

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a Contractor, licensor, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. **PROHIBITION AGAINST ASSIGNMENT** Except for the assignment of its right to receive payments subject to Article 5-A of the State Finance Law, the Contractor selected to perform the services herein are prohibited in accordance with Section 138 of the State Finance Law from assigning, transferring, conveying, subletting or otherwise disposing of its rights, title or interest in the contract without the prior written consent of SUNY and attempts to do so are null and void. Notwithstanding the foregoing, SUNY may, with the concurrence of the New York Office of State Comptroller, waive prior written consent of the assignment, transfer, conveyance, sublease or other disposition of a contract let pursuant to Article XI of the State Finance Law if the assignment, transfer, conveyance, sublease or other disposition is due to a reorganization, merger or consolidation of Contractor's its business entity or enterprise and Contractor so certifies to SUNY. SUNY retains the right, as provided in Section 138 of the State Finance Law, to accept or reject an assignment, transfer, conveyance, sublease or other disposition of the contract, and to require that any Contractor demonstrate its responsibility to do business with SUNY.

3. **COMPTROLLER'S APPROVAL.** (a) In accordance with Section 112 of the State Finance Law, Section 355 of New York State Education Law, and 8 NYCRR 316, Comptroller's approval is not required for the following contracts: (i) materials; (ii) equipment and supplies, including computer equipment; (iii) motor vehicles; (iv) construction; (v) construction-related services; (vi) printing; and (vii) goods for State University health care facilities, including contracts for goods made with joint or group purchasing arrangements.

(b) Comptroller's approval is required for the following contracts: (i) contracts for services not listed in Paragraph (3)(a) above made by a State University campus or health care facility certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$250,000; (ii) contracts for services not listed in Paragraph (3)(a) above made by a State University campus not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$50,000; (iii) contracts for services not listed in Paragraph (3)(a) above made by health care facilities not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$75,000; (iv) contracts whereby the State University agrees to give something other than money, when the value or reasonably estimated value of such consideration exceeds \$10,000; (v) contracts for real property transactions if the contract value exceeds \$50,000; (vi) all other contracts not listed in Paragraph 3(a) above, if the contract value exceeds \$50,000, e.g. SUNY acquisition of a business and New York State Finance Article 11-B contracts and (vii) amendments for any amount to contracts not listed in Paragraph (3)(a) above, when as so amended, the contract exceeds the threshold amounts stated in Paragraph (b) herein. However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

(c) Any contract that requires Comptroller approval shall not be valid, effective or binding upon the

State University until it has been approved by the Comptroller and filed in the Comptroller's office.

4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation

6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by SUNY of any SUNY-approved sums due and owing for work done upon the project.

7. **NON-COLLUSIVE BIDDING CERTIFICATION.**

In accordance with Section 139-d of the State Finance Law, if this contract was awarded based on the submission of competitive bids, Contractor affirms, under penalty of perjury, and each person signing on behalf of Contractor, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered it to SUNY a non-collusive bidding certification on Contractor's behalf.

8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4).

9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State, its representatives, or the State Comptroller.

10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as SUNY and its representatives and entities involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. SUNY shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute")

provided that: (i) the Contractor shall timely inform an appropriate SUNY official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, SUNY's or the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

Identification Number(s). Every invoice or New York State Claim for Payment submitted to the State University of New York by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State University of New York is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the State University of New York contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

(a) In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(1) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall

mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(2) at SUNY's request, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(3) Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(b) Contractor will include the provisions of "1", "2" and "3", above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a Contractor or sub-contractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. SUNY shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, SUNY shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit A, the terms of this Exhibit A shall control.

14. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be

used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with the approval of the State, otherwise, the bid may not be considered responsive. Under bidder certification, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. **MacBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165(5) of the State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. **OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
30 South Pearl St., 7th Floor
Albany, NY 12245
Tel: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414

email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to SUNY;

(b) The Contractor has complied with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Search Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that SUNY may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with SUNY in these efforts.

21. RECIPROCITY AND SANCTIONS

PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act of 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. Contact the NYS Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany, New York 12245, for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal or similar services, then in accordance with Section 163(4-g) of the State Finance Law, the Contractor shall timely,

accurately and properly comply with the requirement to submit an annual employment report for the contract to SUNY, the Department of Civil Service and the State Comptroller.

24. PURCHASES OF APPAREL AND SPORTS EQUIPMENT. In accordance with State Finance Law Section 165(7), SUNY may determine that a bidder on a contract for the purchase of apparel or sports equipment is not a responsible bidder as defined in State Finance Law Section 163 based on (a) the labor standards applicable to the manufacture of the apparel or sports equipment, including employee compensation, working conditions, employee rights to form unions and the use of child labor; or (b) bidder's failure to provide information sufficient for SUNY to determine the labor conditions applicable to the manufacture of the apparel or sports equipment.

25. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

26. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the Contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or SUNY discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if SUNY determines that such action is in the best interests of the State.

27. IRAN DIVESTMENT ACT. By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

THE FOLLOWING PROVISIONS SHALL APPLY ONLY TO THOSE CONTRACTS TO WHICH A HOSPITAL OR OTHER HEALTH SERVICE FACILITY IS A PARTY

28. Notwithstanding any other provision in this contract, the hospital or other health service facility remains responsible for insuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, state and local statutes, rules and regulations. In the foregoing sentence, the word "service" shall be construed to refer to the health care service rendered by the hospital or other health service facility.

29. (a) In accordance with the 1980 Omnibus Reconciliation Act (Public Law 96-499), Contractor hereby agrees that until the expiration of four years after the furnishing of services under this agreement, Contractor shall make available upon written request to the Secretary of Health and Human Services, or upon request, to the Comptroller General of the United States or any of their duly authorized representatives, copies of this contract, books, documents and records of the Contractor that are necessary to certify the nature and extent of the costs hereunder.

(b) If Contractor carries out any of the duties of the contract hereunder, through a subcontract having a value or cost of \$10,000 or more over a twelve-month period, such subcontract shall contain a clause to the effect that, until the expiration of four years after the furnishing of such services pursuant to such subcontract, the subcontractor shall make available upon written request to the Secretary of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, copies of the subcontract and books, documents and records of the subcontractor that are necessary to verify the nature and extent of the costs of such subcontract.

(c) The provisions of this section shall apply only to such contracts as are within the definition established by the Health Care Financing Administration, as may be amended or modified from time to time.

1. DEFINITIONS. The following terms shall be defined in accordance with Section 310 of the Executive Law:

STATE CONTRACT herein referred to as "State Contract", shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000.00), whereby the State University of New York ("University") is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing, to be performed for, or rendered or furnished to the University; (b) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and (c) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University as an owner of a state assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project.

SUBCONTRACT herein referred to as "Subcontract", shall mean any agreement for a total expenditure in excess of \$25,000 providing for services, including non-staffing expenditures, supplies or materials of any kind between a State agency and a prime contractor, in which a portion of the prime contractor's obligation under the State contract is undertaken or assumed by a business enterprise not controlled by the prime contractor.

WOMEN-OWNED BUSINESS ENTERPRISE herein referred to as "WBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more United States citizens or permanent resident aliens who are women; (b) an enterprise in which the ownership interest of such women is real, substantial and continuing; (c) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

A firm owned by a minority group member who is also a woman may be certified as a minority-owned business enterprise, a women-owned business enterprise, or both, and may be counted towards either a minority-owned business enterprise goal or a women-owned business enterprise goal, in regard to any Contract or any goal, set by an agency or authority, but such participation may not be counted towards both such goals. Such an enterprise's participation in a Contract may not be divided between the minority-owned business enterprise goal and the women-owned business enterprise goal.

MINORITY-OWNED BUSINESS ENTERPRISE herein referred to as "MBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more minority group members; (b) an enterprise in which such minority ownership is real, substantial and continuing; (c) an enterprise in which

such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000.00), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

MINORITY GROUP MEMBER shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples of North America. (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian Subcontinent or Pacific Islands.

CERTIFIED ENTERPRISE OR BUSINESS shall mean a business verified as a minority or women-owned business enterprise pursuant to section 314 of the Executive Law. A business enterprise which has been approved by the New York Division of Minority & Women Business Development ("DMWBD") for minority or women-owned enterprise status subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members or women, and that also meets the financial requirements set forth in the regulations.

2. TERMS. The parties to the attached State Contract agree to be bound by the following provisions which are made a part hereof (the word "Contractor" herein refers to any party other than the University):

1(a) Contractor and its Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(b) Prior to the award of a State Contract, the Contractor shall submit an equal employment opportunity (EEO) policy statement to the University within the time frame established by the University.

(c) As part of the Contractor's EEO policy statement, the Contractor, as a precondition to entering into a valid and binding State Contract, shall agree to the following in the performance of the State Contract: (i) The Contractor will not discriminate against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State Contracts; (ii) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the State Contract, all qualified applicants will be afforded

equal employment opportunities without discrimination; (iii) At the request of the University the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(d) Form 108 - Staffing Plan To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

(e) Form 112 - Workforce Employment Utilization Report ("Workforce Report")

(i) Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to SUNY of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

(ii) Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

(iii) In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

(f) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(g) The Contractor shall include the provisions of this section in every Subcontract in such a manner that the requirements of the provisions will be binding upon each Subcontractor as to work in connection with the State Contract, including the requirement that Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the Contractor information on the ethnic background, gender, and Federal occupational categories of the employees to be utilized on the State Contract.

(h) To ensure compliance with the

requirements of this paragraph, the University shall inquire of a Contractor whether the work force to be utilized in the performance of the State Contract can be separated out from the Contractor's and/or Subcontractors' total work force and where the work of the State Contract is to be performed. For Contractors who are unable to separate the portion of their work force which will be utilized for the performance of this State Contract, Contractor shall provide reports describing its entire work force by the specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories which the agency may specify.

(i) The University may require the Contractor and any Subcontractor to submit compliance reports, pursuant to the regulations relating to their operations and implementation of their affirmative action or equal employment opportunity program in effect as of the date the State Contract is executed.

(j) If a Contractor or Subcontractor does not have an existing affirmative action program, the University may provide to the Contractor or Subcontractor a model plan of an affirmative action program. Upon request, the Director of DMWBD shall provide a contracting agency with a model plan of an affirmative action program.

(k) Upon request, DMWBD shall provide the University with information on specific recruitment sources for minority group members and woman, and contracting agencies shall make such information available to Contractors

3. Contractor must provide the names, addresses and federal identification numbers of certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State Contract and a description of the Contract scope of work which the Contractor intends to structure to increase the participation by Certified minority- and/or women-owned business enterprises on the State Contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State Contract which the Contractor intends to be performed by a certified minority- or woman-owned business enterprise. In the event the Contractor responding to University solicitation is joint venture, teaming agreement, or other similar arrangement that includes a minority-and woman owned business enterprise, the Contractor must submit for review and approval: i. the name, address, telephone number and federal identification of each partner or party to the agreement; ii. the federal identification number of the joint venture or entity established to respond to the solicitation, if applicable; iii. A copy of the joint venture, teaming or other similar arrangement which describes the percentage of interest owned by each party to the agreement and the value added by each party; iv. A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture, teaming agreement, or other similar arrangement.

4. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN. The University shall determine whether Contractor has made conscientious and active efforts to employ and utilize minority group members and women to perform this State Contract based upon an analysis of the following factors:

(a) Whether Contractor established and maintained a current list of recruitment sources for minority group members and women, and whether Contractor provided written notification to such recruitment sources that contractor had employment opportunities at the time such opportunities became available.

(b) Whether Contractor sent letters to recruiting sources, labor unions, or authorized representatives of workers with which contractor has a collective bargaining or other agreement or understanding requesting assistance in locating minority group members and women for

employment.

(c) Whether Contractor disseminated its EEO policy by including it in any advertising in the news media, and in particular, in minority and women news media.

(d) Whether Contractor has attempted to provide information concerning its EEO policy to Subcontractors with which it does business or had anticipated doing business.

(e) Whether internal procedures exist for, at a minimum, annual dissemination of the EEO policy to employees, specifically to employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions. Such dissemination may occur through distribution of employee policy manuals and handbooks, annual reports, staff meetings and public postings.

(f) Whether Contractor encourages and utilizes minority group members and women employees to assist in recruiting other employees.

(g) Whether Contractor has apprentice training programs approved by the N.Y.S. Department of Labor which provides for training and hiring of minority group members and women.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor.

5. PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES.

Based upon an analysis of the following factors, the University shall determine whether Contractor has made good faith efforts to provide for meaningful participation by minority-owned and women-owned business enterprises which have been certified by DMWBD:

(a) Whether Contractor has actively solicited bids for Subcontracts from qualified M/WBEs, including those firms listed on the Directory of Certified Minority and Women-Owned Business Enterprises, and has documented its good faith efforts towards meeting minority and women owned business enterprise utilization plans by providing, copies of solicitations, copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publications of such advertisements; dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the University, with certified minority- and woman-owned business enterprises, and the reasons why any such firm was not selected to participate on the project.

(b) Whether Contractor has attempted to make project plans and specifications available to firms who are not members of associations with plan rooms and reduce fees for firms who are disadvantaged.

(c) Whether Contractor has utilized the services of organizations which provide technical assistance in connection with M/WBE participation.

(d) Whether Contractor has structured its Subcontracts so that opportunities exist to complete smaller portions of work.

(e) Whether Contractor has encouraged the formation of joint ventures, partnerships, or other similar arrangements among Subcontractors.

(f) Whether Contractor has requested the services of the Department of Economic Development (DED) to assist Subcontractors' efforts to satisfy bonding requirement.

(g) Whether Contractor has made progress payments promptly to its Subcontractors.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor. It shall be the responsibility of Contractor to ensure compliance by every Subcontractor with these provisions.

6. MWBE Utilization Plan.

(a) The Contractor represents and warrants that

Contractor has submitted an MWBE Utilization Plan prior to the execution of the contract.

(b) MWBE Utilization Plan (Form 7557-107). Contractors are required to submit a Utilization Plan on Form 7557-107 with their bid or proposal. Complete the following steps to prepare the Utilization Plan:

- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
- ii. insert a description of the contract scope of work which the Contractor intends to structure to increase the participation by NYS Certified minority- and women-owned enterprises on the State contract;
- iii. insert the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State contract which the Contractor intends to be performed by a NYS Certified minority- or women-owned business; and

(c) Any modifications or changes to the agreed participation by NYS Certified MWBEs after the Contract Award and during the term of the contract must be reported on a revised MWBE Utilization Plan and submitted to the SUNY University-wide MWBE Program Office.

(d) The University will review the MWBE Utilization Plan and will issue the Contractor a written notice of acceptance or deficiency within twenty (20) day of its receipt. A notice of deficiency shall include the:

- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
- ii. name of any MWBE which is not acceptable for the purpose of complying with the MWBE participation goals;
- iii. reasons why it is not an acceptable element of the Contract scope of work which the MWBE Program Office has determined can be reasonably structured by the Contractor to increase the likelihood of participation in the Contract by MWBEs; and
- iv. other information which the MWBE Program Office determines to be relevant to the MWBE Utilization Plan.

(e) The Contractor shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the University a written remedy in response to the notice of deficiency.

- i. If the written remedy that is submitted is not timely or is found to be inadequate, the University-wide MWBE Program Office shall notify the Contractor and direct the Contractor to submit, within five (5) business days, a request for partial or total waiver of MWBE participation goals on forms provided by the University-wide MWBE Program Office.
- ii. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

(f) The University may disqualify a Contractor as being non-responsive under the following circumstances:

- i. If a Contractor fails to submit a MWBE Utilization Plan;
- ii. If a Contractor fails to submit a written remedy to a notice of deficiency in a MWBE Utilization Plan;
- iii. If a Contractor fails to submit a request for waiver; or
- iv. If the MWBE Program Office determines that the Contractor has failed to document Good Faith Efforts.

(g) Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.

(h) Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, SUNY shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

7. Waivers.

(a) For Waiver Requests Contractor should use (Form 7557-114) – Waiver Request.

(b) If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete the University shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

(c) If University, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the University may issue a notice of deficiency to the Contractor. The contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

8. Quarterly MWBE Contractor Compliance Report.

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form 7557-114) to the University by the 5th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

9. GOALS. (a) GOALS FOR MINORITY AND WOMEN WORK FORCE PARTICIPATION.

(i) The University shall include relevant work force availability data, which is provided by the DMWBD, in all documents which solicit bids for State Contracts and shall make efforts to assist Contractors in utilizing such data to determine expected levels of participation for minority group members and women on State Contracts.

(ii) Contractor shall exert good faith efforts to achieve such goals for minority and women's participation. To successfully achieve such goals, the employment of minority group members and women by Contractor must be substantially uniform during the entire term of this State Contract. In addition, Contractor should not participate in the transfer of employees from one employer or project to another for the sole purpose of achieving goals for minority and women's participation.

(b) GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION. For all State Contracts in excess of \$25,000.00 whereby the University is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing or all State Contracts in excess of \$100,000.00 whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, Contractor shall exert good faith efforts to achieve a participation goal of twenty-four and 52/100 percent (24.52%) for Certified Minority-Owned Business Enterprises and thirteen and 84/100 percent (13.84%) for Certified Women-Owned Business Enterprises.

10. ENFORCEMENT. The University will be responsible for enforcement of each Contractor's compliance with these provisions. Contractor, and each Subcontractor, shall permit the University access to its books, records and accounts for the purpose of investigating and determining whether Contractor or Subcontractor is in compliance with the requirements of Article 15-A of the Executive Law. If the University determines that a Contractor or Subcontractor may not be in compliance with

these provisions, the University may make every reasonable effort to resolve the issue and assist the Contractor or Subcontractor in its efforts to comply with these provisions. If the University is unable to resolve the issue of noncompliance, the University may file a complaint with the DMWBD.

Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, remedies or enforcement proceedings as allowed by the Contract.

11. DAMAGES FOR NON COMPLIANCE.

Where the University determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay liquidated damages to the University. Such liquidated damages shall be calculated as an amount equaling the difference between:

a. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

b. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the University, Contractor shall pay such liquidated damages to the University within sixty (60) days after such damages are assessed, unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the University.



**STATE UNIVERSITY OF NEW YORK
CONSULTANT AGREEMENT
(For Construction Projects)**

This Agreement made as of the _____ day of _____, 20____, for Contract Number _____ by and between STATE UNIVERSITY OF NEW YORK, a corporation organized and existing under the laws of the State of New York, with its principal office located at State University Plaza, Albany, New York 12246, on behalf of State University of New York at _____, located at _____, hereinafter referred to as "University" and _____ having its principal office located at _____, hereinafter referred to as "Consultant".

WITNESSETH:

WHEREAS, the University desires the design of the work contained in Project Number _____, titled _____

at _____, Agency Code _____, for a total fee of \$ _____, (
in figures _____, (
in words _____), and

WHEREAS the Consultant is willing to undertake the design of such Project for the compensation stated above,

NOW, THEREFORE, the parties in consideration of the mutual covenants herein contained agree as follows:

**Article I
CONSULTANT'S BASIC SERVICES**

The Consultant shall provide such professional services as may be necessary to complete the design and construction of the Project. The same shall include, but are not limited to, the following:

SECTION A - GENERAL SERVICES

1. Determination of the staffing and subconsultants necessary for the timely performance of the services required hereunder to meet the University's program requirements.
2. Periodically advising the University of the progress of the planning, design and construction of the Project and any anticipated delay in the same.
3. Attendance, together with its subconsultants, at all conferences reasonably required by the University and the taking, preparation and distribution of minutes of all such conferences.
4. Coordination of all the services to be provided hereunder with related projects of the University being undertaken by the Consultant or by others.

SECTION B - SPECIFIC SERVICES

1. Program Phase

- a. Attendance at orientation meetings at the Project site and University office to review the terms of this Agreement, University procedural requirements at various development phases and the Program

of the Project. For the purposes of the Agreement, the term "Program" includes: this Agreement, the Letter of Intent, the Scope of Services, State University Construction Fund Directives, and the comprehensive Project program addenda and the Program Budget.

- b. Preparation of an analysis of the following factors: educational requirements; site and property requirements; environmental influences; availability, relocation, provision and extension of all utilities; local building practices; time schedules for all phases of the Project; budget and cost forecasts; pedestrian access and egress patterns; public transportation facilities; vehicular traffic, and parking availability and nature.
- c. Review of the Program, function, scope and intent of the Project, and, when deemed necessary by the University, the preparation of drawings indicating the contract limits of the proposed construction contract.
- d. Preparation of an analysis of the site and, in the case of the rehabilitation of an existing building, the existing condition of the building, including, but not limited to, determining the location, measurement and submitting a report to the University setting forth such analysis and specifying additional information, such as topography, soil data, and municipal agency and utility company projects that may be required for the development of the Project and containing recommendations for the action necessary to obtain such information.
- e. Preparation of diagrammatic studies of the Project showing, in the case of a project involving a structure, the utilities and other structures; and, in the case of a project involving site work, the relationship of site systems to the site, services, utilities and structures.
- f. Preparation of an analysis of the probable cost of the Project, based upon square foot area, volume and/or systems involved.
- g. Preparation and submission to the University for its approval of a Program Phase Report, prepared in a format acceptable to the University, setting forth in detail the function, scope and intent of the Project. Submission of the aforesaid report by the Consultant shall constitute its acceptance of the Program, unless otherwise specified and agreed to by the University in writing.

2. Schematic Design Phase

- a. Preparation, submission and presentation to the University of the architectural concept of the Project (Schematic Approach) to illustrate the fundamental character of one or more design concepts which satisfy the basic program requirements of the Project, including but not limited to, preparation of sketches in plan of the Project.
- b. Preparation and submission to the University for its approval of a Schematic Design Report, which shall include, but not be limited to:
 - 1. Such graphic material, code analysis, and information as is necessary to fully illustrate the proposed design and the construction materials of the Project and the relationship of the Project to other projects on the campus, either existing or proposed, and such other factors that may affect the design of the Project or otherwise involve or relate to the Project.
 - 2. Engineering reports analyzing and economically justifying the proposed structural, mechanical, electrical and other technical systems included in the Project.
 - 3. A cost estimate, hereinafter referred to as the "Schematic Cost Estimate", of sufficient detail to indicate that the proposed design can be constructed within the limitations of the Program Budget.

3. Design Manual Phase

- a. Preparation of preliminary plans of the Project, including elevations and/or sections, which plans shall be based on the approved schematic design and the University's comments thereon and shall fully develop graphically the design, scope and concept of various systems of the Project.

- b. Preparation of outline specifications describing in narrative style design decisions in each of the technical areas, performance criteria and materials of various components and systems of the type of structure and/or site work, systems and such other work and details as may be required to complete the design of the project.
- c. Preparation, in the case of a project involving a structure, of furniture, furnishings and equipment layouts of all rooms and spaces in the Project.
- d. Preparation, in the case of a project involving a structure, of an analysis of the relationship of the designed gross and net square foot areas to programmed areas of the Project.
- e. Preparation of study perspectives and models illustrating in detail the architectural design of the Project.
- f. Preparation and submission for approval, during the preparation of preliminary plans and outline specifications, of a detailed cost estimate based upon a preliminary quantity takeoff of all work necessary for the complete construction of the Project, which estimate is hereinafter referred to as the "Design Manual Cost Estimate." The Design Manual Cost Estimate shall be in sufficient detail to demonstrate to the University that the work designed is within the University's Program Budget.
- g. Preparation and submission for approval of scope descriptions and cost estimates of such feasible design alternatives as will allow for construction contract award flexibility.
- h. Preparation and submission for approval of a Design Manual Report, incorporating design decisions, preliminary plans, outline specifications, cost estimate, time schedules and such other information required by the Design Manual Report.
- i. Presentation of the approved Design Manual Report to University representatives.

4. Construction Document Phase

- a. Preparation and submission for approval of complete final working drawings which shall clearly define all additive and/or deductive alternates and all graphic illustrations necessary to accurately bid and complete the construction of the Project. The Consultant's compensation, if any, for services in connection with alternates shall be determined in accordance with the provisions of Section D (8) of Article III hereof.
- b. Preparation and submission for approval of a complete set of final specifications in University format setting forth in detail and describing the work to be performed by the contractor and the finish and the quality of materials and workmanship to be required of the contractor.
- c. Preparation and submission for approval of a detailed cost estimate, based upon the complete contract documents, of all work necessary for the complete construction of the Project, which estimate is hereinafter referred to as the "Pre-Bid Cost Estimate." In the event the bids of all qualified, responsible and reliable contractors for the construction of the Project are in excess of the amount of the Program Budget, as of the approved bid date, the Consultant, to the extent necessary in the University's judgment to bring the cost of the Project within said Program Budget, shall revise, subject to the approval and acceptance by the University, all or any part of the drawings and specifications of the Project that the University may deem advisable or, if the construction contract for the Project has been awarded by the University, the Consultant shall prepare all credit change orders, including any necessary revisions to the drawings and specifications that the University may deem advisable to bring the cost of the Project within said Program Budget. Notwithstanding any other provisions of this Agreement, all of the foregoing services to be provided by the Consultant, under the provisions of this paragraph, shall be provided by it without reimbursement of costs or any additional compensation therefor unless the Consultant can justify to the satisfaction of the University that the factors that caused the variance between the low bid and said Program Budget were not the responsibility of the diligence and its best efforts. For the purposes of this subdivision only, the term Program Budget shall be the amount that the University is willing to spend for construction of the Project.
- d. Application to the Labor Department of the State of New York for wage schedules for each construction

contract and incorporation of the same in the specifications for each contract.

- e. Preparation and submission for approval of a Pre-Bid Report, which shall include, but not be limited to, the final working drawings and specifications and "Final Cost Estimate" to the University for its review and approval a minimum of four (4) weeks prior to the date set for the advertisement for bids from contractors. The Consultant assumes complete responsibility for the correctness, accuracy and completeness of the final working drawings and final specifications and for their coordination with the work of its subconsultants. The approval of such drawings and specifications by the University shall in no way affect or limit this responsibility of the Consultant.
- f. The assemblage and distribution of the bid documents to prospective bidders and plan rooms.
- g. The seeking of bidders, opening and analysis of bids, investigation and selection of bidders and recommendations relative to the award of each contract for the construction of each Project.

5. Construction Phase - General Administration of Construction Contracts

- a. Furnishing general administration of each construction contract awarded for the Project until final completion and acceptance by the University of the construction of the Project.
- b. Furnishing such field administration of each construction contract and inspection of the work of each contractor in an effort to guard the University against inferior materials or workmanship. The Consultant shall use all reasonable care and diligence and exercise its best efforts to see that the Project is constructed in accordance with the drawings and specifications. Through the use of such care, diligence and efforts and any action taken by the Consultant in accordance with this Agreement or under each construction contract, the Consultant does not, however, guarantee that a contractor will not breach its construction contract, but the Consultant shall use all reasonable care and diligence and exercise its best efforts to discover any breach and after it becomes aware of any breach it shall immediately notify the University thereof. In the event of such breach, the Consultant shall submit to the University its recommendations for appropriate remedial action.
- c. Arranging for and/or providing, at regular intervals, and at special times as directed by the University, field administration and inspection of each construction contract by home office personnel of the Consultant and its subconsultants who are expert in the technical areas of work involved in the Project. The Consultant shall provide such field administration and inspection on an average of not less than twice a month during the Construction Phase and shall require its subconsultants to provide such field administration and inspection not less than twice a month during the Construction Phase when work in the subconsultant's specialty is in progress. Said services shall be provided without additional compensation except that, when the total direct labor cost of the same, and a sum equal to 150 percent thereof, equals one-half of the Construction Phase Fee, additional services in the field, unrelated to any fault or omission of the Consultant or its subconsultants, required and approved in writing by the University, will be paid for by the University in accordance with the provisions of subdivision (3) of Section D and subdivision (2) of Section E of Article III hereof.
- d. Furnishing a Field Representative and such assistants as are required, where the same are requested and approved in writing by the University, to give full-time personal field administration of each construction contract and inspection of and attention to all the work to be performed by each contractor. The field administration, inspection and attention provided by the Field Representative and/or assistants shall not be in lieu of or a substitute for the administration, inspection and attention required to be furnished by the Consultant hereunder but shall be in addition thereto. The Consultant's compensation for such Field Representative and assistants shall be determined in accordance with the provisions of Section D (2) and (7) of Article III hereof.
- e. Obtaining, reviewing and approving, when the same is satisfactory, each contractor's time progress schedule. The Consultant shall use all reasonable care and diligence and exercise its best efforts to see that the completion date for the construction of the Project, as set forth in each construction contract, is met, and, to this end, it shall periodically review the construction progress and performance and advise the University of the same. Each construction contract for the Project shall provide that time is of the essence for the completion and construction of the Project and the Consultant agrees to assist the University in an

effort to achieve the specified completion date by advising the University of actions that could be taken to prevent or eliminate delays. The Contractor shall have responsibility for its time, means and methods of construction and for construction site safety.

- f. Development with each contractor of a time schedule covering the preparation and submission of all shop drawings and samples, which schedule shall be designed to avoid delays during construction and to assure an even flow of work. The Consultant shall utilize all reasonable care and diligence and exercise its best efforts to see that each contractor adheres to such schedules. The Consultant shall review and comment upon shop drawings and samples furnished by each contractor within fifteen (15) working days of receipt of the same; provided, however, the same are submitted in accordance with the aforesaid time schedule.
- g. Assumption of complete responsibility in the first instance for the interpretation of the substitution, prior concurrence of the interpretation must be obtained from the University.
- h. Taking of positive action, within the limits of the Consultant's authority hereunder and under the provisions of the applicable construction contract, to safeguard the interest of the University whenever the necessity for such action comes to the Consultant's attention.
- i. The preparation of technical documents, if any, and procedural forms for the execution of Change Orders. The solicitation of price quotes from the Contractor for proposed Change Orders and the evaluation and recommendation of the Contractor's responses. The authorization, together with the University, of all Change Orders. Except in the case of an emergency which threatens loss or injury to persons or property, neither the consultant nor any of its representatives can authorize any change order to a construction contract or change in the work covered by the construction contract. The Consultant's compensation, if any, for services in connection with change orders shall be determined in accordance with the provisions of Section D (6) of Article III.
- j. Keeping of records setting forth the field progress, the submission and processing of shop drawings and samples and the progress of the Project as it relates to each requisition for payment of each contractor.
- k. Reviewing and approving, when the same are satisfactory, partial and final requisitions submitted by construction work.
- l. Conducting of field meetings, held at regular intervals, with representatives of the various trades and of the contractors engaged in the construction of the Project and the preparation and distribution of the minutes of such meetings.
- m. Monthly submission of progress reports to the University during the Construction Phase of the Project based upon personal observation of the Consultant or its staff, which reports shall include, but are not limited to, an analysis of the construction time schedule as contrasted to field progress and anticipated delays in construction.
- n. Assemblage of written guarantees, manuals and as-built drawings required of each contractor and submission of the same to the University.
- o. Inspection of the Project thirty (30) to forty-five (45) days prior to the time the University is to take over, use, occupy or operate any part or all of the Project and furnishing a punch list and/or report to the University of contractor. The Consultant shall use all reasonable care and diligence and exercise its best efforts to see that such work items until they are satisfactorily completed.
- p. Using all reasonable care and diligence and exercising its best efforts to see that all discrepancies and deficiencies covered by guarantees provided by each contractor are promptly remedied; inspection of the Project forty-five (45) to sixty (60) days prior to the end of the one (1) year general guarantee period; furnishing a list and/or report to the University of observed discrepancies and deficiencies covered by contractor guarantees; and monitoring and inspecting the performance of the required remedial work.

Article II

ADDITIONAL OBLIGATIONS AND RESPONSIBILITIES

SECTION A - SEQUENCE OF SERVICES

Except as herein provided, the services described in Article I shall be rendered in the same sequence as they appear in this Agreement, and, where the Project includes more than one construction contract to be let by the University, the Consultant shall provide all of the services required under this Agreement for each such construction contract.

SECTION B - SUBCONSULTANTS

The Consultant shall not engage, contract with or use the services of any subconsultant without obtaining the prior written approval of the University. The Consultant shall submit for approval a report of the scope of services to be provided by each of its subconsultants, with the latter's acknowledgment thereof. No provision of this Agreement and no approval by the University of the scope of the services to be provided by the subconsultants shall, however, be construed as an agreement between the University and any subconsultant of the Consultant or with any person, firm or corporation engaged by, contracted with, or whose services are utilized by the Consultant, or in any way affect the responsibilities of the Consultant hereunder, and, unless otherwise agreed to in writing by the University, the fees of any subconsultants retained by the Consultant shall be deemed covered by the Total Fee to be paid by the University to the Consultant.

SECTION C - CONSULTANT'S PERSONNEL

All personnel assigned by the Consultant to the Project shall be required to cooperate fully with personnel assigned by the University to the Project, and, in the event the Consultant's personnel fail to so cooperate, they, on request of the University, shall be relieved of their duties in connection with the Project.

SECTION D - COORDINATION

The Consultant shall designate one person who, on its behalf, shall be responsible for coordinating all of the services to be rendered by the Consultant hereunder. Such designee shall be subject to the approval of the University.

SECTION E - DRAWINGS AND SPECIFICATIONS

The drawings and specifications prepared by the Consultant shall be in conformity with all applicable laws, governmental rules and regulations, and the requirements of the Program. The Consultant shall be responsible for obtaining all required permits, approvals and clearances from the appropriate state and local authorities with the exception only of such permits, approvals and clearances as are required to be obtained by the contractor or contractors for the Project.

SECTION F - PATENTS

The drawings and specifications prepared by the Consultant shall not, without the prior written approval of the University, specify or require any patented article, design or process which requires payment by the University of royalties for its use or is of a proprietary nature.

SECTION G - GRANTS AND LOANS

In the event that the University is a recipient of or applicant for a grant or loan for the Project from any individual, firm, association, corporation or foundation or from any governmental department or agency, the Consultant, without additional compensation for up to forty (40) direct labor cost hours, shall attend all conferences requested by the party making the grant or loan, submit all necessary drawings, specifications, documents, forms and estimates for the approval of such party, prepare reports for grant or loan requirements during the Construction Phase and revise any and all drawings and specifications for the Project to comply with the requirements of the aforesaid party in connection with the grant or loan; provided, however, that if, in the judgment of the University, any of such revisions are caused by a change in the requirements of the party making the grant or loan and are found to be necessary after the Consultant's performance of part of the work to be revised, the Consultant will be entitled to extra

compensation for such revisions and related extra work in accordance with the provisions of Section D (3) of Article III hereof.

SECTION H - REPRODUCTIONS

The Consultant, at its own cost and expense, shall supply reproductions of plans, specifications, reports and other data and documents pertaining to the Project for its own use, for interoffice use with its sub-consultants. The University shall be entitled to be supplied with a maximum of six (6) reproductions of any plans, specifications, reports and other data and documents required to be prepared by the Consultant pursuant to Article I hereof. Reproduction of Contract Documents for bidding/construction purposes shall be the responsibility of the Consultant, if requested by the University, and shall be reimbursed by the University for the actual cost plus 10 percent.

SECTION I - CLAIMS

In the event any claim is made or any action brought in any way relating to the design or construction of the Project, the Consultant, without additional compensation therefor, will diligently render to the University any and all architectural and engineering assistance which the University may require of the Consultant, including, but not limited to, the making of analyses and reports. Notwithstanding the foregoing, the Consultant shall not be required by the University, without extra compensation therefor, to prepare mock-ups, make tests or testify at a trial or pre-trial proceeding; provided, however, that the Consultant shall furnish such services at its own cost and expense where it is established by a judicial decree or finding that the aforesaid claim or action has arisen from the negligence of the Consultant or the failure of the Consultant to properly and fully perform its obligations and responsibilities under this Agreement.

SECTION J - CHANGES AND/OR REVISIONS

At any time during the term of this Agreement, the Consultant, upon request of the University, shall change and/or revise any and all drawings and specifications of or for the Project.

SECTION K - BUDGETS

The University shall establish a Program Budget based on the amount that the University would be willing to spend for the Project at the time the construction contract or contracts are scheduled to be bid. The estimated cost of construction of the Consultant's design of the Project shall at all times be within the applicable Program Budget unless revised in writing by the University. In the event that such estimated cost is at any time in excess of the University's Program Budget, the Consultant, to the extent necessary in the University's judgment to bring the cost of the Project within said Budget, shall revise, at its own cost and expense, subject to the acceptance and approval by the University, all or any part of the drawings and specifications of the Project that the University may deem advisable. Unless otherwise directed by the University, the cost analysis and all cost estimates referred to in subsections (1)f, (2)b, (3)f, (4)c and (4)e of Section B of Article I hereof shall be prepared by a cost analyst approved by the University.

SECTION L - SUPERVISION AND DIRECTION

The services to be performed by the Consultant hereunder shall at all times be subject to the general supervision and direction of the University. The University shall determine every question of fact which may arise in relation to the interpretation of this Agreement and performance by the parties hereto of their respective obligations and responsibilities hereunder and the decision of the University thereon shall be final, conclusive and binding upon the Consultant unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as to necessarily imply bad faith.

The University reserves the right to have the State University Construction Fund (Fund) act on its behalf at any time or during any phase of the project authorized by this Agreement. Such designation of the Fund to act on behalf of the University shall be in writing addressed to the Consultant and signed by the University.

Article III PAYMENT FOR SERVICES

SECTION A - BASIC COMPENSATION

1. For the purposes of this Agreement, the term "Total Fee" shall mean the total compensation payable to the Consultant under the provisions of subdivisions (1), (2), (3) and (4) of this Section. The Total Fee shall be a negotiated lump sum and shall include any and all costs for subconsultants, telephone, postage, travel, meals, expressly provided in the Agreement, all of the services required to be provided by the Consultant hereunder shall be deemed to be covered by the Total Fee and the Consultant shall not be entitled to extra compensation or reimbursement of its expenses in providing the same.
2. Except as otherwise provided for herein, payment of the fee shall be divided into two parts. The first part shall correspond to the Design Phase of the work and shall equate to 80 percent of the Total Fee. The second part shall correspond to the Construction Administration Phase of the work and shall equate to 20 percent of the Total Fee.

The value of each of the design phases shall be computed as follows:

- a. Upon completion and acceptance by the University of the Program and Schematic Design Phase, a sum to 20 percent of the Total Fee.
 - b. Upon completion and acceptance by the University of the Design Manual Phase, a sum equal to 20 percent of the Total Fee.
 - c. Upon completion and acceptance by the University of the Construction Documents Phase, a sum equal to 40 percent of the Total Fee.
3. Notwithstanding the foregoing, in the event that the University, during one of the Phases of the Project, suspends all or any part of the Project, the Consultant, in lieu of the method hereinabove provided, shall be paid for its services during such Phases as follows: (1) for services performed by the Consultant prior to such suspension, a sum equal to the percentage of completion prior to the suspension; and (2) for services performed by the Consultant following the resumption of all or any part of the Project, a renegotiated sum determined by the Revised Program Budget for the work to be resumed, by the percentage of completion following the resumption of all or any part of the Project.

Substantive program changes made by the University shall, in no way, affect previous payments made to the Consultant.

4. Notwithstanding the provisions of subdivisions (1), (2) and (3) above, if the amount of the bid of the lowest qualified, responsible and reliable contractor does not exceed the University's Program Budget and if the bid is not accepted by the University within six (6) months after its approval of the final working drawings and final specifications, then, the Consultant, unless it and the University otherwise agree in writing, shall be paid only the fee earned under the Design Phase and it shall be deemed to have been released by the University from rendering any additional services hereunder.

SECTION B - TIME OF PAYMENT OF BASIC COMPENSATION

During the Program and Schematic Design Phase, the Design Manual Phase, the Construction Documents Phase, and the Construction Phase of the Project the University shall make monthly installment payments to the Consultant. The amount of the monthly installment payments shall be in proportion to the amount of services rendered by the Consultant as determined by the University on its receipt of reports from the Consultant as to the progress of the services to be furnished in the respective phases.

SECTION C - REIMBURSABLE EXPENSES

Except as otherwise provided for in Section H of Article II hereof, all reproductions of plans, specifications, reports and other data and documents requested by and furnished to or on behalf of the University and all required application fees in connection with the Project shall be paid for by the University on the basis of the Consultant's actual expenditure therefor; provided, however, that the Consultant shall not be entitled to any reimbursement for the

cost of typing or drafting of the same.

SECTION D - EXTRA COMPENSATION

1. Final models, photographs and other architectural renderings, as contrasted to study or preliminary models, photographs or other architectural renderings, will be paid for either on a lump-sum basis agreed to in writing by the parties hereto or on the basis of the Consultant's direct labor cost plus a sum equal to 150 percent thereof; the manner of payment to be determined by the University prior to the completion of performance of such services.
2. The furnishing of a Site Representative at the frequency and duration directed by the University. Payment for this service shall be on the basis of the Consultant's direct labor costs plus 35 percent, inclusive of all benefits and overhead. The individual and the hourly rate shall be approved by the University.
3. Special technical, engineering and/or consultation services will be paid for either on a lump-sum basis agreed to in writing by the parties hereto or on the basis of the Consultant's direct labor cost plus a sum equal to 150 percent thereof; the manner of payment to be determined by the University prior to the completion of performance of such services.
4. Testing laboratory services, topographic, utility, traffic volume, air/water quality and property surveys, test borings, construction progress photos, and, in case of the rehabilitation of an existing building, determining the location, measurement and other essential data of existing architectural, structural, mechanical, electrical and utility features, the details of which, in the judgment of the University, are grossly deficient from a review of existing information and drawings and/or a physical inspection, shall be paid for either on a lump-sum basis agreed to in writing by the parties hereto or on the basis of the Consultant's direct labor cost plus a sum equal to 150 percent services.
5. Except for changes and/or revisions prepared by the Consultant pursuant to Section B (4) c of Article I hereof, all changes and/or revisions to drawings or specifications, resulting from a significant program change of the University prior to the award of a construction contract shall be paid for either on a lump-sum basis agreed to in writing by the parties hereto or on the basis of the Consultant's direct labor cost plus a sum equal to 150 percent thereof; the manner of payment to be determined by the University prior to the completion of performance of such services. Notwithstanding any of the other provisions hereof, whenever any program change results in an increase or decrease in the estimated cost of the Project, the Consultant's Basic Design Fee for services rendered prior to said change shall be based on the last approved Program Budget and the Consultant's Basic Design Fee for all services rendered after such change shall be based on the approved Revised Program Budget for the phase submission after the change was made.
6. All services rendered by the Consultant in connection with any work item, included in a change order to a construction contract, which results from either: (a) a program change of the University, or (b) conditions which, in the judgment of the University, could not have been reasonably anticipated or foreseen by the Consultant at the time bids for construction of the Project were received, will be paid for by the University on the basis of the approved value of said item multiplied by 5 percent. All services rendered by the Consultant in connection with all other extra work items and all deleted work items, included in a change order to a construction contract, shall be deemed to be covered by the Total Fee.
7. Notwithstanding any of the other provisions of this Section, the University will reimburse the Consultant for such field office expenses, other than salaries and fringe benefits, required or approved in writing by the University which, as a result of the nature of the Project, are, in the judgment of the University, substantially in excess of those field office expenses normally incurred by a Consultant in furnishing field administration of a construction contract and inspection of construction work.
8. Additive and deductive alternates, in which changes in design are involved, as contrasted to a material or equipment substitution or addition which, in the judgment of the University, does not involve design changes, will be paid for either on the basis of the Consultant's direct labor cost plus a sum equal to 150 percent thereof or on the basis of the amount the Construction Documents Payment would have been increased had the value of such alternates been added to the amount of the approved Pre-Bid Cost Estimate; the manner of payment to be determined by the University within sixty (60) days after the award of the construction contract. For the purposes of the preceding sentence, deductive alternates shall be added to, rather than subtracted from, the Pre-Bid Cost

Estimate and the value of all alternates shall be deemed to be an amount equal to the bid quoted for the alternates by the lowest bidder or, in the event that the lowest bidder does not submit a bid for such alternates, an average of all bids submitted therefor. Notwithstanding the foregoing, unless otherwise agreed to in writing by the University, the Consultant shall not be entitled to reimbursement of costs or any additional compensation in connection with any alternates for any construction contract or part thereof which is being rebid because all bids previously received by the University were in excess of the amount of the Program Budget of the University therefor and were rejected by the University.

Notwithstanding the foregoing, all services rendered by the Consultant in connection with alternates that involve a material or equipment substitution, addition or deletion which, in the judgment of the University, does not involve design changes, and all services rendered by the Consultant in connection with any additive or deductive alternates prior to the Construction Document Phase shall be deemed covered by the Total Fee unless otherwise agreed to in writing by the University.

9. In the event the Consultant is caused to furnish services, not provided for herein and not previously performed, as a result of the University declaring a contractor in default, damage to the Project by fire or other casualty, or a delay, through no fault or omission of the Consultant, in completion of construction of more than one (1) year after the specified completion date in a construction contract, the University shall pay the Consultant for such services, but, in the case of delayed construction completion, for only those services performed after said one (1) year period, on the basis of the Consultant's direct labor cost plus a sum equal to 150 percent thereof; provided, however, that the Consultant shall not be entitled to extra compensation for monitoring and inspecting either punch list, work or guarantee work items except monitoring and inspection service performed by the Consultant after the expiration of eighteen (18) months from the commencement of the one (1) year general guarantee period.
10. Notwithstanding the foregoing, the Consultant shall not be entitled to extra compensation under any of the preceding subdivisions of this Section unless the services to be provided by the Consultant hereunder have been requested and approved in writing by the University.

SECTION E - PAYMENT OF REIMBURSABLE EXPENSES

1. The reimbursable expenses and extra compensation provided by the above Sections C and D of this Article shall in each case become due and payable by the University within thirty (30) days after its approval of an invoice to be submitted by the Consultant describing the respective items and services furnished and/or performed and the computation of the cost thereof.
2. The term "direct labor cost" as used in this Agreement refers only to labor furnished by the Consultant. Such cost shall be determined by multiplying the amount of time directly and exclusively devoted to the applicable services by non-technical assistants to the Site Representative and technical personnel of the Consultant by the respective charges for such personnel's time; provided, however, that no charge shall be included for time of such personnel if they are not paid for the same. Charges for employees' time will be computed on the basis of their regular rates of gross pay, exclusive of any premiums paid for overtime, except where the University authorizes and agrees in writing to pay for such overtime, which rates shall be filed with and approved by the University. Charges for time of the Consultant's officers or members of the firm will be computed on the basis of a rate of fifty dollars (\$50) per hour. Except as otherwise specifically provided herein, no charges shall be included for time of non-technical personnel or the cost of benefits, required by law or otherwise, to non-technical or technical personnel.

When services for which the Consultant would be entitled to extra compensation under Section D (1) through (9) of Article III hereof are furnished, upon request and approval in writing by the University, by a person, firm or corporation other than the Consultant, the University, in lieu of the payments hereinabove provided, which would have been made had such services been furnished by the Consultant, will only pay the Consultant for such services on the basis of the Consultant's actual expenditure therefor plus a sum equal to 10 percent thereof; provided, however, that the Consultant shall not be entitled to said 10 percent override when, in connection with or related to the services furnished by said other person, firm or corporation, it has been or will be compensated by the University for the direct labor costs of its own technical personnel.

3. Notwithstanding anything to the contrary hereinabove set forth, where labor and/or materials utilized by the

Consultant in furnishing the services to be provided by it hereunder are furnished by a person, firm or corporation Consultant shall not be entitled to any further payments hereunder until it submits proof that such labor and/or materials have been paid for by it or until the University has determined that the Consultant with good cause has otherwise sufficiently provided for the payment and satisfaction of the same.

4. Whenever any payment to or fee of the Consultant is dependent in whole or in part on the Consultant's or its subconsultants' cost or costs, the Consultant shall maintain efficient and accurate cost and accounting records as to all such costs and the Consultant shall require its subconsultants to maintain similar records. The Consultant, at any time during the term of this Agreement or within six (6) years thereafter, shall make such records and requires its subconsultants to make their records available to the University or its authorized representatives for review and audit. In the event all or any part of such records are not maintained or made available to the University, any item not supported by reason of the unavailability of such records shall, at the election of the University, be disallowed and, if payment therefor has already been made, the Consultant, upon demand, shall refund to the University the amounts so disallowed. Payment to the Consultant and/or approval by the University of any invoice submitted by the Consultant shall in no way affect the Consultant's obligations hereunder or the right of the University to obtain a refund of any payment to or fee of the Consultant which was in excess of that to which it was lawfully entitled.
5. For purposes of participating in a survey, the Consultant agrees to maintain efficient and accurate cost and accounting records as to all costs it incurs in connection with the performance of services provided or required under Article I hereof, and the Consultant shall require its subconsultants to maintain similar records. The Consultant, at any time during the term of this Agreement or within six (6) years hereafter, shall make such records and require its consultants to make their records available to the University or its authorized representatives for review and audit.

SECTION F - SPECIAL COMPENSATION

For the special services, if any, listed in the Scope of Services, which is attached hereto and made a part hereof, that the Consultant agrees to furnish and perform, the University shall pay the Consultant the fees listed on said Scope of Services.

Upon completion and approval by the University of each of said services, the fee therefor shall become due and payable by the University within thirty (30) days after submission by the Consultant of an invoice describing the services furnished and performed and the computation of the cost thereof.

SECTION G - CREDIT ADJUSTMENT TO THE UNIVERSITY

The University shall receive a credit in connection with the contracts listed in the Scope of Services, which is attached hereto and made a part hereof, in the amount or percentage listed thereon. For each of such contracts the applicable credit, if any, shall be first applied, until extinguished in its entirety, against any fee, compensation or expense of the Consultant in connection with such contract for which payment is to be made by the University pursuant to any of the provisions of this Agreement.

Article IV OWNERSHIP OF DOCUMENTS

The plans, drawings, specifications, reports, renderings, models, and other documents to be prepared and furnished by the Consultant pursuant to this Agreement shall be the property of the University. The Consultant shall not publish or disseminate to third parties information pertaining to the Project, or any part or aspect thereof, without first obtaining written approval from the University for such publication or dissemination and of the format and content thereof.

Notwithstanding the foregoing, in the event that the University uses all or a substantial portion of the final working drawings for the construction of another project, the University shall compensate the Consultant therefor in such amount as it deems fair and reasonable. In the event of such use, the University shall remove the Consultant's name and seal from the documents and the Consultant shall have no liability or responsibility for such use.

Article V SURVEYS, BORINGS AND TEST DATA

The University shall furnish the Consultant such topographic, utility and property surveys, borings and test pit data as it may have and the Consultant shall obtain such additional topographic, utility and property surveys, borings and test pit data as may be required to complete the final working drawings and final specifications for each of the construction contracts. Such additional surveys, borings and data, the obtainment of which is approved in writing by the University, shall be paid for by the University in accordance with the provisions of Section D (4) of Article III. The Consultant agrees that it will make no claim against the University by reason of such surveys, borings and data unless the same are found to be inaccurate and solely as a result thereof the Consultant, in the opinion of the University, is caused to revise and/or redesign all or any part of the Project, in which case the University will compensate the Consultant for such revision and/or redesign pursuant to the provisions of Section D (5) of Article III hereof.

Article VI TERMINATION OF AGREEMENT

SECTION A - PERSONAL SERVICES

It is understood between the parties that this Agreement is intended to secure the personal services of the Consultant or Consultants (if a partnership) because of its or their ability or reputation and that this Agreement shall not be assigned, sublet or transferred without the prior written consent of the University.

SECTION B - DEATH OR DISABILITY

In case of the death or disability of one or more but not all of the persons referred to as Consultant, the rights and duties of the Consultant shall, at the election of the University, devolve upon the survivor or survivors of them who shall be obligated to perform the services required under this agreement and the University shall make all payments due under this Agreement to the survivors.

SECTION C - TERMINATION

At any time during the effectiveness of this Agreement, the University shall have the right upon seven (7) calendar days' written notice to the Consultant to terminate this Agreement, for cause, convenience or in the event the State Finance Law sections 139-j and 139-k certifications are found to be false or incomplete or to postpone, delay, suspend or abandon all or any part of the Project. In the event of such termination, postponement, delay, suspension or abandonment, the Consultant shall deliver to the University all plans, drawings, specifications, reports and other data and records pertaining to the Project and the University shall pay to the Consultant all amounts due in accordance with Article III hereof; provided, however, that if the University, after commencement of the Consultant's performance of services hereunder, postpones, delays or suspends the Project and subsequently, after a lapse of time, directs the resumption of performance of services by the Consultant, the Consultant, if it, in the judgment of the University, is caused to do extra work, which it would not have otherwise had to do, as a result thereof, will be entitled to extra compensation for such extra work in accordance with the provisions of Section D (3) of Article III hereof. Except as expressly provided in the previous sentence, such termination, postponement, delay, suspension or abandonment shall not give rise to any cause of action or claim against the University for damages, extra remuneration or loss of anticipated profits. In the event such termination, postponement, delay, suspension or abandonment is caused because of the Consultant's failure to fulfill its obligations or responsibilities under this Agreement, the Consultant shall remain liable to the University for all damages suffered by it by reason of such failure, including, but not limited to, any excess costs incurred in completing the Project by the use or employment of other Consultants or otherwise.

Article VII LIABILITY OF THE CONSULTANT

1. To the fullest extent permitted by law, in addition to any liability or obligations of the Consultant to the University that may exist under any other provisions of this Agreement or by statute or otherwise, the Consultant shall assume all risks of liability for its performance, and that of any of its officers, employees, suppliers, subconsultants,

subcontractors or agents and shall be solely responsible and liable for all liabilities, losses, damages, costs or expenses, including attorney's fees, arising from any claim, action or proceeding relating to or in any way connected with the performance of this Agreement and covenants and agrees to defend if requested, indemnify and hold harmless the State of New York, State University of New York, the State University Construction Fund, its agents, officers and employees, from any and all liability, demands, claims, suits, causes of action and losses of whatever kind and nature, arising out of or in connection with its performance of any service or contract resulting from this Agreement, including negligence, active or passive or improper conduct of the Consultant, its officers, subconsultants, agents, suppliers, subcontractors or employees, errors or omissions of the Consultants, its subconsultants, suppliers, agents or employees, or the failure by the Consultant, its officers, subconsultants, agents, subcontractors or employees to perform any obligations or commitments to the State of New York, the State University of New York, the State University Construction Fund, its agents, officers, and employees, or third parties arising out of or resulting from this Agreement, the performance of the services, or the work.

2. To the fullest extent permitted by law, the Consultant shall also indemnify the State of New York, State University of New York, the State University Construction Fund, its agents, officers and employees for breach of contract not related to professional services.

3. The Consultant represents it and its subconsultants, subcontractors, agents, employees and officers shall possess the license, experience, knowledge and character necessary to qualify them individually for the particular duties they perform in connection with the Project. For the purpose of this Agreement, the terms "inspection" and/or "administration" shall not be interpreted as the Consultant's guarantee of any contractor's workmanship or that such contractors will not breach their construction contract.

4. Prior to the commencement of the work to be performed by the Consultant, the Consultant shall submit to the University, certificates of insurance showing evidence of compliance with all insurance requirements contained in the contract. Certificates of Insurance (with the exception of Workers' Compensation and Disability) must be provided on an ACORD 25 Certificate of Insurance, or an equivalent form, and shall reference the project, contract or agreement number. Certificates of Insurance shall disclose any deductible, self insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the contract; specify the additional insureds and named insureds as required therein; and be signed by an authorized representative of the insurance carrier or producer. Deductibles or self-insured retentions above \$250,000 are subject to approval by the University and additional security may be required. Only original documents will be accepted.

5. All insurance shall provide that the required coverage apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to the University for any claim arising from the Consultant's work under this Agreement, or as a result of Consultant's activities. Any other insurance maintained by the University shall be in excess of and shall not contribute to the Consultant's insurance regardless of any "other insurance" clause contained in the University's own policy of insurance.

6. All insurance shall be maintained with insurance carriers authorized to do business in New York State and rated at least "A-" by A.M. Best Company. The Consultant shall cause all insurance to be in full force and effect as of the commencement date of this contract and to remain in full force and effect throughout the term of the contract and as further required by the contract. Not less than thirty days prior to the expiration date or renewal date, the Consultant shall supply the University with updated replacement certificates of insurance and endorsements. The Consultant shall advise the University of any letter or notification that cancels, materially changes, or non-renews the policy and Consultant shall require the insurance carrier(s) to copy the University on any letter or notification that cancels, materially changes, or non-renews the policy. If required by the University, Consultant shall deliver to the University within forty-five (45) days of such request, a copy of any or all policies of insurance not previously provided, certified by the insurance carrier as true and complete.

7. Should the Consultant engage a subconsultant or subcontractor, the Consultant shall impose the insurance requirements in this document on those entities. Consultant shall keep the subconsultant certificates of insurance on file and produce them upon the demand of the University.

8. The Consultant shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of the contract, or as required by law, whichever is greater. The Commercial General Liability policy, and any umbrella/excess policies used to meet the "Each occurrence" limits specified below, must be endorsed to be primary with respects to the coverage afforded the Additional Insureds.

i. Commercial General Liability Insurance

Which coverage shall include, but not be limited to coverage for bodily injury, property damage, personal/advertising injury, premises liability, independent contractors, blanket contractual liability including tort liability of another assumed in contract, liability arising from all work and operations under this Agreement, defense and indemnification obligations, including those assumed under contract, cross liability coverage for additional insureds, products/completed operations for a term no less than three years commencing upon acceptance of the work, explosion, collapse, and underground hazards, contractor means and methods, liability resulting from Section 240 or Section 241 of the NYS Labor Law, and products/completed operations with a limit of not less than \$2,000,000 for each occurrence and general aggregate limit of not less than \$2,000,000.

ii. Workers Compensation and Disability Benefits as required by New York State.

Consultant shall procure and maintain Workers Compensation and Disability Benefits Coverage for the life of this Agreement for the benefit of employees required to be covered by the New York State Workers Compensation Law and the New York State Disability Benefits Law. Evidence of coverage must be provided on forms specified by the Chariman of the Workers Compensation Board.

iii. Comprehensive Business Automobile Liability Insurance with a limit of no less than (\$1,000,000) each accident covering liability arising out of the use of any motor vehicle in connection with the work, including owned, leased, hired, and non owned vehicles bearing, or, under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear license plates. Such policy shall name the State of New York, State University of New York, and the State University Construction Fund as additional insureds. If the contract involves the removal of hazardous waste from the project site or otherwise transporting hazardous materials, pollution liability coverage for covered autos shall be provided by form CA 99 48 03 06 or CA 00 12 03 06 and the Motor Carrier Act Endorsement (MCS90) shall be attached.

iv. Consultant shall procure and maintain during and for a period of three (3) years after the completion of the contract, Professional Liability insurance (Errors and Omissions) with a limit of {insert value}.^[m1]

Such insurance shall apply, but not be limited to, any negligent act, error, or omission in the rendering or failing to render professional services required under the contract and if the project involves abatement, removal, repair, replacement, enclosure, encapsulation, and/or disposal of any hazardous material or substance, it may not exclude bodily injury, property damage, pollution or asbestos related claims, testing, monitoring, measuring, or laboratory analyses. If applicable, the Consultant shall provide coverage of the Consultant's negligent act, error, or omission in rendering or failing to render professional services required by this Contract arising out of specifications, installation, modification, abatement, replacement or approval of products, materials or processes containing pollutants, and the failure to advise of or detect the existence or the proportions of pollutants. The professional liability insurance may be issued on a claims-made policy form, in which case the Professional shall procure at its sole expense, extended Discovery Clause coverage of up to three (3) years after work is completed if coverage is cancelled or not renewed. Written proof of this extended reporting period must be provided to the University prior to expiration or cancellation.

9. When the limits of the CGL, Auto, and/or Employers Liability policies procured are insufficient to meet the limits specified, the Consultant shall procure and maintain commercial Umbrella and/or Excess Liability policies with limits in excess of the primary, provided, however, that the total amount of insurance coverage is at least equal to the requirements set forth above. Such policies shall follow the same form as the primary.

10. Unless otherwise agreed to in writing by the University, policies must be endorsed to provide that there shall be no right of subrogation against the University. To the extent that any of the policies of insurance prohibit such a waiver of subrogation, Consultant shall secure the necessary permission to make this waiver.

11. Except as otherwise specifically provided herein or agreed in writing, policies must be written on an occurrence basis. The insurance policy(ies) shall name the State University Construction Fund, State University of New York, and State of New York, its officers, agents, and employees as additional insureds thereunder. The additional insured requirement does not apply to Workers' Compensation, Disability or Professional Liability coverage.

13. Neither the procurement nor the maintenance of such insurance shall in any way affect or limit the obligations, responsibilities or liabilities of the Consultant hereunder.

14. Nothing in this Article or in this Agreement shall create or give to third parties any claim or right of action against the Consultant or the University beyond such as may legally exist irrespective of this Article or this Agreement.

Article VIII AFFIRMATIVE ACTION

The Consultant agrees to comply with the requirements of Exhibit A-I, attached hereto and made a part hereof.

Article IX PROVISIONS REQUIRED TO BE INSERTED BY LAW

Each and every provision required by law to be inserted in this Agreement, including, but not limited to, the provisions set forth in Exhibit "A" which is attached hereto and made a part hereof and State Finance Law Section (163) (4) (g) imposes certain reporting requirements on contractors doing business with New York State. In furtherance of these reporting requirements, the Contractor agree to complete and submit an initial planned employment data report and annual employment report, which are attached as Forms A and B. respectively.

Article X RELEASE OF THE UNIVERSITY

The acceptance by the Consultant or any person claiming under the Consultant of final payment made under this Agreement shall operate as and shall be a release of the University from all claims by and liability to the Consultant, its successors, legal representatives and assigns, for anything done or furnished under the provisions of this Agreement or in connection with the Project.

Article XI GENERAL PROVISIONS

SECTION A - APPROVAL

Wherever in this Agreement action is to be taken by or approval given by the University, such action or approval may be taken or given by any officer or employee of the University duly designated to act on behalf of the University.

SECTION B - DEFINITION

In the event that the principals of the party referred to in the Agreement as the "Consultant" are architects, engineers, landscape consultants or surveyors, then and in that event, wherever the word or designation "Consultant" appears in this Agreement, such word or designation shall be deemed to be "Architect", "Engineer", "Landscape Consultant", or "Surveyor", as the case may be. For the purpose of this Agreement, the terms "inspection" and/or "administration" shall not be interpreted as the Consultant's guarantee of workmanship or that the Contractor will not breach its construction contract.

SECTION C - DELAYS OR OMISSIONS

No delay or omission by the University or the Consultant to exercise any right or remedy accruing to it under the terms of this Agreement or existing at law or in equity or by statute or otherwise shall be construed as a waiver of any of the provisions of this Agreement or of any such right or remedy and no such delay or omission shall impair any such right or remedy or be construed to be a waiver of or acquiescence in the act or acts or omission or omissions to act giving rise to the accruals of such right or remedy, nor shall it affect the University's or the Consultant's rights or remedies upon the occurrence of any subsequent event of the same or of a different

nature.

SECTION D - CAPTIONS

The captions of Articles and Sections of this Agreement are intended for convenience and for reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement or in any way affect this Agreement.

SECTION E - SINGULAR/PLURAL; MALE/FEMALE

As used in this Agreement, the singular of any word or designation, whenever necessary or appropriate, shall include the plural and vice versa, and the masculine gender shall include the female and neuter genders and vice versa.

SECTION F - ACTIONS OR PROCEEDINGS AGAINST THE UNIVERSITY

No action or proceeding shall lie or be maintained by the Consultant, or anyone claiming under or through the Consultant, against the University or any of its trustees, officers, agents or employees, upon any claim arising out of or based upon this Agreement or any breach thereof or by reason of any act or omission of the University or its trustees, officers, agents or employees, unless such action or proceeding is commenced within one (1) year after the University's acceptance of the construction work.

SECTION G - ENTIRE AGREEMENT

This Agreement, together with Exhibit A, State University of New York Standard Contract Clauses, constitutes the entire agreement between the parties hereto and supersedes all previous understandings and agreements with respect to the Project or any of the provisions hereof. No statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.

SECTION H – GOVERNING LAW

This Agreement shall be governed, construed and enforced in accordance with the laws of New York State, excluding New York State's choice of law principles, and all claims relating to or arising out of this Agreement or the breach thereof, whether sounding in contract, tort or otherwise, shall likewise be governed by the laws of New York State, excluding the New York choice of law principles. Consultant agrees to submit itself to such courts' jurisdiction.

SECTION I – CONSULTANT RESPONSIBILITY

(a) *General Responsibility.* The Consultant shall at all times during the term of this Agreement remain responsible. The Consultant agrees, if requested by the SUNY Chancellor or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity. (b) *Suspension of Work for Non-Responsibility.* The SUNY Chancellor, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement at any time when he or she discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant must comply with the terms of the suspension order. Activity under this Agreement may resume at such time as the SUNY Chancellor or his or her designee issues a written notice authorizing a resumption of performance under the Agreement. (c) *Termination for Non-Responsibility.* Upon written notice to the Consultant and a reasonable opportunity to be heard with appropriate SUNY officials or staff, this Agreement may be terminated by the SUNY Chancellor or his or her designee at the Consultant's expense, where the Consultant is determined by the SUNY Chancellor or his or her designee to be non-responsible. In such event, the SUNY Chancellor or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

STATE UNIVERSITY OF NEW YORK:

_____ *by* _____ *title* _____ *date*

CONSULTANT:

_____ *by* _____ *title* _____ *date*

_____ *Federal ID Number* (If Corporation, affix Corporate Seal)



ACKNOWLEDGMENTS

(Acknowledgment by Individual)

STATE OF NEW YORK)
COUNTY OF) ss.:

On this _____ day of _____, 19____, before me personally came _____
_____, to me known and known to me to be the person(s)
described in and who executed the foregoing instrument and he/she acknowledged to me that he/she executed
the same.

Notary Public

(Acknowledgment by Partnership)

STATE OF NEW YORK)
COUNTY OF) ss.:

On this _____ day of _____, 19____, before me personally came _____
_____, to me known and known to me to be the
person who executed the above instrument, who, being duly sworn by me, did for theirself dispose and say

that he/she is a member of the firm of _____,
consisting of theirself and _____, that he/she executed
the foregoing instrument in the firm name of _____,
and that he/she had authority to sign the same, and he/she did duly acknowledge to me that he/she executed the
same as the act and deed of the aforementioned firm for the purposes mentioned therein.

Notary Public

(Acknowledgment by Corporation)

STATE OF NEW YORK)
COUNTY OF) ss.:

On this _____ day of _____, 19____, before me personally came _____
_____, to me known, who, being duly sworn, did

depose and say that he/she resides in _____; that he/she is
the _____ of _____ the
_____, the corporation described in and which
executed the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to said
instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation,
and that he/she signed his name thereto by like order.

Notary Public

Exhibit A

State University of New York Standard Contract Clauses

Exhibit A-1

State University of New York Affirmative Action Clauses



PROSPECTIVE BIDDERS NOTICE

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE REQUIREMENTS: CONSTRUCTION-RELATED CONSULTANT SERVICES CONTRACTS

To Prospective Bidders:

Consistent with the State University of New York (SUNY)'s commitment and in accordance with Article 15-A of the New York State Executive Law, Consultants are required to ensure that good faith efforts are made to include meaningful participation by Minority and Women-Owned Business Enterprises (MWBE). These requirements apply to all SUNY construction-related consultant services contracts in excess of \$25,000.

Receipt of MWBE documentation is required with submittal of qualifications for construction related consultants service contracts. Such documentation shall be submitted on the forms listed below in sub-parts (a) and (b). The MWBE Program Coordinator is given the statement of qualifications and short list of qualified consultants developed by the evaluation/selection committee for review and approval.

- a. Receipt of the Sub-consultant Staffing List
 - i. Architecture/Engineering Design Sub-consultant Staffing List ([7555-15](#))
 - ii. Construction Management Sub-consultant Staffing List ([7555-16](#))
 - iii. Commissioning Services Sub-consultant Staffing List ([7555-17](#))
- b. MWBE-EEO Policy Statement ([7557-104](#)) or the Vendor/Consultant's own EEO Policy Statement

The campus MWBE Program Coordinator will enter sub-plans and payment plans into the SUNY PRISM Compliance Management (PCM) system. This requirement applies to construction consultant contracts in excess of \$25,000.

If the Consultant's MWBE participation rate shown on its MWBE Utilization Plan is below 30%, the campus MWBE Program Coordinator will provide a written notice of deficiency of the Utilization Plan within twenty (20) business days of its submission to the Consultant, as required under 5 NYCRR §142.4.

The notice will include but not be limited to the following:

- a. A list of NYS certified MWBEs that the Consultant could potentially use within the contract scope of work;
- b. The name of any MWBE which is not acceptable for the purpose of complying with the MWBE participation goals; and
- c. Any other information which the MWBE Program Coordinator determines to be relevant to develop an approvable MWBE Utilization Plan.

The Consultant shall respond to the notice of deficiency by submitting a revised MWBE Utilization Plan within seven (7) business days, as required by 5 NYCRR Part §142.6 (e) to the MWBE Program Coordinator.

If the deficiency is not corrected and the MWBE participation rate on the MWBE Utilization Plan is still below 30%, the Consultant should request a waiver.

The Waiver Request Form submitted by the Consultant will include, but not be limited to, the following:

- a. A request for partial or total waiver of MWBE goals as required by 5 NYCRR Part §142.6 (f) on Request for Waiver Form ([Form 7557-114](#)) provided by the University-wide MWBE Program Office.
- b. Copy of the deficient Utilization Plan.
- c. Work Scope of this contract. If there are sub-consulting opportunities, please provide documentation d, e, and f.
- d. Screenshot of searching result for available MWBEs in [NYS M/WBE Directory](#).
- e. Copy of email messages containing the request for quote, along with the responses from MWBEs.
- f. Forms required to obtain this information are:
[7557-101](#) – MWBE Consultant Solicitation Letter
[7557-102](#) – MWBE Participation Quote
[7557-103](#) – MWBE Consultant Unavailability Certification

Please submit the above documentations by mail, fax, or email:

[CAMPUS NAME]
[CAMPUS MWBE PROGRAM COORDINATOR]
[CAMPUS ADDRESS]
Fax: [CAMPUS FAX]
Tel: [CAMPUS PHONE]
Email: [CAMPUS CONTACT]

- OR - IF APPLICABLE

Please submit the above documentation to the University-wide MWBE Program Office:

SUNY System Administration at State University Plaza,
Office of Diversity, Equity and Inclusion
University-wide MWBE Program
Albany, NY 12246
Fax: (518)-320-1548
Tel: (518)-320-1452
Email: MWBEProgram@suny.edu

Information regarding this legislation may be found at: [Participation by Minority Group Members and Women \(MWBEs\) with Respect to State University of New York Contracts](#) on the [State University of New York](#) web site.

**STATE UNIVERSITY OF NEW YORK
MWBE UTILIZATION PLAN INSTRUCTIONS
(FOR ALL CONTRACT TYPES)**

A letter of explanation and documentation of efforts should accompany any MBE/WBE Utilization Plan that falls short of the stated goals. Without an approved MBE/WBE Utilization Plan, SUNY's Notice of Award and Contract may be withheld.

If you have questions or need assistance related to the SUNY's Minority and Women's Business requirements call the University-wide MWBE Program Office at 518-320-1189 or email MWBEprogram@suny.edu.

1. The three low bidding Consultants ("Consultants") are required to submit a Utilization Plan (107) to the MWBE Program Coordinator within seven (7) calendar days after the opening of bids for construction contracts exceeding \$100,000.
2. The MWBE Program Coordinator is required to submit the mandatory MWBE documentation to the University-wide MWBE Program Office web based contract management system for commodity, service and construction related consultant service contracts exceeding \$25,000 and for construction project exceeding \$100,000 upon contract execution.
3. The MBE and WBE goals are separate and not to be treated as one combined goal.
4. The MBE and WBE firms included are businesses the bidder *seriously expects* to include in the project activity.
5. The Consultant reasonably commits to the dollar values included in the plan for participation by MBE and WBE subConsultants and suppliers.
6. MBE and WBE firms **must be certified** by the New York State Department of Economic Development, Division of Minority and Women Business Development. A directory of certified minority and women-owned business enterprises is available on the internet at <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>.
7. Consultants utilizing MWBE firms for supplies/materials/equipment whose NYS certification profile designates them as Broker will receive an MWBE utilization credit for the actual monetary value of the broker fees or the actual markup percentage of the items brokered.
8. MBE and WBE Participation:

The actual services provided by the MBE or WBE must be essential in the performance of the scope of work for the applicable contract. Utilization of a certified MBE or WBE as a conduit or pass through for participation credit is **strictly prohibited**. It is the discretion of University-wide MWBE Program to determine whether services are essential in the performance of the scope of work and offer a determination of the appropriateness of work allowed for lower tier Sub-consulting in accordance with practices generally accepted in the construction industry. The services the MBE or WBE will provide must be among those explicitly identified in the profile (codes) of firm as listed in the NYS Empire State Development Directory of Certified MWBEs. Firms submitted or who participate in the project outside of these conditions and without specific prior approval by SUNY will not be credited toward the MWBE Utilization Plan and goals for the contract.

9. Prior to submitting the Plan, the bidders should confirm the following:
 - a. MBE and WBE firms are NYS certified;
 - b. MBE **or** WBE designation ~ Dual certified firms may be used as *either* but **not** both;
 - c. MBE and WBE firms are being used for item(s) within their certification product codes;
 - d. MBE and WBE firms will perform work for which they have been submitted; and
 - e. 2nd tier subConsultants and/or suppliers are noted as such and an MWBE Utilization credit shall be given for 60% of the total contract value of supply purchases or services rendered (for example, when an electrical subConsultant purchases from a 3rd party supplier an MWBE utilization credit will be given for 60% credit of the total contract value).

The prime Consultant is responsible for ensuring participation provided by subConsultants for 2nd and 3rd tier MBE and WBE participation.

Submission of a Utilization Plan which fails to meet or exceed each goal shall be accompanied by documentation of specific efforts undertaken both pre and post bid. The campus MWBE Program Coordinator will review and notify Consultant of its assessment.

The University-wide MWBE Program Office in collaboration with the campus MWBE Program Coordinator will review the Utilization Plan and notify the Consultant of any deficiencies and determine necessary actions to bring the Plan into compliance. The University-wide MWBE Program Office reserves the right to require the Consultant to provide sufficient documentation of the efforts made in the development of the Utilization Plan. The documentation should meet the good faith efforts standard under 5 NYCRR Part §141.6, and demonstrate the Consultant's commitment to providing opportunities for MBE and WBE firms in the development of the Utilization Plan.

A copy of the approved Utilization Plan will be provided to the Consultant after issuance of Notice of Award.

MWBE FORM (107) INSTRUCTIONS

Requested information must be completed and submitted within seven (7) days after the bid opening.

SubConsultant Name & Address

Name & Address of each MBE/WBE subConsultant or supplier

MBE or WBE

Minority (MBE) or Women (WBE) Designation

Federal ID

Provide accurate Federal ID number of each MBE/WBE subConsultant or supplier

Dollar Value of Subcontract or Purchase Order

This is the total value of the signed subcontract. If this value is different from the amount in the approved MBE/WBE utilization plan, an explanation should be provided.

Description of Work or Supplies

Brief description of work performed or supplies provided by the MBE/WBE subConsultant or supplier

Schedule

This is the anticipated start and completion dates for each MBE/WBE subConsultant or supplier. Do not include the construction schedule for the life of the entire project.

Signature

To be signed by an Officer of the Company

- The information included on the form is subject to verification by the campus MWBE Program Coordinator.
- The campus MWBE Program Coordinator must be notified prior to changes made to the approved MBE/WBE Utilization Plan.

Questions regarding this form should **first** be directed to the [campus MWBE Program Coordinator](#) (click the link and be directed to the SUNY MWBE Campus Contacts directory on the University-wide MWBE web site).

Questions regarding this form should be directed to the University-wide MWBE Program Office at (518) 320- 1189 or via e-mail: MWBEprogram@suny.edu.

Submit To:

**State University of New York
Office of Diversity, Equity and Inclusion University-wide MWBE Program
353 Broadway
Albany, NY 12246
Or MWBEProgram@suny.edu**



PROSPECTIVE BIDDERS NOTICE
SERVICE DISABLED VETERAN-OWNED BUSINESS ENTERPRISE REQUIREMENTS:
CONSTRUCTION-RELATED CONSULTANT SERVICES CONTRACTS

To Prospective Bidders:

Consistent with the State University of New York (SUNY) 's commitment and in accordance with Article 17-B of the New York State Executive Law and its implementing regulations, state agencies and Consultants are required to ensure that good faith efforts are made to include meaningful participation by Service Disabled Veteran-Owned Business (SDVOB). The requirements apply to all SUNY construction-related consultant services contracts in excess of \$25,000.

Receipt of SDVOB documentation is required with submittal of qualifications for construction related consultants service contracts. Such documentation shall be submitted on the forms listed below in sub-parts (a) and (b). The MWBE Program Coordinator is given the statement of qualifications and short list of qualified consultants developed by the evaluation/selection committee for review and approval.

- a. Receipt of the Sub-consultant Staffing List
 - i. Architecture/Engineering Design Sub-consultant Staffing List ([7555-15](#))
 - ii. Construction Management Sub-consultant Staffing List ([7555-16](#))
 - iii. Commissioning Services Sub-consultant Staffing List ([7555-17](#))

The campus MWBE Program Coordinator will enter sub-plans and payment plans into the SUNY PRISM Compliance Management (PCM) system. This requirement applies to construction consultant contracts in excess of \$25,000.

If the Consultant's SDVOB participation rate shown on its SDVOB Utilization Plan is below 6%, the campus MWBE Program Coordinator will provide a written notice of deficiency of the Utilization Plan within twenty (20) business days of its submission to the Consultant, as required under 9 NYCRR 252.2(1)(3).

The notice will include but not be limited to the following:

- a. A list of NYS certified SDVOBs that the Consultant could potentially use within the contract scope of work;
- b. The name of any SDVOB which is not acceptable for the purpose of complying with the SDVOB participation goals; and
- c. Any other information which the MWBE Program Coordinator determines to be relevant to developing an approvable SDVOB Utilization Plan.

The Consultant shall respond to the notice of deficiency by submitting a revised SDVOB Utilization Plan within seven (7) business days, as required by 9 NYCRR § 252.2(1)(5).to the MWBE Program Coordinator.

If the deficiency is not corrected and the SDVOB participation rate on the SDVOB Utilization Plan is still below 6%, the Consultant should request a waiver.

The Waiver Request Form submitted by the Consultant will include but not limited to the following:

- a. A request for partial or total waiver of SDVOB goals are required by (9 NYCRR § 252.2(m) (2) on Request for Waiver Form ([Form 7564-114](#)) provided by the University-wide MWBE Program Office.
- b. Copy of the deficient Utilization Plan.

- c. Work Scope of this contract. If there are sub-consulting opportunities, please provide documentation d, e, and f.
- d. Screenshot of searching result for available SDVOBs in [Directory of NYS Certified SDVOBs](#).
- e. Copy of email messages containing the request for quote along with the responses from SDVOBs.
- f. Forms required to obtain this information are:
 - [7564-101](#) – SDVOB Consultant Solicitation Letter
 - [7564-102](#) – SDVOB Participation Quote
 - [7564-103](#) – SDVOB Consultant Unavailability Certification

Please submit the above documentations by mail, fax, or email:

Please submit the above documentation to the campus MWBE Program Coordinator:

[CAMPUS NAME]
[CAMPUS MWBE PROGRAM COORDINATOR]
[CAMPUS ADDRESS]
Fax: [CAMPUS FAX]
Tel: [CAMPUS PHONE]
Email: [CAMPUS CONTACT]

- OR - IF APPLICABLE

SUNY System Administration at State University Plaza,
Office of Diversity, Equity and Inclusion
University-wide MWBE Program
Albany, NY 12246
Fax: (518)-320-1548
Tel: (518)-320-1452
Email: MWBEProgram@suny.edu

Information regarding this legislation may be found at: [Division of Service-Disabled Veterans' Business Development](#) on the New York State Office General Services web site.

**STATE UNIVERSITY OF NEW YORK
SDVOB UTILIZATION PLAN**

A letter of explanation and documentation of efforts must accompany any SDVOB Utilization Plan that falls short of the stated goals. Without an approved SDVOB Utilization Plan, SUNY's Notice of Award and Contract may be withheld.

If you have questions or need assistance related to the SUNY's Service-Disabled Veteran-Owned Business requirements call the University-wide MWBE Program Office at 518-320-1452 or email MWBEprogram@suny.edu.

1. The three low bidding Consultants ("Consultants") are required to submit a Utilization Plan (Form 7564-107) to the MWBE Program Coordinator within seven (7) calendar days after the opening of bids for construction contracts exceeding \$100,000.
2. The MWBE Program Coordinator is required to submit the mandatory SDVOB documentation to the University-wide MWBE Program Office web based contract management system for commodity, service and construction related consultant service contracts exceeding \$25,000 and for construction project exceeding \$100,000 upon contract execution .
3. The SDVOB firms included are businesses the Consultant *seriously expects* to include in the project activity.
4. The Consultant must reasonably commit to the dollar values included in the Utilization Plan for participation by SDVOB Sub-consultants and suppliers.
5. SDVOB firms **must be certified** by the Division of Service-Disabled Veterans' Business Development. A directory of certified minority and women-owned business enterprises is available on the internet at http://ogs.ny.gov/Core/Docs/CertifiedNYS_SDVOB.pdf. If you would like to receive an excel file containing the current the List of NYS Certified Service-Disabled Veteran-Owned Businesses and sign up to receive updates whenever we certify new businesses, please send a request to veteransdevelopment@ogs.ny.gov.
6. Consultants utilizing SDVOB firms for supplies/materials/equipment whose NYS certification profile designates them as Broker will receive an SDVOB utilization credit for the actual monetary value of the broker fees or the actual markup percentage of the items brokered.
7. SDVOB Participation:

The actual services provided by the SDVOB must be essential in the performance of the scope of work for the applicable contract. Utilization of a certified SDVOB as a conduit or pass through for participation credit is strictly prohibited. It is the discretion of SUNY University-wide MWBE Program to determine whether services are essential in the performance of the scope of work and to offer a determination of the appropriateness of work allowed for lower tier subcontracting, in accordance with practices generally accepted in the construction industry. The services the SDVOB will provide must be among those explicitly identified in the profile (codes) of the firm as listed in the SDVOB directory [Division of Service-Disabled Veterans' Business Development](#). Firms submitted or firms that participate in the project outside of these conditions and without specific prior approval by SUNY will not be credited toward the SDVOB Utilization Plan and goals for the contract.

8. Prior to submitting the Utilization Plan, the bidders should confirm the following:
 - a. SDVOB firms are NYS certified;
 - b. SDVOB firms are being used for item(s) within their certification product codes as indicated in their SDVOB Directory firm profile;
 - c. SDVOB firms will perform work for which they have been submitted; and
 - d. 2nd tier Sub-consultants and/or suppliers are noted as such and an SDVOB Utilization credit shall be given for 60% of the total contract value of supply purchases or services rendered (for example, when an electrical Sub-consultant purchases from a 3rd party supplier an SDVOB utilization credit will be given for 60% credit of the total contract value).

The prime Consultant is responsible for ensuring participation provided by Sub-consultants for 2nd and 3rd tier SDVOB participation.

Submission of a Utilization Plan which fails to meet or exceed each goal shall be accompanied by documentation of specific efforts undertaken both pre- and post-bid. The campus MWBE Program Coordinator will review and notify Consultant of its assessment.

The University-wide MWBE Program Office in collaboration with the campus MWBE Program Coordinator will review the Utilization Plan and notify the Consultant of any deficiencies and determine necessary actions to bring the Utilization Plan into compliance. The University-wide MWBE Program Office reserves the right to require the Consultant to provide sufficient documentation of the efforts made in the development of the Utilization Plan. The documentation should meet the good faith efforts standard under 9 NYCRR § 252.2, and demonstrate the Consultant's commitment to providing opportunities for SDVOB firms in the development of the Utilization Plan.

A copy of the approved Utilization Plan will be provided to the Consultant after issuance of Notice of Award.

SDVOB FORM (7564-107) UTILIZATION PLAN INSTRUCTIONS

Requested information must be completed and submitted within seven (7) days after the bid opening.

Sub-consultant Name & Address

Name & Address of each SDVOB Sub-consultant or supplier.

Federal ID

Provide accurate Federal ID number of each SDVOB Sub-consultant or supplier.

Dollar Value of Subcontract or Purchase Order

This is the total value of the signed subcontract. If this value is different from the amount in the approved SDVOB Utilization Plan, an explanation should be provided.

Description of Work or Supplies

Brief description of work performed or supplies provided by the SDVOB Sub-consultant or supplier.

Schedule

This is the anticipated start and completion dates for each SDVOB Sub-consultant or supplier. Do not include the construction schedule for the life of the entire project.

Signature

To be signed by an Officer of the Company

- The information included on Form 7564-107 is subject to verification by the campus MWBE Program Coordinator.
- The campus MWBE Program Coordinator must be notified prior to changes made to the approved SDVOB Utilization Plan.

Questions regarding this form should **first** be directed to the [campus MWBE Program Coordinator](#) (click the link and be directed to the SUNY MWBE Campus Contacts directory on the University-wide MWBE web site).

Questions regarding this form should be directed to the University-wide MWBE Program Office at (518) 320- 1340 or via e-mail: MWBEprogram@suny.edu.

Submit To:

**State University of New York
Office of Diversity, Equity and Inclusion University-wide MWBE Program
353 Broadway
Albany, NY 12246
Or MWBEProgram@sunv.edu**