

SMALL PURCHASE CONSTRUCTION REQUEST

Under \$ _____ Construction Agreement

Project No. _____

Agreement dated as of _____ between the Research Foundation of the City University of New York on behalf of _____ ("Research Foundation") and _____ ("Contractor") (each a "Party," collectively, the "Parties"). The Parties agree as follows

1. Services to be Provided

The Contractor will perform the services described in Exhibit A (the "Services").

2. Term

The term of this Agreement is from _____ through _____. The Research Foundation shall have the right to delay, postpone or suspend the Services, or any portion thereof, immediately or upon a specified date, for a period of not more than ninety (90) days, upon notice to the Contractor, for any reason deemed by the Research Foundation to be in its interest. Any such delay, postponement or suspension shall not give rise to any cause of action for damages against the Research Foundation. The Contractor's time for performance of the Services shall be extended for the period of the delay, postponement or suspension. This Agreement may be earlier terminated by the Research Foundation on three calendar days' notice, for any reason whatsoever. If this Agreement is terminated, the Contractor shall receive equitable compensation for the Services that have been satisfactorily performed by the Contractor up to the date of the termination.

3. Compensation

The Contractor agrees to perform the Services for the compensation set forth in Exhibit B. Except as set forth in Paragraph 2 above, payments shall be made in accordance with the terms and conditions in Exhibit B. The Contractor must complete and submit the attached Final Contractor's Release (Exhibit B-1) for its final payment under the Agreement.

4. Liens and Claims

The Contractor shall not file, cause to be filed, or allow any person claiming by or through the Contractor to file any lien in any way related to this Agreement without first giving the Research Foundation ten (10) days advance written notice of the prospective lienor's intent to file such lien and the basis upon which a right of lien is claimed, including an express statement of the dollar amount of any claim pursuant to which it is claimed such right of lien arises. The Research Foundation shall have the right to cause such lien to be cancelled and discharged by bonding or otherwise in either of the following events: (1) if the Contractor, or any person claiming by or through the Contractor, files or causes to be filed, a lien without giving proper advanced notice as required as set forth above; or (2) if any of the Contractor's subcontractor ("Subcontractor") or any person claiming by or through such Subcontractor shall file or cause to be filed any lien, or the Contractor, upon notice from The Research Foundation, fails to cause such a lien to be cancelled and discharged with ten (10) calendar days from such notice. Any expense so incurred by the Research Foundation in connection with such cancellation or discharge, including the premiums upon any bond furnished for such cancellation and discharge and reasonable attorneys' fees and disbursements, shall be paid by the Contractor upon demand or, at the option of the Research Foundation, shall be deducted from any payment then due or thereafter becoming due to the Contractor.

The Contractor shall indemnify and hold harmless the Research Foundation and its representatives against any and all Subcontractors' liens which may be filed. If the Contractor shall fail to promptly discharge all Subcontractors' liens, the Research Foundation shall have no obligation to make any payment to the Contractor, and shall have the right to discharge any liens which may have been filed by any Subcontractor of any tier in accordance with this Paragraph 4.

All materials and equipment furnished or installed by the Contractor shall be free of all claims, liens, and encumbrances including, without limitation, conditional bills of sale, security agreements, financing statements or chattel mortgages. At the request of the Research Foundation, the Contractor shall furnish to the Research Foundation such properly executed, acknowledged and delivered bills of sale and other instruments as may be required by the Research Foundation to assure the Research Foundation of title to such materials and equipment, free of claims, liens and encumbrances. The Contractor shall mark or otherwise identify all such materials and equipment as the property of the Research Foundation as the Research Foundation may direct.

5. Confidential Information

The Contractor and its employees may have access to or learn of information and records that are not rightfully in the public domain in the course of providing Services under this Agreement. The Contractor agrees that it and each of its employees will treat such information confidentially and not share it with persons other than those directly involved within Research Foundation on the matter that it relates to.

6. Independent Contractor

The Contractor is an independent contractor and is solely responsible for the Contractor's actions or inactions. The Contractor is solely responsible for the manner of performing Services under this Agreement. The Contractor is not, and will not be, an agent or servant of Research Foundation, NYCEDC or the City by virtue of this Agreement or by virtue of any approval, permit, license, grant, right, or other authorization given by Research Foundation, NYCEDC or the City or any of their representatives in connection with this Agreement.

7. Taxes

The Contractor is solely responsible for withholding and paying all applicable workers' compensation, disability benefits, unemployment insurance and income taxes with respect to the performance of Services hereunder. The Contractor is also solely responsible for filing tax returns and making any related payments with respect to the performance of Services hereunder.

8. Indemnification

The Contractor will indemnify, defend and hold harmless Research Foundation, NYCEDC and the City and their respective officers, officials, agents, members, directors, and employees from any and all claims, judgments or liabilities to which they or any of them may be subject because of any negligence or any fault or default of the Contractor, its agents, employees or Subcontractors.

9. Compliance with Law

The Contractor will perform all Services under this Agreement in accordance with the applicable provisions of federal, state and local laws, rules and regulations. Specifically, the Contractor shall comply with the following statutes and/or regulations:

(A) Non-Discrimination / Equal Employment Opportunity Provisions

1. Executive Order 11246 entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor Regulations (441 CFR, Part 60).
2. New York State Executive Law, Article 15 (Human Rights Law)

(B) Copeland "Anti-kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations

(29 CFR, Part 3). This Act provides that each contractor or subgrantee shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled.

(C) Davis Bacon Act (40 U.S.C. 276a to 1-7) and as supplemented by Department of Labor regulations (29 CFR Part 5). The Contractor specifically agrees that:

- (i) If this Agreement is governed by this Act, the minimum wages to be paid by the Contractor to various classes of laborers and mechanics shall be based upon the wages that will be determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the city, town, village, or other civil subdivision of the State in which the work is to be performed.
- (ii) The Contractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics, and that the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work.
- (iii) The Research Foundation may withhold from the Contractor so much of accrued payments as may be considered necessary to pay to laborers and mechanics employed by the Contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the Contractor, subcontractors or their agents.
- (iv) In the event that any laborer or mechanic employed by the Contractor or any subcontractor directly on the site of the work covered by this contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the Government may, by written notice to the Contractor, terminate his right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages and to prosecute the work to completion by contract or otherwise, and the Contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

(D) Sections 103 and 107 of the Contract Work Hours and Safety standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).

- (i) Section 103 of the Act requires that each contractor shall compute the wages of every mechanic and laborer on the basis of a standard work day of 8 hours and a standard work week of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the workweek.
- (ii) Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market.

(E) New York State Labor Law, Article 8. It is specifically agreed, as required by the Labor Law, Sections 220 and 220-d as amended, that:

- (i) No laborer, workman or mechanic in the employ of the Contractor, Subcontractor or other person doing or contracting to do the whole or a part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood, or danger to life or property or as otherwise defined under the Labor Law.
- (ii) The wages to be paid for a legal day's work to laborers, workmen or mechanics shall not be less than the prevailing rate of wages as defined by law.
- (iii) The Contractor and every Subcontractor on public works contracts shall post in a prominent and accessible place on the site where the work is performed a legible statement of all wage rates and supplements as specified in the contract to be paid or provided, as the case may be, for the various classes of mechanics, workingmen, or laborers employed on the work.
- (iv) The Contractor and every Subcontractor shall keep original payrolls or transcripts thereof, subscribed and affirmed to him as true under the penalties of perjury, showing the hours and days worked by each workman, laborer, or mechanic, the occupation at which he worked, the hourly wage rate paid and the supplements paid or provided. Contractor will provide copies upon request.
- (v) Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide program registered with the New York State Department of Labor. Any employee listed on a payroll at an apprentice wage rate, who is not registered, shall be paid the wage rate determined by the New York State Department of Labor for the classification of work he actually performed. The Contractor or Subcontractor will be required to furnish written evidence of the registration prior to using any apprentices on the contract work.
- (vi) The minimum hourly rate of wages to be paid to laborers, workingmen and mechanics shall not be less than the hourly minimum rate of wage stated in the specifications and shall be designated by the Commissioner of Labor of the State of New York.
- (vii) The Contractor agrees that, in case of underpayment of wages to any worker or any Subcontractor, the Owner shall withhold from the Contractor, out of payments due, an amount sufficient to pay said worker the difference between the wages required to be paid under this Contract and rates actually paid and that the Owner may disburse the withheld amount for and on account of the Contractor to the employees to whom said amount is due.
- (viii) This Contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than the stipulated wage scale as set forth in the Labor Law Section 220, subdivision 3, as amended, or the stipulated minimum hourly wage scale as set forth in the Labor Law Section 220-d, as amended.
- (ix) The Contractor specifically agrees, as required by Section 220-e, as amended, that:
 - 1. in the hiring of employees for the performance of work under this Contract or any Subcontract hereunder, no Contractor, Subcontractor or any person acting on behalf of such Contractor or Subcontractor, shall by reason of race, creed, color, disability, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates;
 - 2. no Contractor, Subcontractor or any person on his behalf, shall in any manner discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, creed, color, disability, sex or national origin;
 - 3. there may be deducted from the amount payable to the Contractor by the State or municipality

- under this contract, a penalty of fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract;
4. this contract may be cancelled or terminated by the state or municipality, and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this section of the contract; and
 5. the aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale, or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the state of New York.

(F) If the contract will require the performance of business service work, the Contractor must comply with New York State Labor Law, Article 9. It is specifically agreed by the Contractor that:

- (i) The Contractor shall pay a service employee (as defined in Section 230) under a contract for building service work a wage of not less than the prevailing wage in the locality for the craft, trade or occupation of the service employee.
- (ii) No later than the first day upon which work on said contract is performed by an employee, the Contractor shall post in a prominent and accessible place on the site of the work a legible statement of the wages to be paid to the workmen employed thereon.
- (iii) This Contract may be forfeited and no sum paid for any work done thereunder on a second conviction for failure to pay to any service employee the wages stipulated in the schedule of wages as set forth in the Labor Law Section 238, subdivision 2, as amended.
- (iv) Pursuant to section 239 of the Labor law, under a contract for service work, the Contractor specifically agree to the same provisions as specified in Article 1 (E) (ix) herein prohibiting discrimination on account of race, creed, color, national origin, age or sex.

10. Insurance

The Contractor shall purchase and maintain the insurance described in Exhibit C at its own cost and expense.

11. Assignment, Subcontractors

The purpose of this Agreement is to secure the Services of the Contractor. The Contractor shall neither subcontract out any portion of the Services, nor assign this Agreement without the express written approval of Research Foundation.

12. Right to Audit and Inspect

The Research Foundation, its auditors, the sponsoring agency, the Comptroller General of the United States, the Comptroller of the State of New York have the right at all times to audit and inspect the operations and records of the Contractor relating to this Agreement.

13. Assistance by the Contractor

The Contractor and each of its employees will diligently provide any and all assistance that the Research Foundation may require of the Contractor if any claim is made or any action brought relating to this Agreement, whether or not the Contractor is a party, without compensation. The Contractor agrees that it and each of its employees will cooperate fully and faithfully with any investigation, audit or inquiry conducted by a state, local or federal governmental agency or authority. The Contractor represents that all information provided to the Research Foundation concerning the Contractor in connection with any questionnaire or investigation by the Research Foundation is materially true as of the date of this Agreement.

14. Notices All notices by either party to this Agreement shall be in writing and directed to the respective address indicated after the signatures below.

15. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving effect to the principles of conflict of laws thereof. Any and all claims asserted by or against the Research Foundation arising under this Agreement or related hereto shall be heard and determined either in the federal courts of the Southern District of New York or in the New York State Courts located in the City and County of New York.

16. Corporate Status

The Contractor hereby represents and warrants that it is duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization or formation; is in good standing and authorized to do business in the State of New York; has all requisite power and authority to execute, deliver and perform this Agreement; and has duly authorized, executed and delivered this Agreement.

17. Modification in Writing

No modification, amendment, waiver or release of any provision of this Agreement or of any right, obligation, claim or cause of action arising hereunder shall be valid or binding for any purpose unless in writing and duly executed by the party against whom the same is asserted

In Witness Whereof, the Parties have duly executed this Agreement.

**Research Foundation of
The City University of New York**
On behalf of _____

By _____

Name _____

Title _____

Date _____

Address 230 West 41st Street
New York, New York 10036
Attn General Counsel

Federal Tax ID Number 13-1988190

Name of Contractor

By _____

Name _____

Title _____

Date _____

Address _____

Federal Tax ID Number _____

Exhibit A

Services

Exhibit B

Fee and Payment Schedule

Exhibit B-1
Contractor's Final Release

TO WHOM IT MAY CONCERN:

_____ (the "Contractor"), in consideration of the receipt from the Research Foundation of the City University of New York on behalf of [COLLEGE] ("Research Foundation") of all monies due to the Contractor under the Agreement hereinafter described, releases and discharges the Research Foundation and its successors and assigns from all actions, debts, claims, mechanics' liens, public improvement liens and demands whatsoever, in law or equity, which the Contractor, its successors and assigns ever had, now have or hereafter may have arising from or related to the Agreement dated _____

_____ between the Research Foundation and the Contractor for (describe work and site) including all change orders thereto.

This FINAL RELEASE may not be changed orally.

IN WITNESS WHEREOF, the Contractor has caused this FINAL RELEASE to be executed by its duly authorized officers and its corporate seal to be hereunto affixed on _____, 20____.

(SEAL)

CONTRACTOR

By_ _____
Name
Office

State of New York)
) ss
County of)

On, 20 _____, before me personally came _____, to me known, who, by me duly sworn, did depose and say that he or she resides at _____; that he or she is the _____ of the Contractor, the corporation described in and which executed the foregoing FINAL RELEASE; that he or she knows the seal of the said corporation; that the seal affixed to the FINAL RELEASE is the corporate seal; that it was affixed by order of the directors of said corporation; and that he or she signed his or her name thereto by like order.

Notary Public

Exhibit C

Insurance Schedule

The Contractor shall maintain the following insurance during the term of the Agreement

- Commercial General Liability Coverage under this policy shall be at least as broad as that provided by ISO Form CG 0001 (10/01 ed.), must be "occurrence" based rather than "claims-made" with limits of
 - \$1,000,000 per occurrence with an aggregate of \$2,000,000.
- Worker's Compensation and disability benefits insurance in statutory amount for all employees of the Contractor engaged under the Agreement.
- Employer's liability Insurance in the amount of \$1,000,000.

The Contractor shall, for all insurance required and where applicable, maintain insurance that is of primary coverage and have a minimum AM Best or equivalent rating of A:X. All policies shall be provided by insurance companies licensed to do business in New York State.

The Contractor shall name the Research Foundation and any other entity that Research Foundation requires, as additional insured on all insurance policies.

Additional Insurance Required [INCLUDE LANGUAGE FOR ANY SPECIALIZED INSURANCE THAT MAY BE REQUIRED]