

UNIVERSITY OF ROCHESTER
SUPPLEMENT TO PROJECT REQUIREMENTS LETTER
(OWNER-CONSULTANT AGREEMENT)

ARTICLE 1 - CONSULTANT'S RESPONSIBILITIES	1
1.1 CONSULTANT'S SERVICES	1
1.2 CONSULTANT'S REPRESENTATIONS AND WARRANTIES.....	1
ARTICLE 2 - SCOPE OF CONSULTANT'S BASIC SERVICES.....	2
2.1 DEFINITION.....	2
2.2 SCHEMATIC DESIGN PHASE	2
2.3 DESIGN DEVELOPMENT PHASE.....	3
2.4 CONSTRUCTION DOCUMENTS PHASE	3
2.5 BIDDING OR NEGOTIATION PHASE.....	4
2.6 CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT	5
ARTICLE 3 - ADDITIONAL SERVICES	8
3.1 GENERAL.....	8
3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES	8
3.3 CONTINGENT ADDITIONAL SERVICES	8
3.4 OPTIONAL ADDITIONAL SERVICES	9
ARTICLE 4 - OWNER'S RESPONSIBILITIES	10
4.1 PROJECT REQUIREMENTS	10
4.2 PROJECT BUDGET	10
4.3 AUTHORIZED REPRESENTATIVE.....	10
4.4 AVAILABLE DOCUMENTS.....	10
4.5 OWNER SUPPLIED SERVICES.....	10
4.6 DEFECTS	11
4.7 CERTIFICATES AND CERTIFICATIONS	11
4.8 BUILDING ACCESS	11
ARTICLE 5 - CONSTRUCTION COST.....	11
5.1 DEFINITION.....	11
5.2 RESPONSIBILITY FOR CONSTRUCTION COST	11
ARTICLE 6 - OWNERSHIP AND USE OF DOCUMENTS.....	12
6.1 DOCUMENTS.....	12
6.2 LICENSE.....	13
ARTICLE 7 - Intentionally Omitted	13
ARTICLE 8 - TERMINATION, SUSPENSION OR ABANDONMENT	13
8.1 TERMINATION.....	13
8.2 SUSPENSION	14
8.3 ABANDONMENT	14
8.4 FAILURE TO MAKE PAYMENT	14
8.5 COMPENSATION DUE.....	14

ARTICLE 9 - MISCELLANEOUS PROVISIONS..... 14

9.1 GOVERNING LAW..... 14

9.2 STANDARD GENERAL CONDITIONS 15

9.3 SUCCESSORS AND ASSIGNS 15

9.4 EXTENT OF AGREEMENT 15

9.5 THIRD PARTY 15

9.6 ASBESTOS 15

9.7 USE OF PROJECT DOCUMENTS 15

9.8 WAIVERS 15

9.9 IDENTIFICATION..... 16

9.10 FORCE MAJEURE 16

9.11 INDEMNIFICATION..... 16

9.12 CONFIDENTIALITY..... 16

ARTICLE 10 - PAYMENTS TO THE CONSULTANT AND DIRECT SERVICES..... 17

10.1 DIRECT PERSONNEL EXPENSE AND DIRECT SERVICES 17

10.2 REIMBURSABLE EXPENSES 17

10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES..... 17

10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES 18

10.5 PAYMENTS WITHHELD..... 18

10.6 CONSULTANT'S ACCOUNTING RECORDS..... 18

10.7 FORM OF INVOICE..... 18

ARTICLE 11 - BASIS OF COMPENSATION 19

11.4 REIMBURSABLE EXPENSES 19

11.5 ADDITIONAL PROVISIONS 19

ARTICLE 12 - Intentionally Omitted 20

ARTICLE 13 - INSURANCE 20

13.1 INSURANCE FOR CONSULTANTS 20

ARTICLE 14 - OTHER CONDITIONS OR SERVICES..... 21

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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 Articles 2 and 3 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.

1.1.1.2 This Agreement incorporates by reference the latest version of the University's Standard General Conditions of the Contract for Construction and any undefined terms shall be defined by these General Conditions.

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 services covered by this Agreement are subject to the time limitations contained in Subparagraph 2.6.1, 10.3.2, and 11.5.1. The Consultant shall notify the Owner orally within forty-eight (48) hours of the occurrence of any event which will delay the Consultant's performance of services under this Agreement. Such oral notice shall be confirmed in writing within five (5) days, and such writing shall contain a detailed statement as to the event causing the delay, the length of the time extension requested and the additional cost, if any, to the Owner. The Owner shall not consider any time extension unless the Consultant complies with this notice requirement and provides the required statement.

1.1.4 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.

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

1.1.6 The Consultant shall attend and take detailed minutes of all design coordination, review and construction administration 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 architect or engineer, 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 Basic 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 five phases described in Paragraphs 2.2 through 2.6, unless modified in the Project Requirements Letter, and include normal architectural, site, structural, mechanical, electrical and fire protection engineering services for the Project and any other services included or modified in the Project Requirements Letter as part of Basic Services.

2.1.2 Consultant shall be responsible for the coordination of all drawings and design information for the Project regardless of whether such drawings are performed by Consultant, by Consultant's consultants or Subcontractors, or by others. If preliminary or design development work has been performed by others, Consultant is nevertheless fully responsible for and accepts full responsibility for such earlier work when Consultant performs subsequent phases of the Basic Services called for under this Agreement, as fully as if the preliminary, schematic and design development work had been performed by Consultant itself. Consultant shall be responsible for coordination and internal checking of all drawings and for the accuracy of all dimensional and layout information contained therein, as fully as if each drawing were prepared by Consultant. Consultant shall be responsible for the completeness and accuracy of all drawings and specifications submitted by or through Consultant and for their compliance with all applicable codes, ordinances, regulations, laws and statutes, including the Americans with Disabilities Act.

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

2.2 SCHEMATIC DESIGN PHASE

2.2.1 The Consultant shall review the program and schedule furnished by the Owner to ascertain the requirements of the Project, including the supporting infrastructure and impact on surrounding areas, and shall arrive at a mutual understanding of such requirements with the Owner, subject to the limitations set forth in paragraph 5.2.1.

2.2.1.1 The Consultant shall advise the Owner of any need or advisability of the Owner's securing any tests, analyses, studies, reports, or consultant's services, in connection with the development of the design and construction documents for the Project.

2.2.2 The Consultant shall provide a preliminary evaluation of the Owner's program, schedule and the Project budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 5.2.1.

2.2.3 The Consultant shall review with the Owner alternative approaches to design and construction of the Project including, but not limited to, those set forth in the Project Requirements Letter.

2.2.4 Based on the mutually agreed upon program, schedule and Project budget requirements, the Consultant shall prepare, for approval by the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

2.2.5 The Consultant shall propose and submit to the Owner a preliminary estimate of Construction Cost based on current area, volume or other unit costs. This estimate shall consider both the Owner's historical data and all special conditions which tend to distort historical averages. The percent accuracy shall be stated.

2.2.6 At the completion of the schematic design phase, the Consultant shall submit to the Owner a demolition plan and an architectural plan, including floor plans showing the door swings, Owner's room name and room number. The Consultant shall contact the Owner's representative to determine and assign the room numbers.

2.2.7 The Consultant shall provide preliminary interior design services including materials, finish and color selections.

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program, schedule or Project budget, the Consultant shall prepare, for approval by the Owner, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the entire Project as to architectural, structural, civil, mechanical and electrical systems, fire protection, materials and such other elements as may be appropriate; and any other services included in the Project Requirements Letter as part of Basic Services.

2.3.2 The Design Development Documents will be reviewed periodically by members of the Owner's Design/Construction Division staff and the Consultant will be required to participate in design review sessions with the Owner's staff.

2.3.3 The Consultant shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost.

2.3.4 The Consultant shall prepare a written code review together with such supplemental drawings as may be required.

2.3.5 The Consultant shall perform a life cycle cost analyses of all system and component selections to the extent listed in the Project Requirements Letter, and recommend a system based on efficiency and suitability to the program. The Consultant shall perform energy calculations to determine anticipated energy consumption.

2.3.6 The Consultant shall submit in writing for review at each design review session, any proposed deviations to the University of Rochester Design Standards and Division 0 & 1 specifications.

2.3.6.1 The Consultant shall cause all drawings, specifications, documents and other work required to be performed by or on behalf of the Consultant under this Agreement to be prepared in accordance with the current requirements of all applicable codes, rules and regulations, and the substance thereof to be suitable for the purpose or purposes intended. By its submission to the Owner, the Consultant represents that the design presented in Design Development Documents comply with all laws, ordinances, rules and regulations of any federal, state or local agency including, without limitation, with regard to the use and disposal of asbestos and any other hazardous materials, substances and wastes.

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the Project budget authorized by the Owner, the Consultant shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

2.4.1.1 The Consultant shall review and incorporate as appropriate all current University of Rochester Design Standards and Division 0 & 1 specifications into the project specifications, with only such modifications and additions as the Consultant determines are required for the work of the project, subject to the Owner's approval.

2.4.1.2 The Consultant shall submit in writing for review at each design review session, any proposed deviations to the University of Rochester Design Standards and Division 0 & 1 specifications.

2.4.1.3 The Consultant shall, except as approved in writing by the Owner's representative, comply with all University standards and policies, and comply with all applicable national, state and local codes. It shall be the Consultant's responsibility to investigate and determine the nature and scope of existing University standards and practices, and to make recommendations as desirable for their revision.

2.4.2 The Consultant shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the Conditions of the Contract, and the form of Agreement between the Owner and the Contractor. The Consultant shall assist the Owner in preparing documents for separate bidding on items which the Owner customarily purchases independent of the general Contractor such as carpeting, furnishings, window coverings, kitchen equipment, telecommunications systems, fire extinguishers, fire alarm systems and control systems. The Owner will require the use of the University's standard forms where applicable.

2.4.3 The Consultant shall advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions. The Consultant shall provide a detailed estimate of probable construction costs as required in the Project Requirements Letter and at 90% completion of the Construction Documents. This estimate shall be based on the Construction Documents, augmented by the program.

2.4.4 The Consultant shall identify all necessary permits, certificates, and authorizations required by governmental authorities having jurisdiction over any part of the Project. The Consultant shall be responsible for filing documents required for the approval of Governmental Authorities having jurisdiction over the Project, excluding permits required to be obtained directly by the Contractor and various Subcontractors, for communicating with the Contractor to ascertain that all necessary permits are obtained in a timely manner, and for advising the Owner immediately of any problem.

2.4.5 The Consultant shall provide the Owner lists of tests to be performed by owner, tests performed by Contractor, allowances to be carried by the Contractor, delegated designs, extended warranties, submittals, shop drawings, product samples, mock ups and owner's salvage materials called out in the construction documents. Lists to be provided and updated at 50% and 95% completion of Construction Documents.

2.5 BIDDING OR NEGOTIATION PHASE

2.5.1 The Consultant, following the Owner's approval of the Construction Documents and of the latest estimate of Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals by rendering interpretations and clarifications of the Drawings and Specifications in the form of written addenda. The Consultant shall assist the Owner in reviewing bids and in negotiating proposals. As part of these services, the Consultant shall participate in a pre-bid meeting and site walk-through, and shall assist the Owner in conducting pre-award conferences with successful Bidders and in awarding and preparing contracts for construction. The Owner will receive bids, and will prepare all contracts and similar documentation.

2.5.2 The Consultant shall cause to be printed, at Owner's expense, the Bid Drawings and Project Manual. The Consultant shall issue and record bid documents issued to any authorized party and shall receive the bid documents back after the bid. The Consultant shall receive and record bid deposits and return the bid deposits to qualified bidders in accordance with instructions in the Project Manual. Checks not required to be returned in accordance with the instructions to bidders, shall be forwarded to Owner within thirty (30) days from award of contract or rejection of all bids.

2.5.3 The Construction Documents as submitted to the local municipality having jurisdiction for building permit purposes shall be forwarded to the Owner for archiving in an electronic format compatible with format(s) used by the Owner.

2.6 CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 The Consultant's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the award of the Contract for Construction and terminates, notwithstanding the contract time set forth in subparagraph 11.5.1 and, except as required for the preparation of record documentation, at the earlier of the issuance to the Owner of the final Certificate for Payment or 120 days after the date of Substantial Completion of the Work, unless extended under the terms of Subparagraph 10.3.2.

2.6.2 The Consultant shall provide administration of the Contract for Construction as set forth below and in the General Conditions of the Contract for Construction, as modified by the parties, unless otherwise provided in this Agreement.

2.6.3 Duties, responsibilities and limitations of authority of the Consultant shall not be restricted, modified or extended without written agreement of the Owner and Consultant.

2.6.4 The Consultant and Contractor shall advise and consult with the Project Manager during regularly scheduled construction meetings.

2.6.5 The Consultant shall visit the site at intervals appropriate to the stage of construction as good professional architectural and engineering practice would require, or as otherwise agreed by the Consultant in writing, to become familiar with the progress and quality of the Work, and to determine if the Work is proceeding in accordance with the Contract Documents. However, the Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of such on-site observation as an architect or engineer, as appropriate, the Consultant shall keep the Owner informed as to the progress and quality of the Work, and shall use its best efforts to guard the Owner against defects and deficiencies in the Work.

2.6.6 The Consultant shall not have control over or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, or for the acts or omissions of the Contractor, Subcontractors or any other persons performing any of the Work, except the Consultant's employees and subcontract consultants, or for the failure of any of them to carry out the Work in accordance with the Contract Documents, unless, in either case, the Consultant knows or should have known that the Contractor, Subcontractors, suppliers or other persons have failed to perform the Work or to carry out the Contract Documents, in which event the Consultant shall promptly notify and consult with the Owner.

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

2.6.8 Communications by and with the Consultant's sub-contract consultants shall be through the Consultant.

2.6.9 Based on the Consultant's observations at the site and on evaluations of the Contractor's Applications for Payment, the Consultant shall review and certify the amounts owing to the Contractor and shall issue Certificates for Payment in such amounts as provided below and in the Contract Documents, for the Owner's approval and execution.

2.6.10 The issuance of a Certificate for Payment shall constitute a representation by the Consultant to the Owner, based on the Consultant's observations at the site as provided in Subparagraph 2.6.5 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated; that, to the best of the Consultant's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests, required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Consultant has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques,

sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. If a Subcontractor has not been paid and the Consultant has knowledge or reason to believe that it has not been paid, the Consultant shall so advise the Owner.

2.6.11 The Consultant shall determine that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents, to guard the Owner against defects and deficiencies in the Work. The Consultant shall promptly advise the Project Manager in writing of Work which does not conform to the Contract Documents. The Consultant shall, where he may deem it necessary or advisable for the implementation or intent of the Contract Documents, recommend special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work be then fabricated, installed or completed.

2.6.12 The Consultant shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, for conformance with information given and the design concept expressed in the Contract Documents. The Consultant's action shall be taken within ten working days of receipt of submittals except as individually authorized by the Owner. 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 designed by the Contractor, all of which remain the responsibility of the Contractor to the extent required by the Contract Documents. The Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Consultant, of construction means, methods, techniques sequences or procedures. When professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the Consultant shall be entitled to rely upon such certification to establish that the materials, systems or equipment will meet the performance criteria required by the Contract Documents.

2.6.12. The Consultant shall additionally review and approve for compliance with the Contract Documents all user and maintenance manuals and software packages supplied by the Contractor in compliance with the Specifications.

2.6.13 The Consultant shall prepare Change Orders, on Form UR 08 and Construction Change Directives on UR 12, with supporting documentation and data, for the Owner's approval and execution in accordance with the Contract Documents.

2.6.14 The Consultant shall conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion, shall receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue appropriate Certificates for Payment and a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

2.6.15 The Consultant shall be the initial interpreter of the requirements of the Contract Documents. The Consultant shall render to the Project Manager interpretations necessary for the proper execution or progress of the Work with reasonable promptness on the Project Manager's written request, and shall render to the Owner written opinions, within a reasonable time, on all claims, disputes or other matters in question between the Owner and Contractor relating to execution or progress of the Work or the interpretation of the Contract Documents.

2.6.16 Interpretations and decisions of the Consultant shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in written or graphic form.

2.6.17 The Consultant's decisions in matters relating to aesthetic effect shall be final if consistent with the intent of the Contract Documents. The Consultant's decisions on any other claims, disputes or other matters shall be subject to whatever remedies at law or in equity the parties have.

2.6.18 The Consultant shall be represented at all tests or inspections conducted by a Governmental Authority having jurisdiction, and shall provide such assistance as may be required.

2.6.19 The Consultant shall, during the Construction Phase, on a monthly basis review the status and accuracy of the updated drawings and specifications maintained by the Contractor on the job site, and shall advise the Owner in writing on their accuracy and completeness.

2.6.20 The Consultant shall as part of and at the time of issuance of a Change to the project, revise the original drawings to incorporate the Change.

2.6.21 The Consultant shall, upon completion of the Work, revise the original Construction Documents as Final Record Drawings, based on marked-up prints, drawings and other data furnished by the Contractor to the Consultant. The final Record Drawings are Construction drawings which are revised to show all changes made during the construction process and existing conditions in the project area upon completion of the project at least to the accuracy of the original drawings. Final Record Drawings shall also include changed construction details and additional information as may be required by the project documents. Final Record Drawings shall be drawn to a scale of 1:1. The revised drawings shall be identified as "Final Record Drawings", but shall not otherwise identify the revisions. The Final Record Drawings shall be submitted by the Consultant to the Owner as electronic CAD files, in a format which is compatible with the CAD software currently in use by the Owner, and complying with the Owner's standards for CAD drawings, including layering and title block standards. An index to the drawings will be furnished by the Consultant to the Owner containing and cross-referencing the Owner's project number, building number, floor and/or section of the building, the drawing number, the drawing discipline and the corresponding file name containing the drawing. At the time of the submission of the electronic copy, one (1) half-scale, blue line or black and white bond copy shall be submitted to the Project Manager for final review. All Final Record Drawings, specifications, addenda, project operating manuals and finish selection manuals 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 and one set paper copy as required by the Project Manager.

2.6.22 Owner shall have the right to disapprove any portion of the Consultant's work on the Project, including but not limited to Design Phase, Construction Documents Phase, Bidding or Negotiation Phase or Construction Phase, design work or documents, for any reason, including, but not limited to, aesthetics, or because in the Owner's opinion, the Construction Cost is likely to render such work or the Project not feasible. In the event that any phase of the Consultant's work is not approved by the Owner, the Consultant shall proceed, when requested by the Owner, with revisions to the design documents prepared for that phase to attempt to satisfy Owner's objections. These revisions will be made without adjustments to the compensation provided for hereunder, unless revisions are made to drawings previously approved under previous phases, in which case such revisions will be invoiced as additional services, except to the extent that the subsequent disapproval is related to Construction Cost which could not be determined until all phases were satisfaction of Owner that it could not have corrected or adjusted the estimate based on its responsibilities under Article 5 herein. Should there be substantial revisions to the original program after the approval of Design Phase drawings, which changes substantially increase the scope of design services to be furnished hereunder, Consultant shall so notify Owner in writing and receive approval from Owner, before proceeding with revisions necessitated by such changes. No payment, of any nature whatsoever, will be made to Consultant, for additional work or services, without such written approval by Owner.

2.6.23 The Consultant shall assist and cooperate fully with the Owner in the review of claims submitted by or against the Contractor in regard to the Project. The obligation of the Consultant to so assist and cooperate with the Owner shall survive final completion of the Work.

2.6.24 When the Consultant considers each Contractor's Work or a designated portion thereof substantially complete, the Consultant shall, jointly with the Contractor, prepare for the Owner a list of incomplete or unsatisfactory items and a schedule for their completion. The Consultant shall assist the Owner in conducting inspections to determine whether the Work or designated portion thereof is substantially complete.

2.6.25 The Consultant shall coordinate the correction and completion of the Work. Following issuance of a Certificate of Substantial Completion of the Work or a designated portion thereof, the Consultant shall evaluate the completion of the work of the Contractors and make recommendations to the Owner when Work is ready for final inspection. The Consultant shall assist the Owner in conducting final inspections.

2.6.26 The Consultant shall provide architectural electronic CAD floor plans that show updated walls, doors, windows and generic room names (office, lab, etc. not staff names) & number at approximately 85% construction completion.

ARTICLE 3

ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in the Project Requirements Letter, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Paragraphs 3.2, 3.3 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner.

3.2 PROJECT REPRESENTATION BEYOND BASIC SERVICES

3.2.1 If the Owner and Consultant agree that more extensive representation by the Consultant at the site than is described in Subparagraph 2.6.5 shall be provided, the Consultant shall provide one or more Project Representatives to assist the Consultant in carrying out such additional responsibilities at the site.

3.2.2 Such Project Representatives shall be selected, employed and directed by the Consultant, and the Consultant shall be compensated therefore as mutually agreed between the Owner and the Consultant as set forth in an exhibit appended to this Agreement, which shall describe the duties, responsibilities and limitations of authority of such Project Representatives.

3.2.3 Through the inspections by such Project Representatives, the Consultant shall provide further protection for the Owner against defects and deficiencies in the Work, but the furnishing of such project representation shall not modify the rights, responsibilities or obligations of the Consultant as described elsewhere in this Agreement.

3.3 CONTINGENT ADDITIONAL SERVICES

3.3.1 Making significant revisions in Drawings, Specifications or other documents when such revisions are inconsistent with written approvals or instructions previously given, are required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents, or are due to other causes not solely within the control of the Consultant.

3.3.2 Providing services required because of significant changes in the Project including, but not limited to, size, quality, complexity, the Owner's schedule, or the method of bidding or negotiating and contracting for construction, except for services required under Subparagraph 5.2.5.

3.3.3 Preparing Drawings, Specifications and supporting data and providing other services in connection with Change Orders provided such Change Orders are required by such causes not within the control of the Consultant in whole or in part.

3.3.4 Providing services in connection with evaluating substitutions (except substitutions identified or proposed during the Bidding or Negotiation Phase) proposed by the Contractor and making subsequent revisions to Drawings, Specifications and other documentation resulting therefrom.

3.3.5 Providing consultation concerning replacement of any Work damaged by fire or other cause during construction, and furnishing services as may be required in connection with the replacement of such Work.

3.3.6 Providing services made necessary by the failure of performance, the termination or default of the Contractor; by major defects or deficiencies in the Work of the Contractor; or by failure of performance of either

the Owner or Contractor under the Contract for Construction, except as may be required by the Consultant's errors or omissions.

3.3.7 Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work, except as may be required by the Consultant's errors or omissions.

3.3.8 Providing services in connection with a public hearing, arbitration proceeding or legal proceeding except where the Consultant is party thereto.

3.3.9 Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase, except otherwise provided in this Agreement. Preparation of bid documents for items customarily purchased by the Owner outside the general contract as noted in Paragraph 2.4.2 shall be part of Basic Services.

3.4 OPTIONAL ADDITIONAL SERVICES

3.4.1 Providing analyses of the Owner's needs and programming the requirements of the Project.

3.4.2 Providing financial feasibility or other special studies.

3.4.3 Providing planning surveys, site evaluations or comparative studies of prospective sites.

3.4.4 Providing special surveys, environmental studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project, except to the extent such surveys, studies or submissions are required for general building permit applications.

3.4.5 Providing services relative to future facilities, systems and equipment.

3.4.6 Providing coordination of construction performed by separate Contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner, except for construction performed or equipment customarily supplied by Owner.

3.4.7 Providing services in connection with the work of a construction manager or separate consultants retained by the Owner.

3.4.8 Providing Detailed Estimates of Construction Cost, detailed quantity surveys or inventories of material, equipment and labor except as may be required for selection of material or systems Consultant will be designing and selecting under Basic Services above, for an estimated operating cost budget which is part of the Basic Services, and except as provided in Subparagraph 2.4.3 or required by Paragraph 5.2.2.

3.4.9 Providing interior design and other similar services required for or in connection with the selection, procurement or installation of furniture, furnishings and related equipment.

3.4.10 Providing services for planning tenant or rental spaces.

3.4.11 Making investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing facilities.

3.4.12 Providing, except as otherwise provided in this Agreement, extensive assistance in the utilization of any equipment or system after initial start-up or testing, adjusting and balancing; preparation of operation and maintenance manuals; training personnel for operation and maintenance; and consultation during operation, except that the Consultant will participate in and cooperate with the training and turnover process and will provide all necessary architectural and engineering assistance, at no cost to the Owner, if equipment designed and/or specified by the Consultant has been installed in accordance with the Drawings and Specifications but does not function properly.

3.4.13 Providing services, except as required for the preparation of record documentation, after issuance to the Owner of the final Certificate for Payment, or in the absence of a final Certificate for Payment, more than 120 days after the Date of Substantial Completion of the Work.

3.4.14 Providing services of consultants for other than the architectural, structural, civil, mechanical, electrical and fire protection engineering services for the Project, and any other services included in the Project Requirements Letter as part of Basic Services.

3.4.15 Providing any other services not otherwise included or implied in this Agreement or not customarily furnished in accordance with generally accepted architectural or engineering practice.

ARTICLE 4

OWNER'S RESPONSIBILITIES

4.1 PROJECT REQUIREMENTS

4.1.1 The Owner shall provide full information regarding requirements for the Project, including a program which shall set forth the Owner's design objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment and systems and site requirements.

4.2 PROJECT BUDGET

4.2.1 The Owner shall provide an overall budget for the Project, including the Construction Cost, based on consultation with the Consultant, which shall include contingencies for changes in the Work during construction, and other costs which are the responsibility of the Owner, including those described in this Article 4.

4.3 AUTHORIZED REPRESENTATIVE

4.3.1 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 services.

4.4 AVAILABLE DOCUMENTS

4.4.1 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.

4.5 OWNER SUPPLIED SERVICES

4.5.1 The Owner shall furnish the services of geotechnical engineers when such services are requested by the Consultant prior to execution of this Agreement and referenced in the Contract Documents. Such geotechnical investigations shall be, in the judgment of the Consultant, appropriate for the project and of sufficient detail to permit informed design decisions by the Consultant. All other such services shall be provided by the Consultant as part of Basic Services. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and receptivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

4.5.2 The Owner shall furnish the services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Consultant.

4.5.3 The Owner shall pay for structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents.

4.5.4 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary at any time for the Project, including such auditing services as the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor uses the moneys paid by or on behalf of the Owner.

4.5.5 The services, information, surveys and reports required by Paragraphs 4.4 through 4.5 inclusive shall be furnished, except as provided therein, at the Owner's expense, and the Consultant shall be entitled to rely upon the accuracy and completeness thereof.

4.6 DEFECTS

4.6.1 If the Owner observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, prompt written notice thereof shall be given by the Owner to the Consultant.

4.7 CERTIFICATES AND CERTIFICATIONS

4.7.1 The proposed language of certificates or certifications requested of the Consultant or Consultant's consultants shall be submitted to the Consultant for review and approval at least 14 days prior to execution. The Owner shall not request certifications that would require knowledge or services beyond the scope of this Agreement.

4.8 BUILDING ACCESS

4.8.1 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 Evaluations of the Owner's Project budget, 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.

5.2.2 Notwithstanding the foregoing, a Fixed Limit of Construction Cost shall be established as a condition of this Agreement as set forth below. The parties agree that the target budget set forth in the Project Requirements Letter shall be treated as a Fixed Limit of Construction Cost for the Project. If, at the completion of the Schematic Design or the Design Development Phases, the anticipated Construction Cost, subject to verification by the Owner, exceeds that set forth in the target budget, the Owner shall have the options set forth in Subparagraph 5.2.4, below. The Consultant shall work closely with the Project Manager to continually estimate and refine any projections of Construction Cost, and modify the Project design documents as appropriate, after consultation with and approval by the Project Manager, so as to achieve said limit. The Consultant's activities in so doing shall be considered as a part of its Basic Compensation. The Consultant shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, and to include in the Contract Documents alternate bids to adjust the Construction Cost to the Fixed Limit. Such Fixed Limit shall be increased in the amount of an increase in the Contract Sum occurring after execution of the Contract for Construction. The Consultant may recommend changes in the project scope.

5.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after the Consultant submits the Construction Documents to the Owner, the Fixed Limit of Construction Cost may, with the approval of the Project Manager, be adjusted to reflect changes in the level of prices for materials, labor or product specified by the Consultant for the Project between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought, provided that such price changes are supported by such documentation as shall be reasonably requested by the Project Manager.

5.2.4 If the Fixed Limit of Construction Cost (adjusted as provided in Subparagraph 5.2.3) is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall:

- 5.2.4.1 Give written approval of an increase in such fixed limit;
- 5.2.4.2 Authorize rebidding or renegotiating of the Project within a reasonable time;
- 5.2.4.3 If the Project is abandoned, terminate in accordance with Paragraph 8.3; or
- 5.2.4.4 Cooperate in revising the Project scope or quality as required to reduce the Construction Cost.

5.2.5 If the Owner chooses to proceed under Clause 5.2.4.4, the Consultant, without additional charge, shall modify the Contract Documents as necessary to comply with the fixed limit.

ARTICLE 6

OWNERSHIP AND USE OF DOCUMENTS

6.1 DOCUMENTS

6.1.1 The Drawings, Specifications and other documents, including Final Record Drawings, prepared by the Consultant for this Project are instruments of the Consultant's service through which the work to be executed by the Contractor is described and copies as described in subparagraph 2.6.21 shall be submitted to the Owner, without cost to the Owner upon completion or cancellation of the Work. Documents, including copies of structural and mechanical calculations, if any, shall be turned over to the Owner at that time.

6.1.2 Documents prepared in CAD systems shall be turned over to the Owner as described in subparagraph 2.6.21. 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 extensions of this project or 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 design of the Project, including the drawings and specifications. Owner may make any changes, additions, and deletions of the Project design, in whole or in part, including (without limitation) destruction of any tangible portion of the design, 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.

6.2.2 The Contractor, Subcontractors, sub-Subcontractors, and material suppliers are granted a limited license to use and reproduce applicable portions of the drawings, specifications and other documents prepared by the Consultant appropriate to and for use in the execution of their work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the drawings, specifications and other documents prepared by the Consultant.

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 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 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 STANDARD GENERAL CONDITIONS

9.2.1 Terms in this Agreement shall have the same meaning as those in the Owner's Standard General Conditions of the Contract for Construction.

9.3 SUCCESSORS AND ASSIGNS

9.3.1 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.

9.4 EXTENT OF AGREEMENT

9.4.1 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.

9.5 THIRD PARTY

9.5.1 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.

9.6 ASBESTOS

9.6.1 The Consultant understands that asbestos or other toxic materials may be present in project work areas and the access thereto. The Consultant agrees to be responsible for its own acts, errors or omissions with respect to such asbestos or other toxic materials, although it is understood that handling of or consultation with respect to asbestos or other toxic materials is not part of Consultant's Basic Services. In the event that the Consultant observes or identifies the presence of such materials, which may in its judgment affect its work or the work of any subsequent Contractor or Subcontractor involved in the project, the Consultant shall call the Owner's attention to the presence of such materials.

9.7 USE OF PROJECT DOCUMENTS

9.7.1 The Consultant shall have the right to include representations of the design of the Project, including photographs of the exterior and interior, among the Consultant's promotional and professional materials. The Consultant shall include both the Owner's name and the project identification as part of any such representations. The Consultant's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Consultant in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Consultant on the construction sign and in the promotional materials for the Project.

9.8 WAIVERS

9.8.1 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.

9.9 IDENTIFICATION

9.9.1 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.

9.10 FORCE MAJEURE

9.10.1 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. This includes by way of example, and not as a limitation, delays caused by subsurface conditions which could not have been reasonably anticipated, except to the extent Consultant could reasonably have prevented such delays as provided in Article 4.5. 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.

9.11 INDEMNIFICATION

9.11.1 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.

9.12 CONFIDENTIALITY

9.12.1 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 Services under this Agreement. This obligation shall not extend:

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

9.12.1.2 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

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

9.12.2 The Consultant further agrees to require each of its agents (other than employees), Subcontractors, assignees or successors, if any, and, if requested by the Owner, 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 Services under this Agreement.

9.12.3 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 Services performed under this Agreement.

9.12.4 All records, documents, reports and other materials created as a part of performing the 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 and Additional 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 Expense of overtime work requiring higher than regular rates and in connection with Additional Services, when authorized in writing by the Owner, prior to incurring the expense. 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

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

10.3.2 If and to the extent that the time initially established in the Project Requirements Letter is exceeded or extended beyond 60 days through no fault of the Consultant, compensation for any services rendered during the additional period of time shall be computed in the manner set forth in the Project Requirements Letter.

10.3.3 When compensation is based on a percentage of Construction Cost and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in the Project Requirements Letter, based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent preliminary estimate of Construction Cost or detailed estimate of Construction Cost for such portions of the Project.

10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES AND REIMBURSEABLE EXPENSES

10.4.1 Payments on account of the Consultant's Additional Services and for Reimbursable Expenses shall be made not later than forty five days after submission of a proper invoice. Invoice backup to include presentation of the Consultant's statement of services rendered or expenses incurred.

10.5 PAYMENTS WITHHELD

10.5.1 No deductions shall be made from the Consultant's compensation on account of penalty, liquidated damages or other sums withheld from payments to the Contractors, or on account of the cost of changes in the Work other than those for which the Consultant is responsible.

10.6 CONSULTANT'S ACCOUNTING RECORDS

10.6.1 Records of Reimbursable Expenses and expenses pertaining to Additional Services and 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.

10.7 FORM OF INVOICE

10.7.1 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.

10.7.1.1 The Owner's project name and project number.

10.7.1.2 The date of the invoice.

10.7.1.3 The calendar interval covered by the work invoiced.

10.7.1.4 The total for Basic Services for the period invoiced.

10.7.1.5 The total for Reimbursables for the period invoiced.

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

10.7.1.7 The name of the invoicing firm.

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

10.7.3 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.

[Paragraphs 11.1-11.3 Intentionally Omitted]

11.4 REIMBURSABLE EXPENSES

11.4.1 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.

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

11.4.3 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.

11.4.4 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.

11.5 ADDITIONAL PROVISIONS

11.5.1 If the Basic Services covered by this Agreement have not been completed within the time set forth in the Project Requirements Letter, as extended by subparagraphs 2.6.1 and 10.3.2, through no fault of the Consultant, the Consultant shall be compensated as provided in the Project Requirements Letter.

11.5.2 If the Consultant believes that the scope of the project or of the Consultant's services has changed materially he shall advise the Owner in writing prior to incurring expenses above those allowed in this Contract. The Owner will make only in the event of such notification, and only as authorized in writing additional compensation.

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)

13.1.6 Hazardous Materials

For contracts involving pickup transportation, service, repair or disposal of hazardous goods, add the following coverages:

Asbestos Removal or Testing Asbestos Liability under General Liability	\$1 million
Pollution Exposures Pollution Liability under General and Auto Liability	\$1 million

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 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, to be attached hereto as “**Appendix B**”, 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 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 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 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 Services under this Agreement. This obligation shall not extend:

- (a) to information which is or becomes published or otherwise available to the public;
- (b) 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

(c) to information which the Consultant is required to disclose by law, regulation or court order.

14.5.1 The Consultant further agrees to include in any agreements with its agents (other than employees), Subconsultants, assignees or successors, if any, and, if requested by the Owner, the employees of any of the above, non-disclosure terms substantively identical to this paragraph prior to their performing any Services under this Agreement.

14.5.2 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 Services performed under this Agreement.

14.5.3 All records, documents, reports and other materials created as a part of performing the Services, including any documentation of the results of investigations, sampling and laboratory analyses and conclusions or comments thereon, shall be treated as confidential by the Consultant, and if 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.

14.6 All correspondence and notices hereunder shall be effective and deemed received by the intended recipient when sent by facsimile, 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.