

UNIVERSITY OF ROCHESTER

**SUPPLEMENT TO PROJECT REQUIREMENTS LETTER - SHORT FORM VERSION
(OWNER-CONSULTANT AGREEMENT)**

*(Contract used for consultant services not requiring state license certification UON.
Contract can be used for land survey and geotechnical professional services.)*

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ARTICLE 1

CONSULTANT'S RESPONSIBILITIES

1.1 CONSULTANT'S SERVICES

1.1.1 The Consultant's services consist of those services performed by the Consultant, the Consultant's employees and any subcontract consultants retained by Consultant as enumerated in Article 2 of this Agreement and any other services included in the Project Requirements Letter.

1.1.1.1 The Owner shall have prior approval of the selection of all subcontract consultants. The Consultant shall not, except as part of his responsibilities under Basic Services, offer to hire any subcontract consultant without the prior written consent of the Owner.

1.1.2 The Consultant's services shall be performed as expeditiously as is consistent with professional skill, care, orderly progress of the Work, and in accordance with the owner's project schedule. Upon request of the Owner, the Consultant shall submit for the Owner's approval a schedule for the performance of the Consultant's services which may be adjusted as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for compensated changes in project scope or as otherwise approved by the Owner, be exceeded by the Consultant or the Owner.

1.1.3 The Consultant shall throughout all phases of the work coordinate closely with the University's designated representatives. The University's Project Manager shall be the Consultant's prime contact, and will designate other appropriate representatives of the Owner. All correspondence or other documents or materials shall be directed to the Project Manager except as he or she may authorize.

1.1.4 All correspondence, drawings, specifications, operations and maintenance manuals, or other project documents shall prominently bear the Owner's project number and job title.

1.1.5 The Consultant shall attend and take detailed minutes of all design coordination and review meetings, and shall distribute copies to all attendees and to absent members of the project design team, to ensure the receipt of the minutes within five (5) days of the date of the meeting.

1.2 CONSULTANT'S REPRESENTATIONS AND WARRANTIES

1.2.1 The Consultant is and will continue to be fully experienced and properly qualified, licensed, financed, organized and equipped to perform the Basic Services and its obligations under this Agreement. The Consultant shall have the status of and act as an independent Contractor maintaining complete control over its employees, agents and representatives.

1.2.2 The Services and the Consultant's performance under this Agreement shall be in accordance with the professional practices, standards and codes and with the skill and diligence of a recognized professional in the business of performing the Basic Services, of a good and workmanlike character, and in compliance with all applicable federal, state, and local laws, ordinances and regulations and the rules and regulations of all applicable governmental authorities having jurisdiction over all or part of the Services, the Consultant or the Project. The Consultant acknowledges that the Owner is relying upon the accuracy, competence, and completeness of the Consultant in performing the Services.

ARTICLE 2

SCOPE OF CONSULTANT'S BASIC SERVICES

2.1 DEFINITION

2.1.1 The Consultant's Basic Services shall consist of the services for the Project described in the Project Requirements Letter.

2.1.2 Consultant shall be responsible for the coordination of all drawings and design information for the Basic Services regardless of whether such drawings are performed by Consultant, by Consultant's consultants or Subcontractors, or by others. Consultant shall be responsible for the completeness and accuracy of all drawings and specifications submitted by or through Consultant.

2.1.3 All estimates shall be submitted in a Unifomat unless otherwise directed by the Project Manager.

ARTICLE 3

Intentionally omitted

ARTICLE 4

OWNER'S RESPONSIBILITIES

4.1 PROJECT REQUIREMENTS

4.1.1 The Owner shall provide information regarding requirements for the Project sufficient to enable consultant to provide the Basic Services.

4.2 AUTHORIZED REPRESENTATIVE

4.2.1 The Owner's Project Manager is authorized to act on the Owner's behalf with respect to the Project. The Owner or such authorized representative shall examine the documents submitted by the Consultant and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Consultant's Basic Services.

4.3 AVAILABLE DOCUMENTS

4.3.1 The Owner will provide access to the University's Inventory Data Control Center (IDCC), which may contain construction drawings relating to portions of the Work. The Consultant shall verify, as part of Basic Services and to the extent required for the Work, the accuracy of all such documents.

4.4 BUILDING ACCESS

4.4.1 The Owner will provide access to the buildings and other facilities of the University during normal working hours for the purposes of this project.

ARTICLE 5

CONSTRUCTION COST

5.1 DEFINITION

5.1.1 The Construction Cost shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Consultant.

5.1.2 The Construction Cost shall include the cost at current market rates of equipment designed, specified, selected or specifically provided for by the Consultant. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding.

5.1.3 Construction Cost does not include the compensation of the Consultant and the Consultant's subcontract consultants, the cost of the land, rights-of-way, financing or other costs which are the responsibility of the Owner as provided in Article 4.

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

5.2.1 Preliminary estimates of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Consultant, represent the Consultant's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Consultant nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices or over competitive bidding, market or negotiating conditions. Accordingly, the Consultant cannot and does not warrant or represent that bids or negotiated prices will not vary from the Project budget proposed, established or approved by the Owner, or from any estimate of Construction Cost or other cost estimate or evaluation prepared or agreed to by the Consultant. However, notwithstanding the above, the Consultant is required to use prudent efforts to obtain current pricing information in establishing estimates of Construction Cost.

ARTICLE 6

OWNERSHIP AND USE OF DOCUMENTS

6.1 DOCUMENTS

6.1.1 The Drawings, Specifications and other documents prepared by the Consultant for this Project are instruments of the Consultant's service.

6.1.2 Documents prepared in CAD systems shall be turned over to the Owner. Other electronic documents shall be submitted as electronic files in a format that is compatible with the word processing, spreadsheet or other software currently in use by the Owner.

6.1.3 Reuse of any of these documents by the Owner on any other project shall be at the Owner's risk, and the Owner agrees to defend, indemnify and hold harmless the Consultant from all claims, damages and reasonable expenses including attorney's fees arising out of such reuse. The Consultant shall be permitted to retain originals, including reproducible copies, of any or all documents for such use as he may require, except that use of any document without substantial modification shall be attributed to the Owner.

6.1.4 The Consultant's reuse of the design concepts developed for this project is not limited by this Agreement, except as may be provided in the Project Requirements Letter.

6.2 LICENSE

6.2.1 The Consultant hereby grants to the Owner a non-exclusive, perpetual, fully paid up, royalty-free license to the results of the Basic Services, including any documents, drawings and specifications prepared by Consultant as part of the Basic Services. Owner may make any changes, additions, and deletions of the results of the Basic Services, in whole or in part, all without further permission or consent of the Consultant, although the Consultant shall not be liable to the Owner or any third party as a result of any such changes, additions, and deletions.

ARTICLE 7

[Intentionally Omitted]

ARTICLE 8

TERMINATION, SUSPENSION OR ABANDONMENT

8.1 TERMINATION

8.1.1 This Agreement may be terminated by either party upon seven days' written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination. This right of termination shall not be construed as an exclusive remedy, but is in addition to each and every other right or remedy now or hereafter available at law or in equity.

8.2 SUSPENSION

8.2.1 If the Project is suspended by the Owner for more than 30 consecutive days, the Consultant shall be compensated for Basic Services performed prior to notice of such suspension. When the Project is resumed, the Consultant's compensation shall be equitably adjusted to provide for expenses incurred in the interruption and resumption of the Consultant's Basic Services.

8.3 ABANDONMENT

8.3.1 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Consultant. If the Project is abandoned by the Owner for more than 90 consecutive days, the Consultant may terminate this Agreement by giving written notice. In no event shall the Owner be liable to the Consultant for any prospective loss including but not limited to lost profits or unabsorbed overhead, and recovery for reimbursable expenses shall be limited to those actually incurred (and not accrued) by the Consultant.

8.4 FAILURE TO MAKE PAYMENT

8.4.1 Failure of the Owner to make payments to the Consultant in accordance with this Agreement, except where the Owner is in good faith disputing the payment, may be considered substantial nonperformance and cause for termination.

8.4.2 If the Owner fails to make payment when due the Consultant for services and expenses, unless the Owner is in good faith disputing the payment, the Consultant may, upon 30 days' written notice to the Owner, suspend performance of services under this Agreement. In the event of a suspension of services for nonpayment, the Consultant shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services.

8.5 COMPENSATION DUE

8.5.1 In the event of termination not the fault of the Consultant, the Consultant shall be compensated for services properly performed prior to termination, together with Reimbursable Expenses then due and reasonable termination expenses.

8.5.2 In no event (whether for suspension, abandonment or termination) shall the Owner be liable to the Consultant for any special, incidental, indirect, consequential, punitive or other similar damages or prospective losses including, but not limited to, lost profits or unabsorbed overhead, regardless whether a claim is based on contract, tort (including negligence), or theory of strict liability. Recovery for costs, fees or reimbursable expenses shall be limited to those actually incurred (and not accrued) by the Consultant.

ARTICLE 9

MISCELLANEOUS PROVISIONS

9.1 GOVERNING LAW

9.1.1 This Agreement, including any dispute or controversy arising out of or related to this Agreement or the breach hereof, shall be subject to, governed by and construed in accordance with the substantive and procedural laws of the State of New York without reference to its principles of conflicts of law. Each of the parties hereby irrevocably consent to the exclusive jurisdiction and venue of the courts of the State of New York located in Monroe County and the Federal Court for the Western District of New York in connection with any action or proceeding arising out of or related to this Agreement.

9.2 SUCCESSORS AND ASSIGNS

9.2.1 The Owner and the Consultant, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. The Consultant shall not assign, sublet or transfer any interest in this Agreement or the proceeds hereof without the written consent of the Owner.

9.3 EXTENT OF AGREEMENT

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

9.4 THIRD PARTY

9.4.1 Nothing contained herein shall be deemed to create any contractual relationship with or a cause of action in favor of a third party against either the Owner or the Consultant.

9.5 WAIVERS

9.5.1 The failure of either party at any time to enforce any or all provisions of this Agreement shall not constitute a waiver of such provision(s) in any way, or of the right of either party at any time to avail itself of such remedies as it may have for any breach by the other party. No condition of this Agreement shall be considered waived unless such waiver is explicitly given in writing. No such waiver shall be considered a waiver of any past or future default or modification of any of the terms or conditions of this Agreement unless expressly stipulated in such waiver. The invalidity of, or invalidity of application of, one or more provisions of this Agreement shall not affect the validity of any other provision or any other application of any provision of this Agreement.

9.6 IDENTIFICATION

9.6.1 Consultant shall obtain identification badges from the University, at the prevailing rate. The Consultant's personnel shall wear whenever they are on University property. The Consultant shall be responsible for the actions of its employees while on University property.

9.7 FORCE MAJEURE

9.7.1 Neither party hereto shall be considered in default of the performance of its obligations to the extent that any such performance is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of the affected party and which could not have been avoided by the exercise of due diligence or foresight. The party prevented from performance shall take all reasonable steps to overcome the cause of such inability to perform, and upon removal of such cause shall resume its performance as soon as practicable. Upon the occurrence of a force majeure event, the affected party shall promptly notify the other party with a full assessment of the implications of such an event.

9.8 INDEMNIFICATION

9.8.1 The Consultant shall, to the fullest extent permissible by law (including the General Obligations Law of New York), indemnify, defend and hold the Owner, its trustees, agents and employees harmless from and against any and all liability, loss, cost, damage or expense (including attorneys' fees) arising from the enforcement of owner's rights under this agreement or out of bodily injury to persons (including death) or damage to property caused by or resulting from the negligent acts, errors or omissions of the Consultant, its partners, Contractors, Subcontractors, agents or employees, except to the extent contributed to or caused by the negligence of the Owner.

9.9 CONFIDENTIALITY

9.9.1 The Consultant agrees that it shall retain in confidence, and shall not disclose or permit to be disclosed to third parties without the prior written consent of the Owner, any information obtained from or through the Owner or any other person involved in the performance of the Work or in the Project, or developed by the Consultant in connection with the performance of the Basic Services under this Agreement. This obligation shall not extend:

9.9.1.1 To information which is or becomes published or on sale, or otherwise available to the public;

9.9.1.2 To information obtained by the Consultant from a third party (other than the Owner or any other person involved in the performance of the Work or in the Project) who did not receive that information under restriction on disclosure; or

9.9.1.3 To information which the Consultant is required to disclose by law, regulation or court order.

9.9.2 The Consultant further agrees, if requested by the Owner, to require each of its agents (other than employees), Subcontractors, assignees or successors, if any, and the employees of any of the above, to execute a non-disclosure agreement with terms substantively identical to this paragraph prior to their performing any Basic Services under this Agreement.

9.9.3 The Consultant and its employees, agents, Subcontractors, assignees and successors shall oppose any efforts by third parties to obtain, without the prior written consent of the Owner, any materials in their possession relating to the Basic Services performed under this Agreement.

9.9.4 All records, documents, reports and other materials created as a part of performing the Basic Services, including any documentation of the results of investigations, sampling and laboratory analyses and conclusions or comments thereon, relating to the existence, investigation or removal of hazardous materials, shall be marked "Privileged and Confidential" and shall be kept in a secure location within the Consultant's offices.

ARTICLE 10

PAYMENTS TO THE CONSULTANT AND DIRECT SERVICES

10.1 DIRECT PERSONNEL EXPENSE AND DIRECT SERVICES

10.1.1 Direct Personnel Expense is defined as the direct salaries of all the Consultant's personnel engaged on the Project, and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

10.1.2 The Schedule of Hourly Billing Rates set forth in the Project Requirements Letter is incorporated herein as the current rate of pay in use for computing Direct Personnel Expenses. These rates shall remain in effect for the term of this Agreement.

10.1.3 Direct Services are defined as services described in the Project Requirements Letter which are to be arranged or required by the Consultant, but which are to be compensated directly by the Owner. Such services which are not described as being compensated directly by the Owner are part of Basic Services.

10.2 REIMBURSABLE EXPENSES

10.2.1 Reimbursable Expenses are in addition to the compensation for Basic Services and include reasonable actual expenditures made by the Consultant and the Consultant's employees and consultants in direct pursuance of work under this Project for the expenses listed in the following Subparagraphs:

10.2.1.1 Expenses of transportation and living expenses for out-of-town travel in connection with the Project with the Owner's prior approval; long distance communications; and fees paid for securing approval of authorities having jurisdiction over the Project. Expenses for personal vehicles are limited to the rate published by the University. Expenses for intercity transportation are limited to the cost of coach air travel.

10.2.1.2 Expense of reproductions, postage and handling of Drawings, Project Manual and other documents requested by the Owner for the Owner's use and for bidding and construction purposes. All other expenses of reproductions for the Consultant's use, local telephone and fax, normal postage and handling, local travel including travel to and from the Consultant's office and project site or owner's office, are considered part of the Consultant's overhead and therefore not reimbursable. Special charges for computer aided design, data processing and non technical staff are also considered overhead and therefore not reimbursable.

10.2.1.3 All overtime required to meet the schedule for performance of Basic Services shall be a part of the base compensation for Basic Services.

10.2.1.4 Expense of renderings, models and mock-ups requested by the Owner, when authorized in writing by the Owner prior to incurring the expense.

10.2.1.5 Backup documentation for reimbursable expenses must accompany each request for payment. Each piece of backup documentation, particularly expenses for reproductions and associated postage and handling, must be clearly marked by the consultant as to the specifics of that expense (i.e., design review prints, etc.).

10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES AND REIMBURSABLE EXPENSES

10.3.1 Payments for Basic Services and Reimbursable Expenses shall be made not later than forty five days after submission of a proper invoice.

10.4 CONSULTANT'S ACCOUNTING RECORDS

10.4.1 Records of Reimbursable Expenses and expenses pertaining to services performed on the basis of a Multiple of Direct Personnel Expense shall be kept on the basis of generally accepted accounting principles and shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

10.5 FORM OF INVOICE

10.5.1 Invoices shall display the following on the cover sheet. Other material, including recapitulations of previous invoices or payments, may be included at the Consultant's discretion, but shall be kept separate. The Owner may reject any or all non-compliant invoices.

10.5.1.1 The Owner's project name and project number.

10.5.1.2 The date of the invoice.

10.5.1.3 The calendar interval covered by the work invoiced.

10.5.1.4 The total for Basic Services for the period invoiced.

10.5.1.5 The total for Reimbursables for the period invoiced.

10.5.1.6 A list of Basic Services previously invoiced, with an accounting to date.

10.5.1.7 The name of the invoicing firm.

10.5.2 Invoices shall attach all backup material required under this Agreement. The Owner may reject any or all invoices which do not include such backup.

10.5.3 All invoices shall be directed to the Planning and Project Management Financial Manager, and shall bear the Owner's project number prominently in the letterhead.

ARTICLE 11

BASIS OF COMPENSATION

The Owner shall compensate the Consultant for the Scope of Services provided, in accordance with Article 10, Payments to the Consultant, and the other Terms and Conditions of this Agreement, as set forth in the Project Requirements Letter.

11.1 REIMBURSABLE EXPENSES

11.1.1 FOR REIMBURSABLE EXPENSES, as described in Paragraph 10.2, and any other items included in the Project Requirements Letter as Reimbursable Expenses, a multiple of one times the amounts expended by the Consultant, the Consultant's employees and consultants in the interest of the Project.

11.1.2 Reimbursable Expenses will be compensated upon presentation of invoice accompanied by appropriate original documentation or photocopies thereof.

11.1.3 Any sale to the University of materials or services with respect to this project will be exempt from the New York State Sales and Compensating Use Taxes ("Sales Taxes") if an Exempt Organization Certificate (form ST 119.1) is provided to the vendor at the time of the sale. The University hereby appoints the Consultant as its agent solely for purposes of the purchase of materials or services with respect to this project. This agency appointment includes the power to delegate such agency appointment, in whole or in part, to agents, subagents, sub consultants, suppliers and vendors of the Consultant and to such other parties as the Consultant chooses so long as they are engaged, directly or indirectly, with respect to this project. It shall be the responsibility of the Consultant or sub consultant to provide the appropriate exemption certificate to the vendor at the time of the sale. It shall also be the responsibility of the Consultant or sub consultant to arrange for the negotiation of a sales contract with the University covering the "resale" to the University of specific project materials. Copies of the University's Exempt Organization Certificate may be obtained from the University's Planning and Project Management office.

11.1.4 In the event that the Owner is advised of the Consultant's failure to pay his subcontract consultants and Subcontractors promptly, the Owner may withhold payment from the Consultant to satisfy such unpaid expenses, require the Consultant to deliver waivers of lien for each such subcontract consultant or Subcontractor prior to the next payment and/or charge the Consultant for all the Owner's expenses, including attorney's fees, incurred because of the Consultant's failure to pay in a timely manner his subcontract Consultants and Subcontractors.

11.2 ADDITIONAL PROVISIONS

11.2.1 If the Consultant believes that the scope of the Basic Services has changed materially he shall advise the Owner in writing prior to incurring expenses above those allowed in this Contract.

ARTICLE 12

[Intentionally Omitted]

ARTICLE 13

INSURANCE

13.1 INSURANCE FOR CONSULTANTS

Unless otherwise provided in the Project Requirements Letter, the Consultant shall carry at his expense at least the following insurance from insurers licensed in New York State, as approved by the owner. This may include insurance purchased especially for the project.

13.1.1 Commercial General Liability insurance written on occurrence basis with the following limits:

Bodily Injury and Property Damage Limit \$1 million per occurrence

Products/Completed Operations \$1 million aggregate

Personal Injury and Advertising Injury Limit \$1 million each person or organization

General Aggregate Limit \$2 million

No exclusions for:

Product/Completed operations

Contractual Liability

Independent Contractors

Personal and Advertising Injury

Delete all exclusions relating to XCU

13.1.2 Automobile Liability: Owned, Hired and Non-owned Autos

Combined Single Limit (CSL) for Bodily Injury and Property Damage \$1 million each accident

13.1.3 Excess "Umbrella" Liability

The umbrella coverage should be no more restrictive than underlying coverages. \$5 million each occurrence and aggregate

13.1.4	Worker's Compensation and Employer's Liability	Statutory Coverage
13.1.5	Errors and Omissions	
	Professional Liability	\$1 million occurrence / \$3 million aggregate Or \$2 million occurrence / \$2 million aggregate
	(Note: Professional liability is not subject to the excess "Umbrella" liability coverage)	

13.2 The Consultant agrees to maintain each type of insurance at the minimum limits outlined in 13.1 or as required by law, whichever is greater, for a minimum of five years following the date of Substantial Completion of the Work or the date of termination of this Agreement, whichever is earlier.

13.3 Certificates of Insurance and endorsements acceptable to the Owner shall be filed with the Owner prior to the commencement of services. These documents shall contain a provision that coverages afforded under the policies will not be canceled or amended until at least sixty days' prior written notice is given to the Owner. All policies, except worker's compensation and professional liability, shall be endorsed to name owner, its trustees, agents and employees as additional insured, written on a primary and non-contributory basis with any and all other insurance coverage of Owner or available to owner, including self insurance, and to provide for a waiver of subrogation against those parties.

13.4 No requirement with respect to the insurance herein, including type or limit, shall in any manner limit or qualify the liabilities and obligations assumed hereunder by the Consultant.

13.5 If any of the required insurance shall be provided on claims made basis the Consultant shall insure that:

13.5.1 The policies provide that policy retroactive dates coincide with or precede the Consultant's start of the Basic Services (including subsequent policies purchased as renewals or replacements);

13.5.2 Similar insurance is maintained for at least 3 years;

13.5.3 If such insurance is terminated for any reason extended reporting provisions will be purchased to cover claims arising from such three year period; and

13.5.4 Written notices shall be given to the Owner of circumstances or incidents which might give rise to future claims.

ARTICLE 14

OTHER CONDITIONS OR SERVICES

14.1 Consultant shall submit for Owner's approval prior to entering into this Agreement a project organization chart setting out Consultant's personnel, and their responsibilities in connection with this Project, which Consultant proposes to use for this Project, together with an identification of any Subconsultants, Subcontractors or outside firms which Consultant proposes to use in connection with the performance of its Basic Services on this

Project. If at any time after entering into this Agreement, Owner has any reasonable objection to any such person or entity, Consultant shall promptly propose substitutes to whom the Owner has no reasonable objection, and the Consultant's compensation shall be equitably adjusted to reflect any difference in the Consultant's costs occasioned by such substitution; however, no increase in the Consultant's compensation hereunder shall be allowed for any such substitution unless the Consultant has acted promptly and responsively in submitting names as required by this paragraph. The project organization chart shall identify, by name and title, each person or consultant assigned to the Project by the Consultant. The Consultant shall make no change in any of the personnel or consultants assigned to the Project without the express written permission of the Owner, which permission shall not be unreasonably denied so long as the substitution of any person or consultant assigned to the Project by the Consultant does not delay the Consultant's performance hereunder. Consultant shall familiarize itself, and shall comply, with Owner's policies and procedures regarding activities on University of Rochester property. Consultant shall require similar compliance from any Subconsultants or Subcontractors.

14.2 Time is of the essence in this Agreement and any time limits set out in this Agreement are solely for the protection and benefit of the Owner and create no third-party beneficiary rights in any other party.

14.3 Owner as Third-Party Beneficiary. The Consultant shall provide in each sub-agreement, including but not limited to its agreements with each member of the Project Team, that the Owner shall be considered a third-party beneficiary of such agreement, with the right to assume Consultant's rights and obligations thereunder or to assign them to another qualified consultant upon the default of Consultant under, or termination of, this Agreement. Each sub-agreement shall require the Consultant or Subconsultant to comply with, and be subject to, all of the terms and conditions of this Agreement applicable to the Consultant's Basic Services and the work to be performed pursuant to such sub-agreement. The Owner may require the Consultant to submit copies of such sub-agreements to the Owner. The Owner shall have the right to withhold any and all payments to the Consultant applicable to those items of Work which have not been performed pursuant to sub-agreements that are in compliance with this Section.

14.4 Consultant represents and warrants to Owner the following:

- (a) It is financially solvent and possesses sufficient working capital to complete the services required and to perform its obligations hereunder.
- (b) It is authorized to do business in New York State and is properly licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it and the services required hereunder and the Project itself.
- (c) It is a professional corporation which is duly organized, validly existing and in good standing under the laws of New York and has the requisite corporate power and authority to enter into, execute, deliver and perform this Agreement. Consultant further represents and warrants to Owner that the execution, delivery and performance of this Agreement does not conflict with its certificate of incorporation or by-laws, nor result in the breach of the terms of or constitute a default under any agreement or contract to which it is a party.
- (d) It has visited the Project, familiarized itself with the local conditions under which the services required hereunder are to be performed and correlated its observations with all of the requirements of the Contract Documents.

14.5 All correspondence and notices hereunder shall be effective and deemed received by the intended recipient when sent by e-mail message, the day after delivery to a nationally recognized overnight courier or three days after mailing if such correspondence or notice bears the Project name and is addressed to the intended recipient.