as of the date of issuance of Architect Release.
- § 3.1.9.3 industry practices and standards with which Landscape Architect and Landscape Architect's Advisors must comply in order to fulfill Landscape Architect's duties under this Master Agreement, including those set forth in Section 2.2.
- § 3.1.9.4 the Instruments of Service requirements described herein and as may be specified in Architect Release.

**§ 3.1.10 Deliverables.** Landscape Architect shall furnish Owner with, at a minimum, those Instruments of Service specified herein and in Architect Release, in the Design Standards, or as otherwise required by above standards. Landscape Architect shall re-perform, revise, or cause to be re-performed or revised, at no cost to Owner and without delay to the Project, any of its Instruments of Service that fail to comply with Section 2.2 or Applicable Law, whenever discovered.

**§ 3.1.11 Intentionally Deleted.**

**§ 3.1.12 Sustainability and Climate Resiliency Impacts.** Landscape Architect shall review with Owner performance goals and strategies for the site and campus, such as landscape-based green infrastructure. Landscape architect shall explore alternative approaches that may affordably and reasonably achieve Owner's objectives to design and construct environmentally responsible projects that align with MIT's "Fast Forward" climate action initiative and other Institute efforts related to resiliency and sustainability.

**§ 3.1.13 Intentionally Deleted.**

**§ 3.1.14 Design to Control Budget.** If at any time prior to establishing of the Stipulated Sum or GMP, Owner-approved reconciled estimate, the lowest bona fide bid or the negotiated proposal for the Stipulated Sum or GMP exceeds the Control Budget, Owner may, in its

sole discretion: (a) require Landscape Architect to modify the Drawings and Specifications to conform to Control Budget and to the Schedule without additional compensation (unless Owner has materially reduced the Control Budget or program for reasons for which Landscape Architect is not responsible); (b) increase the amount of the Control Budget accordingly, with a corresponding increase in the compensation due to Landscape Architect, if applicable; (c) withhold authorization to commence the subsequent phase, in whole or in part; (d) confer with Landscape Architect as to a method of reducing the Project costs; (e) authorize re-bidding or re-negotiate the bids or proposal; and (f) suspend or terminate in accordance with this Master Agreement. In the event that Owner does not develop its own estimate, Landscape Architect shall establish its own estimate for the purposes of reconciling with the Control Budget. Until Owner establishes a Control Budget, the provisions of this paragraph shall not apply.

**§ 3.1.15 Cost Review.** In each design phase, Landscape Architect shall cooperate with Owner and/or its cost consultant(s), if any, in their preparation of estimates, and shall review and advise Owner on such estimates.

**§ 3.1.16 Authorization to Proceed.** In each phase set forth in this Article, Owner, Landscape Architect and, if applicable, Contractor will meet and review Landscape Architect's Drawings and Specifications and identify necessary changes due to comments received from Owner and Governmental Authorities. Landscape Architect will document the decisions reached and the actions to be taken for each necessary change. Each design phase will be complete upon Owner's authorization to proceed to the next design phase. Unless noted otherwise in Architect Release, Landscape Architect shall not proceed with Services of subsequent phases without such written authorization. Owner shall have no obligation to compensate Landscape Architect for Services undertaken but not authorized.

**§ 3.2 Conceptual Design Phase.** If specified in an Architect Release, Landscape Architect shall provide the following Services during the Conceptual Design Phase, based on the information provided in Architect Release:

**§ 3.2.1 Strategic Project Planning.** Meet with representatives of Owner's involved departments, offices and other designees to define common goals, objectives, organization and procedures for the Project. Develop a work plan that outlines the process by which these will be attained. Upon reaching consensus, prepare and submit a summary of the goals and objectives of the planning study and the work plan to be followed.

**§ 3.2.2 Programming.** Conduct interviews and workshops, and collect other information as necessary to document the current and anticipated program needs and requirements.

**§ 3.2.3 Site Analysis and Development.** Inspect the Project Site to become familiar with the conditions in which the Work is to be performed. Analyze the development of the proposed Project Site, including land utilization, structure placement, facilities development, movement systems (traffic, circulation and parking), lay-down storage areas, utility systems, surface and subsurface conditions, ecological and historical requirements, topography, zoning and other legal restrictions (including but not limited to the Americans with Disabilities Act (the "ADA"), variances, and local building codes),

and landscape concepts and forms. Prepare and submit a report, including appropriate Instruments of Service, of Landscape Architect's site analysis. Provide updates to such Instruments of Service as the Services progress. Under the direction of Owner, Landscape Architect shall seek out and coordinate, to the extent reasonably possible, with community groups, owners, design professionals and contractors actively involved in projects and operations at adjacent or nearby properties whose activities may be impacted by or may impact the Services or the Work.

**§ 3.2.4 Existing Facilities Assessment.** Make such field inspections and measurements as necessary to become familiar with existing conditions at the Project Site and conduct whatever investigations of existing conditions are necessary to ensure that the design is appropriate and complete. Verify configuration of existing spaces. Field measure critical dimensions. Verify type and condition of existing systems based on Owner-provided information and Landscape Architect's inspection. Prepare and submit a report, including appropriate Instruments of Service, certifying the performance of such investigation and indicating the project's capabilities, limitations and deficiencies based on the identified program requirements.

**§ 3.2.5 Design Concepts.** Based on Owner's direction regarding preferred conceptual alternative(s), develop alternative(s) based on the program needs and space requirements. Document circulation and flow patterns, and the conceptual design approach for all relevant project elements. Identify any special design considerations that may require specialty Landscape Architect's Advisors.

**§ 3.2.6 Estimating.** Prepare a complete, detailed estimate of the Stipulated Sum or GMP. Reconcile its estimate with those of Owner and/or its cost consultant(s), if any, or any Landscape Architect's Advisors.

**§ 3.2.7 Project Sequencing.** Determine Owner's criteria for Project sequencing. For each selected design concept(s), collaborate with Owner, and Contractor, if any, to investigate options for sequencing the Project as a series of discrete projects or phases. Identify Project sequencing based on such criteria.

**§ 3.2.8 Presentation Materials.** For use in fundraising or any other purpose by Owner, prepare and submit Instruments of Service, including models, renderings and final Drawings, of a type and quality ordinarily presented to Owner during design reviews.

**§ 3.3 Schematic Design Phase Services.** If specified in an Architect Release, Landscape Architect shall provide the following Services during the Schematic Design Phase, based on the approved Conceptual Design Phase documents or other documents approved by Owner:

**§ 3.3.1 Strategic Project Planning.** If not previously addressed in the Conceptual Design Phase, perform the activities described in Section 3.2.1.

**§ 3.3.2 Program Review and Evaluation.** Review and examine the program and other information furnished by Owner and its designees, to ascertain the requirements of the Project. Evaluate Owner's program, Schedule and Control Budget, each in terms of the

other. Meet as needed with Owner and its designees to confirm Owner's needs with respect to aesthetic, functional, time, financial and other design-related requirements.

**§ 3.3.3 Design Standards Review and Evaluation.** Review and evaluate Owner's Design Standards, and develop a strategy for incorporation into the Project design.

§ 3.3.3.1 Notify Owner as to any portion of the Design Standards that Landscape Architect judges to be in conflict with a Project or design requirement or is otherwise detrimental to the Project, as required by Section 3.1.9.

§ 3.3.3.2 If specified in Architect Release, prepare "basis of design" documentation for architectural, structural, mechanical, electrical and plumbing, as applicable to a Project.

§ 3.3.3.3 If LEED certification is specified in Architect Release, Landscape Architect or Landscape Architect's Advisors will prepare the LEED scorecard, sustainability matrix or sustainability checklist, as appropriate, to demonstrate how a Project will attain Owner's sustainability objectives.

**§ 3.3.4 Programming.** If not previously addressed in the Conceptual Design Phase, perform the activities described in Section 3.2.2.

**§ 3.3.5 Site Analysis and Development.** If not previously addressed in the Conceptual Design Phase, perform the activities described in Section 3.2.3. In addition, prior to any subsurface work, Landscape Architect working with Owner's Project Team must review existing drawings, specifications, surveys, reports and other documents available from Owner, and also check and verify any required conditions or actions based on MIT's Activity Use Limitation ("AUL") list and GIS map. If the Project site has an AUL, Landscape Architect shall collaborate with Owner's project team to meet its requirements. Prepare and submit a report, including appropriate Instruments of Service, of Landscape Architect's site analysis.

**§ 3.3.6 Intentionally Deleted.**

**§ 3.3.7 Existing Facilities Assessment.** If not previously addressed in the Conceptual Design Phase, perform the activities described in Section 3.2.4.

**§ 3.3.8 Analysis of Alternatives.** Analyze and develop alternative approaches to the design of the Project for the purpose of maximizing Owner's objectives for the Project, including scope, cost, Schedule, design intent, and sustainability, energy management and materials specification. Perform the following:

§ 3.3.8.1 Review with Owner a number of alternative approaches to the overall design and construction of the Project as set forth in Architect Release.

§ 3.3.8.2 Suggest alternatives to various components and construction methodologies. Evaluate each approach in terms of overall Project concept, current and future needs, operating costs, continuing operation, expected useful life of

completed project, impact on programs and operations during the Construction Phase, methods of minimizing such impact and, in collaboration with Owner's designee, phasing, constructability, Schedule and cost.

**§ 3.3.9 Landscape Architectural Design.** Based on the program requirements, Control Budget, and other design criteria, prepare and submit Instruments of Service describing each alternative approach to the overall design of the Project. Identify any special design considerations that may require specialty Landscape Architect's Advisors. Develop preliminary design solutions for landforms, hardscape and plantings, site furnishings and other landscape elements.

**§ 3.3.10 Intentionally Deleted.**

**§ 3.3.11 Intentionally Deleted.**

**§ 3.3.12 Intentionally Deleted.**

**§ 3.3.13 Civil Design.** Develop preliminary design solutions for Project Site drainage systems, storm water management, grading, paving, curb cuts, utilities and fire protection. Develop preliminary design solutions for off-site utility systems improvements required for the Project.

**§ 3.3.14 Intentionally Deleted.**

**§ 3.3.15 Intentionally Deleted.**

**§ 3.3.16 Intentionally Deleted.**

**§ 3.3.17 Materials Research and Specifications.** Review with and advise Owner concerning recommended performance specifications, sustainability, efficiency, and quality standards for potential materials, systems and equipment for each discipline listed above and in accordance with Section 3.1.12 and Section 3.3.8. Prepare and submit outline Specifications in a systems format designated by Owner.

**§ 3.3.18 Estimating.** Prepare a complete, detailed estimate of the Stipulated Sum or GMP. Reconcile its estimate with those of Owner and/or its cost consultant(s), if any, or any Landscape Architect's Advisors.

**§ 3.3.19 Life Cycle Costs Analysis.** If life cycle costs analysis is required, Landscape Architect shall evaluate and submit a report on the economic performance and long-term expense of owning and operating the Project over its design life using the MIT Life Cycle Cost tool.

**§ 3.3.20 Value Engineering.** Landscape Architect shall propose value engineering alternatives and meet with Owner's cost consultants as part of regular design reviews for the purpose of reviewing and analyzing specific value enhancements proposed by such cost consultants that do not affect compliance with Applicable Law, and make recommendations for acceptance or rejection. In addition to first cost, life-cycle cost analysis shall be completed for all such enhancements that have an energy impact. All

such enhancements shall not materially degrade or limit environmental health and safety. Record and submit a list of value engineering modifications considered by Owner. Advise Owner promptly if redesign or a change in the Schedule is required to incorporate the accepted modifications.

**§ 3.3.21 Intentionally Deleted.**

**§ 3.4 Design Development Phase Services.** If specified in an Architect Release, Landscape Architect shall provide the following Services during the Design Development Phase, based on the approved Schematic Design Phase documents:

**§ 3.4.1 Program Consistency.** Confirm that Owner's program, Schedule and Control Budget are consistent with each other. Meet as needed with Owner and its designees to confirm Owner's needs with respect to aesthetic, functional, time, financial and other design-related requirements.

**§ 3.4.2 Landscape Architectural Design.** Establish the final scope, relationships, forms, size and appearance of the Project through plans, sections, elevations, typical construction details, final materials selection, equipment layouts and perspective sketches. Establish final scope of, and submit preliminary details for, landscape construction, materials, plantings, fixtures and furnishings. Provide study models where requested by Owner or deemed appropriate by Landscape Architect to convey three-dimensional aspects of the design. At Owner's option, (a) provide required documentation for necessary variances for Project or (b) redesign the Project to remove the need for variances.

**§ 3.4.3 Intentionally Deleted.**

**§ 3.4.4 Intentionally Deleted.**

**§ 3.4.5 Intentionally Deleted.**

**§ 3.4.6 Intentionally Deleted.**

**§ 3.4.7 Civil Design.** Establish the final scope of, and submit preliminary details for, on-site and off-site civil engineering work.

**§ 3.4.8 Intentionally Deleted.**

**§ 3.4.9 Intentionally Deleted.**

**§ 3.4.10 Intentionally Deleted.**

**§ 3.4.11 Specifications.** Prepare and submit Design Development Phase Specifications consisting of summary Specifications sections organized according to an Owner-approved format. Review potential bidding requirements and collaborate with Owner's designee regarding their further development for the Project. Submit proposed modifications to Owner's form of Division 1 (General Requirements) consistent with the Contract Documents, along with summary Specifications sections identifying major materials and systems and

establishing quality levels in general terms. If the design will require Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, Landscape Architect shall include performance specifications in the Design Development Phase Specifications.

**§ 3.4.12 Estimating.** Prepare a complete, detailed estimate of the Stipulated Sum or GMP. Reconcile its estimate with those of Owner and/or its cost consultant(s), if any, or any Landscape Architect's Advisors.

**§ 3.4.13 Intentionally Deleted.**

**§ 3.4.14 Constructability Review.** Landscape Architect and the Landscape Architect's Advisors shall participate in meetings with Owner and Contractor, if any, for the purpose of reviewing design and construction details and methodologies that affect construction feasibility (including laydown storage areas), efficiency, available labor and materials, alternate equipment that may be available, and possible means and methods of attaining efficiencies in the Schedule or Stipulated Sum or GMP.

**§ 3.4.15 Value Engineering.** Perform the activities described in Section 3.3.20.

**§ 3.4.16 Intentionally Deleted.**

**§ 3.5 Construction Documents Phase Services.** If specified in an Architect Release, Landscape Architect shall provide the following Services during the Construction Documents Phase:

**§ 3.5.1 General.** Based on the approved Design Development Phase Instruments of Service, Owner's comments, and any adjustments in the scope, quality or Control Budget authorized by Owner, prepare Drawings, Specifications and other Instruments of Service setting forth in detail the design requirements for the Project, including technical data, developed in such form as to constitute the basis of the Bid Documents and allow for competitive bidding and complete construction of the Work. Provide, as a material part of the Services, Drawings and Specifications that are detailed, coordinated, constructible, complete and accurate, as required herein, so as to promote accurate bidding and minimize Change Orders attributable to such documents, such Drawings and Specifications to include, without limitation, details regarding boring logs and hazardous materials surveys.

**§ 3.5.3 Construction Phasing Plans.** Assist and advise Owner and Owner's designees in developing construction phasing plans based on the critical sequence of events and the current Schedule prepared by Contractor, if applicable. Prepare separate Instruments of Service as necessary for portions of the Work to be included in early release packages.

**§ 3.5.4 Intentionally Deleted.**

**§ 3.5.5 Signage.** Submit sign design, schedules, specifications and location plans for exterior wayfinding signage.

**§ 3.5.6 Estimating.** Prepare a complete, detailed estimate of the Stipulated Sum or GMP. Reconcile its estimate with those of Owner and/or its cost consultant(s), if any, or any Landscape Architect's Advisors.

**§ 3.5.7 Intentionally Deleted.**

**§ 3.5.8 Constructability Review.** Perform the activities described in Section 3.4.14.

**§ 3.5.9 Value Engineering.** Perform the activities described in Section 3.3.20. In addition, submit a list of affidavits and reports necessary for permitting submissions.

**§ 3.5.10 Stamped Set.** Promptly upon Owner's written authorization to proceed, Landscape Architect shall deliver to Owner one tangible set of the Drawings and Specifications with the seals and authorized signatures of Landscape Architect and, as applicable, Landscape Architect's Advisors, along with a complete set in electronic form.

**§ 3.5.11 Project Equipment List.** Landscape Architect shall provide a utility equipment matrix to indicate all new, altered, and/or replaced equipment installed in the Project, which matrix shall include all equipment numbers and locator tags.

**§ 3.5.12 Intentionally Deleted.**

**§ 3.6 Procurement Phase Services.** If specified in an Architect Release, Landscape Architect shall provide the following as Procurement Phase Services:

**§ 3.6.1 Risk Analysis.** Landscape Architect and Landscape Architect's Advisors shall participate in a risk analysis meeting, in which they shall analyze the financial risk to the Project for undefined costs (including six, 12 and 24 month delays in project commencement), and advise and assist Owner in defining, evaluating and applying probabilities and costs to each identified risk.

**§ 3.6.2 List of Bidders.** Landscape Architect shall review and comment on the list of recommended potential bidders provided by Owner and shall disclose to Owner any familial or business relationship, direct or indirect ownership or control interest or other financial interest it may have with any potential bidders. Owner shall take into account any reasonable objections by Landscape Architect to any potential bidders before a list of bidders is finalized.

**§ 3.6.3 Bid Documents.** Landscape Architect shall confer with Owner and Contractor, if applicable, and agree upon groupings of Drawings and Specifications that will facilitate bidding. With Owner's consent, alternates may be included in the bid packages. Landscape Architect shall prepare and deliver to Owner integrated Bid Documents that are complete and ready for bid in accordance with the Schedule. Landscape Architect shall incorporate the Bid Documents into bid packages and, if Owner so directs, distribute them to prospective bidders, or assist Owner and Contractor, if any, in doing so.

**§ 3.6.4 Pre-Bid Conference.** Landscape Architect shall set the agenda, or assist Owner in setting the agenda, and attend a conference at the Project Site to familiarize prospective bidders



with local conditions affecting the Work, Project schedules, any special systems, materials or methods, and other agenda items required in the Specifications. Landscape Architect shall prepare and circulate minutes to attendees, and prepare and issue Addenda, if any, to all prospective bidders.

**§ 3.6.5 Clarifications.** Landscape Architect shall promptly respond to written requests made by prospective bidders or through Owner for an interpretation of the Bid Documents in the context of the Work to be performed in the form of Addenda for circulation by Owner and Contractor, if applicable.

**§ 3.6.6 Bid Analysis.** After the opening of the bids, Landscape Architect will analyze the bids and provide Owner with its written recommendations regarding the bids and any proposed substitutions. Landscape Architect shall promptly provide Owner with its written response to Contractor's recommendations, if applicable.

**§ 3.6.7 IFC Documents.** Incorporate all Addenda and other approved changes into the Bid Documents and reissue them as an "Issued For Construction" set within seven (7) days of submittal of bids.

**§ 3.6.8 GMP Proposal.** Landscape Architect shall review and advise Owner regarding Contractor's Guaranteed Maximum Price (GMP) Proposal, if any, including review of subcontractor bids, if requested by Owner. Landscape Architect shall respond to questions from Owner, and if requested by Owner, meet with Owner and Contractor to discuss the GMP Proposal.

**§ 3.6.9 Early Releases.** If early release is required for demolition, site work, long-lead items or any other reason, Landscape Architect shall prepare bid documents for such items as a separate early package and shall participate in accordance with this Article 3.6 in separate Procurement Phase activities related to that package.

**§ 3.7 Construction Phase Services.** Landscape Architect shall provide administration of the Construction Contract as set forth below; provided, however, that Landscape Architect shall not have control over or charge of, and shall not 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 Construction Contract:

**§ 3.7.1 Commencement.** Prior to the commencement of the Construction Phase, Landscape Architect shall provide Owner with the status of each Substitution and Alternate in terms of acceptance, rejection or deferral by Owner, and with full descriptions of negotiated modifications to any accepted or deferred Substitutions or Alternates. Substitutions and Alternates that have been accepted by Owner shall be incorporated into this Master Agreement and the Contract Documents, and shall be in full force and effect as though originally included. As part of the Services, Landscape Architect shall coordinate related work and modify surrounding work as required to properly integrate accepted Substitutions and Alternates with the Work.

**§ 3.7.2 Preconstruction Conference.** Landscape Architect shall attend a preconstruction conference at the Project Site.

**§ 3.7.3 Interpretation of Contract Documents.** Landscape Architect shall promptly respond to requests by or through Owner or Contractor for interpretation of the Contract Documents so as not to unreasonably delay the progress of the Work. Landscape Architect's responses shall be in written and/or graphic form, copied to Owner, and in accordance with the intent of the Contract Documents. Landscape Architect shall promptly inform Owner if it expects an interpretation to lead to Pricing Request or Construction Change Directive or an impact on the Schedule. If additional time is needed for an interpretation or if information is needed to interpret the Contract Documents, Landscape Architect shall promptly notify and propose a time and/or plan to Owner and Contractor for the gathering of such information and/or preparation of a response.

§ 3.7.3.1 Landscape Architect has no authority to order or approve any changes, extra-contractual work or services; to contractually bind Owner; or to alter Owner's rights and obligations under any contract.

§ 3.7.3.2 Landscape Architect shall promptly review all requested changes in the Work and make recommendations to Owner with respect to them within seven (7) days. If the Prompt Pay Act applies, (a) Landscape Architect shall include a written explanation of the factual and contractual basis for any recommendation to reject a requested change, certified as made in good faith; and (b) Landscape Architect shall track time limits for Owner's approval or rejection of each request for a change in the Work and shall provide Owner with written notice two (2) days in advance of such limit for any request that has not been approved or rejected.

§ 3.7.3.3 As required by Owner, Landscape Architect shall meet with Owner and Contractor every two (2) weeks to review outstanding requested Change Orders and Construction Change Directives and shall institute procedures for their prompt disposition.

§ 3.7.3.4 Landscape Architect shall, within seven (7) days of Owner's request, evaluate on a preliminary basis and advise Owner on the merits of any Claims made on a Project. Owner may defer any decision on any Claim until it fully assesses the basis of the Claim and the effects thereof.

§ 3.7.3.5 Landscape Architect shall prepare and maintain its own Record Documents (as defined below) during the Construction Phase and shall update them and issue them to the Contractor and Owner on a regularly agreed upon schedule. As part of the regular updates, if Contractor's As-Built Documents (as defined below) presented to Landscape Architect contain any material omission, incorrect information or inconsistency, Landscape Architect shall inform Owner and Contractor in writing with reasonable promptness. For purposes of this Master Agreement, the following definitions shall apply:

(a) **"Architect Record Documents"** shall mean a drawing set kept by Landscape Architect and updated regularly to include all authorized

contract document changes to drawings and specifications, including changes based on Contractor submittals.

- (b) “**Contractor’s As-Built Documents**” shall mean a drawing set maintained and updated by Contractor that records the differences between the design shown on the Contract Documents and the actual conditions of the Project as constructed on the Project Site.

**§ 3.7.4 Site Visits.** As a minimum at the intervals set in Architect Release or as reasonably requested by Owner, Landscape Architect and Landscape Architect’s Advisors shall visit the Project Site and, as Owner may direct, familiarize itself with the progress and quality of the Work and observe if the Work is proceeding in accordance with the Contract Documents. On a monthly basis, Landscape Architect shall review Architect Record Drawings and Contractor’s As-Built Drawings for completeness of updates, integrity of Contractor’s annotations, and to confirm that Contractor is maintaining on-site documentation in the manner required by the Contract Documents. Landscape Architect and Landscape Architect’s Advisors shall prepare and maintain a written summary of on-site observations, provide weekly field reports to Owner, and report to Owner and Contractor with reasonable promptness any defects or deficiencies observed in the Work or on-site documentation, or if any portion of the Work is being performed in a manner indicating that it will not be in conformance with the Contract Documents when complete.

§ 3.7.4.1 Landscape Architect shall witness all testing and inspection that Applicable Law requires be conducted by third parties, and shall conduct all other required inspections, upon receipt of written notice from Contractor that a portion of the Work is ready for a required testing or inspection and of the date fixed for such testing or inspection. Landscape Architect and Landscape Architect’s Advisors shall promptly review the results of third-party inspections.

§ 3.7.4.2 Landscape Architect shall immediately notify Owner when it discovers that Work for which testing or inspection was required or requested has been covered before such testing or inspection is performed.

**§ 3.7.5 Submittals.** Landscape Architect shall confer with Contractor and agree upon a schedule of required submittals. Upon Owner’s acceptance of such submittal schedule, Landscape Architect shall perform its obligations as to submittals in accordance therewith.

§ 3.7.5.1 Owner and Landscape Architect may rely upon professional certification of performance characteristics of materials, systems or equipment that is required by the Contract Documents and included in a submittal.

§ 3.7.5.2 Landscape Architect shall review all submittals in order to confirm conformance with the design concept expressed in the Contract Documents, but not for purposes of any safety precautions, construction means, methods, techniques, sequences or procedures contained therein or to enhance or modify the design of a Project. Review of such submittals is not

conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, 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. Landscape Architect shall return submittals to Contractor in accordance with the accepted submittal schedule, with a copy to Owner, with Landscape Architect's stamp and signature affixed thereto.

**§ 3.7.6 Applications for Payment.** Landscape Architect shall review and certify Contractor's applications for payment forward it to Owner with Landscape Architect's signature or recommendation to withhold payment, in accordance with the payment requirements of the Construction Contract. If Landscape Architect fails to act within the required time period, Owner may treat the application for payment as if Landscape Architect had signed it. If the Prompt Pay Act applies, (a) Landscape Architect shall include a written explanation of the factual and contractual basis for any recommendation to withhold payment, certified as made in good faith; and (b) Landscape Architect shall track time limits for Owner's approval or rejection of each application for payment and shall provide Owner with written notice two (2) days in advance of such limit for any application that has not been approved or rejected.

**§ 3.7.7 Substantial Completion.** Landscape Architect shall perform Services relating to Substantial Completion as defined and set forth in the Construction Contract.

**§ 3.7.8 Final Completion.** Landscape Architect shall perform Services relating to Final Completion as defined and set forth in the Construction Contract.

§ 3.7.8.1 On or before the proposed date of Final Completion, Landscape Architect shall provide a written description of all landscape systems, if applicable, and their operations, together with any diagrams required for use of maintenance and repair personnel. Landscape Architect shall coordinate and cross-reference its systems description and diagrams to the maintenance manuals furnished by Contractor.

§ 3.7.8.2 Before the proposed date of Final Completion, Landscape Architect shall provide training assistance for Owner. At the beginning of each discipline training session, Landscape Architect shall present an overall design concept overview and shall include a review of all systems using the single-line diagrams outlined above, if applicable.

**§ 3.7.9 Landscape Architect's Conformed Documents.** Within twenty-one (21) days of receipt of Contractor's As-Built Documents from Contractor, Landscape Architect shall review Contractor's As-Built Documents for conformance to the Project as completed on the Site.

§ 3.7.9.1 Landscape Architect shall inform Owner and Contractor of any observed or known errors or deviations from Contractor's As-Built Drawings to the Project as completed on the Site and shall review subsequent changes to Contractor's As-Built Drawings until conformance to the Project as completed on the Site is achieved.

- § 3.7.9.2 Landscape Architect may record required changes to Contactor's As-Built Drawings on a separate sheet, clearly identified and inserted at the beginning of each section to which they pertain.
- § 3.7.9.3 Upon completion of such review, Landscape Architect shall provide Owner with a stamped set of documents reflecting the completed Architect Record Drawings (the "**Architect Conformed Documents**"), with any deviation from the Contractor's As-Built Drawings noted on Architect Conformed Documents or documented by a separate sheet inserted into the front of the applicable section.
- § 3.7.9.4 Landscape Architect is not required to field measure as-built conditions and may rely on Contractor's As-Built Drawings for the accuracy of as-built conditions provided therein.

#### **ARTICLE 4      ADDITIONAL SERVICES**

**§ 4.1** Additional Services may be provided after execution of a Service Master Agreement without invalidating the Service Master Agreement. Except for services required due to the fault of Landscape Architect, any Additional Services provided in accordance with this Section 4.1 shall entitle Landscape Architect to compensation pursuant to Section 9.3.

**§ 4.2** Unless otherwise provided in an Architect Release, upon recognizing the need to perform the following Additional Services, as they relate to the services provided pursuant to Architect Release, Landscape Architect shall notify Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. Landscape Architect shall not proceed to provide the following services until Landscape Architect receives Owner's written authorization:

- § 4.2.1** Services necessitated by a material change in the Initial Information, a change in previous instructions or approvals given by Owner, or a material change in the Project including, but not limited to, size, quality, complexity, Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- § 4.2.2** Extensively changing or editing previously prepared Instruments of Service (as defined below) necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- § 4.2.3** Services necessitated by decisions of Owner not rendered in a timely manner in violation of this Master Agreement or any other failure of performance on the part of Owner or Owner's consultants or contractors;
- § 4.2.4** Preparing digital data for transmission to Owner's consultants and contractors, or to other Owner authorized recipients;
- § 4.2.5** Preparation of design and documentation for alternate bid or proposal requests proposed by Owner;
- § 4.2.6** Preparation for, and attendance at, a public presentation, meeting or hearing;

§ 4.2.7 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where Landscape Architect is party thereto;

§ 4.2.8 Evaluation of the qualifications of bidders or persons providing proposals; or

§ 4.2.9 Consultation concerning replacement of Work resulting from fire or other cause during construction.

## **ARTICLE 5      OWNER'S RESPONSIBILITIES**

§ 5.1 Owner is not required to issue any Architect Releases under this Master Agreement and Landscape Architect shall have no obligation to perform any Services under this Master Agreement until Owner and Landscape Architect enter into an Architect Release for a Project.

§ 5.2 Owner shall provide information in a timely manner regarding requirements for, and limitations of, each Architect Release. Within 15 days after receipt of a written request from Landscape Architect, Owner shall furnish the requested information as necessary and relevant for Landscape Architect to evaluate, give notice of, or enforce lien rights.

§ 5.3 Owner shall render decisions and approve Landscape Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of Landscape Architect's services.

§ 5.4 Owner shall coordinate the services of its own consultants with those services provided by Landscape Architect. Upon Landscape Architect's request, Owner shall furnish copies of the scope of consulting services in the contracts between Owner and Owner's consultants. Owner shall furnish the services of consultants as designated in an individual Architect Release, or authorize Landscape Architect to furnish them as an Additional Service, when Landscape Architect requests such services and demonstrates that they are reasonably required by the scope of Architect Release. Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.5 Owner shall furnish all legal, insurance and accounting services, including auditing services that may be reasonably necessary at any time to meet Owner's needs and interests under a Service Master Agreement.

§ 5.6 Owner shall provide prompt written notice to Landscape Architect if Owner becomes aware of any fault or defect in the services or work related to a Service Master Agreement, including errors, omissions or inconsistencies in Landscape Architect's Instruments of Service.

## **ARTICLE 6      COPYRIGHTS AND LICENSES**

§ 6.1 The Drawings (as defined below), specifications (the "**Specifications**") and other documents prepared by Landscape Architect and/or Landscape Architect's Advisors in connection with the Services are defined herein as the "**Instruments of Service**" and, unless otherwise provided, Landscape Architect or Landscape Architect's Advisor, as the case may be, shall be deemed the author of these documents and shall retain all common law, statutory and other reserved rights, including copyright. Landscape Architect shall not, however, use the Drawings, Specifications or other documents for any purpose not relating to

the Project without Owner's prior written consent, except as permitted by Section 12.4; provided, however, that this restriction shall not apply to design elements that are not unique to the Project and are combined with other design elements by Landscape Architect in a manner that does not materially resemble the Project. Subject to its payment obligations set forth in Article 9 of this Master Agreement, Owner shall have the irrevocable right (the "**License**") to retain, use, reproduce, exhibit and distribute copies, including reproducible copies (and copies of computer disks or other computer memory storage devices), of the Drawings, Specifications and other documents prepared by Landscape Architect for any and all of the following purposes ("**Licensed Purposes**"): (i) information and reference in connection with the construction, reconstruction, renovation, repair, maintenance, use, occupancy or design of the Project or any other facilities now or hereafter located on Owner's campus, as the same may change or expand from time to time, (ii) Owner's historical documentation of the Project (including, without limitation, transforming such Drawings, Specifications and other documents into other forms of media for purposes of archival presentation), (iii) education of Owner's students, faculty, staff, alumni, and the public, (iv) fundraising, (v) promotion of the Project and Owner, and (vi) research. The term "**Drawings**" as used in this Section 6.1 includes, without limitation, graphic images and two- and three-dimensional depictions of the Project in any form of media, including, but not limited to those contained in computer files stored on computer disks, tapes or other computer memory storage media, and the License includes the right to receive, in the form of such computer memory storage media, and to retain and use, copies of Landscape Architect's CADD Drawings as maintained in Landscape Architect's computer files for the purposes set forth above. Owner may transfer any or all of its rights under this Article 6 to any assignee or sublicensee of Owner, including, without limitation, any source providing funding for the Project. Landscape Architect hereby consents to the transfer of the License to any assignee of Owner. Landscape Architect shall not be responsible for, or otherwise liable to Owner or Owner's successors in interest for, any damages or claims arising from changes made to, or uses of, the Drawings, Specifications or other documents prepared by Landscape Architect by Owner or by Owner's successors in interest without Landscape Architect's participation as provided in this Master Agreement. Owner, on behalf of itself and its successors in interest, agrees to release, remise, and forever discharge Landscape Architect from any claim, liability or cost, including reasonable attorney's fees, arising out of any such changes, or arising out of the use of such Drawings, Specifications or other documents by Owner for any purpose other than the construction, reconstruction, renovation, repair, maintenance, use or occupancy of the Project.

**§ 6.2** Submission or distribution of documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of Landscape Architect's reserved rights.

**§ 6.3** Landscape Architect and Owner intend this to be a contract for services and each considers all products and results of the services to be rendered by Landscape Architect hereunder (except for the Drawings and Specifications) (the "**Work Product**") to be a work made for hire. For the avoidance of doubt, for purposes of this Section 6.3, the term "Drawings" shall include all 2- and 3-dimensional depictions of Landscape Architect's design of the Project, prepared by Landscape Architect or its consultants at any phase of the services, including sketches, renderings, fly-throughs and physical models. Landscape Architect acknowledges and agrees that the Work Product (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of Owner. If for any reason the Work Product would not be considered a work made for hire under Applicable Law, Landscape Architect does hereby sell, assign, and transfer to Owner, its successors and assigns, the entire right, title and interest in and to the copyright in the Work Product and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived

from, or incorporating the Work Product. Landscape Architect shall have the rights set forth in Section 12.4 with respect to representations of the design of the Project.

**§ 6.3.1** Any and all software applications used, developed, or enhanced by Landscape Architect in conjunction with Landscape Architect's performance under this Master Agreement, together with any documentation and/or hardware/software configurations, used developed or enhanced by Landscape Architect in conjunction with Landscape Architect's performance under this Master Agreement, shall be and remain the sole and exclusive property of Landscape Architect, and Landscape Architect in its ownership and copyright therein shall be entitled to the broadest protection afforded under the copyright and other laws of The Commonwealth of Massachusetts, the United States of America, and under international convention. Notwithstanding the foregoing, Owner, and Owner's successors in interest, if any, shall have the right to retain, use, reproduce, exhibit and distribute copies, including reproducible copies, of such applications for any Licensed Purpose. If Owner participates in the development of such software application, the rights thereto shall be governed by the provisions of Section 6.5 below.

**§ 6.4** Landscape Architect shall retain the ownership of all rights, including, without limitation, those of patent and/or copyright, pertaining to the design and licensing for manufacture of any and all furnishings, fixtures, special hardware and the like (the "FFE") designed by and/or developed solely by Landscape Architect with respect to the Project, to which Landscape Architect shall be entitled to the broadest protections available under the laws of The Commonwealth of Massachusetts, the laws of the United States of America, and under international convention. Notwithstanding the foregoing, Owner shall have the right to use, reproduce, exhibit and distribute any and all such designs for any Licensed Purpose. If Owner or its agents or students participates in the design or development of any element of the FFE, the rights in and to such element shall be governed by the provisions of Section 6.5 below.

**§ 6.5** Owner and Landscape Architect anticipate that they may collaborate together for the design, development, construction, implementation, and installation of certain improvements, fixtures, and systems for the Project (the "Innovations"). If and to the extent such Innovations have application beyond the Project, Owner shall retain all ownership and rights therein and Landscape Architect hereby assigns all right, title and interest thereto to Owner; provided, however, that Landscape Architect hereby retains and Owner hereby grants to Landscape Architect, the right to use such Innovations in any future projects in which Landscape Architect is engaged, without compensation to Owner but with acknowledgment of Owner's contribution thereto. Owner shall be deemed the owner and author of, and shall retain all common law, statutory and other rights, including, without limitation, copyrights, in and to, any drawings, specifications, and other documents related to the Innovations.

## **ARTICLE 7      CLAIMS AND DISPUTES**

### **§ 7.1      General**

**§ 7.1.1** Owner and Landscape Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to any Service Master Agreement, in accordance with the requirements of the method of binding dispute resolution selected in this Master Agreement, within the period specified by Applicable Law, but in any case not more than 10 years after the completion of the services provided pursuant to a specific Service Master Agreement, whichever is sooner. Completion of the services pursuant to a specific Service Master Agreement shall be the date of Substantial Completion of construction related to the services performed



pursuant to the Service Master Agreement or, where there is no construction work related to a Service Master Agreement, the date Landscape Architect completes its services under the Service Master Agreement. Owner and Landscape Architect waive all claims and causes of action not commenced in accordance with this Section 7.1.1.

**§ 7.1.2** To the extent damages are covered by property insurance during construction, Owner and Landscape Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages. Owner or Landscape Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

**§ 7.1.3** Neither Landscape Architect nor Owner shall be liable to the other party for any indirect, incidental, punitive, special, or consequential damages (including, without limitation, any damages arising from loss of use or lost business, revenue, profits, data or goodwill) arising in connection with this Master Agreement, whether in an action in contract, tort, strict liability or negligence, or other actions, even if advised of the possibility of such damages. The foregoing exclusions of and limitations on liability shall not apply to (1) damages arising from or relating to: (a) breaches of the Confidentiality provisions to the extent that such breaches relate to the security system, or ownership of Instruments of Service provisions of this Master Agreement; (b) misappropriation of Owner's property; or (c) a party's willful misconduct or gross negligence; or (2) the cost of procurement of substitute services in the event that Landscape Architect fails to perform Landscape Architectural Services required under this Master Agreement.

**§ 7.1.4** No member, officer, director, principal, stockholder, general or limited partner, joint venture, beneficiary, trustee, representative, volunteer participant, employee, agent or representative of Owner shall be personally liable to Landscape Architect under any term or provision of this Master Agreement for Owner's payment obligations or otherwise, or because of any breach hereof, Landscape Architect agreeing to look solely to Owner for the satisfaction of any liability of Owner hereunder. In no event shall Owner be liable to Landscape Architect except for payment for services rendered pursuant to and in accordance with this Master Agreement. No member, officer, director, principal, stockholder, general or limited partner, joint venture, beneficiary, trustee, representative, supplier, volunteer participant, employee, agent or representative of Landscape Architect shall be personally liable to Owner under any term or provision of this Master Agreement for Landscape Architect's obligations or otherwise, or because of any breach hereof, Owner agreeing to look solely to the assets of Landscape Architect for the satisfaction of any liability of Landscape Architect hereunder.

**§ 7.1.5** All claims, disputes or other matters arising out of or in connection with or related to this Master Agreement shall first be subject to mediation conducted in accordance with the provisions of Article 7.2 below.

**§ 7.1.6** The law of the Commonwealth of Massachusetts (without giving effect to its conflicts of law principles) shall govern all matters arising under or related a Service Master Agreement.

**§ 7.1.7** The provisions of this Article 7 shall survive the expiration or termination of this Master Agreement.

## **§ 7.2 Mediation**

**§ 7.2.1** Any claim, dispute or other matter in question arising out of or related to an Architect Release shall first be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of Landscape Architect's services, Landscape Architect 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 binding dispute resolution.

**§ 7.2.2** Owner and Landscape Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of this Master Agreement. A request for mediation shall be made in writing, delivered to the other party to this Master Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution 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.

**§ 7.2.3** 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.

**§ 7.2.4** If the parties do not resolve a dispute through mediation pursuant to this Section 7.2, all disputes shall be subject to adjudication by a court of competent jurisdiction, and the venue for such action shall be Suffolk County or Middlesex County, Massachusetts. Owner and Landscape Architect hereby waive any and all rights to a jury trial with respect to disputes arising out of a Service Master Agreement and agree that any claim for a jury trial shall be stricken by consent if either party violates this provision. Owner and Landscape Architect agree that this is a commercially reasonable term and that it shall be specifically enforced.

## **ARTICLE 8 TERMINATION OR SUSPENSION OF SERVICE AGREEMENTS**

**§ 8.1** If Owner fails to make payments to Landscape Architect in accordance with an Architect Release, such failure shall be considered substantial nonperformance and cause for termination of Architect Release or, at Landscape Architect's option, cause for suspension of performance of services under Architect Release for which Owner failed to make payment. If Landscape Architect elects to suspend services, Landscape Architect shall give seven (7) days' written notice to Owner before suspending services. In the event of a suspension of services, Landscape Architect shall have no liability to Owner for delay or damage caused Owner because of such suspension of services. Before resuming services, Landscape Architect shall be paid all sums due prior to suspension and any expenses incurred in the

interruption and resumption of Landscape Architect's services. Landscape Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 8.2** If the services under an Architect Release have been suspended by Owner, Landscape Architect shall be compensated for services performed prior to notice of such suspension. When the services under Architect Release are resumed, Landscape Architect shall be compensated for expenses incurred in the interruption and resumption of Landscape Architect's services. Landscape Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

**§ 8.3** If Owner suspends the services under an Architect Release for more than ninety (90) cumulative days for reasons other than the fault of Landscape Architect, Landscape Architect may terminate Architect Release by giving not less than seven days' written notice.

**§ 8.4** Either party may terminate an Architect Release upon not less than seven (7) days' written notice should the other party fail substantially to perform in accordance with the terms of Architect Release, through no fault of the party initiating the termination. Termination of an Architect Release under this Section 8.4 shall not be deemed a termination of other Architect Releases under this Master Agreement.

**§ 8.5** Owner may terminate an Architect Release, upon not less than seven (7) days' written notice to Landscape Architect for Owner's convenience and without cause.

**§ 8.6** In the event of termination of an Architect Release not the fault of Landscape Architect, Landscape Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses (as defined in Section 9.4) then due and all Termination Expenses (as defined in Section 8.7).

**§ 8.7** "Termination Expenses" are in addition to compensation for Landscape Architect's services and may include expenses directly attributable to termination for which Landscape Architect is not otherwise compensated, such as an amount for Landscape Architect's anticipated profit on the value of the services not performed by Landscape Architect. Notwithstanding the foregoing, nothing herein contained shall be deemed to imply or create any obligation on the part of Owner to pay any Termination Expenses.

**§ 8.8** Owner's rights to use Landscape Architect's Instruments of Service in the event of termination of an Architect Release are set forth in Article 6 and Section 12.4 of this Master Agreement.

## **ARTICLE 9      COMPENSATION**

**§ 9.1** Owner shall compensate Landscape Architect for the services described in an Architect Release pursuant to Architect Release and as set forth in this Article 9.

**§ 9.2** Except as otherwise set forth in an Architect Release, the hourly billing rates for services of Landscape Architect and Landscape Architect's Advisors, if any, are set forth on Schedule 9.2 attached hereto.

**§ 9.3** Except as otherwise set forth in an Architect Release, Owner shall compensate Landscape Architect for Additional Services designated in Article 4 as follows: ***(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)***

## **§ 9.4 Compensation for Reimbursable Expenses**

**§ 9.4.1 “Reimbursable Expenses”** are in addition to compensation for Landscape Architect’s professional services and include expenses incurred by Landscape Architect and Landscape Architect’s Advisors directly related to an Architect Release, as defined in and governed by Owner’s Reimbursable Expense Policy, a current copy of which is attached hereto as Exhibit C

**§ 9.4.2** Reimbursable Expenses will be allocated to each Architect Release.

## **§ 9.5 Payments to Landscape Architect**

**§ 9.5.1** Unless otherwise agreed, payments for services provided pursuant to an Architect Release shall be made monthly in proportion to services performed. Payments are due and payable within thirty (30) days of Owner’s receipt of Landscape Architect’s invoice.

**§ 9.5.2** Owner shall not withhold amounts from Landscape Architect’s compensation to impose a penalty or liquidated damages on Landscape Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless Landscape Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding. In any event, Owner shall not withhold payments to Landscape Architect pertaining to an Architect Release to offset amounts in dispute under a separate Architect Release.

**§ 9.5.4** Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to Owner at mutually convenient times. Landscape Architect shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Master Agreement, and the accounting and control systems shall be reasonably satisfactory to Owner. Owner and Owner’s accountants shall be afforded access to, and shall be permitted to audit and copy, Landscape Architect’s records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to Reimbursable Expenses or provided on an hourly basis under this Master Agreement, and Landscape Architect shall preserve these for a period of six (6) years after final payment, or for such longer period as may be required by law (the **“Retention Period”**).

**§ 9.5.5** Landscape Architect’s invoices shall include, at a minimum, the following information:

§ 9.5.5.1 identification of the Project;

§ 9.5.5.2 with respect to billings for Landscape Architectural Services, the month to which the invoice relates broken down by phase and/or category of services, and showing a comparison of the total amount billed to date for such phase and/or category of services versus the total agreed compensation for such phase and/or category of services;

- § 9.5.5.3 a detailed list of the Additional Services performed during the month to which the invoice relates;
- § 9.5.5.4 for all Additional Services that are to be compensated on the basis of hourly rates, then for each individual working on such Additional Services, their name, position, hourly rate and number of hours spent on the Additional Service;
- § 9.5.5.5 for all Additional Services that are to be compensated on the basis of a lump sum mutually agreed by Owner and Landscape Architect, a statement of the basis for the amount due for the month to the invoice relates; and
- § 9.5.5.6 for all Reimbursable Expenses, a detailed list of all Reimbursable Expenses for which Landscape Architect is seeking reimbursement, including the date on which such Reimbursable Expenses were incurred together with original invoices and / or receipts, where appropriate, together with a statement of whether the Reimbursable Expenses incurred to date are consistent with the estimate given to Owner as set forth in Article 9.4.2 and an explanation of any deviations.

**§ 9.5.6** Sixty (60) days after the final completion of Landscape Architectural Services, Architect shall submit a final request for payment which shall set forth all amounts due and remaining unpaid to Landscape Architect, including all Reimbursable Expenses, and, if properly due, Owner shall pay to Landscape Architect the amount due under such final request for payment within thirty (30) days of Owner's receipt of the request. Landscape Architect shall deliver to Owner together with such a final request for payment a complete release of all liens and an affidavit from Landscape Architect to the effect that to Landscape Architect's knowledge, belief and information, the release includes and covers all materials and services over which Landscape Architect has control for which a lien could be filed. Owner shall be under no obligation to pay Landscape Architect the amounts shown in the final request for payment until such an affidavit and lien release, in form(s) in accordance with Massachusetts General Law and otherwise reasonably acceptable to Owner are submitted by Landscape Architect. Notwithstanding anything to the contrary set forth in this Master Agreement or in any Landscape Architect Release, Owner shall have no responsibility (financial or otherwise) with respect to any invoices or expenses (including Reimbursable Expenses) incurred by Landscape Architect in connection with a Project if such invoices or expenses are submitted to Owner after the expiration of the 30-day time period set forth above.

## **ARTICLE 10 MISCELLANEOUS PROVISIONS**

**§ 10.1** Each Architect Release shall be governed by the law of the place where the Project described in Architect Release is located.

**§ 10.2** For each Architect Release, terms not defined in this Master Agreement or in Architect Release shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction.

**§ 10.3** Owner and Landscape Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to each Architect Release. Neither Owner nor Landscape Architect shall assign an Architect Release without the written consent of the other, except that Owner may assign an Architect Release to a lender providing financing for the Project if the lender agrees to assume Owner's rights and obligations under Architect Release.

**§ 10.4** If Owner requests Landscape Architect to execute certificates, the proposed language of such certificates shall be submitted to Landscape Architect for review at least 14 days prior to the requested dates of execution. If Owner requests Landscape Architect to execute consents reasonably required to facilitate assignment to a lender, Landscape Architect shall execute all such consents that are consistent with Architect Release, provided the proposed consent is submitted to Landscape Architect for review at least 14 days prior to execution. Landscape Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of Architect Release.

**§ 10.5** Nothing contained in this Master Agreement or in an Architect Release shall create a contractual relationship with or a cause of action in favor of a third party against either Owner or Landscape Architect.

**§ 10.6** Unless otherwise required in an Architect Release, Landscape Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. To the extent that the Project schedule is materially delayed or Landscape Architect incurs unusual costs due to such discovery, presence, handling, removal, disposal or exposure, the Landscape Architect may request an equitable adjustment of the compensation, which request the Owner will reasonably consider.

**§ 10.7** The performance of Owner or Landscape Architect may be suspended to the extent and for the period of time that such party is prevented or delayed from fulfilling its obligations due to a Force Majeure Event. A "**Force Majeure Event**" shall mean any unforeseen event beyond a party's reasonable control (including, without limitation, acts of God, acts of terrorism, acts of civil or military authority, fires, floods, wars or riots); providing that the non-performing party is without fault in failing to prevent or causing such default or delay, and such default or delay could not have been prevented or circumvented by the non-performing party through the use of reasonable alternate services, work around plans or the reasonable precautions. After ninety (90) cumulative days of suspension by one party due to a Force Majeure Event, the other party may, at its sole discretion, terminate its obligations under the Master Agreement without any further liability, except with respect to those provisions which survive the expiration of this Master Agreement. In no event shall Owner's obligation to pay Landscape Architect be excused by a Force Majeure Event.

**§ 10.8** Failure of either party, at any time to enforce any of the provisions of this Master Agreement shall not be deemed to be a waiver of such or of any other provision hereof.

**§ 10.9** This Master Agreement is not intended to create, nor should it be construed as creating, an agency, joint venture, partnership or similar relationship between the parties. Landscape Architect will act solely as an independent contractor of Owner and neither Owner nor Landscape Architect will have the right to act for or bind the other party in any way or to represent that the other party is in any way responsible for any acts or omissions of such party.

**§ 10.10** Owner and Landscape Architect each represents and warrants that the execution and delivery of this Master Agreement has been duly authorized, that it has full power and authority to perform its obligations under this Master Agreement and that the person executing this Master Agreement on its behalf has the full authority to do so.

## **ARTICLE 11      SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Master Agreement are as follows:

**§ 11.1 Indemnity** To the fullest extent permitted by law, Landscape Architect at its own expense shall indemnify and hold harmless Owner, its affiliates, and their respective trustees, directors, officers, representatives, employees, successors and assigns, and each of them (collectively, the “**Indemnified Parties**”) from and against any claims, actions, proceedings, liabilities, losses, damages, costs and expenses, including reasonable legal fees, which the Indemnified Parties sustains as a result of any misconduct or any wrongful or negligent act, error or omission of Landscape Architect, its consultants, officers, agents, employees, or subconsultants that arise out of the Services hereunder or arise out of or result from Landscape Architect’s breach of the terms of this Master Agreement, except to the extent caused by the negligence or willful misconduct of any of the Indemnified Parties. Landscape Architect shall cause this indemnity obligation to be insured under its Commercial General Liability Insurance and Professional Liability Insurance, as applicable. Such obligation shall not be constructed to negate or abridge any other obligation or indemnification running to the Owner which would otherwise exist. The Owner shall endeavor to give the Landscape Architect timely notice of any claim threatened or made, or suit instituted against it, which could result in a claim for indemnification hereunder provided, however, that lack of or delay in such notice shall not be a waiver of the Landscape Architect’s indemnification of the Owner. The extent of the foregoing indemnification and hold harmless agreement shall not be limited by any provision of insurance required pursuant to Section 2.4 of the Master Agreement and shall survive the expiration or termination of this Master Agreement.

**§ 11.2 Payments.** To the extent that Owner has made the payments then due and payable to Landscape Architect under this Master Agreement with respect to any third parties hired by Landscape Architect to assist in the performance of Landscape Architectural Services, Landscape Architect shall indemnify and hold harmless the Indemnified Parties from and against any and all claims, demands, actions, damages, losses, costs and expenses (including without limitation, reasonable attorneys’ fees) arising out of or relating to any claim made by any of such third parties for payment in connection with the Project. This indemnity and hold harmless obligation shall survive the expiration or termination of this Master Agreement.

**§ 11.3 Format** Prior to any electronic exchange by the parties of the Instruments of Service or any other documents or materials to be provided by one party to the other, Owner and Landscape Architect shall agree in writing on the specific conditions governing the format thereof. Unless otherwise agreed, all non-graphic documents shall be in Microsoft Word, Excel, Project format or Adobe Acrobat. All graphic documents shall be in Adobe Acrobat, or at Owner’s request, Revit (.rvt) or AutoCAD (.dwg).

**§ 11.4 Required Tests** Before commencement of the construction phase of the Project, Landscape Architect shall provide to Owner for Owner’s approval a list of all tests, inspections or reports that are required in the Contract Documents, including, but not limited to, those provided by Landscape Architect as a part of Landscape Architectural Services. This list shall designate the party responsible for the engagement of and payment to providers of those testing services. However, to the extent that testing or

surveying services are necessary as a result of negligent errors, omissions or inconsistencies in the Contract Documents prepared by Landscape Architect, or in the negligent performance of Landscape Architectural Services by Landscape Architect, Landscape Architect shall pay the costs thereof.

**§ 11.5 Duty to Correct Instruments of Service** Landscape Architect shall promptly re-issue at no cost to Owner portions of or all of the Contract Documents or other Instruments of Service if (i) necessary to correct design errors or omissions found prior to or during the course of fabrication and/or construction, (ii) necessary due to failure to follow written instructions of Owner during any phase of the design, fabrication or the construction of the Project, or (iii) necessary due to Landscape Architect's failure to comply with the terms of this Master Agreement. Landscape Architect shall also be responsible for and shall indemnify Owner for all additional costs incurred by Owner, including but not limited to, additional consultants' costs (excluding betterment), if any, required to correct errors and/or omissions by Landscape Architect and the additional time and/or work made necessary as a result of such errors and omissions and Landscape Architect's subsequent correction of the Instruments of Service.

**§ 11.6 Gratuity** Landscape Architect warrants that it has not offered or given, and shall not offer or give, to any employee, agent or representative of Owner or its affiliates any gratuity or inducement with a view toward securing any business from Owner or its affiliates or influencing such person with respect to terms, conditions, or performance of any business dealing with or from Owner or its affiliates. Landscape Architect, its agents, employees and/or representatives warrant that they have not been offered or given by any consultant, subcontractor or other third party in connection with the Project, any gratuity or inducement with a view toward securing any business from Landscape Architect. Any breach of this Article 11.5 shall be considered a material breach of this Master Agreement, and shall allow Owner to terminate this Master Agreement immediately at its sole discretion and allow Owner to avail itself of any and all remedies either at law or in equity.

**§ 11.7 Foreign Corrupt Practices Act** Landscape Architect represents, warrants and covenants that it has not and shall not violate, or cause Owner to violate the United States Foreign Corrupt Practices Act or any other applicable anticorruption laws or regulations ("FCPA") in connection with the Services provided to Owner under this Master Agreement and that it has not, and agrees that it shall not, in connection with the Services, or in connection with any other business transactions involving Owner, pay, offer, promise, or authorize the payment or transfer of anything of value, directly or indirectly to: (a) any government official or employee (including employees of government owned or controlled companies or public international organizations) or to any political party, party official, or candidate for public office or (b) any other person or entity if such payments or transfers would violate the laws of the country in which made or the laws of the United States. It is the intent of the parties that no payments or transfers of value by Owner or Landscape Architect in connection with this Master Agreement shall be made which have the purpose or effect of public or commercial bribery, or acceptance of or acquiescence in, extortion, kickbacks, or other unlawful or improper means of obtaining business. Landscape Architect represents, warrants and covenants that it is familiar with the provisions of the FCPA and agrees that: (a) neither Landscape Architect nor its owner's, partners, officers, directors, employees, or agents is a government official or employee (including an employee of a government-owned or -controlled company or of a public international organization), is a political party official or employee of a political party, or is a candidate for public office, in each case in a non-U.S. location; and (b) it has not previously engaged in conduct that would have violated the FCPA had Landscape Architect been subject to its terms.

**§ 11.8 Conflicts of Interest** Landscape Architect shall promptly notify Owner if during the term of this Master Agreement, Landscape Architect becomes aware of any situation which may present a material



conflict of interest between Landscape Architect and/or its affiliates on one side and Owner and/or Owner's affiliates on the other side, and Landscape Architect agrees that it shall not proceed, and shall cause its affiliates not to proceed, with the conflict of interest situation without Owner's consent. Potential conflict of interest situations include but are not limited to the following: (i) Landscape Architect or its affiliates are employed by Owner in any capacity; (ii) Landscape Architect or its affiliates hold a direct or indirect ownership interest in any proposed subconsultant which Landscape Architect recommends for award of a contract on a Project; and (iii) Landscape Architect or its affiliates hold a direct or indirect proprietary interest in any patent or design of construction, in any building procedures or materials, or in any insurance products recommended by Landscape Architect, which if used on the Project, would involve the payment of royalties, fees, or commissions benefiting Landscape Architect apart from the amounts payable to Landscape Architect under this Master Agreement.

**§ 11.9 No Subcontracting.** Landscape Architect shall not subcontract any part of Landscape Architectural Services without the prior written approval of Owner, which consent may be withheld in the sole discretion of Owner. Landscape Architect shall not subcontract any part of Landscape Architectural Services to entities not incorporated or based in the United States of America. Any subcontracting of any part of Landscape Architectural Services shall be on the following terms and conditions:

**§ 11.9.1** Any subcontracting hereunder shall not relieve Landscape Architect of its responsibility for the performance of all its obligations under this Master Agreement.

**§ 11.9.2** Landscape Architect shall be responsible for all payments due to its subcontractors and for all payments due to their subcontractors and shall supply Owner evidence of such payment promptly upon demand by Owner.

**§ 11.9.3** Landscape Architect shall be responsible for the work and activities of each of its subcontractors, including compliance with the terms of this Master Agreement. Landscape Architect shall ensure that all third parties engaged by Landscape Architect (as permitted by Owner), including any subcontractors, are expressly made aware of all applicable terms and provisions of this Master Agreement and that such third parties strictly abide by the terms of this Master Agreement. Owner shall not be a party to or be liable under any contracts between Landscape Architect and any third party, but Owner is an intended third party beneficiary of all contracts with all subcontractors and other agreements between Landscape Architect and such third parties. Landscape Architect shall incorporate this provision of this Master Agreement into its respective contracts with subcontractors and other agreements between Landscape Architect and third parties related to this Master Agreement.

**§ 11.9.4** Prior to Landscape Architect entering into a subcontract with a third party for the performance of any Landscape Architectural Services or any of its other obligations under this Master Agreement, Landscape Architect shall (i) give Owner reasonable prior written notice specifying the components of Landscape Architectural Services affected, the scope of the proposed subcontract, the identity and qualifications of the proposed subcontractor, and the reasons for subcontracting the Services in question; and (ii) obtain Owner's prior written approval of such subcontractor. In addition, Owner shall have the right to review and approve the subcontract (other than financial terms), or a summary of the relevant subcontract terms between Landscape Architect and such a subcontractor. Owner shall also have the right to revoke its prior approval of a

subcontractor or otherwise direct Landscape Architect to replace or cause the replacement of such subcontractor as soon as possible where the subcontractor's performance is materially deficient (with respect to the scope of the Services performed by such subcontractor) or if there are other reasonable grounds for removal related to such subcontractor's ability to perform Services. Landscape Architect shall remove such subcontractor and continue to perform its obligations under this Master Agreement, notwithstanding the removal of the subcontractor.

**§ 11.9.5** Any mechanic's lien filed against the Project site for services claimed to have been done for, or materials claimed to have been furnished to Landscape Architect shall be discharged by Landscape Architect within thirty (30) days after the filing thereof, at the expense of Landscape Architect, by filing the bond required by Law or otherwise. If Landscape Architect fails so to discharge any lien within such thirty (30) day period, then thereafter Owner may do so upon ten (10) days' notice to Landscape Architect at Landscape Architect's expense and Landscape Architect shall reimburse Owner for any reasonable expense or cost incurred by Owner in so doing within thirty (30) days after rendition of a bill therefore, together with interest on such cost or expense at the rate of Owner's then Prime Rate plus two percent (2%) from the date of such payment, which interest shall be due and payable only in event the reimbursement occurs after the thirty (30) day period provided herein.

**§ 11.10 Access to Owner's Facilities.** If Owner provides access to Owner's facilities, then Landscape Architect shall comply with the provisions of this Section 11.10, any such other Owner's rules, regulations and procedures provided to Landscape Architect, and Applicable Law.

**§ 11.10.1** While onsite at any of Owner's facilities, Landscape Architect, its employees, subcontractors and agents shall not:

§ 11.10.1.1 prop open any exterior door at any time;

§ 11.10.1.2 use Owner's equipment (*e.g.* computer, television, radio) without prior written authorization from Owner; or

§ 11.10.1.3 make any outgoing calls using Owner's telephones *with the exception* of calling 911 or Owner. In the event 911 or Owner is contacted:

- (a) Landscape Architect, its employees, subcontractor or agents shall be permitted to answer Owner's telephone in order to eliminate any false police dispatches by Owner;
- (b) Landscape Architect, its employees, subcontractor or agents shall be required to return to the location to secure any exterior door that they have left unlocked (at no cost to Owner);
- (c) in the event an individual does not speak English, he/she shall call his/her supervisor who shall then call Owner using the number provided to them; and

(d) Landscape Architect shall be responsible for fully reimbursing Owner for the cost of any alarms or damages to equipment caused by Landscape Architect's negligence or failure to follow these procedures.

**§ 11.10.2** Landscape Architect shall not permit or accompany any unauthorized persons onto any of Owner's property (including personal acquaintances, children, relatives or spouses of Landscape Architect's employees, subcontractors or agents).

**§ 11.10.3** Landscape Architect, its employees, subcontractors or agents shall contact Owner's Security Command Center if any individual (other than recognized members of Owner's, Landscape Architect's or Contractor's development team on the Project) arrives at Owner's location that is not accompanied by Owner's staff member and requests access to the property while Landscape Architect is onsite including, but not limited to, law enforcement officers.

**§ 11.10.5** Subject to Applicable Law, and in addition to its other obligations as set forth in this Master Agreement, Landscape Architect shall require any individual it employs or engages in connection with the performance of its obligations under this Master Agreement and in connection with performing and providing Landscape Architectural Services and to abide by the following terms:

§ 11.10.5.1 keep any keys to any of Owner's locations secured on their person at all reasonable times while undertaking Landscape Architectural Services;

§ 11.10.5.2 at all times comply with established entry procedures when entering Owner's locations;

§ 11.10.5.3 Landscape Architect shall suitably reprimand any individual who fails to deactivate alarms as required under any entry procedures and who has been instructed as to the correct procedure.

**§ 11.10.6** When keys to Owner's locations are held at Landscape Architect locations, they shall be kept safe and secure and, without prejudice to the foregoing generality, in a secure immovable lockable cabinet or safe.

**§ 11.10.7** When keys to Owner's locations are lost (including by reason of theft) or misplaced, Landscape Architect shall notify Owner within twenty-four (24) hours of the loss via telephone and electronic mail. Landscape Architect shall be responsible to reimburse Owner for any costs incurred by Owner to replace such keys and locks within thirty (30) calendar days from the date the locks or keys were replaced.

**§ 11.10.8** Landscape Architect shall perform audits of all keys and combination locks on a quarterly basis and shall maintain, for the term of this Master Agreement, an accurate log, which shall include key owners, individuals with copies of keys and combinations, and proper records indicating that any individual who leaves Owner's account has properly returned all keys.

§ 11.10.9 Owner shall, at its own discretion, be authorized to audit Landscape Architect's key and combination lock procedures related to access to Owner's locations. Where provided, Landscape Architect shall use Owner's template for tracking keys.

§ 11.10.10 Keys shall not be tagged in such a manner that they contain information identifying them as Owner's keys.

§ 11.10.11 Landscape Architect shall account for all keys in its possession and have written records of Landscape Architect employees who have keys at all times.

§ 11.10.12 Landscape Architect shall provide prior written notice no less than thirty (30) days of its intent to provide any Owner's-authorized subcontractor with keys to Owner's facilities. No subsequent transfer of keys is authorized without Owner's prior written approval. Landscape Architect shall maintain an auditable list of the names of any subcontractor's employees who have possession of keys.

**§ 11.11 Change in Financial Condition.** Landscape Architect shall provide prompt notice to Owner in the event of any significant change in Landscape Architect's financial condition or business strategy that may result in an impact to the Services including, but not limited to, significant staffing reductions or Landscape Architect's decision to outsource or sell operations or support divisions associated with the applications, data, network or other critical components of the environment used to provide Landscape Architectural Services to Owner.

**§ 11.12 Records Retention.** Landscape Architect shall maintain complete and accurate records of, and supporting documentation for, all services provided under this Master Agreement ("**Contract Records**"). Until the end of the Retention Period, Landscape Architect shall maintain and provide access upon request to the Contract Records. Before Landscape Architect destroys or otherwise disposes of any Contract Records, Owner shall have the right to request Landscape Architect to return such Contract Records by giving notice at least sixty (60) days prior to the applicable record retention expiration date, and Landscape Architect shall deliver such information to Owner.

**§ 11.13 Assignment and Successors.** Neither party may assign its rights or delegate its duties hereunder, whether by operation of Law or otherwise, without the express written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment that does not comply with the terms of this Section shall be null and void. Notwithstanding the foregoing, Landscape Architect hereby consents to any future Owner assignments of its rights or delegation of its duties to one or more of Owner's Affiliates, or to an acquiring or surviving entity in a merger or acquisition in which Owner is the acquired entity (whether by merger, reorganization, acquisition or sale of stock) or to the purchaser of all or substantially all of Owner's assets. This Master Agreement shall bind and inure to the benefit of the parties to this Master Agreement and their respective successors, representatives, and permitted assigns.

**§ 11.14 Audits.** Landscape Architect shall, from time to time during regular business hours and upon reasonable notice, permit Owner, its representatives, federal regulators or federal contractors to perform audits of Landscape Architect's and its subcontractors' facilities, equipment, books and records (electronic or otherwise), operational systems, employees, contractors, subcontractors, and such other audits to the extent necessary to ensure Landscape Architect's and its subcontractors' compliance with the terms and conditions of this Master Agreement, as well as Applicable Laws and to ensure Landscape Architect's financial and operational viability, including but not limited to Landscape Architect's internal controls, pre-engagement employee screening, information and other security, business resumption, continuity, recovery, Service Level compliance, and contingency plans. The terms and conditions of such audit shall be governed by Exhibit B attached hereto.

**§ 11.15 Equal Employment Opportunity Requirements.** Landscape Architect shall perform the Services in compliance with, and shall be subject to, the terms and conditions of Owner's Equal Employment Opportunity Requirements, which are set forth in Exhibit D attached hereto and incorporated herein.

## **ARTICLE 12      CONFIDENTIALITY; PUBLIC ANNOUNCEMENTS**

**§12.1** Landscape Architect shall maintain as confidential and, except as required by law, shall not disclose, copy, or use for purposes other than the performance of this Master Agreement, any Confidential Information, and agrees to protect such Confidential Information with the same degree of care a prudent person would exercise to protect its own confidential information and to prevent the unauthorized, negligent, or inadvertent use, disclosure, or publication thereof. For purposes of this Master Agreement, "**Confidential Information**" shall mean any and all written, oral and visual technical, trade secret or business information of Owner or its affiliates, including without limitation, financial information, business or real estate plans, requirements or strategies, technology and security plans, equipment or systems, which is disclosed to Landscape Architect by Owner, its affiliates or their contractors, agents or representatives. Confidential Information shall not include information that is publicly known at the time of the disclosure or becomes publicly known through no wrongful act or failure of Landscape Architect, or any of Landscape Architect's personnel, attorneys, accounts, its consultants, sub-consultants or other advisors.

**§12.2** Landscape Architect shall notify Owner in writing of any unauthorized, negligent or inadvertent use or disclosure of or access to the Confidential Information promptly following Landscape Architect's discovery of such use, disclosure or access and shall promptly take measures to minimize the effect of such inadvertent use, disclosure or access and prevent its recurrence.

**§12.3** Landscape Architect shall be liable under this Master Agreement to Owner for any use or disclosure in violation of this Section 12.3 by Landscape Architect or any of Landscape Architect's personnel, attorneys, accountants or other advisors. Upon expiration or termination of this Master Agreement, or at any time upon demand by Owner, Landscape Architect agrees to, at Owner's request, either return to Owner all Confidential Information or destroy such Confidential Information. The parties agree that disclosure of Confidential Information will cause irreparable damage to Owner and therefore, in addition to all other remedies available at law or in equity, Owner shall have the right to seek injunctive relief, and to recover the amount of damages (including reasonable attorneys' fees and expenses) incurred in connection with such unauthorized use.

**§12.4** Landscape Architect shall not make any public announcements or publicity releases regarding the Project or this Master Agreement without Owner's prior written consent, which Owner may withhold in

its sole discretion. Landscape Architect shall not use nor permit its subcontractors or Landscape Architect's Advisors to use (a) the name of "Massachusetts Institute of Technology," or any variation, adaptation, or abbreviation thereof, or (b) the names of any of its trustees, officers, faculty, students, employees, or agents, or (c) any trademark owned by Owner, or (d) any terms of this Master Agreement in any promotional material or other public announcement or disclosure without the prior written consent of the Director of Owner's Technology Licensing Office and Owner's Designated Representative, such consent to be granted or withheld in Owner's sole discretion. Landscape Architect may include photographic or artistic representations of such design in its promotional, academic, and professional materials provided they have been publicly released by Owner or are reasonably approved in advance by Owner and they do not include any Confidential Information. Landscape Architect shall be given reasonable access to the completed Project to make such representations. Any of Owner's promotional materials specifically referring to such design shall where fitting give credit to Landscape Architect.

### **ARTICLE 13      SCOPE OF THIS MASTER AGREEMENT**

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

### **ARTICLE 14      AUTHORITY**

**§ 14.1** Owner represents and warrants to Landscape Architect as follows: (i) the person or persons executing this Master Agreement on behalf of Owner has or have been duly authorized to do so; (ii) such execution has fully obligated and bound Owner to all the terms and provisions of this Master Agreement; and (iii) Owner has no obligation to obtain the consent of any joint venture party or other third party to enter into this Master Agreement, or, if Owner has any such obligation, such consent has been previously obtained and is in full force and effect.

**§ 14.2** Landscape Architect represents and warrants to Owner as follows: (i) the person or persons executing this Master Agreement on behalf of Landscape Architect has or have been duly authorized to do so; (ii) such execution has fully obligated and bound Landscape Architect to all the terms and provisions of this Master Agreement; and (iii) Landscape Architect has no obligation to obtain the consent of any joint venture party or other third party to enter into this Master Agreement, or, if Landscape Architect has any such obligation, such consent has been previously obtained and is in full force and effect.

***[SIGNATURE PAGE FOLLOWS]***

This Master Agreement is entered into by the undersigned as of the Effective Date.

**OWNER**

**LANDSCAPE ARCHITECT**

**MASSACHUSETTS INSTITUTE OF TECHNOLOGY**

**XXXXXXXXXXXXXXXXXX**

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

Name: Christos Maravelias

Title: Director, Campus Construction

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

Name:

Title:

**EXHIBIT A**

**FORM OF ARCHITECT RELEASE**

See attached.

## **EXHIBIT B**

### **AUDIT REQUIREMENTS**

1. Landscape Architect's records for or relating to the Project which shall include but not be limited to accounting records (hard copy, as well as computer readable data if it can be made available); written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating worksheets; correspondence; change order files (including documentation covering negotiated settlements); back charge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates, dividends, and any other supporting evidence, in each case reasonably deemed necessary by Owner to substantiate hourly time charges and reimbursement expense costs related to this contract (all foregoing hereinafter referred to as "records") shall be open to inspection and subject to audit and/or reproduction by Owner's agent or authorized representative to the extent necessary to adequately permit evaluation and verification of Cost of Work for the Contract or any changes in the Work, and any invoices, change orders, payments or claims submitted by Landscape Architect or any of his payees pursuant to the execution of the contract.
2. Such audits may require inspection and copying from time to time and at reasonable times and places of any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent's reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that in Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document as set forth in Paragraph 1 above. Such records subject to audit shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with this contract.
3. Owner or its designee shall be afforded access to all of Landscape Architect's records, and shall be allowed to interview any of Landscape Architect's employees, pursuant to the provisions of this article throughout the term of the contract and for a period of three years after final payment or longer if required by law.
4. Landscape Architect shall require all subconsultants, insurance agents, and materials suppliers (payees) to comply with the provisions of this article by insertion of the requirements hereof into a written contract agreement between Landscape Architect and payee. Such requirements will also apply to Subconsultants and Sub-subconsultants, etc. Landscape Architect will cooperate fully and will cause all related parties and all of Landscape Architect's subconsultants (not including those entering into lump sum subcontracts) to cooperate fully in furnishing or in making available to Owner from time to time whenever requested in an expeditious manner any and all such information, materials and data.
5. Owner's agent or its authorized representatives shall have access to Landscape Architect's facilities, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.



6. If an audit inspection or examination in accordance with this article, discloses overcharges (of any nature) by Landscape Architect to Owner in excess of one percent (1%) of the total contract billings, the actual cost of Owner's audit shall be reimbursed to Owner by Landscape Architect. Any adjustments and/or payment which must be made as a result of any audit or inspection of Landscape Architect's invoices and/or records shall be made within reasonable amount of time (not to exceed 90 days) from presentation of Owner's findings to Landscape Architect.

## EXHIBIT C

### REIMBURSABLE EXPENSE POLICY

Landscape Architect acknowledges and agrees that Owner shall reimburse Landscape Architect for Reimbursable Expenses in accordance with the terms and conditions of this Reimbursement Expense Policy (this “Policy”).

**1. Definition.** For purposes of this Master Agreement, “**Reimbursable Expenses**” shall include, and shall be limited to, commercially-reasonable costs and expenses actually incurred in connection with the following:

- (a) Reproductions, postage and handling or drawings, specifications and other documents;
- (b) Renderings, models, and mock-ups, but only when requested by Owner
- (c) Premiums for additional insurance coverage or limits, including professional liability insurance, requested by the Owner in excess of the insurance required by this Master Agreement or in an Architect Release;
- (d) Expense of overtime work requiring higher than regular rates, only with the prior written approval of Owner;
- (e) Subject to Section 2 below, travel costs in connection with a Project;
- (f) Living expenses in connection with out-of-town travel;
- (g) Long distance telephonic communications;
- (h) Fees paid for securing approval of authorities having jurisdiction over the Project; and
- (i) Only in connection with an Architect Release in which the compensation is based on time and material:
  - (i) computer-aided design and drafting equipment time (including but not limited to computer time rental, data processing, word processing, etc.);
  - (ii) Photographic production techniques and/or photography expenses (including but not limited to equipment purchase or rental, film purchasing and developing, etc.)

In the event an Architect Release sets forth a monetary cap on Reimbursable Expenses, Owner shall not be responsible for any Reimbursable Expenses incurred by Landscape Architect in excess of such monetary cap. Reimbursable Expenses shall be reimbursed by Owner at cost and shall not include any additional fees or charges.

**2. Travel:** The basic policy guiding travel under this Policy is that the individual traveler for a Landscape Architect or Landscape Architect’s Advisor (the “**Traveler**”) should neither gain nor lose personal funds as a result of Services that require travel. Any such travel must be planned so that the costs of such travel shall not exceed commercially-reasonable and moderate limitations. The mode of travel considered reasonable is that which provides adequate standards of comfort, convenience, safety, and efficiency. To that end, transportation by commercial means is recommended.

**A. Transportation.**

- (i) Commercial Travel: Commercial airline transportation is reimbursed on the basis of the actual cost incurred by the Traveler for the direct-distance air fare, bus fare or rail fare by the usually traveled route with due consideration on the part of the traveler to select the class of service available to accomplish the travel at the most appropriate rate structure.

In recognition of the substantial differential between first-class and less-than-first-class accommodations, only less-than-first class travel will be reimbursed at 100%. Notwithstanding the foregoing, Owner acknowledges that it may be necessary on occasion to use first-class accommodations due to of lack of available space, untenable time schedules, indirect routing, or cancellation of flights. When first-class transportation is used for any of these reasons, Landscape Architect must provide a statement that sets forth the justification (the “**Justification Statement**”) for such first-class travel with Landscape Architect’s submission of the reimbursement request. If no justification is provided, or if Owner deems, in its reasonable discretion, that the use of first-class transportation was unnecessary, then such reimbursement will be reduced to the fare allowed pursuant to this Policy.

- (ii) Private Automobile: When travel by private automobile is desirable to save time, to transport equipment or to reduce costs when a number of persons are traveling to the same destination together, then Owner shall reimburse such costs at the then-current Internal Revenue Service rate on the basis of standard highway mileage guides. This mileage allowance is intended to cover all transportation and operating costs. No reimbursement is made for the cost of repairs to the vehicle, regardless of whether such repairs or damage result from the traveler’s acts or the acts of others. Ferry, bridge, tunnel, toll road, and reasonable parking charges are allowed in addition to the mileage allowance.
- (iii) Car Rental: The use of rental cars is a reimbursable expense where other transportation is not available or for the reasons listed under Private Automobile above or for any other use resulting in savings of cost or time. Reimbursement shall be only made in that portion of the rental car’s expense (mileage or time) for the project’s business. No reimbursement shall be made on any portion of the rental car’s expense for personal use.
- (iv) Private airplane: The use of aircraft owned, rented, operated, or chartered by a Traveler on the Project’s business is prohibited without the prior written consent of Owner. Reimbursement for such travel is not to exceed the current Internal Revenue Service rate per road mile between the departure and destination points, which includes all costs and fees of any nature associated with the aircraft. No Traveler may purport to be an agent of Owner in entering into agreements with airports or other authorities.
- (v) Miscellaneous Transportation Expense: Limousine Service to and from airports, bus terminals, and railroad stations, plus reasonable tips are reimbursed to the extent such service is not included in air, bus, and rail fares. Taxi fares, including tips, are reimbursed where public transportation or limousine service is not practical. This includes taxis between hotels and airports, bus terminals, or railroad stations.

B. Food and Lodging.

- (i) Food: Although the cost of meals varies widely, Owner allows reimbursement for the actual cost of meals up to \$60.00 per Traveler per full calendar day. Reimbursement requests in excess of this amount must be accompanied by a Justification Statement.
- (ii) Lodging: Travelers are reimbursed for the actual cost of accommodations in first-class hotels and motels.

For travel to the Cambridge area, Owner has arranged for preferential room rates with several greater Boston area hotels. Travelers should stay at one of the hotels below and must request the Owner preferred rate when booking the hotel. Owner shall not be responsible for any lodging costs in excess of the Owner preferred rate if Landscape Architect fails to request the Owner preferred rate.

Boston Marriott Cambridge	800-228-9290
Hotel @ MIT, Cambridge	800-754-7130
Cambridge Center Residence Inn by Marriott	800-331-3131
Holiday Inn Express Hotel & Suites, Cambridge	617-577-7600
Hotel Marlowe, Cambridge	800-825-7040
Hyatt Regency Cambridge	800-233-1234
The Kendall Hotel, Cambridge	617-577-1300
Royal Sonesta Hotel, Cambridge	800-766-3782
Holiday Inn Boston, Somerville	800-972-3381

C. Miscellaneous Travel Expenses.

- (i) Telephone calls necessary to obtain transportation and hotel reservations; and
- (ii) Expenses associated with baggage handling and storage, including reasonable excess baggage charges, and tips.

D. Exclusions. The following expenses are expressly excluded from the definition of “Reimbursable Expenses” and shall not be reimbursed by Owner:

- (i) Costs incurred by unreasonable failures to cancel travel reservations;
- (ii) Fines for automobile violations;
- (iii) Lost or stolen tickets, cash, or property;
- (iv) Travel, trip or accident insurance premiums;
- (v) Expenses not directly related to the performance of the travel assignment;
- (vi) Personal telephone calls; and
- (vii) Personal entertainment costs.

**3. Reimbursement Procedure**

A. Reimbursement Form. Landscape Architect shall submit Reimbursable Expenses for reimbursement by Owner by submitting a reimbursement expense form (the “**Reimbursement Form**”) for each Traveler requesting reimbursement, which Reimbursement Form must contain the following information:

- (i) Name of Traveler;
- (ii) Name of Project; if the Reimbursement Form contains Reimbursable Expenses for more than one (1) Project, then each Project shall be separately itemized and totaled;
- (iii) Dates that Reimbursable Expenses were incurred;
- (iv) Reason for Reimbursable Expenses;
- (v) Itemization of each Reimbursable Expense claimed on Reimbursement Form, including name and address of vendor, date that service/material was rendered, and description and quantity of service/material rendered;
- (vi) Total Amount of Reimbursable Expenses claimed on Reimbursement Form; and
- (vii) Certification of Traveler that the Reimbursable Expenses were actually incurred and are true, accurate and complete in all respects.

B. Receipts. The Reimbursement Form shall be accompanied by receipts or other supporting

documentation reasonably requested by and/or acceptable to Owner for each of the itemized Reimbursable Expenses. Such supporting documentation may include, but shall not be limited to, transportation ticket receipts or stubs, rental car receipts, receipted hotel bills, excess baggage tickets, taxi slips, toll slips, and restaurant bills.

C. Format. The Reimbursement Form shall be submitted on 8 1/2" x 11" size paper only. Small size receipts, stubs, tickets, etc. shall be photocopied or taped onto 8 1/2" x 11" sheets in collage fashion; provided that all such small documentation shall pertain to the same common charge. The Reimbursement Form shall be clearly LEGIBLE AND UNDERSTANDABLE, either computer-printed, typewritten, or neatly hand-lettered; cursive writing shall not be accepted. If a receipt or supporting documentation sets forth charges for clients in addition to Owner, the charges to be reimbursed by Owner shall be clearly annotated.

D. Submission. Upon Landscape Architect's submission of a Reimbursement Form to Owner, Owner shall have thirty (30) days to review and remit payment of reimbursement or to reject the Reimbursement Form, which rejection must be accompanied by a statement indicating the reason for the rejection. Upon receipt of a rejection, Landscape Architect may, but shall not be obligated to, submit a revised Reimbursement Form within thirty (30) days of Landscape Architect's receipt of Owner's rejection. Landscape Architect shall not submit Reimbursement Forms more than once per month per Traveler. Owner's obligation to pay any properly submitted and undisputed Reimbursement Expenses shall be subject to Landscape Architect's submission to Owner of the applicable Reimbursement Form within ninety (90) days after the last date of applicable travel.

## EXHIBIT D

### EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS

A. Equal Employment Opportunity. During the performance of this Master Agreement, Landscape Architect agrees as follows:

1. Landscape Architect shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.
2. Landscape Architect shall, in all solicitations or advertisements for employees placed by or on behalf of Landscape Architect, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
3. Landscape Architect shall comply with all provisions of Executive Order 11246 and the rules, regulations, and orders of the Secretary of Labor.
4. Landscape Architect shall furnish all information and reports required by Owner and by Executive Order No. 11246 and will permit access to its books, records, and accounts by Owner to ascertain compliance with such rules, regulations and orders and the terms of this Master Agreement.

In the event of Landscape Architect's non-compliance with the provisions of this Exhibit D, or with any of the rules, regulations, or orders of the Secretary of Labor, Owner may serve written notice upon Landscape Architect of its intention to terminate this Master Agreement in whole or in part, such notice to contain the reasons for such intention. Unless within ten days after the serving of such notice upon Landscape Architect such non-compliance shall cease and satisfactory arrangement of correction shall be made, the Contract shall, upon the expiration of said ten days, be terminated in whole or in part at Owner's election and, in the event of termination, Owner may complete the work in accordance with the provisions set forth in this Master Agreement documents, to the same extent as authorized in the event of termination by Owner. Notwithstanding the foregoing, where deficiencies are found to exist in Landscape Architect's compliance program, reasonable efforts will be made by both parties to secure compliance through conciliation and persuasion.

B. Employment of Minority and Female Workers.

1. Landscape Architect shall make good faith efforts to achieve Minority and female employment in each trade in which it has employees working and training in this geographic area.
2. **"Minority"** as used above means:
  - (a) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin).
  - (b) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American

or other Spanish Culture or origin, regardless of race);

- (c) Asian and Pacific Islander ( all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands).
- (d) American Indian or Alaskan native (all persons having origins in any of the original people of North America).

C. Affirmative Action in Subcontracting and Procurement.

1. Utilization of Minority-Owned and Women-Owned Business Concerns.

- (a) It is the policy of Owner that minority-owned and women-owned business concerns have maximum practicable opportunity to participate in the performance of Owner's contracts.
- (b) Landscape Architect shall adhere to this policy in the awarding of subcontracts and purchase orders under this Master Agreement to the fullest extent consistent with the efficient performance of this Master Agreement.

**SCHEDULE 9.2**

**COMPENSATION – HOURLY BILLING RATES**

(If applicable, list the hourly billing rates for services of Landscape Architect and Landscape Architect's Advisors)