

Rochester Institute of Technology

STANDARD FORM OF AGREEMENT BETWEEN

OWNER AND ARCHITECT

AGREEMENT BETWEEN:

ROCHESTER INSTITUTE OF TECHNOLOGY (OWNER)

120 Lomb Memorial Drive

Rochester, New York 14623-5608

AND:

(ARCHITECT)

FOR:

RIT Project:

DATED:

**ARTICLE 1**

ARCHITECT’S SERVICES AND RESPONSIBILITIES

1.1 ARCHITECT'S SERVICES

1.1.1 Architect’s services (the “Services”) consist of those services performed by Architect, Architect’s employees and any subcontract engineers or others (the “Sub-consultants”) retained by Architect as enumerated in Articles 3 and 4 of this Agreement and the other Contract Documents.

1.1.2 Owner shall have prior approval of the selection of all Sub-consultants. Architect shall not, except as part of its responsibilities under Basic Services, offer to hire any Sub-consultant without the prior written consent of Owner.

1.1.3 Services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work and in accordance with Architect's proposed schedule included in Exhibit B hereto unless modified and agreed to by the owner in writing. In addition, Architect agrees that Owner may make minor adjustments, with Architect’s approval (which approval shall not unreasonably be withheld), to specific milestone dates and planned sequencing of the Project without adjustments to fees or the scheduled completion date. Time limits established by this schedule approved by the Owner shall not, except for compensated changes in Project scope or as otherwise approved by Owner, be exceeded by Architect.

1.1.4 Architect shall throughout all Phases of the work coordinate closely with Owner’s designated representatives. Owner’s project representative (the “Project Manager”) shall be Architect’s prime contact and will designate other appropriate representatives of Owner. All correspondence or other documents or materials shall be directed to the Project Manager except as he or she may authorize in writing. Architect’s Project Team as represented in Exhibit B – Architect’s Original Proposal, will remain in place throughout the Project, unless directed, authorized and agreed upon in writing by Owner.

1.1.5 All correspondence, drawings, specifications or other Project documents shall prominently bear Owner’s project number and job title.

1.1.6 The Architect shall attend all scheduled job coordination and other project meetings and such additional meetings as may be requested by Owner, including without limitation all such meetings as may be scheduled or conducted by the Construction Manager, provided that Architect shall have no obligation hereunder to attend meetings of which it has not been provided at least 48 hours’ notice, except in the case of an emergency which does not allow for advance notice. In addition, Architect shall take detailed minutes of all meetings involving design-related issues, including, without limitation, meetings with user groups, Owner’s management personnel persons, organizations, agencies, or other entities external to the Owner. Minutes shall be deemed correct unless written exceptions/corrections are received within seven days after dissemination. Project meetings shall be monthly during the Schematic Design Phase, the Design Development Phase and the Construction Document Phase. Project meetings shall be biweekly (every two weeks) during the Bidding and Construction Phases.

1.1.7 The Architect shall produce Construction Documents to the standards outlined in the RIT CAD Specifications attached by reference to the Supplementary General Conditions to the Contract for Construction.

1.1.8 Annexed as Exhibit A hereto is the Owner’s Request for Proposal (“RFP”).

1.1.9 Architect’s obligations under this Agreement shall not be limited by any review of the Drawings or Specifications by the Owner or Construction Manager or by other professionals employed or engaged by either.

1.2 ARCHITECT'S RESPONSIBILITIES AND WARRANTS

1.2.1 Architect is and will continue to be properly qualified, licensed, financed, organized and equipped to perform the Services and its other obligations under this Agreement. Architect 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 Architect’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 in force at the time services are performed and the rules and regulations of all applicable governmental authorities having jurisdiction over all or part of the Services, Architect or the Project. Architect acknowledges that the Owner is relying upon the accuracy, competence, and completeness of Architect in performing the Services. Architect represents and warrants that all architectural and engineering services required by New York law to be performed by architects and engineers licensed to practice in New York State will be so performed, and that all Drawings and Specifications prepared by Architect will be stamped and sealed by New York-licensed professionals as required by New York law.

1.2.3 Notwithstanding that the CM may provide incidental design elaboration and value engineering services, as well as analyses of alternative systems and life cycle costs, Architect shall provide its services hereunder independently of CM and, except as set forth specifically herein, without reliance upon CM.

1.3 BASIC SERVICES

The Architect’s Basic Services shall consist of the five phases described in Paragraphs 1.3.1 through 1.3.7, normal structural, mechanical and electrical engineering and any other services included in Article 1.3.8, unless specifically identified in Exhibit A.

1.3.1 The following are to be included as part of the Project Scope and the Architect’s scope of Basic Services:

1.3.1.1 The facility design shall incorporate all codes, OSHA rules, and legal requirements with specific attention drawn to the requirements of the “Americans with Disabilities Act”, particularly as it relates to the interface with existing facilities.

1.3.1.2 The Architect shall participate in design review sessions and processes including reviews at initial and critical milestone points with the Owner’s Operations & Maintenance groups, the Owner’s Fire Marshal and other affected Owner’s departments.

1.3.1.3 The project design is subject to review and approval of the Owner’s property insurance carrier.

1.3.1.4 Interruptions of ongoing educational activities and normal operations at the Owner’s site shall be held to an absolute minimum and shall be planned and occur only with the specific approval of the Owner.

1.3.1.5 The design shall comply with the RFP, as approved and accepted by Owner.

1.3.1.6 Provide analyses of the Owner’s needs, and program the requirements of the Project.

1.3.1.7 Working to a stated furniture budget, provide interior design services including furniture layouts, “to and from” move diagrams and other similar services required for or in connection with facilities design and the selection, procurement and installation of furniture, furnishings and related equipment. Complete schematic furniture package for distribution to furniture vendor including: schematic design phase plan, finishes, 3-D representation, visualization, and milestone schedule.

1.3.1.8 Conduct investigations, surveys, valuations, inventories or detailed appraisals of existing facilities, furnishings and equipment, and services required in connection with the design and construction performed in support of this project. Any such information provided by the Owner is provided only as a courtesy and does not relieve the Architect from the responsibility of ensuring its accuracy.

1.3.1.9 Prepare documents of alternate, separate or sequential bids or providing extra services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase, when requested by the Owner.

1.3.1.10 Prepare a set of CAD drawings according to Rochester Institute of Technology’s CAD Specification # 01420.1 and record drawings in CAD showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Architect. For building addition or renovation projects, CAD drawings must be furnished for the entire floor(s) affected by the work in order for the Owner to maintain a single, complete and integrated set of existing condition drawings.

1.3.1.11 Prepare interior and/or exterior electronic renderings of the design work in a format acceptable to the Owner, for the Owner’s use in explaining the design and/or advertising the project.

1.3.1.12 Provide complete Tel-data design services.

1.3.1.13 The design shall respond to energy efficiency standards established by the Federal Government and State of New York as well as the energy efficiency design philosophy outlined in the Owner’s Design Standards. Coordination will be required with local utilities with particular attention to rebate programs and energy efficiency design incentives. Aggressively seek any/all energy rebate programs and provide a cost benefit life cycle analysis of designing to them.

1.3.1.14 Compile, design, specify, and coordinate interior and exterior way-finding, building identification, room/space identification, and Code required signs including 8.5” X 11” Building Evacuation signs in format acceptable to Owner for floor areas altered or constructed. 8.5” X 11” Building Evacuation signs in format acceptable to Owner for floor areas altered or constructed.

1.3.1.15 Provide planning surveys, site evaluations, environmental studies or comparative studies of prospective sites, and preparing special surveys, studies and submissions required for approvals of governmental authorities or others having jurisdiction over the Project.

1.3.1.16 Furnish a legal description and a certified land survey of the site, giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site. Owner shall supply whatever information is available pertaining to locations, dimensions of existing buildings, other improvements and trees; and full information concerning available service and utility lines both public and private, above and below grade, including inverts and depths.

1.3.1.17 Furnish the services of civil and soil engineers. Such services shall include test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, including necessary operations for determining subsoil, air and water conditions, with reports and appropriate professional recommendations.

1.3.1.18 Provide complete acoustical and A-V consulting services.

1.3.1.19 Provide complete landscape design services.

1.3.1.20 Design, specify, and coordinate window treatments.

1.3.1.21 Compile, design, and specify security system including electronic locks, keypad access, alarms, and other intrusion protection devices required for a complete system.

1.3.1.22 Provide programming, analysis, and an estimate of probable Construction Cost in report format for all existing spaces to be vacated by staff/programs moving into newly created spaces even if the design of the vacated space is not included in this Agreement.

1.3.1.23 Update RIT’s master utility study to reflect all changes to remaining utility capacity.

1.3.2 SCHEMATIC DESIGN PHASE

1.3.2.1 The Architect shall review the program furnished by the Owner to ascertain the requirements (including all applicable code, OSHA, and ADA requirements) of the Project and shall review the understanding of such requirements with the Owner.

1.3.2.2 The Architect shall provide a preliminary evaluation of the program and the Project budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 3.4.

1.3.2.3 The Architect shall review with the Owner alternative approaches to design and construction of the Project.

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

1.3.2.5 The Architect shall submit to the Owner an estimate of Probable Construction Cost based on current area, volume or other unit costs.

1.3.2.6 The Architect shall provide preliminary analysis, including budget implications and preliminary life cycle analyses, where appropriate, of alternate space arrangements to achieve program requirements and alternative mechanical systems analysis.

1.3.2.7 The Architect shall assist in the preparation of such documents and participate in such communications, including, without limitation, communications with Governmental Authorities, as required to obtain such regulatory and other governmental permits and approvals as are necessary for the Project. For purposes of this Agreement, “Governmental Authorities” shall mean all governmental authorities, regulatory agencies and courts, whether federal, state, local or other with jurisdiction over the Project.

1.3.2.8 The Architect shall assist in the preparation and completion of all documents and submittals required by federal, state and local laws, codes, orders and regulations. Architect’s services hereunder may include, without limitation, submissions for environmental assessment reviews and approvals, traffic engineering studies, zoning review and architectural board review.

1.3.2.9 The Architect shall furnish geotechnical investigations and soils engineering as appropriate for the Project. 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 resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

1.3.2.10 Architect shall verify, as part of the Basic Services, and to the extent required for the Work, the accuracy of all documents furnished by Owner pursuant to Section 2.4 below.

1.3.3 DESIGN DEVELOPMENT PHASE

1.3.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Owner in the program or Project budget, the Architect 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, mechanical and electrical systems, materials and such other elements as may be appropriate.

1.3.3.2 The Architect shall provide to the Owner detailed estimates of Probable Construction Costs, and shall advise the Owner of any adjustments to the preliminary estimate of Construction Cost.

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

1.3.3.4 The Architect shall prepare detailed life cycle cost analyses for all major system and equipment decisions, including, without limitation, HVAC and system selections, electrical distribution alternatives, fire detection systems, fire protection and biohazard protection systems, HVAC control systems, roofing systems and finish selections.

1.3.3.5 The Architect shall review and assist in resolving discrepancies with respect to Construction Manager’s estimate of Construction Cost submitted for the Design Phase.

1.3.3.6 The Design Development Documents will be reviewed periodically (50% and 100%) by the Project Manager and members of the Owner’s staff. Architect shall participate in design review sessions with the Owner’s personnel.

1.3.3.7 The Design Development Documents shall include preliminary specifications that identify and establish the quality levels of major materials and systems of the Project.

1.3.3.8 The Design Development Documents shall include preliminary furniture layouts for all spaces. Furniture layouts shall comply with RIT Furniture Standards, which are referenced in the RIT Design Guidelines at <http://www.rit.edu/fa/facilities/sites/rit.edu.fa.facilities/files/docs/Design%20Guidelines-2014_02_12.pdf>.

1.3.3.9 Prior to presenting Design Development Documents to Owner for approval, the Architect shall demonstrate to the Owner and provide a written opinion that all material design conflicts, clashes, and/or collisions have been removed and/or resolved to Owner’s satisfaction.

1.3.4 CONSTRUCTION DOCUMENT PHASE

1.3.4.1 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 Architect shall prepare, for approval by the Owner, Construction Documents consisting of drawings, prepared in accordance with Rochester Institute of Technology’s CAD Specifications # 01420.01, and CSI format specifications setting forth in detail the requirements for the construction of the Project.

1.3.4.2 The Architect 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.

1.3.4.3 The Architect shall provide to the Owner detailed estimates of Construction Costs, and shall advise the Owner of any adjustments to previous estimates of Construction Cost indicated by changes in requirements or general market conditions.

1.3.4.4 The Architect shall assist the Owner in connection with the Owner’s responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

1.3.4.5 The Architect shall, except as approved in writing by the Owner’s representative, comply with all Owner design standards and policies, and comply with all applicable National, State and Local codes, OSHA rules, and ADA requirements. The Architect shall review and incorporate as appropriate all Owner design standards into the project specifications, with only such modifications and additions as the Architect determines are required for the work of the project, subject to the Owner’s approval. It shall be the Architect’s responsibility to investigate and determine the nature and scope of existing Owner standards and practices, and to make recommendations as desirable for their revision.

1.3.4.6 The Construction Documents will be reviewed periodically (50%, 85%, and 100%) by the Project Manager and members of the Owner’s staff, and the Architect shall participate in design review sessions with the Owner’s personnel.

1.3.4.7 All spaces shown on the Contract Drawings shall be identified using the Owner’s permanent room and floor numbers. The Architect shall work with the Owner’s representatives to determine and assign these numbers.

1.3.4.8 The Specifications shall not provide for sole sourcing of equipment or materials unless agreed to in writing by Owner.

1.3.4.9 The Architect shall advise the Owner of any adjustments to previous preliminary estimates of Construction Cost indicated by changes in requirements or general market conditions. The Architect shall provide a detailed estimate of probable Construction Cost, which shall be within the Construction Budget, at the point as outlined in Exhibit A. This estimate shall be based on the Construction Documents, consistent with the program and the approved Design Development Documents.

1.3.4.10 The Architect shall review and resolve discrepancies with respect to Construction Manager’s estimate of Construction Cost which will be submitted at the completion of the Construction Documents Phase, as determined by Owner, Architect and Construction Manager.

1.3.4.11 The Architect shall identify all necessary permits, certificates, and authorizations required by Governmental Authorities having jurisdiction over any part of the Project. The Architect 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 Construction Manager and its Subcontractors), for communicating with the Construction Manager to ascertain that all necessary permits are obtained in a timely manner, and for advising the Owner immediately of any problem.

1.3.4.12 The Architect shall perform square footage calculations in the format requested by the Owner on a gross area basis and on a net area basis by room.

1.3.5 BIDDING PHASE

1.3.5.1 The Architect, following the Owner’s approval of the Construction Documents and of the latest estimate of Probable Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals, and assist in awarding and preparing contracts for construction. As part of these services, Architect shall participate in pre-bid conferences and site walk-through in coordination with the Construction Manager, and shall assist the Owner and CM in conducting pre-award conferences with successful Bidders and in awarding and preparing contracts for construction. The Owner and CM will prepare and issue requests for and receive bids, and will prepare all contracts and similar documentation.

1.3.6 CONSTRUCTION PHASE -- ADMINISTRATION OF THE CONSTRUCTION CONTRACT

1.3.6.1 The Construction Phase will commence with the award of the Contract for Construction and, together with the Architect’s obligation to provide Basic Services under this Agreement, will terminate thirty (30) days after final payment to the Contractor is due.

1.3.6.2 Unless otherwise provided in this Agreement and incorporated in the Contract Documents, the Architect shall provide administration of the contract for Construction as set forth below and in the edition of the Rochester Institute of Technology, General Conditions of the Contract for Construction, executed for this Project.

1.3.6.3 The Architect shall be a representative of the Owner during the Construction Phase, and shall advise and consult with the Owner. Instructions to the Contractor shall be forwarded through the Architect. The Architect shall have authority to act on behalf of the Owner only to the extent provided in the Contract Documents unless otherwise modified by written instrument in accordance with Subparagraph 1.3.7.

1.3.6.4 The Architect and its sub-Architects shall visit the site at intervals appropriate to the stage of construction, but not less than weekly or as otherwise agreed by the Architect 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 Architect 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 observations as an Architect, the Architect shall keep the Owner informed, in writing, of the progress and quality of the Work, and shall endeavor to guard the Owner against defects and deficiencies in the Work of the Contractor. Exhibit F provides the form and format for recording/reporting all site visits and it (or Architect’s similarly formatted document) should be delivered to the RIT Project Manager within 48 hours of each site visit.

1.3.6.5 The Architect shall not have control 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, for the acts or omissions of the Contractor, Subcontractors or any other persons performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Contract Documents.

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

1.3.6.7 The Architect shall determine the amounts owing to the Contractor based on observations at the site and on evaluations of the Contractor’s Applications for Payment, and shall issue Certificates for Payment in such amounts, as provided in the Contract Documents.

1.3.6.8 The issuance of a Certificate for Payment shall constitute a representation by the Architect to the Owner, based on the Architect’s observations at the site as provided in Subparagraph 1.5.4 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 Architect’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 Architect has made any examination to ascertain how and for what purpose the Contractor has used the moneys paid on account of the Contract Sum.

1.3.6.9 The Architect shall be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by both the Owner and Contractor. The Architect shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Contractor, and shall render written decisions, within a reasonable time, on all claims, disputes and other matters in question between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract Documents.

1.3.6.10 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in written or graphic form. In the capacity of interpreter and judge, the Architect shall endeavor to secure faithful performance by both the Owner and the Contractor, shall not show partiality to either, and shall not be liable for the result of any interpretation or decision rendered in good faith in such capacity.

1.3.6.11 The Architect’s decisions in matters relating to artistic effect shall be final if consistent with the intent of the Contract Documents. The Architect’s decisions on any other claims, disputes or other matters, including those in question between the owner and the Contractor, shall be subject to resolution as provided in this Agreement and in the Contract Documents.

1.3.6.12 The Architect shall have authority to reject Work which does not conform to the Contract Documents. Whenever, in the Architect’s reasonable opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the Architect will have authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such work will be then fabricated, installed or completed.

1.3.6.13 The Architect shall review and approve or take other appropriate action upon the Contractor’s submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Architect’s approval of a specific item shall not indicate approval of an assembly of which the item is a component.

1.3.6.14 The Architect shall prepare Change Orders for the Owner’s approval and execution in accordance with the Contract Documents, and shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are not inconsistent with the intent of the Contract Documents.

1.3.6.15 The Architect shall conduct inspections to determine the Dates of Substantial Completion, and Final Completion, and a one year warranty inspection; shall receive, review for completeness, and forward to the Owner for the Owner’s review Record Drawings, O & M Manuals, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment.

1.3.6.16 The extent of the duties, responsibilities and limitations of authority of the Architect as the Owner’s representative during construction shall not be modified or extended without written consent of the Owner, the Contractor and the Architect.

1.3.7 PROJECT REPRESENTATION BEYOND BASIC SERVICES

1.3.7.1 If the Owner and Architect agree that more extensive representation at the site than is described in paragraph 1.3 shall be provided, the Architect shall provide one or more Project Representatives to assist the Architect in carrying out such responsibilities at the site.

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

1.3.7.3 Through the observations by such Project Representatives, the Architect shall endeavor to provide further protection for the Owner against defects and deficiencies in the Work.

1.3.8 ADDITIONAL SERVICES

The following Services are not included in Basic Services unless so identified in Exhibit A. Any of the following services identified in Exhibit A to be included in the Basic Services shall be included in the compensation for Basic Services. Additional Services may be requested by the owner exclusive of the Basic Services, authorized or confirmed in writing by the Owner, and they shall be paid for by the Owner as provided in this Agreement, in addition to the compensation for Basic Services.

1.3.8.1 Provide financial feasibility or other special studies.

1.3.8.2 Provide services relative to future facilities, systems and equipment which are not intended to be constructed during the Construction Phase.

1.3.8.3 Provide services in connection with the work of a Construction Manager or separate Architects retained by the Owner.

1.3.8.4 Provide services for planning tenant or rental spaces.

1.3.8.5 Make 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 Architect.

1.3.8.6 Prepare Drawings, Specifications and supporting data and provide other services in connection with Change Orders to the extent that the adjustment in the Basic Compensation resulting from the adjusted Construction Costs is not commensurate with the services required of the Architect, provided such Change Orders are required by causes not solely within the control of the Architect.

1.3.8.7 Provide 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.

1.3.8.8 Except as may be required by Architect’s errors or omissions, provide services made necessary by the default of the Contractor, or 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.

1.3.8.9 Provide extensive assistance in the utilization of any equipment or system such as initial start-up or testing, adjusting and balancing, preparation of operation and maintenance manuals, training personnel for operation and maintenance, and consultation during operation.

1.3.8.10 Provide services thirty (30) days after issuance to the Owner of the final Certificate for Payment except as reasonably inferred from services/responsibilities described elsewhere in this agreement.

1.3.8.11 Prepare to serve or serve as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding beyond the scope of the permit application process.

1.3.8.12 Provide services of Architects not otherwise included in this Agreement.

1.3.8.13 Provide any other services not otherwise included in this Agreement or not customarily furnished in accordance with generally accepted architectural practice.

1.4 TIME

1.4.1 The Architect shall perform Basic and Additional Services as expeditiously as is consistent with professional skill and care and the orderly progress of the work. Upon request of the Owner, the Architect shall submit for the Owner’s approval, a schedule for the performance of the Architect’s services which shall be adjusted as required as the Project proceeds, and shall include allowances for periods of time required for the Owner’s review and approval of submissions and for approvals of authorities having jurisdiction over the Project. This schedule, when approved by the Owner, shall not, except for reasonable cause, be exceeded by the Architect.

**ARTICLE 2**

THE OWNER'S RESPONSIBILITIES

2.1 The Owner shall provide full information regarding requirements for the Project and will cooperate with the Architect during Programming to set forth the Owner’s design objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, special equipment and systems and site requirements.

2.2 The Owner shall provide an overall budget for the project, including contingencies for bidding, changes in the Work during construction, and other costs which are the responsibility of the Owner.

2.3 The Owner shall designate a representative authorized to act in the Owner’s behalf with respect to the Project. The Owner or such authorized representative shall examine the documents submitted by the Architect and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Architect’s services.

2.4 The Owner shall provide access to its facilities archive which may contain construction drawings, surveys, and other test reports relating to portions of the Project. The Owner shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents.

2.5 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.

2.6 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 Architect.

2.7 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Architect’s services and of the Work.

**ARTICLE 3**

CONSTRUCTION COST

3.1 The Construction Cost shall be the total cost or estimated cost of the physical construction (including general conditions costs), to Owner of all elements of the Project designed or specified by the Architect.

3.2 The Construction Cost shall include at current market rates, a reasonable allowance for overhead and profit, the cost of labor and materials furnished by the Owner and any equipment which has been designed, specified, selected or specially provided for by the Architect.

3.3 Construction Cost does not include the compensation of the Architect and the Architect’s consultants, payments to consultants or the Construction Manager for professional services (including, but not limited to, the CM Fee), the cost of the land, rights-of-way, or other costs which are the responsibility of the Owner as provided in Article 2.

3.4 Evaluations of the Owner’s Project budget, estimates of Probable Construction Cost and detailed Estimates of Construction Cost, prepared by the Architect, represent the Architect’s best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect 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 Architect 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, if any, or from any estimate of Probable construction Cost or other cost estimate or evaluation prepared by the Architect. Notwithstanding the foregoing, Architect shall use best efforts to ensure that the Project Design results in an actual Construction Cost that does not exceed Owner’s Project budget by more than ten percent.

3.5 A fixed limit of Construction Cost shall be established as a condition of this Agreement by establishment of a Project budget agreed to by Owner and Architect. Component systems and types of construction are to be included. As part of this fixed limit, the Architect shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment component system, and types of construction are to be included, in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids to adjust the Construction Cost to the fixed limit. Any such fixed limit shall be increased in the amount of any increase in the Contract Sum occurring after execution of the Contract for Construction.

3.6 If the Bidding or Negotiation Phase has not commenced within three months after the Architect submits the Construction Documents to the Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect any change in the general level of prices in the construction industry between the date of submission of the Construction Documents to the Owner and the date on which proposals are sought.

3.7 Notwithstanding, if a Project budget or fixed limit of Construction Cost (adjusted as provided in Subparagraph 3.6) is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall (1) give written approval of an increase in such fixed limit, (2) authorize rebidding or renegotiating of the Project within a reasonable time, (3) abandon the Project and terminate in accordance with Paragraph 10.2 or (4) cooperate in revising the Project scope and quality as required to reduce the Construction Cost. In the case of (4), the Architect, without additional charge, shall modify the Drawings and Specifications as necessary to comply with the fixed limit. As part of these services, Architect shall participate in pre-bid conferences and site walk-through in coordination with the Construction Manager, and shall assist the Owner and CM in conducting pre-award conferences with successful Bidders and in awarding and preparing contracts for construction. The Owner and CM will prepare and issue requests for and receive bids, and will prepare all contracts and similar documentation.

**ARTICLE 4**

DIRECT PERSONNEL EXPENSE

Reserved.

**ARTICLE 5**

REIMBURSABLE EXPENSE

5.1 Reimbursable Expenses are in addition to the compensation for Basic and Additional Services and include actual expenditures made by the Architect and the Architect’s employees and Architects in the interest of the Project for the expenses listed in the following subparagraphs:

5.1.1 Expenses for Pre-Approved Out of Town Travel or For Travel to RIT by Out of Town Firms:

5.1.1.1 Coach or promotional fare air travel at the most economical rates (or automobile reimbursement at the current IRS allowance if less than air fare). First or Business class is not allowed nor can air carrier selection be biased by any traveler’s frequent flyer affiliation. The lowest applicable air travel will take precedence over frequent flyer programs. Private airplanes are generally prohibited. RIT will reimburse the cost of rail fare not to exceed the cost of the lowest applicable air fare.

5.1.1.2 Per Diem food expenses not to exceed $50.00 (including tax and gratuity). When in Rochester, only meals purchased at owner operated establishments will be reimbursed.

5.1.1.3 Lodging in commercial class hotels and motels to a maximum of $100.00 per night (including tax and gratuity). Travelers to Rochester must book all lodging at the RIT Inn and Conference Center. Other accommodations will only be approved for reimbursement if the RIT Inn and Conference Center cannot accommodate lodging needs.

5.1.1.4 Compact vehicle rental or taxi.

5.1.1.5 Expenses associated with baggage handling.

5.1.1.6 Business related telephone calls, telegrams and facsimiles.

5.1.1.7 In reporting travel outside the United States, the rate used in converting foreign currency to U.S. dollars must be indicated on a Travel Expense Form. The rate must be that used at the time of the transaction, not the rate in effect at the time the Travel Expense Form is submitted.

5.1.2 Expense of reproductions, postage and handling of Drawings, Specifications and other documents, excluding reproductions for the office use of the Architect and the Architect’s Architects.

5.1.3 Expenses of data processing and photographic production techniques when used in connection with Additional Services.

5.1.4 If authorized in advance by the Owner, expense of overtime work requiring higher than regular rates.

5.1.5 Expense of models and mock-ups requested by the Owner.

5.1.6 Expense of any additional insurance coverage or limits, including professional liability insurance above those specified in Article 15, requested by the Owner in excess of that normally carried by the Architect and the Architect’s Architects.

5.1.7 Project expenses for long distance communications and fees paid for securing approval of authorities having jurisdiction over the Project.

5.2 The Architect, the Architect’s employees and Architects shall NOT be reimbursed for the following expenses:

* Expenses of in town travel to and from the site.
* Overhead or general operating expenses of the Architect’s office.
* Costs due to the negligence of the Architect.
* Non-transportation Expenses- Non-reimbursable.
* Personal entertainment, including movies in the hotel room.
* Costs incurred by traveler’s failure to cancel transportation or hotel reservations.
* Additional travel insurance and travel accident insurance premiums.
* Laundry or cleaning for trips less than one week.
* Magazines, newspapers.
* Medicines.
* Hairstyling and haircuts
* Babysitting
* Excessive personal telephone calls (more than one per day).
* Other expenses not directly related to the performance of the travel assignment.
* Expenses incurred due to mechanical failure or accidents.
* Fines for parking or traffic violations for personal or rented vehicles.
* Any expenses not specifically enumerated in paragraph 5.1 above.

**ARTICLE 6**

PAYMENTS TO THE ARCHITECT

6.1 PAYMENTS ON ACCOUNT OF BASIC SERVICES

6.1.1 Invoices for all services performed, shall include the “Invoice Summary” shown as Exhibit E to this Agreement and detailed supporting documentation for all charges.

6.1.2 An initial payment as set forth in Paragraph 14.1 is the minimum payment under this Agreement.

6.1.3 Subsequent payments for Basic Services shall be made on the form included as Exhibit E, not more than once monthly and shall be in proportion to services performed within each Phase of services, on the basis set forth in Article 14.

6.1.4 If and to the extent that the Contract Time initially established in the Contract for Construction is exceeded or extended through no fault of the Architect, compensation for any Basic Services required for such extended period of Administration of the Construction Contract shall be computed as set forth in paragraph 14.3.2 for Additional Services.

6.1.5 When compensation is based on a percentage of Construction Cost, and any portions of the Project are deleted or otherwise not constructed, compensation for such portions of the Project shall be payable to the extent services are performed on such portions, in accordance with the schedule set forth in Subparagraph 14.2, based on (1) the lowest bona fide bid or negotiated proposal or, (2) if no such bid or proposal is received, the most recent estimate of Probable Construction Cost or Detailed Estimate of Construction cost for such portions of the Project.

6.2 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

6.2.1 Payments on account of the Architect’s Additional Services as defined in Paragraph 1.3.7 and for Reimbursable Expenses as defined in Article 5 shall be made monthly upon presentation of the Architect’s statement of services rendered or expenses incurred. (Exhibit E)

6.3 PAYMENTS WITHHELD

6.3.1 No deductions shall be made from the Architect’s compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect is held legally liable.

6.4 PROJECT SUSPENSION OR TERMINATION

6.4.1 If the Project is suspended or abandoned in whole or in part for more than three months, the Architect shall be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment subject to the restrictions of 14.2.2, together with Reimbursable Expenses then due.

6.4.2 If the Project is resumed after being suspended for more than three months, the Architect’s compensation shall be equitably adjusted if the services covered by this agreement have not been completed within thirty (30) months of the date here above first written.

**ARTICLE 7**

ARCHITECT’S ACCOUNTING RECORDS

7.1             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.

**ARTICLE 8**

OWNERSHIP AND USE OF DOCUMENTS

8.1 Without payment of any additional compensation to the Architect, the Drawings, Specifications and other documents, including Record Drawings prepared by the Architect for this Project, shall become the Owner’s property upon completion, cancellation, suspension or termination of the Work or this Agreement, provided that Owner has paid Architect for its services in accordance with the terms of this Agreement. Reproducible copies of the original documents, including copies of structural and mechanical calculations, if any, shall be turned over to the Owner at that time. Documents originally prepared on CAD systems shall be turned over to the Owner in current Auto CAD format on compact disk files.

8.1.1 Reuse of any of these documents by the Owner to complete, repair or on extensions of the Project or on any other project shall be at the Owner’s risk. The Architect shall be permitted to retain copies, including reproducible copies, of any or all documents for such use as it may require, except that use of any document without substantial modification shall be attributed to the Owner and shall have the Owner’s prior written consent. Use by the Architect shall be at its own risk.

8.2 The Architect hereby grants the Owner a non‑exclusive, perpetual, paid-up, royalty-free license to the design of the Project. The Owner may make any changes, additions, and deletions to 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 Architect, provided, however, that Architect shall have no liability for modifications to the Project design made by others.

8.3 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect’s rights.

8.4 All Instruments of Service, including but not limited to, plans specifications, schedules, estimates, renderings, and models developed in the course of the Work are to be considered proprietary and confidential under Section 16.2 below. These items are not to be released to any third parties or internal Owner personnel without the written permission of the Director of Planning, Design and Construction, or his/her authorized agent(s). All Instruments of Service, developed in the course of the Work are to be labeled “confidential” and “for internal use only” unless expressly authorized in writing by the Director of Planning, Design and Construction, or his/her authorized agent(s).

**ARTICLE 9**

DISPUTE RESOLUTION

9.1 All claims, disputes and other matters in question between the Architect and the Owner arising out of, or relating to, the Contract documents or the breach thereof, may be decided by arbitration if mutually agreeable to the parties involved, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then pertaining if the total amount of any monetary damage claimed by each party to said arbitration by claim or counter-claim is less than $50,000. Each party making such a claim in arbitration agrees that it includes all damages which have or ever will arise out of the facts on which said claim is based and that the damages it may recover as a result of said claim are limited to a maximum of $50,000. The limit on claims to be pursued in arbitration shall not be avoided by alleging damages not reasonably related to the claim or by commencing multiple arbitration proceedings arising out of a single dispute; it being the intent of the parties to resolve all disputes described above that involve no more than $50,000 by arbitration and that all other disputes be resolved in the courts of the State of New York pursuant to Subparagraph 9.6.

9.2 Any arbitration occurring pursuant to Subparagraph 16.1 may include any other party substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. The Owner and Architect shall include an arbitration clause consistent with that found in this Paragraph in all other contracts that they may enter into in connection with the Project.

9.3 The foregoing agreement to arbitrate and any other agreement to arbitrate with an additional person or persons in connection with the Project shall be specifically enforceable under the prevailing arbitration laws of the State of New York. The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

9.4 The venue of any arbitration occurring pursuant to this Paragraph or any court proceeding to interpret or enforce said Paragraph shall be in Monroe County, State of New York.

9.5 Notice of the demand for arbitration shall be filed in writing with the other party or parties to said arbitration and with the American Arbitration Association. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

9.6 Except as provided in Subparagraph 16.1, all other claims, disputes and other matters in question between the Architect and the Owner arising out of, or relating to, the Contract Documents or the breach thereof, shall be decided by the courts of the State of New York and venue for any such action shall be in Monroe County.

9.7 Unless otherwise agreed in writing, the Architect shall carry on the Work and maintain its progress during any arbitration or court proceedings, and the Owner shall continue to make payments to the Architect in accordance with the Contract Documents.

**ARTICLE 10**

TERMINATION OF AGREEMENT

10.1 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.

10.2 This Agreement may be terminated by the Owner upon at least seven days’ written notice to the Architect in the event that the Project is permanently abandoned.

10.3 This Agreement may be terminated at any time by the Owner upon thirty (30) days prior written notice.

10.4 In the event of termination not the fault of the Architect, the Architect shall be compensated for all services performed to termination date subject to the restrictions of 14.1.2.2, together with Reimbursable Expenses then due.

**ARTICLE 11**

MISCELLANEOUS PROVISIONS

11.1 Unless otherwise specified, this agreement shall be governed by the law of the principal place of business of the Owner.

11.2 Terms in this Agreement shall have the same meaning as those in the Rochester Institute of Technology, General Conditions of the Contract for Construction, current as of the date of this agreement.

11.3 The Owner and the Architect waive all rights against each other and against the contractors, Architects, agents and employees of the other for damages covered by any property insurance during construction as set forth in the edition of the Rochester Institute of Technology, General Conditions, current as of the date of this Agreement. The Owner and the Architect each shall require appropriate similar waivers from their contractors, Architects and agents.

**ARTICLE 12**

SUCCESSORS AND ASSIGNS

12.1 The Owner and the Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign, sublet or transfer any interest in this Agreement without the written consent of the other.

**ARTICLE 13**

EXTENT OF AGREEMENT

13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect 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 Architect.

13.2 The following shall be attached to and considered part of this agreement: (Exhibit A) - Rochester Institute of Technology’s Request for Proposal dated January 27, 2011. (Exhibit B) - The Architect’s original proposal dated February 25, 2011. (Exhibit C) - Rochester Institute of Technology’s General Conditions of the Contract for Construction, dated June 11, 2007. (Exhibit D) - Rochester Institute of Technology’s CAD Specification # 01420.1 Should there be any inconsistencies in this Agreement and these documents, the Owner shall be entitled to the level of service or benefit the Owner, in its sole judgment, considers better or higher or more cost effective.

**ARTICLE 14**

BASIS OF COMPENSATION

14.1 The Owner shall compensate the Architect for the Scope of Services provided, in accordance with Article 6, Payments to the Architect, and the other Terms and Conditions of this Agreement, as follows

14.1.1 AN INITIAL PAYMENT of Zero dollars ($  0  ) shall be made upon execution of this Agreement and credited to the Owner’s account as follows:

14.1.2 BASIC COMPENSATION

14.1.2.1 FOR BASIC SERVICES, as described in Paragraphs 1.1 through 1.3.7, and any other services included in Paragraph 1.3.8 as part of Basic Services, Basic Compensation shall not exceed and shall be computed as follows:

14.1.2.1.a Compensation for services rendered by principals, employees, and sub-Architects shall be based on the billing rates included in Exhibit B times the actual hours worked on the project.

14.1.2.1.b Owner shall be furnished with complete documentation showing the derivation of the amount due the Architect with each invoice. Should Project be terminated before start of Construction Phase, fee shall not exceed cumulative amounts indicated in paragraph 14.2.2 for phases completed.

14.1.2.2 Basic Compensation shall at no time exceed the cumulative total of the following per phase amounts of Basic Compensation payable:

Schematic Design Phase:

Design Development Phase:

Construction Documents Phase:

Bidding or Negotiation Phase:

Construction Phase:

Total:

14.2 FOR PROJECT REPRESENTATION BEYOND BASIC SERVICES, as described in Paragraph 1.3.7, Compensation shall be computed separately in accordance with Subparagraph 1.3.7.2.

14.3 COMPENSATION FOR ADDITIONAL SERVICES

14.3.1 FOR ADDITIONAL SERVICES OF THE ARCHITECT which are beyond those identified as Basic Services in this contract or in Exhibit A, compensation shall be based on the billing rates included in Exhibit B times the actual hours worked or as otherwise agreed to in advance in writing.

14.3.2 FOR ADDITIONAL SERVICES OF SUB-ARCHITECTS which are beyond those identified as Basic Services in this contract or in Exhibit A, compensation shall be based don the billing rates included in Exhibit B times the actual hours worked or as otherwise agreed to in advance in writing.

14.4 FOR REIMBURSABLE EXPENSES, as described in Article 5, a multiple of 0 times the amounts expended by the Architect, the Architect’s employees and Architects in the interest of the Project. However reimbursable expenses shall not exceed $0.

14.5 Payments due the Architect and unpaid under this Agreement shall bear interest from the date payment is due at the prime rate of interest for major money center banks as published by *The Wall Street Journal* from time to time.

14.6 The Owner and the Architect agree in accordance with the Terms and conditions of this Agreement:

14.6.1 IF THE SCOPE of the Project or of the Architect’s Services is changed materially, the amounts of compensation shall be equitably adjusted as agreed by Owner and Architect in writing.

14.6.2 IF THE SERVICES covered by this Agreement have not been completed within thirty (30) months of the date hereof, through no fault of the Architect, the amounts of compensation, rates and multiples set forth herein shall be equitably adjusted as agreed by Owner and Architect in writing.

**ARTICLE 15**

INSURANCE

15.1 "The Architect shall purchase and maintain in a company or companies licensed to do business in New York State and to which the Owner has no reasonable objection such insurance as will protect him from claims set forth below which may arise out of or result from the Architect’s activities in connection with the project, whether such activities be by himself or by anyone directly or indirectly employed by him, or by anyone for whose acts any of them may be liable:

15.1.1 claims under workers’ or workmens’ compensation, disability benefit and other similar employee benefit acts;

15.1.2 claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;

15.1.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;

15.1.4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Architect, or (2) by any other person;

15.1.5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and

15.1.6 claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

15.1.7 claims for damages resulting from negligent error, omission or act in connection with the performance of professional services."

15.2 The insurance required by Subparagraph 15.1 shall be written for not less than any limits of liability specified in the Contract Documents, or required by law, whichever is greater.

15.3 Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. Each policy shall provide for notification to Owner thirty (30) days prior to termination or restrictive amendments. The insurance companies issuing the policies shall have no recourse against Owner for the payment of premiums or for any assessments under any form or policy. Owner reserves the right to request copies of insurance policies prior to commencement of Work.

15.4 Schedule of Insurances

15.4.1 COMMERCIAL GENERAL LIABILITY: With limits of $1,000,000 per occurrence ($2,000,000 general aggregate) written on an occurrence basis including coverage for bodily injury and property damage, XCU, product liability, products/completed operations, contractual liability, contingent liability, and personal injury liability and advertising liability.

15.4.2 AUTO LIABILITY: Including owned, hired and non-owned autos, trucks, tractors, trailers, motorcycles or other automotive equipment. $1,000,000 combined single limit (each accident). Coverage must apply to non-ownership protection for all employees of architect engaged in performance of this contract. Coverage shall include contractual liability.

15.4.3 UMBRELLA FORM EXCESS LIABILITY: $10,000,000 per occurrence minimum in excess of underlying limits. The umbrella shall be no more restrictive than the underlying coverage, covering all work performed by the Architect under this Contract.

15.4.4 WORKERS’ COMPENSATION & EMPLOYER’S LIABILITY: Statutory New York State limits.

15.4.5 PROFESSIONAL LIABILITY: Minimum limits of $5,000,000. Coverage shall be maintained for at least four years subsequent to the termination date of this agreement; during such four-year period, Architect shall assure that there is no change to the retroactive date of coverage.

15.5 These coverages and limits are to be considered minimum requirements under this Contract and in no way limit the liability of the Architect.

15.6 If at any time any of the above required insurance policies should be canceled, terminated or modified so that the required insurance is not in effect, Owner may require Architect to suspend performance of the Work. No extension of time shall be allowed to Architect in the event of any such suspension. Whether or not the Work is suspended, Owner may, at its option, obtain replacement coverage in whole or in part, the cost of which shall be payable by Architect to Owner.

15.7 During the period of this agreement and for three years following substantial completion, architect and its sub-Architects shall continue to maintain professional liability coverage in the limits specified by this agreement.

15.8 Owner shall be named as an additional insured on the General Liability, Automobile, Excess Liability policies, and, if applicable, any liability policies carried on watercraft. General Liability Additional Insured status shall be specifically provided by Additional Insured Form CG2010(1185) or a combination of CG2010(1093) and CG2037(1001), or CG2033(10/01) and CG2037(1001), or equivalent manuscript wording, and shall apply on a primary and non-contributing basis before any other Insurance or self-Insurance, including any deductible, maintained by, or provided to, the aforementioned additional insureds, and shall remain in effect for the duration of the contract, including the Completed Operations Period. All policies shall be endorsed to Waive all Rights of Subrogation in favor of the Owner. Policies shall not be cancelled, materially changed or non-renewed without thirty (30) days advance notice to the Owner.

**ARTICLE 16**

OTHER CONDITIONS OR SERVICES

16.1 INDEMNIFICATION

16.1.1 To the fullest extent permitted by law, Architect shall indemnify and hold harmless the Owner, and its directors, trustees, students, faculty, officers, employees and agents [the IDA if an IDA‑financed project] (the “Indemnified Parties”) from and against any and all loss, cost, damage, injury, liability, claim, cause of action, demand, penalty or expense (including attorneys’ fees, whether incurred as a result of a third party claim or allegation or arising out of enforcing this Contract), directly or indirectly to the extent arising out of, resulting from or related to (in whole or in part) (1) the negligent performance of services under this Contract, (2) the negligent act or omission of Architect or Architect or any individual, partnership, joint venture or corporation (a) directly or indirectly employed by Architect or Architect thereof or (b) for whose acts or omissions Architect or Architect thereof may be liable, (3) personal injury, sickness, disease or death, including, without limitation, to any employees of the Architect or others identified in Phrase 2 above arising from the negligent acts, errors and omissions of the Architect or (4) injury to or destruction of tangible property, including the loss of use resulting therefrom (excluding property damage to the Work itself to the extent that compensation is provided by the Owner’s all-risk builder’s risk insurance, resulting from the Architect’s negligent acts, errors and omissions), irrespective of whether there is a breach of a statutory obligation or rule of apportioned liability. The obligations of Architect under this indemnification shall apply to all matters except to the extent indemnification of such person is precluded by statute and except those obligations arising solely from the wanton and willful negligence or the malicious acts or omissions of the Owner. The obligations contained in this Subparagraph shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 16.1.

16.1.2 In any and all claims against the Indemnified Parties by any employee of the Architect, any Architect, anyone directly or indirectly employed by any of them or anyone for whose acts or omissions any of them may be liable, the indemnification obligation under this Paragraph 16.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Architect or any Architect under workers’ or workmen’s compensation acts, disability benefit acts or other employee benefit acts.

16.1.3 Architect shall promptly advise Owner in writing of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and Architect, at Architect’s expense, shall assume on behalf of Owner and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to Owner; provided, that Owner shall have the right to be represented therein by advisory counsel of its own selection and at its own expense; and provided further, that if the defendants in any such action include both Architect and Owner and Owner shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to Architect, Owner shall have the right to select separate counsel to participate in the defense of such action on its own behalf at Architect’s expense. In the event of failure by Architect to fully perform in accordance with this indemnification paragraph, Owner, at its option, and without relieving Architect of its obligations hereunder, may so perform, but all costs and expenses so incurred by Owner in that event shall be reimbursed by Architect to Owner, together with interest on the same from the date any such expense was paid by Owner until reimbursed by Architect, at the rate of interest provided to be paid on judgments, by the law of the jurisdiction to which the interpretation of the Contract is subject.

16.1.4 The obligations of the Architect under this Paragraph 16.1 shall survive the expiration or termination of the Contract.

16.2 CONFIDENTIALITY

16.2.1 Architect agrees that it shall retain in confidence, and shall not disclose or permit to be disclosed to third parties (other than its consultants and sub-Architects) without the prior written consent of Owner, any information relating to the Project or administration or management of the Project obtained from or through Owner or any other person involved in the performance of the Project, or developed by Architect in connection with the performance of the Services. This obligation shall not extend to information (a) which is or becomes published or otherwise generally available to the public through no fault of the Architect; (b) is obtained by Architect from a third party (other than Owner or any other person involved in the performance of the Project) who did not receive that information under restriction on disclosure; or (c) which the Architect is required to publicly disclose by law, regulation or court order.

16.2.2 The Architect further agrees to require each of its agents (other than employees), consultants, sub-Architects, 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 Section 16.2 prior to their performing any Services.

16.2.3 The Architect and its employees, agents, consultants, sub-Architects, 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.

This Agreement entered into as of the day and year first written above.

**OWNER**

ROCHESTER INSTITUTE OF TECHNOLOGY

By:

Signature

John F. Moore

Assistant Vice President

Facilities Management Services

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ARCHITECT**

By:

Signature

Print Legal Name and Title:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Exhibit A

Rochester Institute of Technology’s original Request for Proposal

Exhibit B

Architect’s Proposal

Exhibit C

General Conditions of the Contract for Construction

Exhibit D

Rochester Institute of Technology’s CAD Specification # 01420.1

Located on RIT Facilities Management Services website: <http://facilities.rit.edu/vendor/docs/CADSpecs.pdf>.

See “Contract Documents”, then “Misc.”, then “RIT CAD Standards.”

For a paper copy, please contact:

Jim Yarrington, Director of Campus Planning & Design (475-4869 or [jryfms@rit.edu](mailto:jryfms@rit.edu))

Exhibit E

**ARCHITECT/ENGINEER INVOICE SUMMARY**

ARCHITECT NAME:

ADDRESS: PURCHASE ORDER NO.:

PHONE: PROJECT NO.:

FAX: APPLICATION FOR PAYMENT NO.:

E-MAIL: FOR PERIOD:

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  | ORIGINAL  CONTRACT  AMOUNT  (a) | CHANGE  ORDERS  (b) | REVISED CONTRACT AMOUNT  (c=a+b) | PER CENT  COMPLETED  (d) | MAXIMUM  BILLING  ALLOWABLE  (e=cxd) | PREVIOUSLY  BILLED  (f) | CURRENT BILLING  (g) | TOTAL BILLINGS  (h=f+g) |
| PHASES |  |  |  |  |  |  |  |  |  |
|  | PROGRAMMING |  |  |  |  |  |  |  |  |
|  | SCHEMATIC DESIGN |  |  |  |  |  |  |  |  |
|  | DESIGN DEVELOPMENT |  |  |  |  |  |  |  |  |
|  | CONTRACT DOCUMENTS |  |  |  |  |  |  |  |  |
|  | INTERIORS |  |  |  |  |  |  |  |  |
|  | BIDDING |  |  |  |  |  |  |  |  |
|  | CONTRACT ADMINISTRATION |  |  |  |  |  |  |  |  |
| OTHER |  |  |  |  |  |  |  |  |  |
|  | REIMBURSABLES |  |  |  |  |  |  |  |  |
| TOTAL |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |

NOTES: 1. Mail all invoices to: RIT -- ATTN: ACCOUNTS PAYABLE -- 7 Lomb Memorial Drive, Rochester, NY 14623

2. Include detail listing of all hours worked to date on this project. Listing should include names and titles of all individuals assigned to this project, actual hours worked, and agreed upon billing rates.

3. Include sufficient detail to support “reimbursable” billing.

4. A Waiver/Release of Lien form from each Architect and Sub-Architect must accompany this invoice.

Exhibit F

**Record of Site Visit/Inspection**

RIT Project: Date:

Name: Arrival Time:

Total time on site: Departure Time:

Purpose of visit:

Observations during visit (est. % of completion, conformance with schedule and design intent, weather, work in progress, etc.):

Directives given during visit:

Additional comments: