
STANDARD FORM OF DESIGN/BUILD AGREEMENT

AGREEMENT BETWEEN:

ROCHESTER INSTITUTE OF TECHNOLOGY (OWNER)

120 Lomb Memorial Drive
Rochester, New York 14623

AND

FOR:

DATED:

ARCHITECTURAL AND ENGINEERING SERVICES SHALL BE PROVIDED BY:

ARTICLE 1

GENERAL PROVISIONS

The Owner wishes to procure the services of a design/build firm that will provide, during the design phase, all of the services described in Owner's Standard Form of Agreement Between Owner and Architect (the "Architect's Agreement") and, during the construction phase, all of the services described in Owner's Standard Form of Agreement Between Owner and Construction Manager. The Design/Builder agrees to procure architectural and engineering services as provided in the Architect's Agreement, and to provide construction period services as provided in the CM Agreement, all as more fully set forth below. A copy of the Architect's Agreement is annexed hereto as Exhibit C, and it is Owner's expectation that the Design/Builder will enter into an agreement with the Architect that is substantially the same as this agreement. A copy of the CM Agreement is annexed hereto as Exhibit D.

ARTICLE 2

DESIGN PHASE SERVICES

BASIC SERVICES

The Design Phase Basic Services consist of the five phases described in Paragraphs 2.1 through 2.5 and include normal structural, mechanical and electrical engineering services and any other services included in Exhibit C as part of Design Phase Basic Services. Design/Builder shall, through its subcontract with Architect, procure design services for Owner, consistent with the Scope of Work, in all phases of the Project to which this Agreement applies. Design/Builder shall comply with applicable New York State law regarding the practice of professional architectural and engineering services, including certification and stamping of Project Drawings and engineering documents. Design/Builder shall, through its subcontract with Architect, be responsible for the professional quality, technical accuracy, and the coordination of all designs, Drawings, Specifications and other Design Phase Services, whether performed by Architect or subconsultants. Design/Builder shall, without additional compensation, cause Architect and any subconsultants, as the case may be, to correct any errors or deficiencies in the Design Phase Services.

The Architect shall, as a subcontractor to Design/Builder, be responsible for the performance of all architectural and engineering services which by law are required to be performed by a licensed professional architect or engineer in New York State. Owner shall be a named third-party beneficiary of Design/Builder's Agreement with the Architect, and shall be entitled to rely upon all of the services performed by the Architect. Both the Architect and the Design/Builder shall execute a Conditional Assignment and Acknowledgment Agreement in the form of Exhibits A and A-1 hereto in favor of the Owner providing that, in the event of a default by Design/Builder under this Agreement, Owner shall succeed to all of the rights of Design/Builder under its Agreement with the Architect and the Architect shall continue to perform its services directly for the Owner.

2.1 SCHEMATIC DESIGN PHASE

2.1.1 The Architect 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.

2.1.2 The Architect shall provide a preliminary evaluation of the program and the Project budget requirements, each in terms of the other.

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

2.1.4 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.

2.1.5 The Architect shall submit to the Owner, through the Design/Builder, a Statement of Probable Construction Cost based on current area, volume or other unit costs.

2.2 DESIGN DEVELOPMENT PHASE

2.2.1 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.

2.2.2 The Architect shall submit to the Owner, through the Design/Builder, a further Statement of Probable Construction Cost.

2.3 CONSTRUCTION DOCUMENTS PHASE

2.3.1 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 Architect shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

2.3.2 The Architect shall assist the Design/Builder in the preparation of the necessary subcontractor bidding information, bidding forms, and any Supplementary Conditions of the Contract.

2.3.3 The Architect shall advise the Design/Builder and the Owner of any adjustments to previous Statements of Probable Construction Cost indicated by changes in requirements or general market conditions.

2.3.4 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.

2.4 BIDDING OR NEGOTIATION PHASE

2.4.1 The Architect, following the Owner's approval of the Construction Documents and of the latest Statement of Probable Construction Cost, shall assist the Design/Builder in obtaining bids or negotiated proposals, and assist in awarding and preparing subcontracts for construction.

2.5 CONSTRUCTION PHASE -- ADMINISTRATION OF THE CM AGREEMENT

2.5.1 Unless otherwise provided in this Agreement and incorporated in the Contract Documents, the Architect shall assist the Design/Builder in administering the CM Agreement used during the construction phase and any subcontracts entered into by the Owner and/or the Design/Builder, and the Rochester Institute of Technology, General Conditions of the Contract for Construction, executed for this Project, which are annexed as Exhibit D hereto and are incorporated herein by reference.

2.5.2 The Architect shall visit the site at intervals appropriate to the stage of construction, but not less than bi-weekly or as otherwise agreed by the Architect 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 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 and the Design/Builder 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 Design/Builder and its subcontractors.

2.5.3 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 Design/Builder and its 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.

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

2.5.5 The Architect shall recommend payment to the Design/Builder based on observations at the site and on review of the Design/Builder's Applications for Payment, and shall issue Certificates for Payment in such amounts as provided in the Contract Documents.

2.5.6 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 2.5.2 and on the data comprising the Design/Builder'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 Design/Builder 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 Design/Builder has used the moneys paid on account of the Contract Sum.

2.5.7 The Architect shall be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by subcontractors to the Design/Builder. 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 Design/Builder, and shall render written decisions, within a reasonable time, on all claims, disputes and other matters in question relating to the execution or progress of the Work or the interpretation of the Contract Documents.

2.5.8 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.

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

2.5.10 The Architect shall have authority to reject Work performed by the Design/Builder or its subcontractors 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

Owner _____
DB _____

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 be then fabricated, installed or completed.

2.5.11 The Architect shall review and approve or take other appropriate action with respect to 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.

2.5.12 The Architect shall conduct inspections to determine the Dates of Substantial Completion and Final Completion, and a one year warranty inspection; shall receive and forward to the Owner for the Owner's review written warranties and related documents required by the Contract Documents and assembled by the Design/Builder, and shall issue a final Certificate for Payment.

2.6 TIME

2.6.1 The Architect shall perform Basic 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, which shall be coordinated with the Design/Builder's overall project schedule, when approved by the Owner, shall not, except for reasonable cause, be exceeded by the Architect. Owner and Design/Builder acknowledge and agree that the Project is being designed and built on a fast-track, phased construction basis. In addition, various bid packages may be designed and bid before other portions of the Project have been designed. Because the Project was bid by Design/Builder on this basis, Design/Builder shall make no claims based on coordination problems or delays resulting from the fast-track, phased nature of this Project. Owner agrees that it has reviewed and accepted the Project Schedule annexed as Exhibit B hereto.

ARTICLE 3

THE OWNER'S RESPONSIBILITIES

3.1 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.

3.2 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 3. The Owner shall, at the request of the Architect, provide a statement of funds available for the Project, and their source.

3.3 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 or the Design/Builder's services.

3.4 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 available 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.

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

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

3.7 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 Design/Builders' or any subcontractor's Applications for Payment or to ascertain how or for what purposes the Design/Builder uses the moneys paid by or on behalf of the Owner.

3.8 The services, information, surveys and reports required by Paragraphs 3.4 through 3.7 inclusive shall be furnished at the Owner's expense, and the Architect shall be entitled to rely upon the accuracy and completeness thereof.

3.9 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 Design/Builder.

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

ARTICLE 4

CONSTRUCTION PHASE SERVICES

BASIC SERVICES

During the Design Phase (acting as a pre-construction consultant) and during the Construction Phase, Design/Builder shall provide to the Owner all of the services described in the CM Agreement annexed as Exhibit D hereto, and which is incorporated by reference herein.

ARTICLE 5

OWNERSHIP AND USE OF DOCUMENTS

5.1 Without payment of any additional compensation to the Design/Builder, 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. 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 prepared on CAD systems shall be turned over to the Owner in current Auto CAD format.

5.1.1 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 Design/Builder 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 Design/Builder shall be at its own risk.

5.1.2 The Design/Builder 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 Design/Builder.

ARTICLE 6

DISPUTE RESOLUTION

6.1 All claims, disputes and other matters in question between the Design/Builder 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 6.6.

6.2 Any arbitration occurring pursuant to this section 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 Design/Builder 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.

6.3 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.

6.4 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.

6.5 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.

6.6 Except as provided in Subparagraph 6.1, all other claims, disputes and other matters in question between the Design/Builder 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.

6.7 Unless otherwise agreed in writing, the Design/Builder 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 Design/Builder in accordance with the Contract Documents.

ARTICLE 7

TERMINATION OF AGREEMENT

7.1 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.

7.2 This Agreement may be terminated by the Owner upon at least seven days' written notice to the Design/Builder in the event that the Project is permanently abandoned or as provided in the General Conditions.

7.3 In the event of termination not the fault of the Design/Builder, the Design/Builder shall be compensated for all services performed to termination date, together with Reimbursable Expenses then due.

ARTICLE 8

MISCELLANEOUS PROVISIONS

8.1 This agreement shall be governed by the laws of the State of New York.

8.2 Terms in this Agreement shall have the same meaning as those in the Rochester Institute of Technology, General Conditions of the Contract for Construction, annexed hereto as Exhibit D.

8.3 The Owner and the Design/Builder waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages covered by any property

Owner _____
DB _____

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 Design/Builder each shall require appropriate similar waivers from their subcontractors, consultants and agents.

ARTICLE 9

SUCCESSORS AND ASSIGNS

9.1 The Owner and the Design/Builder, 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 Design/Builder shall assign, sublet or transfer any interest in this Agreement without the written consent of the other.

ARTICLE 10

EXTENT OF AGREEMENT

10.1 This Agreement represents the entire and integrated agreement between the Owner and the Design/Builder 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 Design/Builder.

10.2 Rochester Institute of Technology's original Request for Proposal (Exhibit E), the Design/Builder's original proposal (Exhibit F), the Standard Form of Agreement Between Owner and Architect (Exhibit C), and the Standard Form of Agreement Between Owner and Construction Manager and Rochester Institute of Technology's General Conditions of the Contract for Construction (Exhibit D), shall be attached to and considered part of this Agreement. Should there be any inconsistencies within this Agreement or between this Agreement and these documents, the Owner shall be entitled to the level of service or benefit that Owner, in its sole judgment, considers better or higher or more cost effective.

ARTICLE 11

INSURANCE

11.1 The Design/Builder shall purchase and maintain in a company or companies licensed to do business in New York and to which the Owner has no reasonable objection such insurance as will

protect it from claims set forth below which may arise out of or result from the Design/Builder's activities in connection with the project, whether such activities be by itself or by anyone directly or indirectly employed by it, 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 Architect, 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;

.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; and

.7 claims for damages resulting from negligent error, omission or act in connection with the performance of professional services whether performed by Design/Builder, Architect or any subconsultants.

11.2 The insurance required by Subparagraph 11.1 shall be written for not less than any limits of liability specified in the Contract Documents, or required by law, whichever is greater.

11.3 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.

11.4 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 contractor engaged in performance of this contract, Coverage shall include contractual liability.

.3 EXCESS LIABILITY: \$5,000,000 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 PROJECT PROFESSIONAL LIABILITY INSURANCE: \$3,000,000.

11.5 These coverages and limits are to be considered minimum requirements under this Contract and in no way limit the liability of the Design/Builder.

11.6 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 Design/Builder to suspend performance of the Work. No extension of time shall be allowed to Design/Builder 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 Design/Builder to Owner.

11.7 Owner shall be named as an additional insured (CG 2010, Form B) on all policies purchased by the Design/Builder as described herein with the exception of Workers' Compensation and Employer's Liability.

11.8 INDEMNIFICATION

11.8.1 To the fullest extent permitted by law, Design/Builder 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,

Owner _____
DB _____

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 Consultant or any individual, partnership, joint venture or corporation (a) directly or indirectly employed by Design/Builder or Architect thereof or (b) for whose acts or omissions Design/Builder or Architect thereof may be liable, (3) personal injury, sickness, disease or death, including, without limitation, to any employees of the Design/Builder 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 Design/Builder 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 11.8.

11.8.2 In any and all claims against the Indemnified Parties by any employee of the Design/Builder, 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 11.8 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 Design/Builder, Architect or any subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

11.8.3 Design/Builder shall promptly advise Owner in writing of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and Design/Builder, at Design/Builder'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 Design/Builder 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 Design/Builder. Owner shall have the right to select separate counsel to participate in the defense of such action on its own behalf at Owner's expense. In the event of failure by Design/Builder to fully perform in accordance with this indemnification paragraph, Owner, at its option, and without relieving

Owner _____

DB _____

Design/Builder of its obligations hereunder, may so perform, but all costs and expenses so incurred by Owner in that event shall be reimbursed by Design/Builder to Owner, together with interest on the same from the date any such expense was paid by Owner until reimbursed by Design/Builder, 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.

11.8.4 The obligations of the Design/Builder under this Paragraph 11.8 shall survive the expiration or termination of the Contract.

Owner _____
DB _____

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

OWNER

ROCHESTER INSTITUTE OF TECHNOLOGY

By: _____
Signature

RIT Facilities Management Services

Date: _____

DESIGN/BUILDER

We agree to perform our services in accordance with the provisions contained herein.

By: _____
Signature

Print Name & Title

Date:

Exhibit A

Conditional Assignment of A/E Agreement

[Letterhead of D/B Company]

Rochester Institute of Technology
c/o Design and Construction Services
120 Lomb Memorial Drive
Rochester, New York 14623

RE:

Gentlemen:

Pursuant to the terms of a Design/Build Agreement (the "Design/Build Agreement") for an _____ dated as of _____ between ("Design/Builder") and Rochester Institute of Technology ("Owner"), we have entered into an Agreement for Architectural and Engineering Services (the "A/E Agreement") with (the "Architect/Engineer") to provide design services for the above-referenced project.

In accordance with the provisions of the Design/Build Agreement, we hereby conditionally assign to you all of our right, title and interest in and to the A/E Agreement and we further agree as follows:

1. We represent to you that (a) we gave furnished you with a true and complete copy of the A/E Agreement; (b) the A/E Agreement is in full force and effect on the date hereof and has not been previously assigned or encumbered; and (c) neither we nor the Architect/Engineer are in default under any of the provisions of the A/E Agreement.
2. Without your prior written consent, we will not modify or amend the A/E Agreement, further assign it, or consent to the cancellation or termination of the A/E Agreement.

Owner _____
DB _____

3. We agree (a) to perform and observe all of our covenants and obligations under the A/E Agreement, (b) to enforce or secure the performance and observance of all of the covenants and obligations of the Architect/Engineer thereunder, (c) to promptly deliver to you copies of all notices given by us or the Architect/Engineer pursuant thereto and (d) to promptly advise you of any default by the Architect/Engineer thereunder.
4. In the event of any dispute under the A/E Agreement, we authorize you to participate in such litigation and hereby appoint you our agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest), with full power of substitution, to exercise all of our rights in connection with such litigation, which appointment shall take effect immediately upon the occurrence of any Event of Default under the Design/Build Agreement, but nothing contained herein shall obligate you to participate in any such litigation.
5. We hereby irrevocably direct the Architect/Engineer, upon receipt of notice from you of the occurrence of an Event of Default under the Design/Build Agreement, to comply with any request from you that it continue to perform its respective covenants and obligations under the A/E Agreement for your benefit and on your behalf. The Architect/Engineer shall not be under any obligation to inquire or determine the actual existence of any such default claimed by you.
6. Nothing contained herein shall obligate you to perform any of our covenants or obligations under the A/E Agreement or otherwise impose any obligations on you with respect thereto, until such time as you give the notice of default and make the request to continue performance referred to in paragraph 5 hereof.
7. WE will indemnify and hold you harmless from and against any and all liability, loss, damage and expense, including reasonable attorneys' fees, which you may incur under the A/E Agreement or by reason of this Assignment, or by reason of any action taken by you hereunder, and from and against any and all claims and demands whatsoever which may be asserted against you by the Architect/Engineer by reason of any alleged undertaking by you to perform any of our covenants or obligations under the A/E Agreement prior to the time when you give the notice of default and make the request to continue performance referred to in paragraph 5 hereof.

[Name of D/B Company]

Owner _____
DB _____

By: _____
Its: _____

Exhibit A-1

Acknowledgement and Consent of Architect/Engineer to
Conditional Assignment of A/E Agreement

[Letterhead of A/E]

Rochester Institute of Technology
c/o Design and Construction Services
120 Lomb Memorial Drive
Rochester, New York 14623

RE:

Gentlemen:

We understand that you have entered into a Design/Build Agreement (the "Design/Build Agreement") for an _____ dated as of _____ with _____ ("Design/Builder"). As a subcontractor to Design/Builder, we have entered into an Agreement for Architectural and Engineering Services dated as of _____ with Design/Builder (the "A/E Agreement") to provide design services for the above-referenced project.

As the Architect, we hereby acknowledge receipt of a copy of the Design/Build Agreement and the Conditional Assignment of A/E Agreement and agree to be bound by and adhere to the direction of Design/Builder contained in paragraph 5 of the Assignment of A/E Agreement.

We further agree to give you prompt written notice of the failure by Design/Builder to make any payment required to be made to us under the terms of the A/E Agreement. No notice of default given by us to Design/Builder shall be deemed to have been effectively given for purposes of the A/E Agreement, and no right of ours dependent upon the giving of such notice shall take effect, unless and until a copy thereof shall first have been given to you. You shall have the right, but not the obligation, to make such payment on behalf of Design/Builder within 30 days after receipt of such notice. Performance by you of that or any of the other covenants or

Owner _____
DB _____

obligations of Design/Builder under the A/E Agreement will be accepted by us with the same force and effect as if performed by Design/Builder.

We further agree that if we receive from you the notice of default and the request to continue performance referred to in paragraph 5 of the Assignment of A/E Agreement, we will continue to perform our work under the A/E Agreement for your benefit and on your behalf, provided that you agree to pay us for such work in accordance with the terms thereof.

Nothing contained in the Assignment of A/E Agreement shall obligate you to perform any of the covenants or obligations of Design/Builder under the A/E Agreement or otherwise impose any obligation on you with respect thereto until such time as you have given us the notice of default and have made the request to continue performance referred to in paragraph 5 of the Assignment of A/E Agreement.

We agree to furnish you with a copy of all reports prepared by us under the terms of the A/E Agreement and to furnish you with a copy of any other affidavits, documents and papers required to be furnished by us under the A/E Agreement and the Design/Build Agreement, including a Certificate of Substantial Completion on AIA Document G704. At such time as we have fully performed all of our work under the A/E Agreement and have received payment in full for such work, we will furnish Design/Builder and you with a certificate or acknowledgement of payment and release of lien with respect to such work.

We hereby agree that you shall have the right to use the Plans and Specifications at any time and from time to time during the Construction Phase for purposes directly related to the construction of the Project without payment to us of any additional fees or charges therefor.

We hereby certify to you that the construction and equipping of the Project in accordance with the Plans and Specifications is permissible under all currently applicable zoning, building, fire, safety, health and other codes, ordinances and regulations, as modified by any waivers obtained from governmental authorities with jurisdiction over the Project.

Except as otherwise set forth herein, nothing contained herein or in the Design/Build Agreement or the Assignment of A/E Agreement shall be deemed or construed to require us to perform services beyond those specified in the A/E Agreement or to limit any right or remedy we may have for nonpayment under the provisions of the Lien Law.

Very truly yours,

Owner _____
DB _____

[Name of A/E Firm]

By: _____
A Member of the Firm

Owner _____
DB _____

Exhibit B

Project Schedule

Owner _____
DB _____

Exhibit C

Standard Form of Agreement Between Owner and Architect

Owner _____
DB _____

Exhibit D

Standard Form of Construction Manager Agreement and General Conditions

Owner _____
DB _____

Exhibit E

Rochester Institute of Technology's Original Request For Proposal

Owner _____
DB _____

Exhibit F

Design/Builder's Original Proposal

Owner _____
DB _____

AMENDMENT NO. 1 TO AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

Pursuant to Paragraph 2.2 of the Agreement, dated _____ between ROCHESTER INSTITUTE OF TECHNOLOGY (Owner) and _____ (Construction Manager), for _____ (the Project), the Owner and Construction Manager establish a Guaranteed Maximum Price and Contract Time for the Work as set forth below.

ARTICLE I
GUARANTEED MAXIMUM PRICE

The Construction Manager's Guaranteed Maximum Price for the Work, including the estimated Cost of the Work as defined in Article 6 and the Construction Manager's Fee as defined in Article 5, is _____ Dollars (\$ _____). This Price is for the performance of the Work in accordance with the Contract Documents listed and attached to this Amendment and marked Exhibits E through J as follows:

- Exhibit E Drawings, Specifications, addenda and General, Supplementary and other Conditions of the Contract on which the Guaranteed Maximum Price is based, pages _____ through _____, dated _____
- Exhibit F Allowance items, pages _____ through _____, dated _____
- Exhibit G Assumptions and clarifications made in preparing the Guaranteed Maximum Price, pages _____ through _____ dated _____
- Exhibit H Completion schedule, pages _____ through _____, dated _____
- Exhibit I Alternate prices, pages _____ through _____, dated _____
- Exhibit J Unit prices, pages _____ through _____, dated _____

ARTICLE II
CONTRACT TIME

The date of Substantial Completion established by this Amendment is:

OWNER: ROCHESTER INSTITUTE OF TECHNOLOGY CONSTRUCTION MANAGER: _____
Print Legal Name

BY: _____

Gary Prokop, Director of Procurement

Date: _____

BY: _____

Signature

Print Name & Title

Date: _____