

UNIVERSITY OF ROCHESTER
STANDARD CONTRACT FOR CONSTRUCTION
(OWNER-CONTRACTOR LUMP SUM AGREEMENT)

Project: _____

Project Number: _____

Owner: **UNIVERSITY OF ROCHESTER**
Planning and Project Management
271 East River Road
Box 270347
Rochester, New York 14627-0347

Contractor: _____

Consultant: _____

THIS AGREEMENT is made as of the _____ day of _____, _____ and is entered into by and between _____, a Contractor having its principal place of business at _____ (the “Contractor”) and the University of Rochester, an educational corporation organized under the laws of the State of New York, with its address for purposes of this Agreement c/o Planning and Project Management, 271 East River Road, Box 270347, Rochester, New York, 14627-0347 (the “Owner”).

The terms of this Agreement will apply to all portions of the Work (as defined in Paragraph 1.1.4 of the General Conditions of the Lump-Sum Owner-Contractor Agreement, hereafter referred to as the “General Conditions”), which the Contractor will perform in connection with the construction of _____. Therefore, in consideration of the Contractor’s promise to perform the Work and the Owner’s promise to pay for the same, and in consideration of other mutual promises and obligations hereinafter set forth, the parties hereto, each intending to be legally bound, do mutually covenant, promise and agree as follows:

ARTICLE 1

THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, the Conditions of the Contract (General, Supplementary, Special and other Conditions), the Drawings, the Specifications, all documents incorporated by reference as set forth in Paragraph 1.1.2 of the General Conditions, all Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and all Modifications issued after execution of this Agreement; these form the

Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 8.

ARTICLE 2

THE WORK OF THIS CONTRACT

The Contractor shall execute the entire Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3

DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The date of commencement is the date from which the Contract Time of Paragraph 3.2 is measured and shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

3.2 The Contractor shall achieve Substantial Completion of the entire Work not later than _____, subject to adjustments of this Contract Time as provided in the Contract Documents.

[Set forth liquidated damages, if any.]

ARTICLE 4

CONTRACT SUM

4.1 The Owner shall pay to the Contractor in current funds for the Contractor's performance of the Contract the Contract Sum of _____ Dollars (\$_____), subject to additions and deductions as provided in the Contract Documents.

4.2 The Contract Sum is based upon labor, materials, and performance included in base bid **[Insert accepted alternates here or leave blank.]**.

The Contract sum is based upon Drawings and Specifications dated as noted in **Exhibit A**.

4.3 Unit prices, if any, are as follows:

[Attach Exhibit, if necessary.]

ARTICLE 5

PROGRESS PAYMENTS

5.1 Based upon Applications for Payment submitted to the Consultant by the Contractor and Certificates for Payment issued by the Consultant, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and in Article 9 of the General Conditions.

5.1.1 At least five (5) days before the date for each progress payment established in this Agreement, the Contractor shall simultaneously submit to the Consultant and the Project Manager an itemized Application for Payment in the form required by Subparagraph 9.2.2 of the General Conditions, notarized, supported by such data substantiating the Contractor's right to payment as the Owner and the Consultant may require and reflecting retainage, if any, as provided elsewhere in the Contract Documents. Applications for Payment must include adjustments (adds or deducts) to the Lump Sum of the Contract, resulting from Work performed under approved Change Orders (specified under Article 7 of the General Conditions) and shall be shown separately on the Application for Payment. The Contractor shall provide a Partial Waiver of Lien warranting that title to all Work and product covered by the Application for Payment will pass to the Owner either by incorporation into the Work or upon receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances, and that no Work or product covered by an Application for Payment will have been acquired by the Contractor or by any other person performing Work at the site or furnishing product for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person. Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

5.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

5.3 The Consultant will, within ten days after the receipt of the Contractor's Application for Payment, either issue a Certificate for Payment to the Project Manager, with a copy to the Contractor, for such amount as the Consultant determines is properly due, less retainage of 10% until the final payment as provided below, or notify the Contractor in writing of the reasons for withholding a Certificate as provided in Subparagraph 9.6.1 of the General Conditions. This provision shall in no way affect the warranties of the entire Project which shall not commence until Substantial Completion and a Certificate of Occupancy have been accomplished for each Phase of the Work.

5.4 After the Consultant has issued a Project Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents. However, if after issuance of the Certificate for Payment the Owner discovers mathematical errors in the Certificate, the Owner shall notify the Consultant and the Contractor of the errors and make payments in the correct amount. The Owner shall make payments as follows:

5.4.1 Not later than forty five (45) days following receipt of an acceptable Application for Payment, 90% of the value of each line item based on the Contractor's prices for labor and product incorporated in the Work and product suitably stored up to the first day of the month in which such Application was submitted, as estimated by the Consultant and Project Manager, less the aggregate of the previous payments.

5.4.2 Applications and Recommendations for Payment shall be notarized by a duly authorized Notary Public so licensed in the State of New York.

5.4.3 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's Work, the amount to which said Subcontractor is entitled, reflecting the percentage actually retained, if any, from payments to the Contractor on account of such Subcontractor's Work. The Contractor shall, by an appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its sub-Subcontractors in similar manner.

5.4.4 No certificate for a progress payment, nor any progress payment, nor any partial or entire use or occupancy of the Project by the Owner, shall constitute an acceptance of any Work not in accordance with Contract Documents.

ARTICLE 6

FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor as provided below and in Article 9.9 of the General Conditions.

6.1 Following the Consultant's issuance of the Certificate of Substantial Completion of the Work or designated portion thereof, and Contractor's completion of the Work, the Contractor shall simultaneously forward to the Consultant and the Project Manager a written notice that the work is ready for final inspection and acceptance and shall also simultaneously forward to the Consultant and the Project Manager a final Application for Payment. Upon receipt the Consultant will promptly make such inspection. When the Consultant finds the Work acceptable under the Contract Documents and the Contract fully performed, the Consultant will issue a Final Certificate for Payment approving and recommending final payment to the Contractor.

ARTICLE 7

TERMINATION OR SUSPENSION

7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.

7.2 The Work may be suspended by the Owner as provided in Article 14.2.3 of the General Conditions.

ARTICLE 8

ENUMERATION OF CONTRACT DOCUMENTS

8.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

8.1.1 The Agreement is this executed Standard Contract for Construction.

8.1.2 The General Conditions are the University of Rochester General Conditions of the Lump-Sum Owner-Contractor Agreement, **13th Edition**, dated **January 10, 2017**.

8.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated [REDACTED], or as set forth in Article 9.

8.1.4 The Specifications are those referenced in **Exhibit A** and contained in the Project Manual dated [REDACTED].

8.1.5 The Drawings are as enumerated on the List of Drawings and Dates, annexed to this Agreement as **Exhibit A** or as set forth in Article 9.

8.1.6 The Addenda, if any, are as follows:

[List Addenda.]

ARTICLE 9

MISCELLANEOUS PROVISIONS

9.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

9.2 The Contractor represents that it has familiarized itself with the nature and extent of the Contract Documents. Work, site, locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the Work.

9.3 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.4 The Owner and the Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal

representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

9.5 This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

9.6 The Contractor agrees that:

A. It hereby voluntarily and irrevocably submits itself to the jurisdiction and venue of any court of competent jurisdiction over the subject matter of this Agreement located within the State of New York in which any litigation is brought based on or arising out of this Agreement.

B. Any litigation brought by the Contractor based on or arising out of this Agreement shall be brought only in the Supreme Court of the State of New York sitting in Monroe County.

C. Any legal process or notice connected with any litigation may be served on the Contractor by United States registered mail, postage prepaid, addressed to the Contractor at its address stated in this Agreement or at the address stated in this Agreement for the furnishing of notices to the Contractor or at the Contractor's last known address, and that service in such manner shall constitute good and valid service of process upon the Contractor.

D. The Contractor hereby waives any defense which might be available to it in any such litigation based on an alleging lack of jurisdiction or venue, or, if process is served in the manner provided in subparagraph (c) immediately above, invalid service of process, and that it will duly enter its appearance in any such action.

E. This Agreement may be presented in court as conclusive evidence of the foregoing agreement.

9.7 The Contractor shall provide insurance in accordance with the requirements included in article 11 of the General Conditions.

9.8 The Contractor shall address all correspondence, except invoices, to the attention of the Project Manager, Jim Carty. Invoices shall be addressed to the attention of the **Financial Manager**. All correspondence and invoices shall be addressed to the University of Rochester, Planning and Project Management, 271 East River Road, Box 270347, Rochester, New York 14627. All documentation shall clearly show the University's project name, [REDACTED] and the University's project number, [REDACTED].

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Owner and the Contractor have signed this Agreement in triplicate. One counterpart has been delivered to the Contractor. All portions of the Contract Documents have been signed or identified by the Owner and the Contractor on their behalf.

UNIVERSITY OF ROCHESTER

CONTRACTOR

By: Wayne Goodwin

By: Signer

Its: Director of Operations

Its: Title