

Owner _____
A/E _____

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER

AGREEMENT BETWEEN:

ROCHESTER INSTITUTE OF TECHNOLOGY (OWNER)
120 Lomb Memorial Drive
Rochester, New York 14623-5608

AND:

FOR:

RIT Project #:

DATED:

Owner _____
A/E _____

ARTICLE 1

ENGINEER'S SERVICES AND RESPONSIBILITIES

BASIC SERVICES

The Engineer's Basic Services consist of the five phases described in Paragraphs 1.1 through 1.5 and include normal structural, mechanical, electrical and plumbing engineering, including tele-data, services and any other services included in Article 16 as part of Basic Services.

1.1 SCHEMATIC DESIGN PHASE

1.1.1 The Engineer shall review the program furnished by the Owner to ascertain the requirements of the Project and shall review the understanding of such requirements with the Owner.

1.1.2 The Engineer 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 3.2.1.

1.1.3 The Engineer shall review with the Owner alternative approaches to design and construction of the Project.

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

1.1.5 The Engineer shall submit to the Owner a Statement of Probable Construction Cost based on current area, volume or other unit costs.

1.2 DESIGN DEVELOPMENT PHASE

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

1.2.2 The Engineer shall submit to the Owner a further Statement of Probable Construction Cost.

1.3 CONSTRUCTION DOCUMENTS PHASE

1.3.1 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 Engineer 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.

1.3.2 The Engineer 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.

1.3.3 The Engineer shall advise the Owner of any adjustments to previous Statements of Probable Construction Cost indicated by changes in requirements or general market conditions.

1.3.4 The Engineer 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.

1.4 BIDDING OR NEGOTIATION PHASE

1.4.1 The Engineer, following the Owner's approval of the Construction Documents and of the latest Statement of Probable Construction Cost, shall assist the Owner in obtaining bids or negotiated proposals, and assist in awarding and preparing contracts for construction.

1.5 CONSTRUCTION PHASE -- ADMINISTRATION OF THE CONSTRUCTION CONTRACT

1.5.1 The Construction Phase will commence with the award of the Contract for Construction and, together with the Engineer's obligation to provide Basic Services under this Agreement, will terminate when final payment to the Contractor is due.

1.5.2 Unless otherwise provided in this Agreement and incorporated in the Contract Documents, the Engineer 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.

1.5.3 The Engineer 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 Engineer. The Engineer 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 1.5.16.

1.5.4 The Engineer shall visit the site at intervals appropriate to the stage of construction, but not less than _____ or as otherwise agreed by the Engineer in writing, to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents. However, the Engineer 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 Engineer, the Engineer 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 consultant's similarly formatted document) should be delivered to the RIT Project Manager within 48 hours of each site visit.

1.5.5 The Engineer 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.

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

1.5.7 The Engineer 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.

1.5.8 The issuance of a Certificate for Payment shall constitute a representation by the Engineer to the Owner, based on the Engineer'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 Engineer'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 Engineer has made any examination to ascertain how and for what purpose the Contractor has used the moneys paid on account of the Contract Sum.

1.5.9 The Engineer 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 Engineer 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.

1.5.10 Interpretations and decisions of the Engineer 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 Engineer 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.

1.5.11 The Engineer's decisions in matters relating to artistic effect shall be final if consistent with the intent of the Contract Documents. The Engineer'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.

1.5.12 The Engineer shall have authority to reject Work which

does not conform to the Contract Documents. Whenever, in the Engineer's reasonable opinion, it is necessary or advisable for the implementation of the intent of the Contract Documents, the Engineer 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 be then fabricated, installed or completed.

1.5.13 The Engineer 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 Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

1.5.14 The Engineer 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.

1.5.15 The Engineer 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 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.

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

1.6 PROJECT REPRESENTATION BEYOND BASIC SERVICES

1.6.1 If the Owner and Engineer agree that more extensive representation at the site than is described in paragraph 1.5 shall be provided, the Engineer shall provide one or more Project Representatives to assist the Engineer in carrying out such responsibilities at the site.

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

1.6.3 Through the observations by such Project Representatives, the Engineer shall endeavor to 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 Engineer as described in Paragraph 1.5.

1.7 ADDITIONAL SERVICES

The following Services are not included in Basic Services unless so identified in Article 16. They shall be provided if 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.

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

1.7.2 Providing financial feasibility or other special studies.

1.7.3 Providing 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.

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

1.7.5 Preparing 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.

1.7.6 Providing services in connection with the work of a Construction Manager or separate consultants retained by the Owner.

1.7.7 Providing Detailed Estimates of Construction Costs, analyses of owning and operating costs, or detailed quantity surveys or inventories of materials, equipment and labor.

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

1.7.9 Providing services for planning tenant or rental spaces.

1.7.10 Making 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 Engineer.

1.7.11 Preparing Drawings, Specifications and supporting data and providing 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 Engineer, provided such Change Orders are required by causes not solely within the control of the Engineer.

1.7.12 Making investigations, surveys, valuations, inventories or detailed appraisals of existing facilities, and services required in connection with construction performed by the Owner.

1.7.13 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.

1.7.14 Providing 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.

1.7.15 Preparing a set of reproducible record drawings showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Engineer.

1.7.16 Providing 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.

1.7.17 Providing services after issuance to the Owner of the final Certificate for Payment except as reasonably inferred from services/responsibilities described elsewhere in this agreement.

1.7.18 Preparing to serve or serving as an expert witness in connection with any public hearing, arbitration proceeding or legal proceeding.

1.7.19 Providing services of consultants (landscape architect, soils consultant), for other than the normal architectural, structural, mechanical, electrical and plumbing engineering services for the Project.

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

1.8 TIME

1.8.1 The Engineer 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 Engineer shall submit for the Owner's approval, a schedule for the performance of the Engineer'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 Engineer.

ARTICLE 2

THE OWNER'S RESPONSIBILITIES

2.1 The Owner shall provide full information regarding requirements for the Project and will cooperate with the Engineer 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 If the Owner provides a budget for the Project it shall include contingencies for bidding, changes in the Work during

construction, and other costs which are the responsibility of the Owner, including those described in this Article 2 and in Subparagraph 3.1.2. The Owner shall, at the request of the Engineer, provide a statement of funds available for the Project, and their source.

2.3 The Owner shall designate, when necessary, 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 Engineer and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Engineer's services.

2.4 The Owner shall 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; and to the extent able locations, dimensions and complete data pertaining to 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.

2.5 The Owner shall furnish the services of soil engineers or other consultants when such services are deemed necessary by the Engineer. 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.

2.6 The Owner shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the contract documents.

2.7 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.

2.8 The services, information, surveys and reports required by Paragraphs 2.4 through 2.7 inclusive shall be furnished at the Owner's expense, and the Engineer shall be entitled to rely upon the accuracy and completeness thereof.

2.9 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 Engineer.

2.10 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Engineer's services and of the Work.

ARTICLE 3

CONSTRUCTION COST

3.1 DEFINITION

3.1.1 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 Engineer.

3.1.2 The Construction Cost shall include at current market rates, including 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 Engineer.

3.1.3 Construction Cost does not include the compensation of the Engineer and the Engineer's consultants, the cost of the land, rights-of-way, or other costs which are the responsibility of the Owner as provided in Article 2.

3.2 RESPONSIBILITY FOR CONSTRUCTION COST

3.2.1 Evaluations of the Owner's Project budget, Statements of Probable Construction Cost and detailed Estimates of Construction Cost, prepared by the Engineer, represent the Engineer's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Engineer 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 Engineer 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 Statement of Probable construction Cost or other cost estimate or evaluation prepared by the Engineer.

3.2.2 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 Engineer. Component systems and types of construction are to be included. As part of this fixed limit, the Engineer 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.

3.2.3 If the Bidding or Negotiation Phase has not commenced within three months after the Engineer 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.

3.2.4 Paragraph 3.2.1 notwithstanding, if a Project budget or fixed limit of Construction Cost (adjusted as provided in Subparagraph 3.2.3) 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) if the Project is abandoned, 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 Engineer, without additional charge, shall modify the Drawings and Specifications as necessary to comply with the fixed limit. The providing of such service shall be the limit of the Engineer's responsibility arising from the establishment of such fixed limit, and having done so, the Engineer shall be entitled to compensation for all services performed, in accordance with this Agreement, whether or not the Construction Phase is commenced.

ARTICLE 4

DIRECT PERSONNEL EXPENSE

4.1 Direct Personnel Expense is defined as the direct salaries as reportable as Gross Wages to the Internal Revenue Service of all the Engineer's personnel engaged on the Project.

4.2 The hourly rates to be used in subparagraph 14.2.1 shall be the direct salaries defined in 4.1 divided by 2080 hours.

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 Engineer and the Engineer's employees and consultants 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:

- .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.
- .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.
- .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.
- .4 Compact vehicle rental or taxi.
- .5 Expenses associated with baggage handling.
- .6 Business related telephone calls, telegrams and facsimiles.
- .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 Engineer and the Engineer's consultants.

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 XV, requested by the Owner in excess of that normally carried by the Engineer and the Engineer's consultants.

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 Engineer, the Engineer's employees and consultants shall **NOT** be reimbursed for the expenses listed in the following subparagraphs:

5.2.1 Expenses of in town travel to and from the site.

5.2.2 Overhead or general operating expenses of the Engineer's office.

5.2.3 Costs due to the negligence of the Engineer.

5.2.4 Non-transportation Expenses- Non-reimbursable.

- .1 Personal entertainment, including movies in the hotel room.
- .2 Costs incurred by traveler's failure to cancel transportation or hotel reservations.
- .3 Additional travel insurance and travel accident insurance premiums.
- .4 Laundry or cleaning for trips less than one week.
- .5 Magazines, newspapers.
- .6 Medicines.
- .7 Hairstyling and haircuts
- .8 Babysitting
- .9 Excessive personal telephone calls (more than one per day).
- .10 Other expenses not directly related to the performance of the travel assignment.
- .11 Expenses incurred due to mechanical failure or accidents.
- .12 Fines for parking or traffic violations for personal or rented vehicles.

5.2.5 Any expenses not specifically enumerated in paragraph 5.1 above.

ARTICLE 6

PAYMENTS TO THE ENGINEER

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 Engineer, compensation for any Basic Services required for such extended period of Administration of the Construction Contract shall be computed as set forth in paragraph 14.4 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 14.2.2, based on (1) the lowest bona fide bid or negotiated proposal or, (2) if no such bid or proposal is received, the most recent Statement 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 Engineer's Additional Services as defined in Paragraph 1.7 and for Reimbursable Expenses as defined in Article 5 shall be made monthly upon presentation of the Engineer's statement of services rendered or expenses incurred. (Exhibit E).

6.3 PAYMENTS WITHHELD

6.3.1 No deductions shall be made from the Engineer'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 Engineer 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 Engineer shall be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment, together with Reimbursable Expenses then due.

If the Project is resumed after being suspended for more than three months, the Engineer'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

ENGINEER'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 Drawings and specifications as instruments of service are and shall remain the property of the Engineer whether the Project for which they are made is executed or not. The Engineer shall furnish and the Owner shall be permitted to retain copies, including Specifications and CAD Drawings on 3.5" HD Diskettes or CD Rom (in form or format acceptable to RIT) and reproducible copies, of Drawings and Specifications for information and reference in connection with the Owner's use and occupancy of the Project.

8.2 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 Engineer's rights.

ARTICLE 9 **DISPUTE RESOLUTION**

9.1 All claims, disputes and other matters in question between the Engineer 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 Engineer 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 Engineer 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 Engineer 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 Engineer 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 Engineer 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 Engineer, the Engineer shall be compensated for all services performed to termination date, 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 Engineer waive all rights against each other and against the contractors, consultants, 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 Engineer each shall require appropriate similar waivers from their contractors, consultants and agents.

ARTICLE 12

SUCCESSORS AND ASSIGNS

12.1 The Owner and the Engineer, 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 Engineer 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 Engineer 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 Engineer.

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 _____. (Exhibit B) - The Engineer's original proposal dated _____. (Exhibit C) - Rochester Institute of Technology's General Conditions of the Contract for Construction, dated _____. (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 judgement, considers better or higher or more cost effective.

ARTICLE 14

BASIS OF COMPENSATION

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

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

14.2 BASIC COMPENSATION

14.2.1 FOR BASIC SERVICES, as described in Paragraphs 1.1 through 1.5, and any other services included in Article 16 as part of

Basic Services, Basic Compensation shall not exceed and shall be computed as follows:

- .1 Compensation for services rendered by principals and employees shall be based on a multiple of times their Direct Salaries times the actual hours worked on the project. For the Coordination of the various Independent Consultants (Architects etc.), employed by the Engineer, Engineer shall be compensated a multiple of 1.0 times their respective fees. Services of Soils, Civil and Landscape Design Consultants are not included in Base Fee. (Owner to contract for these services separately).
- .2 Owner shall be furnished with complete documentation showing the derivation of the amount due the Engineer 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.

14.2.2 Basic Compensation for each Phase shall not exceed the following cumulative amounts of the total Basic Compensation payable:

	Cumulative
Programming:	\$ (percent)
Schematic Design Phase:	\$ (percent)
Design Development Phase:	\$ (percent)
Construction Documents Phase:	\$ (percent)
Bidding or Negotiation Phase:	\$ (percent)
Construction Phase:	\$ (percent)

14.3 FOR PROJECT REPRESENTATION BEYOND BASIC SERVICES, as described in Paragraph 1.6, Compensation shall be computed separately in accordance with Subparagraph 1.6.2.

14.4 COMPENSATION FOR ADDITIONAL SERVICES

14.4.1 FOR ADDITIONAL SERVICES OF THE ENGINEER, as described in Paragraph 1.7, and any other services included in Article 16 as part of Additional Services, but excluding Additional Services of consultants, compensation shall be computed as follows:

Principals' and employee's time at a multiple of times their Direct Salaries times the actual hours worked on the project or as otherwise agreed to in writing.

14.4.2 FOR ADDITIONAL SERVICES OF CONSULTANT, including Architectural services and those provided under Subparagraph 1.7.2.1 or identified in Article 16 as part of Additional Services, a multiple times the amount billed to the Engineer for such services.

14.5 FOR REIMBURSABLE EXPENSES, as described in Article 5, and any other items included in Article 16 as Reimbursable Expenses, a multiple of times the amounts expended by the Engineer, the Engineer's employees and consultants in the interest of the Project. However reimbursable expenses shall not exceed .

14.6 Payments due the Engineer and unpaid under this Agreement shall bear interest from the date payment is due at the rate entered below, or in the absence thereof, at the legal rate prevailing at the principal place of business of the Engineer.

None

14.7 The Owner and the Engineer agree in accordance with the Terms and conditions of this Agreement:

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

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

ARTICLE 15

INSURANCE

15.1 The Engineer 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 Engineer'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:

- .1 claims under workers' or workmens' compensation, disability benefit and other similar employee benefit acts;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;
- .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 Engineer, or (2) by any other person;
- .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
- .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.
- .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

- .1 BROAD FORM COMMERCIAL GENERAL LIABILITY: With limits of \$1,000,000 (\$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.
- .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 engineer engaged in performance of this contract. Coverage shall include contractual liability.
- .3 EXCESS LIABILITY: \$3,000,000 minimum in excess of underlying limits. The umbrella shall be no more restrictive than the underlying coverage.
- .4 WORKERS' COMPENSATION & EMPLOYER'S LIABILITY: Statutory New York State limits.
- .5 PROFESSIONAL LIABILITY: \$3,000,000

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

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 Engineer to suspend performance of the Work. No extension of time shall be allowed to Engineer 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 Engineer to Owner.

15.8 During the period of this agreement and for three years following substantial completion, architect and its subconsultants shall maintain professional liability coverage in the limits specified by this agreement.

15.7 Owner shall be named as an additional insured (CG 2010, Form B) on all policies purchased by the Engineer as

described herein with the exception of Workers' Compensation, Employer's Liability and Professional Liability.

ARTICLE 16

OTHER CONDITIONS OR SERVICES

16.1 The following items shall be included in Basic Services:

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

16.1.2 Providing detailed estimates of Construction Costs

16.1.3 Providing Architectural, structural and/or interior design and other similar services required for or in connection with the selection, procurement or installation of systems, equipment, furniture, and furnishings.

16.1.4 Making investigations, surveys, valuations, inventories or detailed appraisals of existing facilities, and services required in connection with construction performed by the Owner.

16.1.5 Preparing 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.

16.1.6 Preparing a set of CAD drawings according to Rochester Institute of Technology's CAD Specification # 01420.0 and reproducible record drawings in Mylar or Vellum format showing significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Engineer. For building addition or renovation projects, CAD drawings and reproducible 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.

16.1.7 Prepare CAD BUILDING EVACUATION sign drawing for posting in standard evaluation sign plaque for floor areas altered or constructed.

16.2 INDEMNIFICATION

16.2.1 To the fullest extent permitted by law, Engineer shall indemnify and hold harmless the Owner, and its directors, trustees, officers, employees and agents (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 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 Engineer or Consultant or any individual, partnership, joint venture or corporation (a) directly or indirectly employed by Engineer or Consultant thereof or (b) for whose acts or omissions Engineer or Consultant thereof may be liable, (3) personal injury, sickness, disease or death, including, without limitation, to any employees of the Engineer or others identified in Phrase 2 above arising from the negligent acts, errors,

and omissions of the Engineer 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 Engineer'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 Engineer 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 16.2.

16.2.2 In any and all claims against the Indemnified Parties by any employee of the Engineer, any Consultant, 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 16.2 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 Engineer or any Consultant under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

16.2.3 Engineer shall promptly advise Owner in writing of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and Engineer, at Engineer'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 Engineer 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 Engineer, Owner shall have the right to select separate counsel to participate in the defense of such action on its own behalf at Engineer's expense. In the event of failure by Engineer to fully perform in accordance with this indemnification paragraph, Owner, at its option, and without relieving Engineer of its obligations hereunder, may so perform, but all costs and expenses so incurred by Owner in that event shall be reimbursed by Engineer to Owner, together with interest on the same from the date any such expense was paid by Owner until reimbursed by Engineer, 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.

16.2.4 The obligations of the Engineer under this Paragraph 16.2 shall survive the expiration or termination of the Contract.

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

OWNER

ROCHESTER INSTITUTE OF TECHNOLOGY

By: _____
Signature

Gary Prokop, Director of Procurement
Print Name & Title

Date:

ENGINEER

Print Legal Name

By: _____
Signature

Print Name and Title

Date:

Owner _____
A/E _____

Exhibit A

Rochester Institute of Technology's original Request for Proposal

Owner _____
A/E _____

Exhibit B

Engineer's Proposal

Owner _____
A/E _____

Exhibit C

Standard Form of Construction Manager Agreement and General Conditions

Exhibit D

Rochester Institute of Technology's CAD Specification # 01420.1

Located on RIT Facilities Management Services website: <http://facilities.rit.edu/index.asp>.

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) or

Rich Drury, Manager of Campus Planning & Design (475-5058 or redppa@rit.edu).

Owner _____
A/E _____

Exhibit E

ARCHITECT/ENGINEER INVOICE SUMMARY

CONSULTANT NAME: _____
ADDRESS: _____
PHONE: _____
FAX: _____
E-MAIL: _____

PURCHASE ORDER NO.: _____
PROJECT NO.: _____
APPLICATION FOR PAYMENT NO.: _____
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 Consultant and Sub-consultant 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:
