



# Project Manual

*For construction contracts greater than \$20,000*

## Project No. M05673 Rosch Recital Hall Stage Floor Replacement

April 4, 2025

Set No. \_\_\_\_



EXP: 04/30/2025



280 Central Avenue, Fredonia, NY 14063

Project: **M05673 –Rosch Recital Hall Stage Floor Replacement**

Date: April 4, 2025

Agency/Div. Code: 28180

Contract No. TBD

### Bidding Documents

Section	Title	Page #
	<b>Notice to Bidders (Form 7554-03)</b>	NB-1 & NB-2

### Information for Bidders (Form 7554-06)

Section 1	Definitions	IB-1
Section 2	Issuance of Bidding and Contract Documents	IB-1
Section 3	Proposals	IB-1, IB-2
Section 4	Examination of Bidding and Contract Documents	IB-2
Section 5	Computation of Bid	IB-2, IB-3
Section 6	Payment of Bid Security	IB-3
Section 7	Qualifications of Bidders	IB-3, IB-4
Section 8	Submission of Post-Bid Information	IB-4, IB-5, IB-6, IB-7
Section 9	Award of Contract	IB-7, IB-8
Section 10	Required Bonds & Insurance	IB-8, IB-9, IB-10
Section 11	Minority and Women-Owned Business Enterprises	IB-10
Section 12	Equal Employment Opportunity Requirements	IB-11
Section 13	Executive Order 162 (EO162)	IB-11, IB-12
Section 14	Executive Order 177 (EO177)	IB-12
Section 15	Service Disabled Veteran Owned Business Enterprises	IB-12
Section 16	Encouraging Use of NYS Business Businesses in Contract Performance	IB-12, IB-13
Section 17	Single Contract Responsibility	IB-13
Section 18	Examination of Site and Conditions of Work	IB-13, IB-14
Section 19	General Terms and Conditions	IB-14
Section 20	Additional Terms and Conditions	IB-15, IB-16, IB-17
Section 21	Requirements for Construction Activities to Address Public Health or Safety	IB-17

<b>Proposal (Form 7554-07)</b>	Pages 1 to 6
--------------------------------	--------------

### State University of New York Construction Agreement (Form 7554-09)

#### Summary

#### Article I

#### General Provisions

Section 1.01	Definitions	1, 2
Section 1.02	Captions	2
Section 1.03	Nomenclature	2
Section 1.04	Entire Agreement	2
Section 1.05	Successors, Assigns and Agents	2
Section 1.06	Accuracy and Completeness of Contract Documents	3
Section 1.07	Organization of Contract Documents	3
Section 1.08	Furnishing of Contract Documents	3
Section 1.09	Examination of Contract Documents and Site	3
Section 1.10	Invalid Provisions	3

Section 1.11	No Collusion or Fraud .....	3, 4
Section 1.12	Notices .....	4
Section 1.13	Singular-Plural; Male-Female .....	4

## Article II

### Contract Administration and Conduct

Section 2.01	Consultant's Status .....	4, 5
Section 2.02	Finality of Decisions .....	5
Section 2.03	Claims and Disputes .....	5, 6
Section 2.04	Omitted Work .....	6
Section 2.05	Extra Work .....	6, 7
Section 2.06	Contractor to Give Personal Attention .....	7
Section 2.07	Employment of Workers .....	7
Section 2.08	Detailed Drawings and Instructions .....	7
Section 2.09	Contract Documents to Be Kept at Site .....	7
Section 2.10	Permits and Building Codes .....	7, 8
Section 2.11	Surveys .....	8
Section 2.12	Site Conditions .....	8
Section 2.13	Right to Change Location .....	8
Section 2.14	Unforeseen Difficulties .....	8, 9
Section 2.15	Moving Materials and Equipment .....	9
Section 2.16	Other Contracts .....	9
Section 2.17	Inspection and Testing .....	9, 10
Section 2.18	Subcontractors .....	10, 11
Section 2.19	Shop Drawings and Samples .....	11, 12, 13
Section 2.20	Equivalents - Approved Equal .....	13, 14
Section 2.21	Patents, Trademarks and Copyrights .....	14
Section 2.22	Possession Prior to Completion .....	14
Section 2.23	Completion and Acceptance .....	14, 15
Section 2.24	Record Drawings .....	15, 16
Section 2.25	Guarantees .....	16
Section 2.26	Default of Contractor .....	16, 17, 18
Section 2.27	Termination .....	18, 19

## Article III

### Time of Performance

Section 3.01	Commencement, Prosecution and Completion of Work .....	19, 20
Section 3.02	Time Progress Schedule .....	20
Section 3.03	Time Schedule for Shop Drawings and Samples .....	20
Section 3.04	Notice of Conditions Causing Delay .....	20
Section 3.05	Extension of Time .....	20, 21
Section 3.06	Contractor's Progress Reports .....	21, 22

## Article IV

### Payment

Section 4.01	Compensation to Be Paid Contractor .....	22
Section 4.02	Value of Omitted and Extra Work .....	22, 23
Section 4.03	Adjustment for Bond and Insurance Premiums .....	23
Section 4.04	Unit Prices .....	23, 24
Section 4.05	Allowances .....	24
Section 4.05A	Field Orders .....	24
Section 4.06	Deductions for Unperformed and/or Uncorrected Work .....	24, 25
Section 4.07	Liquidated Damages .....	25
Section 4.08	Contract Breakdown .....	25
Section 4.09	Prompt Payment Requirements .....	25

Section 4.10	Progress Payments .....	25, 26
Section 4.11	Applications for Progress Payments .....	26
Section 4.12	Progress Payments for Materials Delivered to Site .....	26
Section 4.13	Transfer of Title to Materials Delivered to Site .....	26
Section 4.14	Progress Payments for Materials Stored Off Site .....	26, 27
Section 4.15	Withholding of Progress Payments .....	27, 28
Section 4.16	Lien Law .....	28
Section 4.17	Substitution of Securities for Retainage .....	28
Section 4.18	Final Payment .....	28
Section 4.19	Acceptance of Final Payment .....	28, 29
Section 4.20	Guarantee Payment .....	29
Section 4.21	Acceptance of Guarantee Payment .....	29
Section 4.22	Contractor Limited to Money Damages .....	29
Section 4.23	No Estoppel or Waiver .....	29, 30
Section 4.24	Limitation of Actions .....	30
Section 4.25	Electronic Payments .....	30

## **Article V**

### **Protection of Rights and Property**

Section 5.01	Accidents and Accident Prevention .....	31
Section 5.02	Adjoining Property .....	31
Section 5.03	Emergencies .....	31
Section 5.04	Fire Safety .....	31
Section 5.05	Risks Assumed by Contractor .....	31, 32
Section 5.06	Compensation and Liability Insurance .....	32, 33, 34
Section 5.07	Builder's Risk Insurance .....	34, 35
Section 5.08	Effect of Procurement of Insurance .....	35
Section 5.09	No Third Party Rights .....	35, 36

## **Article VI .....**

### **Minority & Women's Business Enterprises (MWBES) / Equal Employment Opportunities (EEO) Provisions**

## **Article VII**

### **Provisions Required by Law**

Section 7.01	Provisions Deemed Inserted .....	37
Section 7.02	Wage Rates .....	37

## **Article VIII .....**

### **Vendor Responsibility**

## **Article IX .....**

### **Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance**

### **Signature of Parties and Governmental Approvals .....**

### **Acknowledgments .....**

### **Schedule I, II, III .....**

(Schedule I Unit Prices, Schedule II Allowances, & Schedule III Field Order Allowances)

## **Attachments – Terms, Conditions**

1. [Exhibit A Standard Contract Clauses](#)
2. [Exhibit A-1 Affirmative Action Clauses](#)

### Attachments – Contractor Documentation

3. [Form 7554-07](#) – Contractor Proposal
4. [Form 7554-10](#) - Bid Bond and Acknowledgement (*required with bid*)
5. Affirmative Action and Minority & Women Owned Business Enterprises from *SUNY Procedure Item #7557 “Participation by Minority Group Members and Women (MWBEs) with Respect to State University of New York Contract” (applies >\$100,000)*
  - a. [Form 7557-121b](#) – MWBE Prospective Bidders Notice
  - b. [Form 7557-107](#) - M/WBE Utilization Plan (*required within seven days of the bid*)
  - c. Contractor’s EEO Policy Statement or [Form 7557-104](#) (*required within 7 days of the bid*)
  - d. [7557-108](#) - M/WBE-EEO Work Plan or EEO Staffing Plan (*required within 7 days of the bid*)

Note: In accordance Procedure Item #7557 MWBE Utilization Plans, EEO policy statements and EEO Work Plans are due within seven days of submittal of the bid.
6. Service Disabled Owned Business Enterprise from *SUNY Procedure Item #7564 “Participation by Service-Disabled Veteran-Owned Business (SDVOBs) with Respect to State University of New York Contracts” (applies >\$100,000)*
  - a. [Form 7564-121b](#) – SDVOB Prospective Bidders Notice
  - b. [Form 7564-107](#) - SDVOB Utilization Plan (*required within seven days of the bid*)

### Attachments –Additional Contractor Documentation (required after bid opening from the low bidder)

7. State Finance Law §§139-j and 139-k from *SUNY Procedure Item #7552 “Procurement Lobbying Procedure for State University of New York” (applies >\$15,000)*
  - a. [Form A](#) - Summary: Policy and Procedure of the State University of New York Relating to State Finance Law §§139-j and 139-k
  - b. [Form B](#) - Affirmation with respect to State Finance Law §§139-j and 139-k
  - c. [Form C](#) - Disclosure and Certification with respect to State Finance Law §§139-j & 139-k
8. Bidder’s Certifications (State Finance Law §139-l, Non-collusive bidding, Executive Order 177) from *SUNY Procedure Item #7554 “Construction Contracting Procedures*
  - a. [Form 7554-20](#) Bidder’s Certifications
9. Procurement Forms from *SUNY Procedure Item #7553 “Purchasing and Contracting (Procurement)*
  - a. [Form I](#) Omnibus Procurement Act of 1992 (*applies >\$1,000,000*)
  - b. [Form II](#) Omnibus Procurement Act of 1992, Out of state firms (*applies >\$1,000,000*)
  - c. [Form XIII](#) Public Officers Law Compliance
10. Bonds and Certificate of Insurance from *SUNY Procedure Item #7554 “Construction Contracting Procedures*
  - a. [Form 7554-11](#) Labor & Materials and Performance Bonds (*applies >\$50,000*)
  - b. [Form 7554-12](#) Certificate of Insurance (*applies to all contracts*)
  - c. NYS Workers Compensation and Disability Insurance (*applies all contracts*)
11. Vendor Responsibility
  - a. OSC’s [VendRep - Online System](#) or [Link to paper forms](#) (*form applies ≥ \$100,000*)
12. NYS Labor Law, Section 220-a
  - a. [Form 7554-13](#)
    - i. Form AC 2947, Prime Contractor's Certification

- ii. Form AC 2948, Subcontractor's Certification
- iii. Form AC 2958, Sub-subcontractor's Certification

### **Attachments – Additional Forms** (Required during Construction)

1. Fredonia Inspection Request Form
2. Fredonia Hot Work Program with Checklist and Temporary Hot Work Permit

### **Technical Specifications**

#### **Division 1 - General Requirements (Form 7554-08)**

Section A - Description of Work .....	0100-1
Section B - Alternates .....	0100-1
Section C - Special Conditions .....	0100-1 - 0100-9
1. Time Progress Schedule	
2. Cutting and Patching	
3. Clean-Up	
4. Temporary Access and Parking	
5. Field meetings	
6. Operating Instructions and Manuals	
7. Utility Shutdowns and Cut Overs	
8. Temporary Power for Construction Activities	
9. Sanitary Facilities	
10. Temporary Heat	
11. Temporary Light	
12. Temporary Water for Construction Purposes	
13. Conducting Work	
14. Safety and Protective Facilities	
15. Protection of Existing Structures, Vegetation and Utilities	
16. Abbreviations and References	
17. Use of Elevators	
18. Salvage of Materials	
19. Storage of Materials	
20. Shop Drawings and Samples	
21. U.S. Steel	
22. Non-Asbestos Products	
23. Material Safety and Data Sheet	
24. Architect's/Engineer's Seal	
25. Construction Permit	
26. Other Contracts	
27. Asbestos	
28. COVID-19 Contractor Requirements and Guidance for Construction Jobsites	
29. Modifications to the Payment Provisions of the Agreement	
30. Wage Rates and Supplements	

SECTION 096400 - WOOD FLOORING..... 096400 – 1 - 096400 – 4

### **List of Drawings**

PLANS, SECTIONS & DETAILS ..... A-101

---

### **Notice to Bidders and Newspaper Advertisement**

SUNY Fredonia will receive sealed bids for project number **M05673** titled **Rosch Recital Hall Stage Floor Replacement** until **1:00 PM** local time on **May 7, 2025** at the Office of Facilities Services, located at the Services Complex on the SUNY Fredonia campus, where such proposals will be publicly opened and read aloud in the conference room.

All work on this Contract is to be completed by **June 23, 2025**.

Bidding and Contract Documents may be examined free of charge at the campus and at the following locations.

***SUNY Fredonia, Facilities Planning Department; 140 Hendrix Hall***

***Consultant's Office: LaBella Associates, 500 E 6th St, Jamestown, NY 14701***

***Plan Room: Southern Tier Builders Association, Inc., 65 East Main Street, Falconer, NY 14733-1397***

***FREE online viewing available at: <http://login.onlineplanservice.com/SP/code.aspx>***

***Password: NYBX25-01944-#M05673***

***Plan Room: Dodge Data & Analytics – Subscribers Only: Online viewing available at:***

***[www.construction.com](http://www.construction.com)***

***Plan Room: Construction Market Data (CMD Group) – Subscribers Only: Online viewing available at: [www.cmdgroup.com](http://www.cmdgroup.com)***

Complete sets of Contract Documents for bidding may be obtained from: Gretchen Fronczak, Capital Project Assistant at Facilities Planning, located at 140 Hendrix Hall on the Fredonia campus. If mailing a deposit check, please use the following address: SUNY Fredonia, Office of Facilities Planning, 280 Central Avenue, Fredonia, NY 14063.

Section 143 of the State Finance Law requires payment of a deposit to receive these documents. Accordingly, a deposit check of **\$20 for an electronic copy**, made payable to **SUNY Fredonia**, is required. Deposits less than \$50.<sup>00</sup> are nonrefundable. Deposits will be waived for certified Minority and Women Owned and Service-Disabled Veteran Owned Businesses.

A pre-bid meeting and project walk-through will be held on **April 22, 2025 at 2:00 PM** with all contractors assembled in **Room # 1002 in Mason Hall on the Fredonia campus**. If attendance at the above is impossible, an alternate meeting may be arranged by prior contact with the project manager; said alternate meeting must be completed no later than **May 2, 2025**; therefore, contractors must plan accordingly and allow sufficient time when scheduling the meeting since all alternate meetings will be accommodated as the project manager's schedule will allow and cannot be guaranteed. Please note that



attendance at a pre-bid meeting and project walk-through **has been deemed mandatory** for all potential bidders on this project. All potential bidders are advised that they must sign a "Pre-Bid Site Visit Meeting Log-In Sheet" to verify that they have complied with this requirement. Failure to fulfill this requirement will disqualify the contractor's bid. Failure to attend a walk-through shall not be the cause for extra payment. Note that the deadline for all RFIs is 1:00 PM on **May 2, 2025**.

Bids must be submitted in duplicate in accordance with the instructions contained in the Information for Bidders. Security will be required for each bid in an amount not less than five (5) percent of the Total Bid.

It is the policy of the State of New York and the State University of New York to encourage minority business enterprise participation in this project by contractors, subcontractors and suppliers, and all bidders are expected to cooperate in implementing this policy. For inquiries related specifically to Minority Women-Owned Business Enterprises (MWBE) & Service-Disabled Veteran-Owned Business (SDVOB) provisions of this procurement solicitation, the designated contact is: Gretchen Fronczak, Capital Project Assistant at Facilities Planning; Phone: (716) 673-3722; Email: [Gretchen.Fronczak@fredonia.edu](mailto:Gretchen.Fronczak@fredonia.edu).

State Finance Law §§139-j and 139-k imposes certain restrictions on communications between a Governmental Entity and a Bidder during the procurement process. During the restricted period the Bidder is restricted from making contacts to other than designated contact unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). The restricted period is from the earliest notice of intent to solicit offers through final award and approval of the Contract. Designated Staff is identified as follows:

Solicitation & Contractual Questions: Gretchen Fronczak, Facilities Contracts Administrator at Facilities Planning; Phone: (716) 673-3722; Email: [Gretchen.Fronczak@fredonia.edu](mailto:Gretchen.Fronczak@fredonia.edu)

Technical Questions (Project Manager): Mark Delcamp, Assistant Director of Facilities Services; Phone: (716) 673-3122; Email: [Mark.Delcamp@fredonia.edu](mailto:Mark.Delcamp@fredonia.edu)

University employees and their designated representatives are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4-year period the Bidder is debarred from obtaining government procurement contracts.

The State University of New York reserves the right to reject any or all bids.



---

## **INFORMATION FOR BIDDERS**

### **Section 1 Definitions**

All definitions set forth in the Agreement are applicable to the Notice to Bidders, Information for Bidders and the Proposal, all of which documents are hereinafter referred to as the Bidding Documents.

### **Section 2 Issuance of Bidding and Contract Documents**

Drawings and Specifications will be issued by the Campus upon request after payment of the deposit specified in the Notice to Bidders.

### **Section 3 Proposals**

- (1) Proposals must be submitted in duplicate on the forms provided by the University. They shall be addressed to the University in a sealed envelope, marked with the name and address of the bidder, the title of the Project and the Project number. The University accepts no responsibility for Proposals that may be delivered by any courier or other messenger service that does not contain all of the above-noted information on the outside of a sealed envelope. Facsimile or email copies of the Proposal will not be accepted.
- (2) All blank spaces in the Proposal must be filled in and, except as otherwise expressly provided in the Bidding Documents; no change is to be made in the phraseology of the Proposal or in the items mentioned therein.
- (3) Proposals that are illegible or that contains omissions, alterations, additions or items not called for in the Bidding Documents may be rejected as informal. In the event any bidder modifies, limits or restricts all or any part of its Proposal in a manner other than that expressly provided for in the Bidding Documents, its Proposal may be rejected as informal.
- (4) Any Proposal may be considered informal which does not contain prices in words and figures in all of the spaces provided or which is not accompanied by a bid security in proper form. In case any price shown in words and its equivalent shown in figures do not agree, the written words shall be binding upon the bidder. In case of a discrepancy in the prices contained in the Proposal forms submitted in duplicate by the bidder, the Proposal form which contains the lower bid shall be deemed the bid of the bidder; provided, however, the University at its election may consider the Proposal of such bidder informal.
- (5) If the Proposal is made by a corporation, the names and places of residence of the president, secretary and treasurer shall be given. If by a partnership, the names and places of residence of the partners shall be given. If by a joint venture, the names and addresses of the members of the joint venture shall be given. If by an individual, the name and place of residence shall be given.
- (6) No Proposal will be considered which has not been deposited with the University at the location designated in and prior to the time of opening of bids designated in the Bidding and Contract Documents or prior to the time of opening as extended by Addendum.

- (7) Bids may be modified, withdrawn or canceled only in writing or by email notice received by the University prior to the time of opening of bids designated in the Bidding and Contract Documents. A written or email notice of modification, withdrawal or cancellation shall be marked by the bidder with the name and address of the bidder, the title of the Project and the Project number. Upon receipt by the University a duly authorized employee of the University, who shall note thereon the date and time of receipt and shall thereupon attach said written or email notice of modification, withdrawal or cancellation to the envelope submitted by the bidder pursuant to subdivision (1) of this
- (8) Permission will not be given to modify, explain, withdraw or cancel any Proposal or part thereof after the time designated in the Bidding and Contract Documents for the opening of bids, unless such modification, explanation, withdrawal or cancellation is permitted by law and the University is of the opinion that it is in the public interest to permit the same.

#### **Section 4 Examination of Bidding and Contract Documents**

- (1) Prospective bidders shall examine the Bidding and Contract Documents carefully and, before bidding, shall make written request to the Consultant (with a copy thereof to the University) for an interpretation or correction of any ambiguity, inconsistency or error therein which should be discovered by a reasonably prudent bidder. Such interpretation or correction as well as any additional Contract provision the University shall decide to include will be issued in writing by the Consultant as an Addendum, which will be sent to each person recorded as having received a copy of the Bidding and Contract Documents from the Consultant, and which also will be available at the places where the Bidding and Contract Documents are available for inspection by prospective bidders. Upon such emailing or delivery and making available for inspection, such Addendum will become a part of the Bidding and Contract Documents and will be binding on all bidders whether or not the bidder receives or acknowledges the actual notice of it. Prospective bidders are responsible for ensuring that all addenda have been incorporated into the bid. The requirements contained in all Bidding and Contract Documents shall apply to all Addenda.
- (2) Only the written interpretation or correction so given by Addendum shall be binding. Prospective bidders are warned that no trustee, officer, agent or employee of the University or the Consultant is authorized to explain or interpret the Bidding and Contract Documents by any other method, and any such explanation or interpretation, if given, must not be relied upon.

#### **Section 5 Computation of Bid**

- (1) In computing their bids, bidders are not to include the sales and compensating use taxes of the State of New York or of any city and county in the State of New York for any supplies or materials which are incorporated into the completed Project as the University is exempt from such taxes.
- (2) Unit prices may be inserted in the Proposal by the University or the bidder at the discretion of the University. Any unit prices listed in the Proposal by the University are based upon the Consultant's appraisal of a fair cost for the work involved. Such listed prices will be binding upon both the bidder and the University unless the bidder wishes to change any of such unit prices

by crossing out the listed unit price and inserting a revised unit price. Such revised unit price shall not be binding upon the University unless it accepts the same, in writing, before it issues a Notice of Award. In the event the Proposal contains blank spaces for unit prices or the bidder revises any stated unit price, the amount of such unit prices for additions shall not vary by more than 15 percent from the prices inserted by the bidder for deductions, and, if the variance of such prices exceeds 15 percent, the University may adjust the deduction price inserted by the bidder so that it is only 15 percent lower than the addition price inserted by the bidder. In addition, the University may adjust any unit price filled in by a bidder to an amount agreeable to both the bidder and the University or it may reject any unit prices.

- (3) Alternates, if any, listed in the Proposal shall be accepted in the order indicated and will be used in combination with the Base Bid to determine the low bidder. Unit prices will not be used to determine the low bidder.
- (4) If a tie bid should occur the University reserves the right to use one of the following methods to determine the successful bidder. For tie bids between two contractors the University representative shall flip a coin, both affected contractors must be present for the coin toss. For tie bids between three or more contractors the University representative shall pull names from a bowl, hat or other container. The affected contractors must be present for the drawing.

## **Section 6 Payment of Bid Security**

- (1) Each Proposal must be accompanied by the required amount of the bid security, which is 5% of the Total Bid, in the form of a bank draft or certified check, payable at sight to the University and drawn on a bank authorized to do business in the United States, or by a Bid Bond, on a form approved by the University, duly executed by the bidder as principal and having as surety thereon a surety company or companies, approved by the University, authorized to do business in the State of New York as a surety. Attorneys-in-fact who execute a Bid Bond on behalf of a surety must affix thereto a certified and effectively dated copy of their power of attorney.
- (2) The University will return, without interest, bid securities in accordance with the following procedure:
  - a. To all bidders except the apparent three (3) lowest bidders within two (2) working days after the opening of bids.
  - b. To any bidder submitting a Bid Bond as a replacement for a previously provided bank draft or certified check, within two (2) working days after the University's approval of such Bid Bond.
  - c. To the apparent three (3) lowest bidders, unless their bid security was previously returned, within two (2) working days after delivery to the University by the successful bidder of the executed Agreement and required Bonds, or within two (2) working days of the University's rejection of all bids or within two (2) working days after the expiration of forty-five (45) calendar days after the bid opening, whichever event shall occur first.
  - d. Bid Bonds, due to their nature, will not be returned.

- (3) The University reserves the right to deposit bid security drafts or checks pending final disposal of them.

## Section 7 Qualifications of Bidders

- (1) A bidder must demonstrate, to the satisfaction of the University, that it has successfully completed three (3) contracts similar in size, scope and complexity to this contract within the last five (5) years.
- For scope and complexity, similar work is defined as **stage floor replacement work**, of as further described in the General Requirements, Description of Work.
  - The determination of relevant contract experience in terms of size, scope and complexity will be at the sole discretion of the University.
  - The above three projects shall be submitted on Attachment A of the Proposal (Form 7554-07), "List of Completed Similar Construction Projects" (the List). If the List is not provided or is missing information, and/or is found to have erroneous information or information that is no longer current, a Proposal may be rejected as not responsive. If requested by the University, the bidder may be permitted to add missing information, modify and/or explain erroneous information or information that is no longer current on the List. Modifications and/or explanations of the List must be received within 48 hours of receipt of the University's request.
- (2) All prospective bidders must demonstrate to the satisfaction of the University that they have the skill and experience, as well as the necessary facilities, ample financial resources, ability to manage staff and subcontractors effectively, ability to anticipate and plan construction work for optimal progress, ability to create, strive for and maintain working environments and relationships that are constructive, communicative and cooperative, organization and general reliability to do the work to be performed under the provisions of the Contract in a satisfactory manner and within the time specified.
- (3) Each bidder must demonstrate to the satisfaction of the University that it has working capital available for the Project upon which it is bidding in an amount equal to 15 percent of the first \$100,000 of the amount of its Base Bid plus 10 percent of the next \$900,000 plus 5 percent of the remainder of its Base Bid. Working capital is defined as the excess of current assets over current liabilities. The University defines current assets as assets which can be reasonably expected to be converted into cash within a year, and current liabilities as debts which will have to be paid within a year.
- (4) The University may make such investigation as the University deems necessary to determine the ability of any bidder to perform the Work. Bidders shall furnish to the University all information and data required by the University, including complete financial data, within the time and in the form and manner required by the University. The University reserves the right to reject any bid if the evidence submitted by or an investigation of such bidder fails to satisfy the University that such bidder is properly qualified to carry out its obligations of the contract and

to complete the work contemplated therein. Conditional bids will not be accepted.

- (5) At the time of the bid opening, all bidders and subcontractors, domestic and foreign, must be in compliance with New York State business registration requirements. Contact the NYS Department of State regarding compliance.

## **Section 8 Submission of Post-Bid Information**

- (1) Within forty-eight (48) hours after the opening of bids, each of the apparent three lowest bidders, unless otherwise directed by the University or otherwise provided in the Bidding and Contract Documents, shall submit to both the University and the Consultant:

- a. Evidence of a completed New York State Uniform Contracting Questionnaire (Vendor Responsibility Questionnaire For-Profit Construction (CCA-2)). Either email confirmation that the bidder's CCA-2 is current and certified in the New York State VendRep System (VendRep) within the last six months from the bid date, or deliver a certified paper format CCA-2, including all attachments, to the University.

The University recommends that vendors file the required CCA-2 online via the VendRep. To enroll in and use the VendRep, see the VendRep Instructions at [https://www.osc.state.ny.us/vendrep/info\\_vrsystem.htm](https://www.osc.state.ny.us/vendrep/info_vrsystem.htm) or go directly to the VendRep online at <https://portal.osc.state.ny.us>. To request assistance, contact the Office of the State Comptroller's ("OSC") Help Desk at 866-370-4672 or 518- 408-4672 or by email at [ciohelpdesk@osc.state.ny.us](mailto:ciohelpdesk@osc.state.ny.us).

The paper format CCA-2 and accompanying definitions are available on the OSC website at the following location: [http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm)

- b. A working plan and schedule showing clearly, in sequence and time-scale, all significant activities of the work. The working plan and schedule shall be in the form of suitable charts, diagrams or bar graphs and shall be based on the Contractor's logic and time estimates for the anticipated time of commencement and completion of the work and its significant phases and activities and the interrelationship between such significant activities and other items pertinent to the work. This requirement is in addition to and not a substitute for the schedule requirements of section 3.02 (Time Progress Schedule) of the Agreement. Although the working plan and schedule submitted shall not be used in determining the lowest responsible bidder, failure to submit the working plan and schedule may result in the rejection of the Proposal as not responsive.
- c. The names and addresses of the bidder's proposed subcontractor for the Asbestos Abatement work of any value, and proposed subcontractors for Electrical Work, the Heating, Ventilating and Air-Conditioning Work and the Plumbing Work for each of said work categories valued at \$100,000 or more.
- i. For each proposed subcontractor named, provide a completed "List of Completed Similar Construction Projects (the List)." If the List is not provided or is missing information, and/or is found to have erroneous information or information that is no

longer current, a proposed subcontractor may be rejected. If requested by the University, the bidder may be permitted to add missing information, modify and/or explain erroneous information or information that is no longer current on the List; modifications and/or explanations of the List must be received promptly after receipt of the University's request.

- ii. Only one proposed subcontractor should be named for each of such trades. Proposed subcontractors of the bidder may not be changed except with the specific written approval of the University.
- iii. The naming of the bidder itself for any of such work is not acceptable and may result in rejection of the bidder unless the bidder can demonstrate to the University that it has successfully completed or substantially completed three (3) contracts similar in size, scope and complexity for the designated work within the last five (5) years. The determination of relevant contract experience in terms of size, scope and complexity will be at the sole discretion of the University.
- iv. The bidder will be required to establish, to the satisfaction of the Consultant and the University, the reliability and responsibility of each of their said proposed subcontractors to furnish and perform the work described in the sections of the Specifications pertaining to each of such proposed subcontractors' respective trades. By submission of the "List of Completed Similar Construction Projects," a proposed subcontractor must be able to demonstrate that they have successfully completed or substantially completed three (3) contracts similar in size, scope and complexity for the designated work within the last five (5) years. The determination of relevant contract experience in terms of size, scope and complexity will be at the sole discretion of the University.
- v. For each of the proposed subcontractors, the bidders must submit to the University, within seven (7) calendar days after the bid opening, evidence of a completed New York State Uniform Contracting Questionnaire (Vendor Responsibility Questionnaire For-Profit Construction (CCA-2)). Either email confirmation that the subcontractor's CCA-2 is current and certified in the New York State VendRep System (VendRep) within the last six months from the bid date, or deliver a certified paper format CCA-2, including all attachments, to the University.
- vi. In the event that the University and the Consultant reject any of said proposed subcontractors, the bidder, within two (2) working days after receipt of notification of such rejection, shall again submit to the University and the Consultant the name of another proposed subcontractor in place of the one rejected and it will be required to establish to the satisfaction of the University and the Consultant the reliability and responsibility of said proposed subcontractor; When naming another proposed subcontractor, the bidder must promptly submit the proposed subcontractor's completed "List of Completed Similar Construction Projects" and their completed CCA-2.
- vii. The bidder will not be permitted to submit another proposed subcontractor if it



designated itself for any of the aforesaid categories of work.

- viii. Proposed subcontractors of the bidder, approved by the University and the Consultant, must be used on the work for which they were proposed and approved and they may not be changed except with the specific written approval of the University.
  - d. A breakdown of the amount of the bidder's Proposal. Such breakdown shall be prepared in accordance with industry standards. No bidder shall be barred from revising, in the Contract breakdown required under the provisions of Section 4.08 of the Agreement, the various amounts listed in the bid breakdown required under the provisions of this Section. The amount set forth in said bid breakdown will not be considered as fixing the basis for additions to or deductions from the Contract consideration.
- (2) Except for Contracts of \$100,000 or less, within seven (7) calendar days after the opening of bids, unless otherwise directed by the University, the three low bidders shall submit to the University for its approval, a Minority and Women-owned Business Enterprise Utilization Plan ([Form 7557-107](#)).
- (3) Except for contracts of \$100,000 or less, within seven (7) calendar days after the opening of bids, the three low bidders shall submit to the University for its approval, an Equal Employment Opportunity Statement and EEO Staffing Plan ([Form 7557-108](#)) to ensure equal employment opportunities without discrimination because of race, creed, color, sex or national origin. Such Statement and plan should demonstrate the bidder's intent to comply with the provisions of Article VI of the Agreement. The EEO plan should include the methods that the bidder will use to address nondiscrimination and affirmative action so that minorities and women will be included in the work force. The Equal Employment Opportunity ("EEO") Policy Statement that shall contain, but not necessarily be limited to, a provision that the bidder, as a precondition to entering into a valid and binding Contract with the University, shall during the performance of the Contract, agree to the following:
- a. It will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group membership 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 the Contract.
  - b. It shall state in all solicitations or advertisements for employees that, in the performance of the 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.
  - c. At the request of the University, it shall request each employment agency, labor union or authorized representative of workers, with which it has 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 bidder's obligations herein.

- d. After the award of the contract, it shall submit to the University a work force utilization report, in a form and manner required by the University, of the work force actually utilized on the Contract, broken down by specified ethnic background, gender and Federal occupational categories or other appropriate categories specified by the University.
- (4) The above information and such other information as the University or the Consultant may request or obtain will be used by the University in determining the reliability and responsibility of the bidder and any proposed subcontractors. Each bidder must comply promptly with all requests by the University and the Consultant for information and must actively cooperate with the University and the Consultant in their efforts to determine the qualifications of the bidder and any proposed subcontractors. Failure to comply with the latter may result in the rejection of the Proposal as not responsive. All information required to be furnished to the University under this Section shall be sent to the State University at {insert address or email address}.

## **Section 9 Award of Contract**

- (1) The award of the Contract shall be made to the bidder submitting the lowest bid that is responsive to the solicitation and who, in the sole opinion of the University, is qualified to perform the work. The University shall determine the lowest bid by adding to or deducting from the Base Bid of the bidders the additive or deductive alternates, if any, the University elects to accept after the opening of the Proposals. Alternates will be accepted in the order they are set forth in the Proposal. The unit prices set forth in the Proposal for additions to or deductions from the work shall not be considered in determining the lowest bid.

The lowest base bid shall not exceed the amount of funds then estimated by the University as available to finance the contract. If the lowest bidder exceeds such amount, the University may reject all bids, or may award the contract on the base bid combined with deductive alternates applied in the order they are set forth in the Proposal as produces the net amount which is within the available funds.

- (2) The right is reserved, if, in the University's judgment, the public interest will be promoted thereby, to reject any or all Proposals, to waive any informality in any Proposal received or to afford any bidder an opportunity to remedy any deficiency resulting from a minor informality or irregularity. Without limiting the generality of the foregoing:
- a. A Proposal may be rejected as not responsive if the bidder fails to furnish the required bid security or to submit the data required with or after its Proposal and this Information for Bidders.
  - b. A Proposal may be rejected as not responsive if the bidder cannot show to the satisfaction of the University: (i) that it has the necessary qualifications and capital; or (ii) that it owns, controls or can procure the necessary plant and equipment to commence the work at the time prescribed in the Contract and thereafter to prosecute and complete

the work at the rate, or within the time specified; or (iii) that it is not already obligated by the performance of so much other work as is likely to delay the commencement, prosecution or completion of the work contemplated by the Contract.

- c. A Proposal will be rejected as not responsive if it does not provide for the completion of the work by the date of completion specified in the Proposal.
- (3) The University also expressly reserves the right to reject any Proposal as not responsive if, in its opinion, considering the work to be performed, the facts, as to the bidder's business or technical organization, plant, financial and other sources of business experience compared with the work bid upon, justify rejection.
- (4) The award of the Contract shall not be construed as a guarantee by the University that the plant, equipment and the general scheme of operations and other data submitted by the bidder with or after its Proposal is either adequate or suitable for the satisfactory performance of the work.

## **Section 10 Required Bonds and Insurance**

- (1) Unless otherwise agreed to by the University, within ten (10) working days after the receipt of Letter of Intent, the Contractor shall procure, execute and deliver to the University and maintain, at its own cost and expense:
  - a. A Performance Bond and a Labor and Material Bond, both of which bonds shall be on the form prescribed by the University and in an amount not less than 100 percent of the total amount of the Contract awarded to the Contractor by the University said bonds must be issued by a surety company approved by the University and authorized to do business in the State of New York as a surety.
  - b. Attorneys-in-fact who execute said Bonds on behalf of a surety must affix thereto a certified and effectively dated copy of their power of appointment.
- (2) Prior to the commencement of work the Successful Bidder will provide, at its sole cost and expense, Certificates of Insurance in accordance with Section 5.06 and 5.07 of the Construction Agreement, which shall remain in force throughout the term of the agreement, or any extension thereof.
- (3) Insurance shall be in accordance with the limits set forth in Schedule A of the Construction Agreement.
- (5) A 120-day schedule
  - a. After receipt of the Letter of Intent but before receipt of the Contract is Awarded, the Contractor, unless otherwise directed by the University, shall update the working plan and schedule previously submitted in accordance with the Information for Bidders to define the contractor's planned operations during the first 120 days and submit it to the University and the Consultant for their acceptance. The updated working plan and schedule shall be in the form of suitable charts, diagrams or bar graphs and shall be

based on the Contractor's logic and time estimates. When updated, such plan and schedule shall be sufficiently detailed to show clearly, in sequence, all salient features of the work of each trade including: the anticipated time of commencement and completion of such work and the interrelationship between such work, submission of Shop Drawings and Samples for approval, approval of Shop Drawings and Samples, placing of orders of materials, fabrication and delivery of materials, installation and testing of materials, contiguous or related work under other contracts, and other items pertinent to the work. The Notice to Proceed may be withheld until this schedule is received and is deemed responsive to the project requirements.

- b. After Contract Award, but before processing second progress payment application, the Contractor, unless otherwise directed by the University, shall submit to the University and the Consultant for their acceptance its proposed working plan and project time schedule for all the work covered by the Contract, and shall include activities for preparation and submission of all Shop Drawings and Samples. Said proposed working plan and schedule shall be prepared in accordance with the form and requirements set forth in the preceding paragraph.

## Section 11 Minority and Women-Owned Business Enterprises

**\*\* NOTE: The MWBE Requirements stated below only apply to procurements exceeding \$100,000 for construction contracts.**

- (1) Pursuant to New York State Executive Law Article 15-A, the University recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified Minority and Women-Owned Business Enterprises and the employment of minority group members and women in the performance of University contracts.
- (2) For purposes of this solicitation, the University hereby establishes an overall goal of **30%** for MWBE participation, **18.9%** for Minority-Owned Business Enterprises ("MBE") participation and **11.1%** for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs). For additional information please refer to the MWBE requirements outlined in the Prospective Bidders Notice ([Form 7557-121b](#)) and Exhibit A-1.
- (3) For guidance on how the University will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.
- (4) Please note the forms identified in the Prospective Bidders Notice ([Form 7557-121b](#)) must be submitted within seven days of the bid opening. Required forms include the MWBE-EEO Policy Statement ([Form 7557-104](#) or equivalent), the MWBE Utilization Plan ([Form 7557-107](#)) and the EEO Staffing Plan ([Form 7557-108](#)).
- (5) Upon contract award and prior to contract execution the selected awardee will enter its Statewide Utilization Management Plan (SUMP) and document its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence through the New York State Contract System, which can be viewed at: <http://ny.newnycontracts.com>, provided however, that the selected awardee may arrange to provide such evidence via a non-electronic method by

contacting the SUNY Office of Diversity, Equity, and Inclusion.

- (6) Any modifications or changes to the MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to the University. The University will review the submitted MWBE Utilization Plan and advise the Bidder of the University's acceptance or issue a notice of deficiency within 30 days of receipt.
- (7) If a notice of deficiency is issued, Awardee agrees that it shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to SUNY [address phone and fax information], a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by SUNY to be inadequate, SUNY shall notify the Awardee and direct the Awardee to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals on [Form 7557-114](#). Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

SUNY may disqualify a Bidder as being non-responsive under the following circumstances:

- i. If a Bidder fails to submit a MWBE Utilization Plan;
- ii. If a Bidder fails to submit a written remedy to a notice of deficiency;
- iii. If a Bidder fails to submit a request for waiver; or
- iv. If SUNY determines that the Bidder has failed to document good faith efforts.

## **Section 12 Equal Employment Opportunity Requirements**

- (1) Pursuant to Article 15 of the Executive Law (the "Human Rights Law"), and all other State and Federal statutory and constitutional non-discrimination provisions, the Bidder will not discriminate against any employee or applicant for employment because of race, creed, color, sex, religion, national origin, military status, sexual orientation, gender identity or expression, age, disability, predisposing genetic characteristics, domestic violence victim status, familial status or marital status. The Bidder 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. The Bidder will state in all solicitations or advertisements for employees that, in the performance of this Contract, all qualified applicants will be afforded equal employment opportunities without discrimination.
- (2) The Bidder 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, if awarded a Contract pursuant to this solicitation, will make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force during its legal engagement with SUNY.
- (3) By submission of a bid or proposal in response to this solicitation, the Bidder agrees with all of the terms and conditions of SUNY Exhibit A including Clause 12 - Equal Employment Opportunities for Minorities and Women and acknowledges that, if the Bidder is awarded a Contract, The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 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, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

- (4) The Bidder further agrees, where applicable, to submit with the bid a staffing plan ([Form 7557-108](#)) identifying the anticipated work force to be utilized on the Contract and, if awarded a Contract, will, upon request, submit to SUNY a workforce utilization report identifying the workforce actually utilized on the Contract if known. Forms are available in SUNY Procurement Policies and Procedures Document 7557 online at: [http://www.suny.edu/sunypp/documents.cfm?doc\\_id=611](http://www.suny.edu/sunypp/documents.cfm?doc_id=611).

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

### **Section 13 Executive Order 162 (EO162)**

- (1) Governor Cuomo's Executive Order 162 requires state contractors to disclose data on the gender, race, ethnicity, job title, and salary of employees performing work on state contracts.
- (2) Bidder agrees to submit Workforce Utilization Report ([Form 7557-110](#)) and to require the same information to be submitted by any of their subcontractors on the state contract, in such format as shall be required by SUNY on a monthly basis for all construction contracts and quarterly basis for all other contracts during the term of the contract. Empire State Development has provided specific details on this requirement at <https://esd.ny.gov/doing-business-ny/mwbe/mwbe-executive-order-162>.

### **Section 14 Executive Order 177 (EO177)**

- (1) The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status.
- (2) The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.
- (3) Generally, the Human Rights Law applies to: (i) all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances

of discrimination or harassment; (ii) employers with fewer than four employees in all cases involving sexual harassment; and (iii) any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

- (4) In accordance with Executive Order No. 177, prior to contract award, selected Awardee must submit a certification that it does not have institutional policies or practices that fail to address harassment and discrimination as described above. SUNY is electing to obtain the certification with the bid documents to avoid unnecessary delay in the contract award process. All Bidders must sign and submit the certification attached to this IFB, SUNY [Form 7554-20](#).

## **Section 15 Service-Disabled Veteran Owned Business Enterprises**

- (1) Consistent with the State University of New York's commitment to, and in accordance with, Article 17-B of the New York State Executive Law, contractors are required to ensure that good faith efforts are made to include meaningful participation by Service-Disabled Veteran-Owned Business in SUNY's MWBE Program. The requirements apply to contracts in excess of \$100,000.
- (2) To ensure that SDVOB Enterprises are afforded the opportunity for meaningful participation in the performance of the University's contracts, and to assist in achieving the SDVOB Act's statewide goal for participation on state contracts the University hereby establishes an overall goal of 6% for SDVOB participation for this solicitation.
- (3) For additional information please refer to the SDVOB requirements outlined in the Prospective Bidders Notice ([Form 7564-121b](#)). Please note the SDVOB Utilization Plan ([Form 7564-107](#)) must be submitted within seven days of the bid opening.

## **Section 16 Encouraging Use of New York State Business Businesses in Contract Performance**

- (1) New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, bidders/proposers for this contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. Such partnering may be as subcontractors, suppliers, protégés or other supporting roles.
- (2) Bidders/proposers need to be aware that all authorized users of this contract will be strongly encouraged, to the maximum extent practical and consistent with legal requirements, to use responsible and responsive New York State businesses in purchasing commodities that are of equal quality and functionality and in utilizing services and technology. Furthermore, bidders/proposers are reminded that they must continue to utilize small, minority and women-owned businesses, consistent with current State law.
- (3) Utilizing New York State businesses in State contracts will help create more private sector jobs, rebuild New York's infrastructure, and maximize economic activity to the mutual benefit of the contractor and its New York State business partners. New York State businesses will promote the contractor's optimal performance under the contract, thereby fully benefiting the



public sector programs that are supported by associated procurements.

- (4) Public procurements can drive and improve the State's economic engine through promotion of the use of New York businesses by its contractors. The State therefore expects bidders/proposers to provide maximum assistance to New York businesses in their use of the contract. The potential participation by all kinds of New York businesses will deliver great value to the State and its taxpayers.
- (5) Information on the availability of New York State subcontractors and suppliers is available from: New York State Department of Economic Development, Procurement Assistance Unit, One Commerce Plaza, Albany, New York 12245, Phone: (518) 474-7756, Fax: (518) 486-7577.

### Section 17 Single Contract Responsibility

This is a single bid general construction project. The Contractor submitting the bid is responsible for all work associated with this Project.

### Section 18 Examination of Site and Conditions of Work

- (1) A pre-bid meeting and project walk-through will be held on **April 22, 2025 at 2:00 PM** with all contractors assembled in **Room # 1002 in Mason Hall on the Fredonia campus**. If attendance at the above is impossible, an alternate meeting may be arranged by prior contact with the project manager; said alternate meeting must be completed no later than **May 2, 2025**; therefore, contractors must plan accordingly and allow sufficient time when scheduling the meeting since all alternate meetings will be accommodated as the project manager's schedule will allow and cannot be guaranteed. Please note that attendance at a pre-bid meeting and project walk-through **has been deemed mandatory** for all potential bidders on this project. All potential bidders are advised that they must sign a "Pre-Bid Site Visit Meeting Log-In Sheet" to verify that they have complied with this requirement. Failure to fulfill this requirement will disqualify the contractor's bid. Failure to attend a walk-through shall not be the cause for extra payment.
- (2) Each bidder must inform itself fully of the conditions relating to the construction of the project and the employment of labor on the project. Failure to do so will not relieve a successful bidder of their obligation to furnish all material and labor necessary to carry out the provisions of their contract. To the extent possible, the contractor, in carrying out the work, must employ such methods or means as will not cause any interruption of or interference with the work of any other contractor.

### Section 19 General Terms and Conditions

- (1) The following items will be incorporated into, and made part of, the formal agreement: (1) the University's Invitation for Bid; (2) the Successful Bidder's proposal; (3) Exhibit A, Standard Contract Clauses; (4) Exhibit A-1, Affirmative Action Clauses; and, (5) Forms A and B Procurement Lobbying Forms.
- (2) In the event of any inconsistency in or conflict among the document elements of the



agreement described above, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order: (1) Exhibits A and A-1; (2) Forms A and B Procurement Lobbying Forms, (3) the Agreement; (4) this IFB; and (5) the Successful Bidder's proposal.

### **Section 19.1 Vendor Debriefing and Contract Award Protest Procedure**

- (1) Upon being notified of their unsuccessful bids, unsuccessful bidders may request in writing a debriefing within 15 calendar days of such notice. The 15 day period starts once unsuccessful bidders are notified. Once a request is made by the bidder, the University must schedule a debriefing within a reasonable time of such request. Unless the campus and bidder mutually agree to use another method such as by telephone, video conference or another type of electronic communication the debriefing must be conducted in person with the bidder.
- (2) This procurement is subject to SUNY Procedure Item 7561, Contract Award Protest Procedure.

### **Section 19.2 Proposal Confidentiality**

- (1) All proposals and qualifications submitted for the University's consideration will be held in confidence. However, the resulting contract is subject to the New York State Freedom of Information Law (FOIL). Therefore, if an Bidder believes that any information in its proposal constitutes a trade secret or should otherwise be treated as confidential and wishes such information not to be disclosed the Bidder shall submit with its proposal a separate letter to the designated contact. The letter shall specifically identify the page number(s), line(s) or other appropriate designation(s) containing such information, explaining in detail why such information is a trade secret and formally requesting that such information be kept confidential. Failure by an Bidder to submit such a letter will constitute a waiver by the Bidder of any rights it may have under Section 89(5) of the Public Officers' Law relating to protection of trade secrets.
- (2) The proprietary nature of the information designated confidential by the Bidder may be subject to disclosure if ordered by a court of competent jurisdiction. A request that an entire proposal be kept confidential is not advisable since a proposal cannot reasonably consist of all data subject to FOIL proprietary status.

### **Section 19.3 Information Security Breach and Notification Act**

- (1) The Bidder shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa and State Technology Law, Section 208). The Bidder shall be liable for the costs associated with such breach if caused by its negligent or willful acts or omissions, or the negligent or willful acts or omissions of its agents, officers, employees or subcontractors.

### **Section 19.4 State Finance Law §§ 139-j and 139-k**

- (1) State Finance Law §§139-j and 139-k imposes certain restrictions on communications between the University and a Bidder during the procurement process. During the restricted

period the Bidder is restricted from making contacts to other than designated contact unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j(3)(a). The restricted period is from the earliest notice of intent to solicit offers through final award and approval of the Contract.

- (2) University employees and their designated representatives are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4-year period the Bidder is debarred from obtaining government procurement contracts.

### **Section 19.5 State Finance Law §§ 139-I**

- (1) Pursuant to N.Y. State Finance Law §139-I, every bid made on or after January 1, 2019 to the State of any public department or agency thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, and where otherwise required by such public department or agency, shall contain a certification that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of N.Y. State Labor Law §201-g.
- (2) N.Y. State Labor Law §201-g provides requirements for such policy and training and directs the Department of Labor, in consultation with the Division of Human Rights, to create and publish a model sexual harassment prevention guidance document, sexual harassment prevent policy and sexual harassment training program that employers may utilize to meet the requirements of N.Y. State Labor Law §201-g. The model sexual harassment prevention policy, model sexual harassment training materials, and further guidance for employers, can be found online at the following URL: <https://www.ny.gov/combating-sexual-harassment-workplace/employers>.
- (3) Pursuant to N.Y. State Finance Law §139-I, any bid by a corporate bidder containing the certification required above shall be deemed to have been authorized by the board of directors of such bidder, and such authorization shall be deemed to include the signing and submission of such bid and the inclusion therein of such statement as the act and deed of the bidder.
- (4) If the bidder cannot make the required certification, such bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the bidder cannot make the certification. After review and consideration of such statement, SUNY may reject the bid or may decide that there are sufficient reasons to accept the bid without such certification.
- (5) All Bidders must sign and submit the certification attached to this IFB, SUNY [Form 7554-20](#).

### **Section 20 Additional Terms and Conditions**

- (1) The terms and conditions of the State University of New York Construction Agreement (Form 7554-09) shall apply and is provided as an attachment to this IFB.

- (2) The resulting agreement shall be binding upon its execution by both parties and, if required by New York State law, upon the approval of the Attorney General and the Office of the State Comptroller.
- (3) The agreement may be revised at any time upon mutual consent of the parties in writing. Such written consent will not be effective until signed by both parties and, if required by New York State law, approved by the Attorney General and the Office of the State Comptroller.
- (4) The relationship of the Successful Bidder to the University shall be that of independent contractor.
- (5) Compliance with the post-employment restrictions of the Ethics in Government Act is required.
- (6) The submission of a proposal constitutes a binding offer to perform and provide said services.
- (7) In the event the Successful Bidder uses partners, subcontracts or subcontractors, the Successful Bidder will remain responsible for compliance with all specifications and performance of all obligations under the contract resulting from this IFB. For the resulting agreement, the Successful Bidder will be the prime contractor.
- (8) The University will not be liable for any costs associated with the preparation, transmittal, or presentation of any proposals or materials submitted in response to this IFB.
- (9) Public announcements or news releases regarding this IFB or any subsequent award of a contract must not be made by any Bidder without the prior written approval of SUNY.
- (10) The Successful Bidder is responsible for compliance with all applicable rules and regulations pertaining to cities, towns, counties and State where the services are provided, and all other laws applicable to the performance of the resulting contract. The Successful Offeror shall provide all necessary safeguards for safety and protection as set forth by the United States Department of Labor, Occupational Safety and Health Administration.
- (11) The Successful Bidder will be responsible for the work, direction and compensation of its employees, consultants, agents and contractors. Nothing in the resulting agreement or the performance thereof by the Successful Bidder will impose any liability or duty whatsoever on the University including, but not limited to, any liability for taxes, compensation, commissions, Workers' Compensation, disability benefits, Social Security, or other employee benefits for any person or entity.
- (12) In the event the Successful Bidder is required to be reimbursed for travel, Bidder shall be reimbursed at rates not to exceed the current NYS Schedule of Allowable Reimbursable Travel Expenses. Refer to the U.S. Government Administration Rates for Travel at: <http://www.gsa.gov>
- (13) In addition, the University reserves the right to:

- a. Not accept any and all proposals received in response to this IFB, waive requirements or amend this IFB upon notification to all bidders, waive minor irregularities or adjust or correct cost or cost figures with the concurrence of the bidder if mathematical or typographical errors exist.
- b. To terminate any resulting contract for: (1) unavailability of funds; (2) cause; (3) convenience; (4) in the event it is found that the certification filed by the Bidder in accordance with State Finance Law §§139-j and 139-k are found to be intentionally false or intentionally incomplete; and if applicable, the Department of Taxation and Finance Contractor Certification Form ST-220CA was false or incomplete. Upon such finding the University may exercise its termination right by providing written notification to the Bidder in accordance with the written notification terms of the contract.
- c. Request certified audited financial statements for the past three (3) completed fiscal years and/or other appropriate supplementation including, but not limited to, interim financial statements and credit reports.
- d. Contact any or all references.
- e. Request clarifications from Bidders for purposes of assuring a full understanding of responsiveness, and further to permit revisions from all Bidders determined to be susceptible to being selected for contract award, prior to award.
- e. Advise Bidder of any objectionable employee(s) and/or subcontractor(s) and request their removal from the project. Such removal shall not be reasonably withheld by the Bidder.

## **Section 21 Requirements for Construction Activities to Address Public Health or Safety**

- (1) The Bidder agrees it is responsible for complying with any and all requirements issued by federal, state or local entities, including but not limited to New York State Governor Office Executive Orders, New York State Department of Health rules, regulations and guidance, and other New York State or State University of New York laws, rules, regulations or requirements that may be issued and/or amended during the bidding and/or performance of work on this Project.
- (2) With respect to the COVID-19 pandemic, Bidder specifically acknowledges and agrees that the NYS Interim COVID-19 Guidance for Construction Projects is made a part of the contract work for this Project, as set forth in General Requirements. Bidder affirms that all costs and time associated with compliance with the current guidance are included in its bid. The current NYS Interim COVID-19 Guidance for Construction Projects for is available at the following website: <https://forward.ny.gov/industries-reopening-phase#phase-one-construction>. Notwithstanding the foregoing, Bidder agrees to comply with the Guidance as it may be amended or superseded in the future.

NAME OF BIDDER

ADDRESS OF BIDDER

EMAIL ADDRESS OF BIDDER

## PROPOSAL FOR

Project: M05673 titled Rosch Recital Hall Stage Floor Replacement

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

### TO THE STATE UNIVERSITY OF NEW YORK:

**1. The Work Proposed Herein Will Be Completed Within the timeframe stated on page one of the Agreement.**  
In the event the bidder fails to complete such work by said date or dates, or within the time to which such completion may have been extended in accordance with the Contract Documents, the bidder agrees to pay the University liquidated damages in an amount equal to the values indicate in the Liquidated Damages Schedule below for each calendar day of delay in completing the work.

#### LIQUIDATED DAMAGES SCHEDULE

<u>Contract Amount</u>	<u>Liquidated Damages</u>
Under \$100,000.....	\$100/day
\$100,000-\$499,999.....	\$200/day
\$500,000-\$999,999.....	\$300/day
\$1MM-\$1,999,999.....	\$400/day
\$2MM-\$3,499,999.....	\$500/day
\$3.5MM-\$5MM.....	\$700/day
Over \$5MM (to be determined by the University in each instance)	\$____/day

2. The bidder hereby declares that it has carefully examined all Bidding and Contract Documents and that it has personally inspected the actual location of the work, together with the local sources of supply, has satisfied itself as to all the quantities and conditions, and understands that in signing this Proposal, it waives all right to plead any misunderstanding regarding the same.
3. The bidder further understands and agrees that it is to do, perform and complete all work in accordance with the Contract Documents and to accept in full compensation therefore the amount of the Total Bid, modified by such additive or deductive alternates, if any, as are accepted by the University.
4. The bidder further agrees to accept the unit prices, if any, set forth in paragraph (5) of this proposal, except as the same may be modified pursuant to the provisions of Section (5) of the Information to Bidders, as full payment for the amount of the credit to the University for any deletions, additions, modifications or changes to the portion or portions of work covered by said unit prices.

## 5. BID CALCULATION

### a. BASE BID *(does not include allowances)*

\$ \_\_\_\_\_  
(in numbers)

\_\_\_\_\_  
(in words)

### b. ALLOWANCES: In accordance with the Schedule II and Section 4.05 of Agreement, the bidder further agrees to the following additions to the Base Bid:

Work or Materials Description	Amount in Words	Amount in Figures

### c. TOTAL BID *(base bid + allowances = total bid)*

\$ \_\_\_\_\_ (in numbers)

\$ \_\_\_\_\_ (in words)

### d. ALTERNATES: In accordance with Section B of the General Requirements the bidder proposes the following additions to or deductions from the Total Bid for the alternates listed below:

Alternate Number	Add/Deduct	Amount in Words	Amount in Figures

- e. **UNIT PRICES:** In accordance with Section (5) paragraph (2) of the Information to Bidders and Section 4.04 of the Agreement the bidder or the University may insert unit prices for the work or materials listed below for clarification.

Work or Materials Description	Amount in Words	Amount in Figures

6. By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, 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: (a) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; (b) unless otherwise required by law, the prices have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (c) no attempt has been made or will be made by the bidder to induce any person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A bid shall not be considered for award nor shall any award be made where (a), (b) and (c) above have not been complied with; provided, however, that if in any case the bidder cannot make the foregoing certification the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (a), (b), and (c) above shall have not been complied with, the bid shall not be considered for award nor shall any award be made unless the Campus President, or designee, or Vice Chancellor for Capital Facilities, or designee, determines that such disclosure was not made for purposes of restricting competition.

The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of this Section.

7. The bidder agrees that if awarded the Contract, it will commence work within (10) calendar days after date of receipt of a fully executed Agreement and that it will fully complete the work by the date stated herein.
8. The bidder acknowledges the receipt of the following addenda, but agrees that it is bound by all addenda whether or not listed herein.

Addendum Number	Date	Addendum Number	Date
_____	____/____/____	_____	____/____/____
_____	____/____/____	_____	____/____/____
_____	____/____/____	_____	____/____/____



9. The bidder submits herewith bid security in an amount not less than five (5) percent of the Total Bid. In the event that (a) the bidder's Total Bid is the lowest one submitted and the bidder does not timely provide the Post-Bid Information required by the Information for Bidders or (b) this Proposal is accepted by the University and the bidder shall refuse or neglect, within ten (10) calendar days after date of receipt of Agreement, to execute and deliver said Agreement in the form provided herein, or to execute and deliver a Performance Bond and a Labor and Material Bond in the amounts required and in the form prescribed, the bidder shall be liable to the University, as liquidated damages, for the amount of the bid security or the difference between the Total Bid of the bidder and the Total Bid of the bidder submitting the next lowest bid, whichever sum shall be higher, otherwise the total amount of the bid security will be returned to the bidder in accordance with the provisions set forth in the Information for Bidders. The University may apply the bid security in full or partial payments, as the case may be, of said liquidated damages and in the event the bid security is less than the amount of liquidated damages to which the University is entitled, the bidder shall pay the difference, upon demand, to the University.
10. The bidder certifies that all wood products that are to be used in the performance of this Contract shall be in accordance with the Specifications and provisions of Section 167 b. of the State Finance Law which Section prohibits the purchase and use of tropical hardwoods.
11. The bidder affirms that it understands and agrees to comply with the procedures of the Fund relative to permissible contacts as required by Sections 139-j(3) and 139-j-(6)(b) of the State Finance Law.
12. The bidder certifies that all information provided or to be provided to the University in connection with this procurement is, as required by Section 139-k of the State Finance Law, complete, true and accurate.

Dated \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Firm's Federal ID Number or  
Social Security Number as applicable \_\_\_\_\_

Legal name of person, partnership, joint venture or corporation:

\_\_\_\_\_

By \_\_\_\_\_  
(signature)

Title \_\_\_\_\_

---

## ACKNOWLEDGMENT FOR THE PROPOSAL

THE LEGAL ADDRESS OF THE BIDDER

---

---

---

---

Telephone No. \_\_\_\_\_ Facsimile No. \_\_\_\_\_

**If a Corporation**

Name

Address

_____	PRESIDENT _____
_____	SECRETARY _____
_____	TREASURER _____

**If a Partnership**

Name of Partners

Address

_____	_____
_____	_____
_____	_____

**If a Joint Venture**

Name of Members

Address

_____	_____
_____	_____
_____	_____

**If an Individual**

Name of Individual

Address

_____	_____
-------	-------



**Bidder Name:**

**Project No.: M05673**

Bidders must provide three (3) example projects completed in the past five (5) years in which the Bidder served as the prime contractor. Example projects must be of similar size, scope and complexity to the project currently being bid, as further described in the Description of Work. Each project must include the Owner/Agency, Award Date, Contract Amount, Date Completed, Contact Person, Telephone number of the contact, Architect and/or Engineer's Name, Contract Number, Contact Email, and the Project Title and a brief scope description. Reference contacts may be used to verify project size, scope, dollar value, percentages and quality of performance.

<b>1.</b>	Agency/Owner			Award Date	Contract Amount	Date Completed
	Agency/Owner Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Contact Email	Project Title & Scope			
<b>2.</b>	Agency/Owner			Award Date	Contract Amount	Date Completed
	Agency/Owner Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Contact Email	Project Title & Scope			
<b>3.</b>	Agency/Owner			Award Date	Contract Amount	Date Completed
	Agency/Owner Contact Person		Telephone No.	Designer Architect and /or Design Engineer		
	Contract No.	Contact Email	Project Title & Scope			
<b>Completed By:</b>				Phone Number: Email: Date:		

## **Division 1 - General Requirements**

### **SECTION A - Description of Work**

#### **1. Work to be Done**

The work to be done under the Contract, in accordance with the Contract Documents, consists of performing, installing, furnishing and supplying all materials, equipment, labor and incidentals necessary or convenient for the construction of Project Number **M05673** titled **Rosch Recital Hall Stage Floor Replacement** and carry out all of the duties and obligations imposed upon the Contractor by the Contract Documents.

The main features of the work shall include, but not be limited to the following:

**Replacement of a 900 square foot +/- wood stage floor within the Rosch Recital Hall on the SUNY Fredonia campus. Associated work includes wood stair repair and floor box cover fabrication.**

#### **2. Work Not Included:**

Work not included in the work of the Contract are those items marked "N.I.C"; movable furnishings, except those specifically specified or indicated on the Drawings; and items marked "by others".

### **SECTION B - Alternates**

#### **1. General**

- a. Refer to Proposal Form. State thereon the amount to be added to or deducted from the Total Bid for the Alternates described herein.
- b. Extent and details of the Alternates are indicated on the Drawings, and described in the Specifications.
- c. Where reference is made in the description of the Alternate to products, materials, or workmanship, the specification requirements applicable to similar products, materials or workmanship in the Total Bid shall govern the products, materials, and workmanship of the Alternate as if these specification requirements were included in full in the description of the Alternates.

#### **2. Alternates**

**NONE**

### **SECTION C - Special Conditions**

#### **1. Time Progress Schedule**

- a. The Contractor shall schedule the Work for expeditious completion in accordance with Section 3.01(2) of the Agreement. The proposed schedule must be established in cooperation with the

Campus and account for Campus calendar restrictions listed in this section that affect the Contractor's access to the work areas and construction activities. At each periodic meeting, the Time Progress Schedule required by Section 3.02 of the Agreement shall be reviewed for compliance with phasing requirements. Revise and update the Time Progress Schedule to properly depict the work required to maintain continuity of campus operations.

- b. First phases of work shall include appropriate time in the schedule for: (1) understanding Campus operations, training crews, acclimating trades and Campus to sequence and apportionment of activities; (2) additional meetings (up to twice a week during the first twelve weeks after the Notice to Proceed) with the Owner, consultant and the Contractor's principals, project manager and those of its significant subcontractors; (3) re-sequencing activities to recover from start-up delays in the progressive operation of interrelated work and (4) other activities commonly associated with the start-up of field work.
- c. Academic Calendar: The Contractor is advised that the Campus intends to maintain a full institutional program throughout the Project duration. The Campus will make continuous use of adjacent spaces, buildings and site, except where work is scheduled or specified to occur. All Contract work must be scheduled and performed without causing unscheduled interruption of the normal institutional activities and processes. The Contractor shall coordinate his work with the following Campus Calendar, and No Utility shutdowns will be permitted during Registration, Study Periods, Exam Periods, or Commencement.
  - Web link to campus academic calendar - <https://www.fredonia.edu/about/offices/academic-affairs/academic-calendars>
- d. The work site will be available to begin construction immediately upon Notice to Proceed. Unless otherwise indicated, normal working hours on the campus are between 7:00 AM and 3:00 PM.
- e. On the Date of Substantial Completion in the Proposal, access to the work area for any uncompleted work and for punch list items shall be coordinated with the campus and comply with the following:
  1. Methods of performing work shall not hinder or disrupt the Campus' occupancy, reduce Campus provided levels of cleanliness and ambient environmental conditions and affect building systems, services, and utilities serving the building unless, upon completion of each shift's work that is performed outside of normal Campus work hours, the Contractor provides cleaning to return the work areas to a similar level of cleanliness as normally provided by the Campus, returns spaces to their normal ambient environmental conditions and restores building systems, services, and utilities serving the occupancy.
  2. No material or equipment shall remain inside the building unless in the active use and control of Contractor personnel.
  3. The Contractor shall provide all utility relocations and re-routings necessary to maintain the existing utilities at their current level of service, including limiting their shutdowns for tie-ins and cutovers to those periods specified. All new work shall be in place, tested and accepted prior to performing a shutdown for the required tie in.
- f. Time Delay Allowance: In addition to the requirements of Article III of the Agreement, the base bid contract duration to perform the work specified in the proposal shall include not less than

five (5) consecutive and/or non-consecutive eight hour working days in the Time Progress Schedule for delays that are of no fault of the Contractor or any of its subcontractors or suppliers, or caused by events or conditions that could not be reasonably anticipated. Provide notice of delay per Section 3.04 and request use of this time allowance. When approved by consultant, the time allowance is expended for each work day that the contractor is unable to work and all delay time used is tracked in the Time Progress Schedule. After this base bid time allowance for delay is expended, comply with the requirements of Article III for any additional delays.

## **2. Cutting and Patching**

- a. The Contractor shall do all cutting, fitting, and patching of its work that may be required to make its several parts come together properly and fitted as shown upon or reasonably implied from the Drawings and Specifications for the completed project.
- b. Any cost caused by defective or ill-timed work shall be borne by the Contractor. Except as otherwise expressly provided in the Contract Documents, the Contractor shall not cut or alter the work of any other Contractor or existing work without the consent of the University.
- c. Existing construction, finishes, equipment, wiring, etc., that is to remain and which is damaged or defaced by reason of work done under this contract shall be restored by the Contractor to a condition satisfactory to the University, or replaced with new, at no additional cost.
- d. Existing surfaces, materials, and work shall be prepared as necessary to receive the new installations. Such preparatory work shall be as required by the conditions and in each case shall be subject to approval by the University.
- e. Newly exposed work or surfaces which are presently concealed shall be made to match existing corresponding or adjoining new surfaces as directed, and the materials and methods to be employed shall be subject to approval by the University.
- f. All new, altered, or restored work in the building shall match existing corresponding work in the material, construction finish, etc., unless otherwise specified or required by the drawings.

## **3. Clean-Up**

- a. Periodic Cleaning: The Contractor shall at all times during the progress of the work keep the Site free from accumulation of waste matter or rubbish and shall confine its apparatus, materials and operations of its workmen to limits prescribed by law or by the Contract Limit Lines, except as the latter may be extended with the approval of the University. Cleaning of the structure(s), once enclosed, must be performed daily and removal of waste matter or rubbish must be performed at least once a week.
- b. Final Clean Up: Upon completion of the work covered by the Contract, the Contractor shall leave the completed project ready for use without the need of further cleaning of any kind and with all work in new condition and perfect order. In addition, upon completion of all work, the Contractor shall remove from the vicinity of the work and from the property owned or occupied by the State of New York, the State University of New York or the University, all plant, buildings, rubbish, unused materials, concrete forms and other materials belonging to it or used under its direction during construction or impairing the use or appearance of the property and shall restore such areas affected by the work to their original condition, and, in the event

of its failure to do so, the same shall be removed by the University at the expense of the Contractor, and it and its surety shall be liable therefor.

#### **4. Temporary Access and Parking**

Parking will be designated upon coordination with campus representatives.

#### **5. Field Meetings**

Periodic job meetings will be scheduled by the Consultant and the University during the course of construction. The Contractor, and, upon request of the Consultant and the University, its principal subcontractors and manufacturer's representatives, shall attend such meetings and be prepared to furnish answers to questions on progress, workmanship, or any other subject on which the Consultant and the University might reasonably require information.

#### **6. Operating Instructions and Manuals**

The Contractor shall furnish three (3) complete sets of operating instructions and manuals which shall include definite and specific instructions on all mechanical and electrical systems involved in the Project. Said instructions and manuals should set forth: (1) the manner of operation; (2) the necessary precautions and care to be followed; (3) periodic prevention maintenance requirements; and (4) a complete set of spare parts lists, catalogs, service manuals and manufacturing data on said systems. Said instructions and manuals are to be made available by the Contractor for review and comment by the University a minimum of six (6) weeks prior to the scheduled completion of the Project.

#### **7. Utility Shutdowns and Cut Overs**

- a. Except as otherwise expressly provided in the Contract Documents, the Contractor shall be responsible for submitting to the University, for its approval, a proposed schedule of all utility shutdowns and Cut overs of all types which will be required to complete the Project; said schedule should contain a minimum of two (2) week's advance notice prior to the time of the proposed shutdown and cut over. Most campuses of the State University of New York are in full operation 12 months of the year, and shutdowns and Cut overs, depending upon their type, generally must be scheduled on weekends, at night, or during holiday periods. The contract consideration is deemed to include all necessary overtime and all premium time, if any, that is required by the Contractor to complete the shutdowns or Cut overs.
- b. Temporary Connections: In the event the Contractor shall disrupt any existing services, the Contractor shall immediately make temporary connection to place such service back into operation and maintain the temporary connection until the Contractor makes the permanent connection. All work must be acceptable to the University.

#### **8. Temporary Power for Construction Activities**

Electrical energy will be available at no cost to the Contractor from existing outlets or panels from locations approved by the College. This power may be used for small power tools (not exceeding 1/2 HP), etc., and the Contractor shall not exceed the capacity of the existing circuits being used. The Contractor shall be responsible for providing all necessary connections, cables, etc. and removal of the same at completion of construction with approval from the University. The Contractor shall in no way modify the existing circuits at the panel boards to increase capacities of the circuits. If the required



power load exceeds the capacities of the available power sources, the Contractor shall be responsible and pay for furnishing and installing all necessary temporary power poles, cables, fused disconnect switches, transformers and electric meters necessary to provide a temporary power system for the project, and remove the same at completion. Install all temporary wiring and equipment and make all connections in conformity with the National Electrical Code. Make all replacements required by temporary use of the permanent wiring system. Provide ground fault protection.

## **9. Sanitary Facilities**

The Contractor will be permitted to use existing toilet and janitor closet facilities as designated by the College provided the existing facilities are not misused, defaced, or left in an unsanitary condition. If the University deems that the existing facilities have been subject to misuse or left unsanitary, the Contractor shall be informed and caused to install and maintain (at its own cost) temporary, sanitary facilities at approved locations. The Contractor shall also be held responsible for the cost of cleaning and repair of any damage to said existing facilities and adherence to health and sanitary codes of the State of New York.

## **10. Temporary Heat**

- a. In those locations where it is required by the conditions of the work, the Contractor shall provide and pay for all temporary heating, coverings and enclosures necessary to properly protect all work and materials against damage by dampness and cold, dry out the work, and facilitate the completion thereof. Fuel, equipment, materials, operating personnel and the methods used therefor shall be at all times satisfactory to the University and adequate for the purpose intended. The Contractor shall maintain the critical installation temperatures, provided in the technical provisions of the specifications hereof, for all work in those areas where the same is being performed.
- b. Maintenance of proper heating, ventilation and adequate drying out of the work is the responsibility of the Contractor. Any work damaged by dampness, insufficient or abnormal heating shall be replaced to the satisfaction of the University by and at the sole cost and expense of the Contractor.
- c. The Contractor shall provide all necessary, temporary heating for the efficient and effective work by itself and all trades engaged in the work. Unless otherwise specified, the minimum temperature shall be 50 degrees F at all places where work is actually being performed within the project (where enclosed). Before and during the placing of wood finish and the application of other interior finishing, varnishing, painting, etc., and until final acceptance by the University of all work covered by the Contract, the Contractor shall, unless otherwise specified in the Contract Documents, provide sufficient heat to produce a temperature of not less than 68 degrees F nor more than 78 degrees F.

## **11. Temporary Light**

The contractor shall install, maintain and remove Underwriter's Label temporary lighting sockets, light bulbs, and intermittent power sockets as approved by the University. The minimum temporary lighting to be provided is at the rate of 1/4 watt per square foot and be maintained for 24 hours, 7 days per week at stairs and exit corridors; in all other spaces, temporary lighting is to be maintained during working hours. Installation shall be in accordance with the National Electric Code.

## **12. Temporary Water for Construction Purposes**

Water for construction is available through the campus system without charge to the Contractor from location designated by the College. The Contractor shall obtain the necessary permission, make all connections, as required, furnish and install all pipes and fittings, and remove the same at completion of work. The Contractor must provide for waste water discharge and shall take due care to prevent damage to existing structures or site and the waste of water. All pipes and fittings must be maintained in perfect condition at all times.

## **13. Conducting Work**

- a. All work is to be conducted in such a manner as to cause a minimum degree of interference with the College's operation and academic schedule.
- b. Safe and direct entrance to and exiting from the existing buildings shall be maintained at all times during regular hours while construction is in progress.
- c. No construction work will start in any area until the Contractor has all the required materials on-site.
- d. The Contractor and its employees shall comply with college regulations governing conduct, access to the premises, and operation of equipment.
- e. The building shall not be left "open" overnight or during any period of inclement weather. Temporary weather tight closures shall be provided for/by the Contractor to protect the structure and its contents.

## **14. Safety and Protective Facilities**

- a. The Contractor shall provide the necessary safeguards to prevent accidents, to avoid all necessary hazards and protect the public, the Staff, students, the work and property at all times, including Saturdays, Sundays, holidays and other times when no work is being done.
- b. The Contractor shall erect, maintain and remove appropriate barriers or other devices, including mechanical ventilation systems, as required by the conditions of the work for the protection of users of the project area, the protection of the work being done, or the containment of dust and debris. All such barriers or devices shall be provided in conformance with all applicable codes, laws and regulations, including OSHA and National Fire Prevention Association 241, for safeguarding of structures during construction.

## **15. Protection of Existing Structures, Vegetation and Utilities**

The Contractor, during the course of its work, shall not damage any buildings, structures and utilities, public or private, including poles, signs, services to buildings, utilities in the street, gas pipes, water pipes, hydrants, sewers, drains and electric power and lighting and telephone cables, lawns, curbs, plants and other improvements. Any damage resulting from the Contractor's operations shall be repaired or replaced at its expense.

## **16. Abbreviations and References**

The following abbreviations may be used in these Specifications:

N.A.	Not Applicable
N.I.C	Not in Contract.
Fed. Spec. or F.S.	Federal Specifications
SUCF	State University Construction Fund
University or SUNY	State University of New York
College	A Campus of the State University of New York

## 17. Use of Elevators

The Contractor shall be permitted to make temporary use of elevators designated by the University and provided such use does not interfere with the normal activities of the College. Large and heavy items shall not be placed in elevators, and suitable padding shall be provided whenever a cab is used for construction purposes. Elevator pits shall be kept free of debris and dust by frequent cleaning out. The elevators shall be restored to original condition satisfactory to the University at the end of construction activities. Use of the top of the elevator may be permitted after obtaining approval of the University.

## 18. Salvage of Materials

Remove and legally dispose of all debris and other materials resulting from the alterations to State University property. The following items shall remain the property of the University and shall be stored at the site as directed by the University: **NONE**

## 19. Storage of Materials

- a. The Contractor shall store materials and equipment within the contract limits in areas on the site as designated by the University.
- b. All materials shall be stored in a neat and orderly manner, and shall be protected against the weather by raised floored weatherproof temporary storage facility or trailer.
- c. Security for stored materials shall be the responsibility of the Contractor.
- d. Storage of materials is not permitted on the roof of any building.

## 20. Shop Drawings and Samples - (Refer to Section 2.19 of the Agreement)

- a. The Contractor shall submit to the University for its approval five (5) sets of prints of all shop drawings required by the specifications. Those marked:

"REJECTED" are not in accordance with the Contract Documents and shall be resubmitted.

"REVISE AND RESUBMIT" Contractor shall correct and resubmit.

"MAKE CORRECTIONS NOTED": The contractor shall comply with corrections and may proceed. Resubmittal is not required.

"APPROVED - NO EXCEPTIONS TAKEN": The contractor may proceed.

- b. All shop drawings and/or submittals used on the construction site must bear the impression of the consultant's review stamp as well as the General Contractor's review stamp, indicating the status of review and the date of review.
- c. All shop drawings shall reflect actual site conditions and accurate field dimensions. Dimensioned shop drawings shall be submitted for all fabricated items. Incomplete submittals will be rejected without review.
- d. All shop drawings, submittals and samples shall include:
  - 1). Date and revision dates.
  - 2). Project title and number.
  - 3). Names of:
    - a). Contractor
    - b). Subcontractor
    - c). Supplier
    - d). Manufacturer
  - 4). Identification of products or materials: Include Department of State (DOS) file number, manufacturers' name and market name of all covered products and applicable materials in accordance with Part 1120 of the Code. This information may be obtained by contacting the DOS, Office of Fire Prevention and Control: 518 474-6746 [voice] and 518 474-3240 [FAX]

## **21. U.S. Steel**

All structural steel, reinforcing steel, or other major steel items to be incorporated in the work shall, if this Contract is in excess of \$100,000, be produced or made in whole or substantial part in the United States, its territories or possessions.

## **22. Non-Asbestos Products**

- a. All materials specified herein shall contain no asbestos.
- b. Provide "Contains No Asbestos" permanent labels applied to the exterior jacket of all pipe insulation at 20-foot intervals with a minimum of one (1) label for each service in each work area.

## **23. Material Safety Data Sheet**

The contractor shall submit MSDS (Material Safety Data Sheet) for all chemicals, solvents, and materials specified or proposed to be used on this project.

## **24. Architect's/Engineer's Seal**

In accordance with Rules and Regulations of the New York State Education Law, Title 8, Part 69.5(b), to all plans, specifications and reports to which the seal of an architect has been applied, there shall also be applied a stamp with appropriate wording warning that it is a violation of the law for any person, unless acting under the direction of a licensed architect, to alter an item in any way. If an item bearing the seal of an architect is altered, the altering architect shall affix to his item the seal and the notation "altered by" followed by his signature and the date of such alteration, and a specific description of the alteration.

## 25. Construction Permit

The Code Compliance Manager for the State University Campus will, as required by law, issue a Construction Permit for this Project. The project is not subject to any local building code or permit requirements, except for work that the Contractor is to perform on property located outside of the boundaries of the campuses of the State University of New York.

## 26. Other Contracts

There may be other contracts let for work to be done in adjacent areas and, as such, this Contractor and such other contractors shall coordinate their work to conform with progressive operation of all the work covered by such contracts, and afford each other reasonable opportunities for the introduction and storage of their supplies, materials, equipment, and the execution of their work.

## 27. Asbestos

If the work to be done under this contract contains the abatement of asbestos the following shall apply:

- a. Applicable Regulations - All work to be done under this Contract shall be in compliance with Part 56 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York (cited as 12 NYCRR Part 56) as amended effective November 9, 1994.
- b. Applicable Variance - The abatement contractor is responsible for obtaining any variance not issued to date that he feels may be applicable to the policies/procedures as set forth in 12 NYCRR Part 56.
- c. Owner Project Fact Sheet -The Contractor shall complete and submit as much information as possible on the Asbestos Material Fact Sheet to the University in triplicate prior to the project startup completion of the Fact Sheet shall be submitted prior to acceptance.
- d. Patent Infringement -The State University of New York and the State University Construction Fund have been given notice by a law firm representing GPAC, Inc. that the use of its process/procedure for asbestos containment and removal constitutes a patent infringement. All potential contractors are hereby notified that they may have to obtain a license to use certain patented Negative Air Containment systems, and that any liability of the University in connection therewith is covered by Section 2.21 of the Agreement. Therefore, all potential contractors are hereby notified that after opening of the bids they must advise the University as to the system they intend to use for Negative Air Containment and provide the University with either a copy of their license to use the same or written documentation, signed by an authorized officer of their surety, that their performance bond guarantees the Contractor's indemnification covering patent claims.
- e. Air Monitoring - All work to be done under this Contract shall be in compliance with Part 56 of Title 12 of the Official Compilation of Codes, Rules and Regulations of the State of New York (cited as 12 NYCRR Part 56), as currently

amended, and applicable federal and state regulations.

The Owner shall be responsible for hiring and paying an independent third-party firm to perform the requirements of air monitoring as called for in 12 NYCRR Part 56 and as permitted in Section 2.17 of the Agreement.

- f. Testing - The University and Campus reserve the right to employ an independent testing laboratory to perform testing on the work and air sampling. The Contractor shall be required to cooperate with the testing laboratory.
- g. Disposal Procedures - It is the responsibility of the asbestos contractor to determine current waste handling, transportation and disposal regulations for the work site and for each waste disposal landfill. The asbestos contractor must comply fully with these regulations, all appropriate U.S. Department of Transportation, EPA and Federal, State and local entities' regulations, and all other then current legal requirements. Submit originals or copies of all pertinent manifests in triplicate to the University.
- h. Submittals - Prior to commencement of the work on this project, the Contractor must submit the following to the University:
  - 1). Copy of original insurance policy.
  - 2). Copy of Department of Labor notification.
  - 3). Owner Fact Sheet.
  - 4). Copy of EPA notification.
- i. Special Requirements -.
  - 1) Size, location, and quantities of all pipes, joints, ducts, valves, tees, etc. must be field verified by all prospective bidders. Information given on the drawings and specifications is for general orientation and information only.
  - 2) The Contractor shall have at least one English-speaking supervisor on the site at all times while the project is in progress.
  - 3) Prior to the commencement of work involving asbestos demolition, removal, renovation, the Contractor must submit to the University the name of its on-site asbestos supervisor responsible for such operations, together with documentation that such supervisor has completed an Environmental Protection Agency-approved training course for asbestos supervisors.

## **28. Sustainable Design Reporting**

When submission of environmental product declarations (EPDs) is required by the technical specifications, in addition to the individual EPD submittals, submit a list summarizing the materials/products covered by each EPD submittal and the estimated total quantities used/installed of such covered materials during the Work completed to date. As directed by the Consultant, the list shall be submitted/updated annually and at Substantial Completion. If the submitted EPDs do not show the kgCO<sub>2</sub> per the quantity unit used/installed for a covered material, provide such information upon request of the Consultant. Using the list and other information, the Consultant will calculate the

estimated total kgCO<sub>2</sub> (kilograms of carbon dioxide) emission equivalent for each covered material/product used/installed.

## **29. Modifications to the Payment Provisions of the Agreement**

Delete the following Sections from Article IV of the Agreement:

- a. Section 4.18 - Final Payment: Delete the Clause "excluding the contractor's guarantee obligations (reference Section 4.08)" from the last line of the paragraph.
- b. Section 4.20 - Guarantee Payment: Delete this section in its entirety.
- c. Section 4.21 - Acceptance of Guarantee Payment: Delete this section in its entirety.

## **30. Wage Rates and Supplements**

The following are the rates of wages and supplements determined by the Industrial Commissioner of the State of New York as prevailing in the locality of the site at which the work will be performed:

Wage Schedules can be accessed online using **PRC # 2025004425** at <https://apps.labor.ny.gov/wpp/showFindProject.do?method=showIt>.

If the Contractor is unable to access the prevailing wage schedule for the PRC# listed above, please contact the University for a copy of the wage rate schedule.



State University of New York  
Construction Agreement

Contract Number: \_\_\_\_\_

This Agreement (referred to alternately as "Agreement" or "Contract") 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, 353 Broadway, Albany, New York 12246, on behalf of State University of New York at Fredonia located at 280 Central Avenue, Fredonia, NY 14063 hereinafter referred to as "University" and \_\_\_\_\_ having its principal office located at \_\_\_\_\_, and a Federal ID or Social Security No. of {insert number}, hereinafter referred to as "the "Contractor."

**WITNESSETH:**

The parties hereto agree that the Contractor shall:

(a) furnish and perform all work of every kind required and all other things necessary to complete in the most substantial

**M05673 – Rosch Recital Hall Stage Floor Replacement**

**At SUNY Fredonia**

in strict accordance with the Contract Documents; and

(b) complete all work necessary for substantial completion by **June 23, 2025** or within the time to which such completion may have been extended in accordance with the Contract Documents;

(c) in the event it fails to substantially complete all the work on time, pay to the University liquidated damages in accordance with the liquidated damages schedule listed on page one of the contractor's proposal for each calendar day of delay of substantially completing all the work; and

(d) do everything required by the Contract; subject, however, to the terms, provisions and conditions listed hereinafter.

(e) The University shall pay and the Contractor shall accept as full and complete payment for the performance of this Agreement, subject to additions or deductions as provided herein, the total contract compensation of \$\_\_\_\_\_, (in figures), \_\_\_\_\_ (in words).

**Article I**  
**General Provisions**

**Section 1.01 Definitions**

Where the following words and expressions are used in the Contract Documents it is understood that they have the meaning set forth as follows:

**Allowance** Any and all work and materials which may be required of the Contractor in performing work set forth under one or more allowances to this Agreement shall be Work, as defined herein, which shall be performed in accordance with the base schedule for the performance of the Contractor's Work. Contractor shall not be entitled to an extension of time for the performance of an allowance or all allowances.

**Consultant** The Architect or Engineer named in the Notice to Bidders or such other person or firm designated by the University to provide general administration of the Contract and inspection of the work.

**Bidding Documents** Notice to Bidders, Information for Bidders and Proposals

**Bonds** Performance Bond and Labor and Material Bond

State University of New York  
Construction Agreement

Delay	For purposes of this document and as used herein and in any other contract documents between the Contractor and the University the word "delay" shall be interpreted broadly and shall include by way of example only and not by way of limitation: delay, disruption, interference, inefficiencies, impedance, hindrance, acceleration, resequencing, schedule impacts, lack of timeliness by the University and/or Consultant, and lack of coordination, cumulative impact of multiple change orders, delay and other impacts.
Contract or Contract Documents	The Agreement, Exhibits A and A-1, Bidding Documents, Bonds, Specifications, Project Manual, Drawings Addenda issued prior to the opening of bids and Change Orders issued after award of the Contract.
University	State University of New York
Notice to Proceed	Written notice provided by the University to the Contractor stating the date on which the contractor can begin project work.
Project	The facility or facilities to be constructed including all usual, appropriate and necessary attendant work shown on, described in or mentioned in the Contract.
Site	The area within the Contract limit lines, as shown on the Drawings, and all other areas upon which the Contractor is to perform work.
Substantial Completion	Substantial Completion is the completion of Work so that the Project can be fully occupied and used for the purposes for which it is intended. Substantial Completion includes: (1) completion of all work required for the issuance of a code compliance certificate, or a temporary approval for occupancy, completed in a manner that includes no uncorrected deficiency or material violation of the Building Code of New York State within the area or work for which the certificate is to be issued; (2) completion of all building systems and functional testing of said systems (other than tests that cannot be performed due to the seasonal environmental conditions in effect at the time of completion); (3) acceptance and approval of the Operating Instructions and Manuals and Training of Campus Personnel; and (4) the sum of values determined for Punch List work at the time of Substantial Completion shall not exceed one (1) percent of the amount of the Contract consideration unless otherwise agreed to by the University.
Work	The using, performing, installing, furnishing and supplying of all materials, equipment, labor, services and incidentals necessary or proper for or incidental to the successful completion of the Project and the carrying out of all duties and obligations imposed upon the Contractor by the Contract.

**Section 1.02 Captions**

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

**Section 1.03 Nomenclature**

Materials, equipment or other work described in words and abbreviations which have a well-known, technical or trade meaning shall be interpreted as having such meaning in connection with the Contract.

**Section 1.04 Entire Agreement**

The Contract constitutes the entire agreement between the parties hereto and 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 the Contract shall not be changed, modified, or altered in any manner except by an instrument in writing executed by the parties hereto.

**Section 1.05 Successors, Assigns and Agents**

To the extent allowed by the terms of "Exhibit A", the Contract shall bind the successors, assigns and representatives of the parties hereto. The University reserves the right to have the State University Construction University Fund act as its agent at any time or duration of this Agreement. Such designation of the Fund to act on the behalf of the University shall be in writing and addressed to the Contractor.

State University of New York  
Construction Agreement

**Section 1.06 Accuracy and Completeness of Contract Documents**

- (1) The Contract Documents are complementary and what is called for by any one shall be as binding as if called for by all. The intention of the Documents is to include all materials, plant, equipment, tools, skill and labor of every kind necessary for the proper execution of the work and also those things which may be reasonably inferable from the Contract Documents as being necessary to produce the intended results.
- (2) The Contract Documents contemplate a finished piece of work of such character and quality as is reasonably inferable from them. The Contractor acknowledges that the Contract consideration includes sufficient money allowance to make its work complete and operational and in compliance with good practice and it agrees that inadvertent minor discrepancies or omissions or the failure to show details or to repeat on any part of the Contract Documents the figures or notes given on another shall not be the cause for additional charges or claims. In case of a conflict between any part or parts of the Contract Documents with any other part or parts thereof, as contrasted to an omission or failure to show details or to repeat on any part of the Contract Documents the figures or notes given on another part thereof, the following shall be given preference, in the order hereinafter set forth, to determine what work the Contractor is required to perform: (a) Exhibit A Standard Clauses (b) Exhibit A-1 Affirmative Action Clauses, (c) Addenda (later dates to take preference over earlier dates); (d) Amendments to Agreement; (e) Agreement; (f) Bidding Documents; (g) Specifications; (h) Schedules (i.e. finish schedules); (i) Large scale detail Drawings (detail drawings having a scale of 3/4" and over); (j) Large scale plan and section Drawings (plan and section drawings having a scale equal to or larger than that used for the basic floor or site plan, as the case may be); (k) Small scale detail Drawings (detail drawings having a scale of less than 3/4"); and (l) Small scale plan and section Drawings (plan and section drawings having a scale less than that used for the basic floor or site plan, as the case may be). In the event of such a conflict between or among parts of the Contract Documents that are entitled to equal preference, the more expensive way of doing the work, the better quality or greater quantity of material shall govern unless the University otherwise directs.

**Section 1.07 Organization of Contract Documents**

The Specifications and Drawings are generally divided into trade sections for the purpose of ready references, but such division is arbitrary and such sections shall not be construed as the prescription by the Consultant or the University of the limits of the work of any subcontractor or as a determination of the class of labor or trade necessary for the fabrication, erection, installation or finishing of the work required. The Contractor will be permitted to allot the work of subcontractors at its own discretion regardless of the grouping of the Specifications and Drawings. It shall be the Contractor's responsibility to settle definitively with each subcontractor the portions of the work which the latter will be required to do. The University and the Consultant assume no responsibility whatever for any jurisdiction claimed by any of the trades involved in the work.

**Section 1.08 Furnishing of Contract Documents**

The University shall establish the format for the Contract Documents (hard copy and/or electronic media) at the start of the Project. The Contractor shall be furnished, free of charge, with two (2) copies of the Specifications and Drawings in the selected format(s). Any other copies of the Specifications and Drawings which the Contractor may desire can be obtained at the Contractor's expense.

**Section 1.09 Examination of Contract Documents and Site**

By executing the Contract, the Contractor agrees that it has carefully examined the Contract Documents together with the site of the proposed work as well as its surrounding territory; that it is fully informed regarding all the conditions affecting the work to be done and the labor and materials to be furnished for the completion of the Contract; and that its information has been acquired by personal investigation and research and not in the estimates and records of the University.

**Section 1.10 Invalid Provisions**

If any term or provision of the Contract Documents or the application thereof to any person, firm or corporation or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the Contract Documents, or the application of such terms or provisions to persons, firms or corporations or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term or provision of the Contract Documents shall be valid and be enforced to the fullest extent permitted by law.

**Section 1.11 No Collusion or Fraud**

State University of New York  
Construction Agreement

The Contractor hereby agrees that the Contract was secured without collusion or fraud and that neither any officer nor any employee of the University has or shall have a financial interest in the performance of the Contract or in the supplies, work or business to which it relates, or in any portion of the profits thereof.

**Section 1.12 Notices**

- (1) All notices permitted or required hereunder shall be in writing and shall be transmitted either:
- a. via certified or registered United States mail, return receipt requested;
  - b. by personal delivery;
  - c. by expedited delivery service; or
  - d. by email if actually received by the University. Contractor bears the burden of proof of service by email and receipt of email by the University.

Such notices shall be addressed as follows or to such different addresses as the parties may from time to time designate:

**SUNY Fredonia**

**Name:** Markus Kessler

**Title:** Director of Facilities Planning

**Address:** 280 Central Avenue, Fredonia, NY 14063

**Telephone Number:** 716-673-3722

**E-mail address:** [Markus.Kessler@fredonia.edu](mailto:Markus.Kessler@fredonia.edu)

**{insert company name}**

**Name:** {insert designated contact's title}

**Title:** {insert designated contact's title}

**Address:** {insert company}

**Telephone Number:** {insert phone}

**E-mail Address:** {insert email}

- (2) Any such notice shall be deemed to have been given either at the time of personal delivery or actual receipt by the University, or in the case of email, upon receipt by the University.
- (3) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) calendar days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

**Section 1.13 Singular-Plural; Male-Female**

As used in the Contract Documents, 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 neutral genders and vice versa.

**Article II**  
**Contract Administration and Conduct**

**Section 2.01 Consultant's Status**

- (1) The Consultant, as the University's representative, shall provide general administration of the Contract and inspection of the work. The Consultant will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, and it will not be responsible for the Contractor's failure to carry out the work in accordance with the Contract Documents. The Consultant's duties, services and work shall in no way supersede or dilute the Contractor's obligation to perform the work in conformance with all Contract requirements, but it is empowered by the University to act on its behalf with respect to the proper execution of the work and to give instructions and/or direction when necessary to require such corrective measures as may be necessary, in its professional opinion, to insure the proper execution of the Contract or to otherwise protect the University's interest.
- (2) The Consultant shall have the authority to stop the work or to require and/or direct the prompt execution thereof whenever such action may be necessary, in its professional opinion, to insure the proper execution of the Contract or to otherwise protect the interests of the University.
- (3) Except as otherwise provided in the Contract, the Consultant shall determine the amount, quality, acceptability, fitness and progress of the work covered by the Contract and shall decide all questions of fact which may arise

State University of New York  
Construction Agreement

in relation to the interpretation of the plans and Specifications, the performance of the work and the fulfillment by the Contractor of the provisions of the Contract. The Consultant shall in the first instance be the interpreter of the provisions of the Contract and the judge of its performance and it shall use its power under the Contract to enforce its faithful performance.

**Section 2.02 Finality of Decisions**

- (1) Any decision or determination of the Consultant under the provisions of the Contract shall be final, conclusive and binding on the Contractor unless the Contractor shall, within ten (10) working days after such decision, make and deliver to the University a verified written statement of its contention that the decision of the Consultant is contrary to a provision of the Contract. The University shall thereupon determine the validity of the Contractor's contention. Pending decision by the University, the Contractor shall proceed in accordance with the Consultant's decision.
- (2) Wherever it is provided in the Contract Documents that an application must be made to the University and/or determination made by the University, the University's decision on such application and/or its determination under the Contract Documents shall be final, conclusive and binding upon the Contractor unless the Contractor, within ten (10) working days after receiving notice of the University's decision or determination, files a written statement with the University and the Consultant that it reserves its rights in connection with the matters covered by said decision or determination and after a court of competent jurisdiction determines the University's said decision or determination to be fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith in an action brought in accordance with Section 4.24.

**Section 2.03 Claims and Disputes**

- (1) If the Contractor claims (i) that any work it has been ordered to do is extra work or (ii) that it has performed or is going to perform extra work or (iii) that any action or omission of the University or the Consultant is contrary to the terms and provisions of the Contract, it shall:
  - a. Promptly comply with such order;
  - b. Notwithstanding the provisions of Section 1.12 of the Agreement and any other provisions of the Contract documents to the contrary, file with the University and the Consultant, within five (5) working days after being ordered to perform the work claimed by it to be extra work or within five (5) working days after commencing performance of the extra work, whichever date shall be the earlier, or within fifteen (15) working days after the said action or omission on the part of the University or the Consultant occurred, a written notice of the basis of its claim and request a determination thereof.
  - c. Notwithstanding the provisions of Section 1.12 of the Agreement and any other provisions of the Contract documents to the contrary, file with the University and the Consultant, within thirty (30) calendar days after said alleged extra work was required to be performed or said alleged extra work was commenced, whichever date shall be the earlier, or said alleged action or omission by the University or the Consultant occurred, a verified detailed statement, with documentary evidence, of the items and basis of its claim, including an initial and updated detailed Time Progress Schedule,
  - d. Produce for the University's examination, upon notice from the University, such information and documentation as directed by the University, which shall include but not be limited to job cost reports and all estimates and documentation used to develop the Bid Proposal, all its books of account, bills, invoices, payrolls, subcontracts, time books, progress records, daily reports, bank deposit books, bank statements, checkbooks and cancelled checks, showing all of its actions and transactions in connection with or relating to or arising by reason of its claim, and submit persons in its employment and in its subcontractors' employment for examination under oath by any person designated by the University to investigate any claims made against the University under the Contract, such examination to be made at the offices of the Contractor; and
  - e. Proceed diligently, pending and subsequent to the determination of the University with respect to any such disputed matter, with the performance of the Contract and in accordance with all instructions of the University and the Consultant.

State University of New York  
Construction Agreement

- (2) The Contractor's failure to comply with any or all parts of subdivision b, c and d of paragraph (1) of this Section shall be deemed to be: (i) a conclusive and binding determination on its part that said order, work, action or omission does not involve extra work and is not contrary to the terms and provisions of the Contract; and (ii) a waiver by the Contractor of all claims for additional compensation or damages as a result of said order, work, action or omission. The provisions of subdivision b, c and d of paragraph (1) of this Section are for the purpose of enabling the University to avoid waste of public funds by affording it promptly the opportunity to cancel or revise any order, change its plans, mitigate or remedy the effects or circumstances giving rise to a claim or take such other action as may seem desirable and to verify any claimed expenses or circumstances as they occur. Compliance with such provisions is essential whether or not the University is aware of the circumstances of any order or other circumstances which might constitute a basis for a claim and whether or not the University has indicated it will consider a claim in connection therewith.
- (3) The Contractor's failure to submit and maintain a Time Progress Schedule in accordance with Section 3.02 of the Agreement shall be deemed to be a waiver by the Contractor of all claims for additional time, compensation or damages as a result of any condition which is an alleged cause of delay in the completion of the work. The Schedule of Record, regularly updated and submitted at required durations in accordance with the provisions of the General Requirements, Section paragraph titled "Project Schedule": (i) informs the University and affords it promptly of regular opportunities to change its plans or mitigate or remedy the effects or circumstances giving rise to a claim of delay in the completion of the work or take such other action as may seem desirable to verify any claimed circumstances as they occur; and (ii) forms a record which becomes the basis of the University's verification of an alleged cause of delay in the completion of the work.
- (4) No person has power to waive or modify any of the foregoing provisions and, in any action against the University to recover any sum in excess of the sum certified by the University to be due under or by reason of the Contract, the Contractor must allege in its complaint and prove at the trial compliance with the provisions of this Section.
- (5) Nothing in this Section shall in any way affect the University's right to obtain an examination before trial or a discovery and inspection in any action that might be instituted by or against the University or the Contractor.

**Section 2.04 Omitted Work**

The University reserves the right at any time during the progress of the work to delete, modify or change the work covered by the Contract, by a Change Order or Field Order thereto providing for either a reduction or omission of any portion of the work, without constituting grounds for any claim by the Contractor for allowances for damages or for loss of anticipated profits and in such event a deduction shall be made from the Contract consideration, the amount of which is to be determined in accordance with the provisions of Section 4.02 or 4.05A of the Agreement.

**Section 2.05 Extra Work**

- (1) The University reserves the right at any time during the progress of the work to add, modify or change the work covered by the Contract by Change Order or Field Order or as otherwise required by the University thereto providing for extra work of either a qualitative or quantitative nature and in such event the Contract consideration may be increased by an amount to be determined in accordance with the provisions of Sections 4.02 and 4.05A of the Agreement and the completion date for all or any part of the work may be extended for such period of time as may be determined by the University as necessary, because of the extra work, to complete the work or any part thereof.
- (2) Nothing in the Contract Documents shall excuse the Contractor from proceeding with the extra work as directed. The terms and conditions of the Contract Documents shall be fully applicable to all extra work.
- (3) The Contractor shall have no claim for extra work or an extension of time if the performance of such work, in the judgment of the Consultant, is made necessary or desirable because of any act or omission of the Contractor which is not in accordance with the Contract.
- (4) Notwithstanding the provisions of Section 2.02 of the Agreement and any other provisions of the Contract Documents to the contrary, the University, after conferring with the Consultant, shall have the right to overrule a determination or decision of the Consultant, that relates to whether certain work is included in the Contract Documents or is extra work, which the University believes is incorrect; in the event the University exercises such right, that determination or decision shall be final, conclusive and binding upon the Contractor and the University

State University of New York  
Construction Agreement

unless the same shall be determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith.

**Section 2.06 Contractor to Give Personal Attention**

- (1) The Contractor shall give its constant personal attention to all the work while it is in progress and shall place the work in charge of a competent and reliable full-time superintendent acceptable to the Consultant and the University who shall have authority to act for the Contractor and who shall be accountable to the Consultant to the extent provided in the Contract. Unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in its employ, such superintendent shall not be changed without the written permission of the Consultant and the University.
- (2) When the Contractor and its superintendent are temporarily absent from the site of the work, the Contractor or its superintendent shall designate a responsible supervisory employee, approved by the Consultant and the University, to receive such orders as the Consultant or its representative may give. At no time shall any work be conducted on the site in the absence of an individual present who has been so designated by the Contractor or its superintendent as having authority to receive and execute instructions given by the Consultant or its representative.
- (3) If the superintendent, project manager or other supervisory employees are not satisfactory to the University, the Contractor shall, if directed by the University, immediately replace such supervisory employees with other supervisory employees acceptable to the Consultant and the University. Such replacement and all related impacts shall be at no additional cost to the University.

**Section 2.07 Employment of Workers**

The Contractor shall at all times employ competent and suitable workers and equipment which shall be sufficient to prosecute all the work to full completion in a disciplined orderly manner and in accordance with the Time Progress Schedule and the contractually required time of performance. All workers engaged in special or skilled work shall have had sufficient experience in such work to properly and satisfactorily perform the same. Should the Consultant deem any employee of the Contractor or any subcontractor incompetent, careless, insubordinate or otherwise objectionable or whose continued employment on the work is deemed by the Consultant to be contrary to the public interest, it shall so advise the Contractor and the latter shall dismiss or shall cause the subcontractor, if such employee is employed by the latter, to dismiss such employee and such employee shall not again be employed on the work to be performed under the Contract without obtaining the prior written approval of the Consultant.

**Section 2.08 Detailed Drawings and Instructions**

Upon timely notice from the Contractor that supplementary information is required, the Consultant shall furnish additional instructions, by means of Drawings or otherwise, necessary for the proper execution of the work. All such Drawings and instructions shall be consistent with the Contract Documents, true developments thereof and reasonably inferable therefrom. The work shall be executed in conformity therewith and the Contractor shall do no work without proper Drawings and/or instructions.

**Section 2.09 Contract Documents to Be Kept at Site**

The Contractor shall keep at the site of the work a copy of the Drawings and Specifications and shall at all times give the Consultant and the University access thereto.

**Section 2.10 Permits and Building Codes**

The Contractor shall obtain from the proper authorities all permits legally required to carry on its work, pay any and all taxes and fees legally required and shall be responsible for conducting its operations in accordance with the provisions of such permits. Except as otherwise expressly provided in the Contract Documents, all of the work covered by this Agreement which is to be performed on property owned by the State University of New York is not subject to the building code of any city, county or other political subdivision of the State of New York. It is, however, subject to the provisions of the Building Code of New York State and the applicable Federal and State health and labor laws and regulations.

**Section 2.11 Surveys**

- (1) From the data shown on the Drawings and identified at the site by the Consultant, a licensed surveyor, to be designated and paid for by the University, shall establish one (1) fixed benchmark and one (1) fixed base line at the site. The Contractor shall work from the benchmarks and base lines shown on the Drawings, identified at



State University of New York  
Construction Agreement

the site by the Consultant and established at the site by the aforesaid surveyor and shall establish such supplementary bench marks and base lines that are required in order for it to lay out the work. The Contractor shall be responsible for all measurements that may be required for execution of the work to the exact position and elevation as prescribed in the Specifications, shown on the Drawings, or as the same may be modified at the direction of the Consultant to meet changed conditions or as a result of modifications to the work covered by the Contract.

- (2) The Contractor shall furnish at its own expense such stakes and other required equipment, tools and materials, and all labor as may be required in laying out any part of the work. If, for any reason, monuments are disturbed, it shall be the responsibility of the Contractor to reestablish them, without cost to the University, as directed by the Consultant. The Consultant may require that construction work be suspended at any time when location and limit marks established by the Contractor are not reasonably adequate to permit checking completed work or the work in progress.
- (3) In all multiple-story construction, the Contractor shall establish and maintain line marks at each floor level and grade marks four (4) feet above the finished floor at each floor level.

**Section 2.12 Site Conditions**

- (1) The Contractor acknowledges that it has assumed the risk and that the Contract consideration includes such provision as it deems proper for all physical conditions and subsurface conditions as it could reasonably anticipate encountering from the provisions of the Contract Documents, borings, rock cores, topographical maps and such other information as the University or the Consultant made available to it prior to the University's receipt of bids or from its own inspection and examination of the site prior to the University's receipt of bids.
- (2) In the event that the Contractor encounters subsurface physical conditions or other latent physical conditions at the site differing substantially from those shown on or described or indicated in the Contract Documents and which could not have been reasonably anticipated from the aforesaid information made available by the University or the Consultant or from the Contractor's aforesaid inspection and examination of the site, it shall give immediate notice to the Consultant of such conditions before they are disturbed. The Consultant will thereupon promptly investigate the conditions and, if it finds that they do substantially differ from that which should have been reasonably anticipated by the Contractor, it shall make such changes in the Drawings and Specifications as may be necessary and a Change Order or Field Order may be issued, the amount of which shall be determined in accordance with the provisions of Sections 4.02 and 4.05A, to reflect any increase or decrease in the cost of, or the time required for, performance of the Contract as a result of any of the aforesaid changes made by the Consultant and/or as a result of such unanticipated subsurface conditions.

**Section 2.13 Right to Change Location**

When additional information regarding the subsurface conditions becomes available to the University as a result of the excavation work, further testing or otherwise, it may be found desirable to change the location, alignment, dimensions or grades to conform to such conditions. The University reserves the right to make such reasonable changes in the work as, in its opinion, may be considered necessary or desirable; such changes and any adjustments in the Contract consideration as a result thereof are to be made in accordance with the provisions of Sections 2.04, 2.05 4.02 and 4.05A of the Agreement.

**Section 2.14 Unforeseen Difficulties**

Except as otherwise expressly provided in Section 2.12 of the Agreement and in other Sections of the Contract Documents, the Contractor acknowledges that it has assumed the risk and that the Contract consideration includes such provisions as it deems proper for any unforeseeable obstacles or difficulties which it may encounter in the performance of the work.

**Section 2.15 Moving Materials and Equipment**

Should it become necessary, in the judgment of the Consultant, at any time during the course of the work to move materials which are stored on the site and equipment which has been temporarily placed thereon, the Contractor upon request of the Consultant shall move them or cause them to be moved at its sole cost and expense; provided, however, if materials and equipment that have been stored or placed by the Contractor at a location on the site expressly approved, in writing, by the Consultant and the same are moved or caused to be moved by the Contractor at the Consultant's

State University of New York  
Construction Agreement

request, such removal shall be deemed extra work and the Contractor shall be compensated therefor in accordance with the provisions of Sections 4.02 and 4.05A of the Agreement.

**Section 2.16 Other Contracts**

- (1) Prior to and during the progress of the work hereunder the University reserves the right to let or permit the letting of other contracts relating to the Project or in connection with work on sites within the Contract limit lines or adjoining or adjacent to that on which the work covered by this Agreement is to be performed. In the event such other contracts are let, or have previously been let, the Contractor and such other contractors shall coordinate their work with each other, arrange the sequence of their work to conform with the progressive operation of all the work covered by such contracts and afford each other reasonable opportunities for the introduction and storage of their materials, supplies and equipment and the execution of their work. If the Contractor or such other contractors contend that their work or the progress thereof is being interfered with by the acts or omissions of the other or others or that there is a failure to coordinate or properly arrange the sequence of the work on the part of the Contractor or such other contractors, they shall, within five (5) working days of the commencement of such interference or failure of coordination or failure to perform work in proper sequence, give written notification to the University and the Consultant of such contention. Upon receipt of such notification or on its own initiative, the Consultant shall investigate the situation and issue such instructions to the Contractor or such other contractors with respect thereto as it may deem proper. The Consultant shall determine the rights of the Contractor and of such other contractors and the sequence of work necessary to expedite the completion of all work covered by this Agreement in relation to the work covered by said other contracts.
- (2) The Contractor agrees that it has and will make no claim for damages against the University by reason of any act or omission to act by any other contractor or in connection with the Consultant's or University's acts or omissions to act in connection with such other contractor, but the Contractor shall have a right to recover such damages from the other contractors.
- (3) If the proper and accurate performance of the work covered by the Contract depends upon the proper performance and execution of work not included herein or depends upon the work of any other contractor, the Contractor shall inspect and promptly report to the Consultant any defects in such work that render it unsuitable for proper execution and results. Its failure to so inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of the work covered by the Contract, except as to latent defects which may be discovered thereafter.

**Section 2.17 Inspection and Testing**

- (1) All materials and workmanship shall be subject to inspection, examination and testing by the Consultant and the University at all times during the performance of the work and at all places where the work is carried on. Except as otherwise herein specified, the University shall pay for the cost of inspection, examination and testing by the Consultant or the University. If, however, the tests prove that the materials and/or work tested do not meet the requirements of the Contract, then the entire cost of such tests and any additional testing and or inspections required until the work is deemed compliant is to be borne by the Contractor. The Consultant will have the right to reject defective material and workmanship furnished by the Contractor or require its correction. The Contractor, without charge therefor, shall satisfactorily and promptly correct all rejected work and replace all rejected material with proper material.
- (2) The Contractor shall promptly segregate and remove from the site of the work all rejected material and work. If the Contractor shall fail to proceed at once with the replacing of rejected material and/or correction of defective workmanship, the University may, by contract or otherwise, replace such material and/or correct such workmanship, and charge the costs thereof to the Contractor or it may cancel the Contract and terminate the Contractor's employment as provided in the Agreement.
- (3) The Contractor, without additional charge, shall promptly furnish all reasonable facilities, labor materials and equipment with associated operators necessary for the safe and convenient access, inspection and testing that may be required by the Consultant or the University.
- (4) If the Contract Documents or the Consultant's instructions or the applicable laws, ordinances or regulations of any governmental authority require any part of the work covered by the Contract to be specially tested or inspected, the Contractor shall give the Consultant timely notice of its readiness for such testing or inspection

State University of New York  
Construction Agreement

or, if the same is to be performed by a governmental authority, of the date fixed therefor. If any such work, without the written permission of the Consultant, should be covered up prior to such testing or inspection, the Contractor, at its sole cost and expense must, if directed by the Consultant, uncover the same for testing or inspection and reconstruct same after the tests or inspection are conducted. All certificates of inspection or testing, involving the Contractor's work, required to be obtained from governmental authorities are to be secured by the Contractor at its sole cost and expense.

- (5) Should it be considered necessary or advisable by the Consultant at any time before final acceptance of the entire work to make an examination of work already completed by removing or tearing out same, the Contractor, upon request, shall furnish all necessary facilities, labor and material to perform such examination. If the work subject to such examination is found to be defective or nonconforming in any manner due to the fault of the Contractor or any of its subcontractors, such uncovering or destruction and necessary reconstruction, even though such includes work not covered in the Contract, shall be at the expense of the Contractor. If, however, such work after testing and examination is found to be satisfactory, the University will pay the Contractor the cost of such uncovering or destruction and reconstruction, such cost to be determined as in the case of extra work as provided in Sections 4.02 and 4.05A.
- (6) Inspection of material and furnished articles to be incorporated in the work may be made at the place of production, manufacture or shipment unless otherwise stated herein. The inspection of material and workmanship for final acceptance as a whole or in part will be made at the site of the work.

**Section 2.18 Subcontractors**

- (1) Except for subcontractors designated by the University, or required to be named at any earlier date, pursuant to the provisions of the Information for Bidders, within thirty (30) calendar days after receipt of the notice to proceed, the Contractor must submit a written statement to the Consultant giving the name and address of all proposed subcontractors. Said statement must contain a description of the portion of the work and materials which the proposed subcontractors are to perform and furnish and any other information tending to prove that the proposed subcontractors have the necessary facilities, skill, integrity, past experience and financial resources to perform the work in accordance with the terms and provisions of the Contract Documents.
- (2) If the Consultant finds that the proposed subcontractors are qualified, it will so notify the Contractor within ten (10) working days after receipt of the aforesaid information. If the determination is to the contrary, however, the Consultant within such period will notify the Contractor of such determination and the latter, unless it decides to do such work itself and is qualified, in the Consultant's opinion, to do such work, must, within ten (10) working days thereafter, submit similar information with respect to other proposed subcontractors.
- (3) The Consultant's approval of a subcontractor and/or the University's designation of a subcontractor pursuant to the provisions of the Contract Documents shall not relieve the Contractor of any of its responsibilities, duties and liabilities hereunder. The Contractor shall be solely responsible to the University for the acts or defaults of such subcontractors and of such subcontractors' officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the Contractor to the extent of its subcontract.
- (4) The Contractor shall be fully responsible for the administration, integration, coordination, direction and supervision of all of its subcontractors and of all work and it shall check all space requirements of the work and coordinate and adjust the same so that conflicts in space do not occur in the work being performed by it with its own employees and with the work being performed by its subcontractors and so that all equipment, piping, wiring, etc., can be installed, where possible, in the spaces allowed for same.
- (5) No subcontractor shall be permitted to work at the site until: (a) it has furnished satisfactory evidence to the Consultant of the insurance required by law; (b) in the case of a Project involving a federal grant, it has furnished satisfactory evidence to the Consultant of the same type and amount of liability insurance as that required of the Contractor by Section 5.06 of the Agreement; and (c) except for subcontractors designated by the University pursuant to the provisions of the Information for Bidders, it has been approved by the Consultant.
- (6) Within ten (10) working days after the Contractor receives payment from the University on account of a progress payment application for the percentage of the work done, it shall pay each of its subcontractors the sum contained in said payment for the percentage of said subcontractor's work, less the same amount retained

State University of New York  
Construction Agreement

therefrom by the University under the terms of the Contract Documents or in consequence of any legal proceedings or statutory liens, and less any amounts due the Contractor under the subcontract for work not performed or not properly or timely performed by the subcontractor. In the event any subcontractor is not paid by the Contractor, the former should immediately notify the University of such fact.

- (7) The Contractor shall execute with each of its subcontractors and shall require all subcontractors to execute with their sub-subcontractors a written agreement which shall bind the latter to the terms and provisions of this Agreement insofar as such terms and provisions are applicable to the work to be performed by such subcontractors. The Contractor shall require all subcontractors and sub-subcontractors to promptly, upon request, file with the Consultant and the University a conformed copy of such agreements, from which the price and terms of payment may be deleted.
- (8) If for sufficient reason, at any time during the progress of the work to be performed hereunder, the Consultant determines that any subcontractor or sub-subcontractor is incompetent, careless, or uncooperative, the Consultant will notify the Contractor accordingly and immediate steps will be taken by the Contractor for cancellation of such subcontract or sub-subcontract. Such termination, however, shall not give rise to any claim by the Contractor or by such subcontractor or sub-subcontractor for loss of prospective profits on work unperformed and/or work unfurnished and a provision to that effect shall be contained in all subcontracts and sub-subcontracts.
- (9) No provisions of this Agreement shall create or be construed as creating any contractual relation between the University and any subcontractor or sub-subcontractor or with any person, firm or corporation employed by, contracted with or whose services are utilized by the Contractor.

**Section 2.19 Shop Drawings and Samples**

- (1) The Contractor in accordance with the approved Shop Drawing, Submittal, Mockup, and Sample schedules and with such promptness and in such sequence as to cause no delay in the work, shall submit for the Consultant's approval all Shop Drawings and Samples called for under the Contract or requested by the Consultant.
- (2) Shop Drawings and mock-ups shall establish the actual detail of the work, indicate proper relation to adjoining work, amplify design details of mechanical and electrical equipment in proper relation to physical spaces in the structure, and incorporate minor changes of design or construction to suit actual conditions. Shop drawings include drawings, diagrams, schedules, product data and other information or materials specially prepared for the work by the Contractor to illustrate some portion of the work. Product data include standard illustrations, schedules, performance charts, instructions, brochures, diagrams and other information identified by the Contractor to illustrate materials or equipment for some portion of the work.
- (3) All Shop Drawings, mock-ups and samples shall be thoroughly checked by the Contractor for compliance with the Contract Documents before submitting them to the Consultant for approval and all Shop Drawings shall bear the Contractor's recommendation for approval. Any Shop Drawings submitted without this stamp of approval and certification, and Shop Drawings which, in the Consultant's opinion, are incomplete, contain numerous errors or have not been checked or only checked superficially, will be returned unchecked by the Consultant for resubmission by the Contractor. In checking Shop Drawings, the Contractor shall verify all dimensions and field conditions and shall check and coordinate the Shop Drawings of any section or trade with the requirements of all other sections or trades whose work is related thereto, as required for proper and complete installation and sequence of the work.
- (4) Samples must be of sufficient size or number to show the quality, type, range of color, finish and texture of the material. Each Sample shall be properly labeled to show the nature of the material, trade name of manufacturer, name and location of the work where the material represented by the Sample is to be used and the name of the Contractor submitting the Sample. Transportation charges to the Consultant must be prepaid on Samples forwarded to it.
- (5) At the start of the Project, the format for submittals shall be established by the University. If an electronic method is selected for the submission and approval of submittals, the Contractor shall provide submittals in a PDF format and the Consultant will return the submittals in electronic format to the Contractor. For both hard-copy and electronic submittal formats, all submittals that require physical samples or mock-ups shall be provided in

State University of New York  
Construction Agreement

accordance with the requirements set forth in the Contract Specifications. Shop Drawings and Samples, submitted by the Contractor in accordance with the approved Shop Drawing and Sample schedule that is included in the Time Progress Schedule, will be reviewed by the Consultant within fifteen (15) working days and if satisfactory will be approved. A Shop Drawing, when approved, will be returned to the Contractor. If not satisfactory, the Drawings and Samples will be appropriately marked and returned to the Contractor for correction thereof, in which event the Contractor shall resubmit to the Consultant a corrected copy of the Shop Drawing or a new Sample, as the case may be. The Contractor shall make any correction required by the Consultant and shall appropriately note any changes or revisions on the Shop Drawing, dated to correspond with the date of the Consultant's request for the change. Upon approval of the Shop Drawing by the Consultant, the Contractor shall promptly furnish to the Consultant as many copies thereof as the Consultant may reasonably request. Should more than two (2) separate reviews of any required shop drawings or samples submitted be necessary, in the judgement of the Consultant and the University, the Contractor shall be responsible for the reasonable costs incurred by the University for such additional reviews by the Consultant.

- (6) At the time of submission of a Shop Drawing or Sample, the Contractor shall inform the Consultant and the University in writing of any deviation in the Shop Drawing or Sample from the requirements of the Contract Documents. Unless such deviation is specifically noted by the Contractor with a notation that such deviation will result in extra work for which the Contractor requests payment, the Contractor shall be deemed to have waived any claim for extra work, additional compensation or payment or an extension of time with respect to all work shown on, described in or related to the Shop Drawing or Sample.
- (7) The Consultant's approval of Shop Drawings or Samples is for design only and is not a complete check on the method of assembly, erection or construction. Approval shall in no way be construed as: (a) permitting any departure whatsoever from the Contract Documents, except where the Contractor, in accordance with the provisions of paragraph 6 of this Section, has previously notified the University and the Consultant of such departure; (b) relieving the Contractor of full responsibility for any error in quality of materials, details, dimensions, omissions or otherwise that may exist; (c) relieving the Contractor of full responsibility for adequate field connections, erection techniques, bracing or deficiencies in strength; (d) relieving the Contractor of full responsibility for satisfactory performance of all work and coordination with the work of all subcontractors and other contractors; or (e) permitting departure from additional details or instructions previously furnished by the Consultant.
- (8) No work requiring a Shop Drawing or Sample shall be commenced until a Shop Drawing or Sample is approved by the Consultant and all such work shall be: (a) in accordance with the approved Shop Drawing, provided the latter conforms in all respects to the Contract Documents or to such deviations therefrom as have been previously noted by the Contractor in accordance with the provisions of paragraph 6 of this Section; and (b) in conformance in all respects to the sample furnished to and approved by the Consultant and, unless otherwise specified, as new and of good quality.
- (9) The Contractor may be required to provide professional services that constitute the practice of architecture or engineering when specifically required by the Contract Documents for a portion of the work or the Contractor needs to provide such services in order to carry out its responsibilities for construction means, methods, techniques, sequences and procedures. When professional services are required in the Contract Documents, the Consultant will specify all performance and design criteria that such services must satisfy. The University and Consultant shall be entitled to rely on the adequacy, accuracy and completeness of the professional services, certifications, and approvals performed or provided by design professionals working for the Contractor.
- (10) Contractor agrees that the University may deduct from any application for payment made by the Contractor, any and all Design Professional, Consultant and/or Construction Management fees and costs incurred by the University together with a markup upon such hard costs in the amount of 15% in the review or evaluation of any substitutions for methods, products or performance pursuant to this Section 2.19.

**Section 2.20 Equivalents - Approved Equal**

**(1) Equivalents or Approvals - General**

- a. The words "similar and equal to", or equal", "equivalent" and such other words of similar content and meaning shall for the purposes of this Agreement be deemed to mean similar and equivalent to one of the named

State University of New York  
Construction Agreement

products. For the purposes of subdivisions (1) and (2) of this Section and for the purposes of the Bidding Documents, the word "products" shall be deemed to include the words "articles", "materials", "items", "equipment" and "methods". Whenever in the Contract Documents one or more products are specified, the words "similar and equal to" shall be deemed inserted.

- b. Whenever any product is specified in the Contract Documents by a reference to the name, trade name, make or catalog number of any manufacturer or supplier, the intent is not to limit competition, but to establish a standard of quality which the Consultant has determined is necessary for the Project. A Contractor may at its option use any product other than that specified in the Contract Documents provided the same is approved by the Consultant in accordance with the procedures set forth in subdivision (2) of this Section. In all cases the Consultant shall be the sole judge as to whether a proposed product is to be approved and the Contractor shall have the burden of proving, at its own cost and expense, to the satisfaction of the Consultant, that the proposed product is similar and equal to the named product. In making such determination the Consultant may establish such objective and appearance criteria as it may deem proper that the proposed product must meet in order for it to be approved.
  - c. Nothing in the Contract Documents shall be construed as representing, expressly or implied, that the named product is available or that there is or there is not a product similar and equal to any of the named products and the Contractor shall have and make no claim by reason of the availability or lack of availability of the named product or of a product similar and equal to any named product.
  - d. The Contractor shall have and make no claim for an extension of time or for damages by reason of the time taken by the Consultant in considering a product proposed by the Contractor or by reason of the failure of the Consultant to approve a product proposed by the Contractor.
  - e. Requests for approval of proposed equivalents will be received by the Consultant only from the Contractor.
  - f. Approval shall in no way be construed as: (a) permitting any departure whatsoever from the Contract Documents, (b) relieving the Contractor of full responsibility for any error in quality of materials, details, dimensions, sequence of work, omissions or otherwise that may exist, (c) relieving the Contractor of full responsibility for adequate field connections, erection techniques, bracing or deficiencies in strength, (d) relieving the Contractor of full responsibility for satisfactory performance of all work to achieve a functionally complete facility or result and coordination with the work of all subcontractors and other contractors or (e) permitting departure from additional details or instructions previously furnished by the Consultant.
  - g. Contractor agrees that the Contractor approves and authorizes the deduction from Contractor's applications for payment any and all costs incurred by the Construction Manager, Consultant, Design Professional or otherwise in evaluating Contractor's submissions under this Section 2.20, together with a markup upon such hard costs in the amount of 15%.
- (2) Equivalents or Approvals After Bidding
- a. Any and all submissions for "or equal" products which are submitted by the Contractor after award of the Contract must be made by the Contractor within ninety (90) calendar days after the date of award. Contractor agrees that it waives and relinquishes the right, claim or privilege, if any, to submit "or equal" proposals if such are made ninety (90) calendar days after the date of award of the Contract to the Contractor.
  - b. Requests for approval of proposed equivalents will be considered by the Consultant after bidding only in the following cases: (a) the named product cannot be obtained by the Contractor because of strikes, lockouts, bankruptcies or discontinuance of manufacture and the Contractor makes a written request to the Consultant for consideration of the proposed equivalent within ten (10) calendar days of the date it ascertains it cannot obtain the named product; or (b) the proposed equivalent is superior, in the opinion of the Consultant, to the named product; or (c) the proposed equivalent, in the opinion of the Consultant, is equal to the named product and its use is to the advantage of the University, e.g., the University receives an equitable credit, acceptable to it, as a result of the estimated cost savings to the Contractor from the use of the proposed equivalent or the University determines that the Contractor has not failed to act diligently in placing the necessary purchase orders and a savings in the time required for the completion of the construction of the Project should result from the use of the proposed equivalent.

State University of New York  
Construction Agreement

- c. Where the Consultant pursuant to the provisions of this subdivision approves a product proposed by a Contractor and such proposed product requires a revision or redesign of any part of the work covered by this Agreement, all such revision and redesign and all new Drawings and details required therefor shall be subject to the approval of the Consultant and shall be provided by the Contractor at its own cost and expense.

Where the Consultant pursuant to the provisions of this Section approves a product proposed by a Contractor and such proposed product requires a different quantity and/or arrangement of duct work, piping, wiring, conduit or any other part of the work from that specified, detailed or indicated in the Contract Documents, the Contractor shall provide the same at its own cost and expense.

- (3) Contractor agrees that the University may deduct from any application for payment made by the Contractor any and all Design Professional, Consultant and/or Construction Management fees and costs incurred by the University, together with a markup upon such hard costs in the amount of 15%, in the consideration or evaluation of any substitutions for methods, products or performance pursuant to this Section 2.20.

**Section 2.21 Patents, Trademarks and Copyrights**

The Contractor acknowledges that the Contract consideration includes all royalties, license fees and costs arising from patents or trademarks in any way involved in the work; provided, however, that the Contract consideration shall not be deemed to have included therein any royalty, license fee or cost arising from a patent or trademark for a design prepared by the Consultant and neither the Contractor nor the University shall have any liability in connection therewith. Where the Contractor is required or desires to use any product, device, material or process covered by patent or trademark, the Contractor shall indemnify and save harmless the University and the State of New York from any and all claims, actions, causes of action or demands, for infringement by reason of the use of such patented product, device, material or process, and shall indemnify the University and the State of New York from any cost, liability, damage and expense, including reasonable attorneys' fees and court costs, which it may be obligated to incur or pay by reason of any claim or infringement at any time both before or after the University's final acceptance of all the work to be performed under the Contract.

**Section 2.22 Possession Prior to Completion**

If before the final completion of all the work it shall be deemed advisable or necessary by the University to take over, use, occupy or operate any part of the completed or partly completed work or to place or install therein equipment and furnishings, the University, upon reasonable written notice to the Contractor, shall have the right to do so and the Contractor will not in any way interfere therewith or object to the same. Such action by the University shall in no way affect the obligations of the Contractor under the terms and provisions of the Contract Documents and the Contractor acknowledges that such action by the University does not in any way evidence the completion of the work or any part thereof or in any way signify the University's acceptance of the work or any part thereof. The Contractor agrees to continue the performance of all work covered by the Contract in a manner which will not unreasonably interfere with such takeover, use, occupancy, operation, placement or installation.

**Section 2.23 Completion and Acceptance**

(1) Partial Completion

If before the final completion of all the work any portion of the permanent construction has been satisfactorily completed and the same will be immediately useful to the University, the latter may, by written notice, advise the Contractor that it accepts such portion of the work. Such action by the University shall in no way affect the obligations of the Contractor under the terms and provisions of the Contract with respect to any work not so completed and accepted. The partial completion of any portion of the Contractor's work by the University, the Campus or the Consultant, shall not impact the assessment of liquidated damages or actual costs for delays or disruption to the Project caused by the Contractor, its subcontractors or vendors.

(2) Substantial Completion

When all the Work covered by the Contract is substantially completed, as defined in Section 1.01, the Contractor shall give written notice thereof to the University and the Consultant. The latter will then promptly make an inspection of the work and, if they shall determine that all the work is substantially completed, they shall so advise the Contractor. Such action shall in no way affect the obligations of the Contractor under the terms and provisions of the Contract with respect to any uncompleted (including untested or deferred work), unaccepted or corrective work or in any way affect, limit or preclude the issuance by the Consultant, from time to time



State University of New York  
Construction Agreement

thereafter, of "Punch Lists", i.e., lists of uncompleted or corrective work which the Contractor is to promptly complete and/or correct. In the judgement of the University, should more than two (2) separate inspections of the Work be necessary, the Contractor agrees that the University may deduct from any application for payment made by the Contractor, any and all Design Professional, Consultant and/or Construction Management fees and costs incurred by the University together with a markup upon such hard costs in the amount of 15% for all such additional inspections.

The Contractor must fully, completely and acceptably perform all Punch List work and any other work subsequently discovered remaining to be completed or corrected, within ninety (90) calendar days of Substantial Completion or within such other timeframe stipulated by the University or Consultant. Failure to complete the Punch List within the time so designated hereunder may be deemed default on the part of the Contractor.

(3) Final Completion and Acceptance

After the completion of all the work the Contractor shall give written notice to the University and the Consultant that all the work is ready for inspection and final acceptance. The University and the Consultant shall promptly make such inspection and, if they shall determine that all the work has been satisfactorily completed, the University shall thereupon by written notice advise the Contractor that it accepts such work. In the judgement of the University, should more than two (2) separate inspections of the Work be necessary, the Contractor agrees that the University may deduct from any application for payment made by the Contractor, any and all Design Professional, Consultant and/or Construction Management fees and costs incurred by the University together with a markup upon such hard costs in the amount of 15% for all such additional inspections.

**Section 2.24 Record Drawings**

- (1) At the start of the Project, the format for Record Drawings shall be established by the University. Prior to acceptance by the University of all work covered by the Contract, the Contractor shall furnish to the Consultant one (1) set of current Contract Drawings on which the Contractor has recorded, using colored pencil for hard copy format or electronic editing tool in contrasting color for electronic format, in a neat and workmanlike manner, all instances where actual field construction differs from work as indicated on the Contract Drawings. These "Record". Drawings shall show the following information: (a) all significant changes in plans, sections, elevations and details, such as shifts in location of walls, doors, windows, stairs and the like made during construction; (b) all significant changes in foundations, columns, beams, openings, concrete reinforcing, lintels, concealed anchorages and "knock-out" panels made during construction; (c) final location of electric panels, final arrangement of electric circuits and any significant changes made in electrical design as a result of Change Orders, Field Orders or job conditions; (d) final location and arrangement of all mechanical equipment and major concealed plumbing, including, but not limited to, supply and circulating mains, vent stacks, sanitary and storm water drainage; (e) final location and arrangement of all underground utilities, connections to building and/or rerouting of existing utilities, including, but not limited to, sanitary, storm, heating, electric, signal, gas, water and telephone; and (f) final make and model for all significant equipment and devices listed in the specifications. The Contractor shall also provide an electronic version as determined by the Consultant.
- (2) Periodically during the work, the Consultant may request submission of a progress set of Record Drawings for review and advise the Contractor of errors or omissions, if any, that must be corrected or completed prior to final submission of the Record Drawings. Shop Drawings shall not be acceptable as Record Drawings.
- (3) The Contractor shall submit the Record Drawings to the Consultant at least fifteen (15) working days prior to the date of Substantial Completion. The Consultant will then review the Record Drawings and, if they shall determine that the Record Drawings represent the actual field construction being completed, they shall so advise the Contractor. If not satisfactory, the Record Drawings will be appropriately marked and returned to the Contractor for correction thereof, in which event the Contractor shall promptly correct and resubmit to the Consultant a corrected copy of the Record Drawings. Acceptance of the Record Drawings by the University is a condition precedent to the Contractor's entitlement to receive Final Payment.

**Section 2.25 Guarantees**

- (1) The Contractor, at the convenience of the University, shall remove, replace and/or repair at its own cost and expense any defects in workmanship, materials, ratings, capacities or characteristics occurring in or to the work covered by the Contract within one (1) year or within such longer period as may otherwise be provided in the Contract, the period of such guarantee to commence with the University's final acceptance of all work covered

State University of New York  
Construction Agreement

under the Contract or at such other date or dates as the University may specify prior to that time, and the Contractor, upon demand, shall pay for all damage to all other work resulting from such defects and all expenses necessary to remove, replace and/or repair such other work which may be damaged in removing, replacing or repairing the said defects. The obligations of the Contractor under the provisions of this paragraph or any other guarantee provisions of the Contract Documents are not limited to the monies retained by the University under the Contract.

- (2) Unless such removal, replacement and/or repair shall be performed by the Contractor within ten (10) working days after it receives written notice from the University specifying such defect, or if such defect is of such a nature that it cannot be completely removed, repaired and/or replaced within said ten (10) day period and the Contractor shall not have diligently commenced removing, repairing and/or replacing such defect within said ten (10) day period and shall not thereafter with reasonable diligence and in good faith proceed to do such work, the University may employ such other person, firm or corporation as it may choose to perform such removal, replacement and/or repair and the Contractor agrees, upon demand, to pay to the University all amounts which it expends for such work.

**Section 2.26 Default of Contractor**

- (1) In addition to those instances specifically referred to in other Sections hereof, the University shall have the right to declare the Contractor in default of the whole or any part of the work if:
- a. The Contractor becomes insolvent; or if
  - b. The Contractor makes an assignment for the benefit of creditors pursuant to the statutes of the State of New York; or if
  - c. A voluntary or involuntary petition in bankruptcy is filed by or against the Contractor; or if
  - d. A receiver or receivers are appointed to take charge of the Contractor's property or affairs; or if
  - e. The Contractor fails to commence work when notified to do so by the Consultant; or if
  - f. The Contractor shall abandon the work; or if
  - g. The Contractor shall refuse to proceed with the work or extra work when and as directed by the Consultant or the University; or if
  - h. The Contractor shall without just cause reduce its working force to a number which, if maintained, would be insufficient, in the opinion of the University, to complete the work in accordance with the approved time progress schedule, and shall fail or refuse to sufficiently increase such working force when ordered to do so by the Consultant; or if
  - i. The Contractor shall sublet, assign, transfer convey, or otherwise dispose of the Contract other than as herein specified; or if
  - j. The University shall be of the opinion that the Contractor is or has been unnecessarily or unreasonably or willfully delaying the performance and completion of the work, or the award of necessary subcontracts, or the placing of necessary material and equipment orders; or if
  - k. The University shall be of the opinion that the work cannot be completed within the time herein provided therefor or within the time to which such completion may have been extended; provided, however, that the impossibility of timely completion is, in the University's opinion, attributable to conditions within the Contractor's control; or if
  - l. The work is not completed within the time herein provided therefor or within the time to which the Contractor may be entitled to have such completion extended; or if
  - m. The University shall be of the opinion that the Contractor is or has been willfully or in bad faith violating any of the provisions of this Agreement;

State University of New York  
Construction Agreement

- n. The University shall be of the opinion that the Contractor is not or has not been executing the Contract in good faith and in accordance with its terms; or if
  - o. At any time during the period of the Agreement, insurance as required is not in effect or proof thereof is not provided to the University.
- (2) Before the University shall exercise its right to declare the Contractor in default by reason of the conditions set forth in the above items *a, b, c, d, e, f, g, h, i, j, k, l, m, n* and *o*, it shall give the Contractor three (3) working days' notice of its intention to declare the Contractor in default and unless, within such three (3) day period, the Contractor shall make arrangements, satisfactory to the University, to correct and/or eliminate the conditions set forth in the University's aforesaid notice, the Contractor may be declared in default at the expiration of such three (3) day period or at the expiration of such longer period of time as the University may determine.
- (3) The right to declare in default for any of the grounds specified or referred to shall be exercised by the University sending the Contractor a written notice setting forth the ground or grounds upon which such default is declared. Upon receipt of notice that it has been declared in default, the Contractor shall immediately discontinue all further operations under the Contract and shall immediately quit the site, leaving untouched all plant, materials, equipment, tools and supplies then on site.
- (4) The University, after declaring the Contractor in default, may then have the work completed by such means and in such manner, by contract, with or without public letting, or otherwise, as it may deem advisable, utilizing for such purpose such of the Contractor's plant, materials, equipment, tools and supplies remaining on the site, and also such subcontractors as it may deem advisable, or it may call upon the Contractor's surety at its own expense to do so.
- (5) In the event that the University declared the Contractor in default of the work or any part of the work, the Contractor, in addition to any other liability to the University hereunder or otherwise provided for or allowed by law, shall be liable to the University for any costs it incurs for additional architectural and engineering services necessary, in its opinion, because of the default and the total amount of liquidated damages from the date when the work should have been completed by the Contractor in accordance with the terms hereof to the date of actual completion of the work, both of which items shall be considered as expenses incurred by the University in completing the work and the amount of which may be charged against and deducted out of such monies as would have been payable to the Contractor or its surety if the work had been completed without a default.
- (6) If the University completes the work, the Consultant shall issue a certificate stating the expenses incurred in such completion, including the cost of re-letting. Such certificate shall be final, binding and conclusive upon the Contractor, its surety, and any person claiming under or through the Contractor, as to the amount thereof.
- (7) The expense of such completion, as so certified by the Consultant, shall be charged against and deducted out of such monies as would have been payable to the Contractor if it had completed the work; the balance of such monies, if any, subject to the other provisions of the Contract, to be paid to the Contractor without interest after such completion. Should the expense of such completion, so certified by the Consultant, exceed the total sum which would have been payable under the Contract if the same had been completed by the Contractor, any such excess shall be paid by the Contractor to the University upon demand.
- (8) In the event the University shall determine to complete the work without calling upon the Contractor's surety to do so, the Contractor shall not be entitled, from and after the effective date of the declaration of the default, to receive any further payment under the Contract until the said work shall be wholly completed and accepted by the University.
- (9) In case the University shall declare the Contractor in default as to a part of the work only, the Contractor shall discontinue such part, shall continue performing the remainder of the work in strict conformity with the terms of the Contract, and shall in no way hinder or interfere with any other contractors or persons whom the University may engage to complete the work as to which the Contractor was declared in default.
- (10) The provisions relating to declaring the Contractor in default as to the entire work shall be equally applicable to a declaration of partial default, except that the University shall be entitled to utilize for completion of the part of the

State University of New York  
Construction Agreement

work as to which the Contractor was declared in default only such plant, materials, equipment, tools and supplies as had been previously used by the Contractor on such part.

- (11) In completing the whole or any part of the work, the Consultant and the University shall have the power to depart from, change or vary the terms and provisions of the Contract; provided, however, that such departure, change or variation is made for the purpose of reducing the time or expense of such completion. Such departure, change or variations, even to the extent of accepting a lesser or different performance, shall not affect the conclusiveness of the Consultant's certificate of the cost of completion, nor shall it constitute a defense to any action to recover the amount by which such certificate exceeds the amount which would have been payable to the Contractor hereunder but for its default.
- (12) The provisions of this Section shall be in addition to any and all other legal or equitable remedies provided by this Agreement and otherwise applicable by law.

**Section 2.27 Termination for Convenience**

- (1) The performance of work under this Agreement may be terminated by the University, in whole or in part, whenever the University shall determine that such termination is in the best interest of the University. Any such termination shall be affected by a notice in writing to the Contractor specifying the date upon which such termination shall become effective and the extent to which performance of the Contract shall be terminated. Such termination shall be effective on the date and to the extent specified in said notice.
- (2) Upon receipt of a notice of termination, and-except as otherwise directed in writing by the University, the Contractor shall:
- a. Discontinue all work and the placing of all orders for materials and facilities otherwise required for the performance thereof,
  - b. Cancel all existing orders and subcontracts to the extent such orders and subcontracts relate to the performance of work terminated by the notice of termination;
  - c. Take such action as may be necessary to secure to the University the benefits of any rights of the Contractor under orders or subcontracts which relate to the performance of work terminated by the notice of termination, including, but not limited to, the assignment to the University, in the manner and to the extent directed by the University, all the right, title and interest of the Contractor under the orders or subcontracts so terminated and cancelled. In the event of such assignment, the University shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination and cancellation of such orders and subcontracts;
  - d. Transfer title and deliver to the University, in accordance with the direction of the University, all materials, supplies, work in process, facilities, equipment, machines or tools produced as a part of or acquired by the Contractor in connection with the work terminated by said notice, and all plans, Drawings, Working Drawings, sketches, Specifications and information for use in connection therewith; provided, however, that the Contractor may retain any of the foregoing if it so elects and foregoes reimbursement therefor;
  - e. Take such action as may be necessary or as the Consultant or the University may prescribe for the protection and preservation of all property in the possession or control of the Contractor in which the University, under the provisions of the Contract, has or may acquire an interest.
- (3) Notwithstanding the foregoing, should the notice of termination relate to only a portion of the work covered by the Contract, the Contractor will proceed with the completion of such portions of the work as are not terminated.
- (4) The University will pay and the Contractor shall accept, in full consideration for the performance and completion of the portions of the work as are not terminated, a sum calculated by determining the percentage the portions of the work not terminated bear to the total amount of the work covered by the Contract, and by multiplying the Contract consideration by such percentage - the product thereof being the amount to be paid to the Contractor. The University shall determine the amount of such consideration in accordance with the foregoing.

State University of New York  
Construction Agreement

- (5) Upon compliance by the Contractor with the foregoing provisions of this Section and subject to deductions for payments previously made, the University, for the portions of the work terminated, shall compensate the Contractor as follows:
- a. By reimbursing the Contractor for actual expenditures made with respect to such work, including expenditures made in connection with any portion thereof which may have been completed prior to termination, as well as expenditures made after termination in completing those portions of the work covered by the Contract which the Contractor may have been required by the notice of termination to complete. The University shall determine the allowability and amount of such expenditures.
  - b. By reimbursing the Contractor for all actual expenditures made, with the prior written approval of the University or pursuant to a court judgment, in settling or discharging any outstanding contractual obligations or commitments incurred or entered into by the Contractor in good faith with respect to the Contract and resulting from the termination thereof.
  - c. By reimbursing the Contractor for all actual expenditures made after the effective date of the notice of termination resulting from or caused by the Contractor taking necessary action or action prescribed by the Consultant or the University for the protection and preservation of all property in the possession or control of the Contractor in which the University, under the provisions of the Contract, has or may acquire an interest.
  - d. By paying the Contractor a markup, which is to be calculated in the same manner as that provided for in subdivision c of paragraph (1) of Sections 4.02 and 4.05A for extra work, on the foregoing expenditures, which markup is to cover the Contractor's overhead and profit; provided, however, that if it appears that the Contractor would have sustained a loss on the entire Contract had it been completed, said markup shall be reduced by one-third.
- (6) The sum of all amounts payable under this Section, plus the sum of all amounts previously paid by the University under the provisions of the Contract, shall not exceed the amount of the Contract consideration. In no event shall the Contractor be entitled to any payment for loss of anticipated profits on uncompleted work and the University shall not be liable for same.
- (7) Termination by the University under the provisions of this Section shall be without prejudice to any claims or rights which the University may have against the Contractor. The University may retain from the amount due to the Contractor under the provisions of this Section such monies as may be necessary to satisfy any claim which the University may have against the Contractor in connection with the Contract; provided, however, that the University's failure to retain such monies shall not be deemed a waiver of any of its rights or claims against the Contractor.
- (8) Notwithstanding the foregoing, where the Contractor and the Consultant can agree upon another method of determining the amount of the consideration to be paid to the Contractor under the provisions of this Section, such method, subject to the approval of the University, may, at the option of the University, be substituted for the method set forth above.

**Article III**  
**Time of Performance**

**Section 3.01 Commencement, Prosecution and Completion of Work**

- (1) The Contractor agrees that it will begin the work herein embraced upon receipt of notice to proceed, unless the University consents in writing, to begin at a different date, and that it will prosecute the same with such diligence that all work covered by the Contract shall be substantially completed and performed on or before the time specified on page one of the Agreement.
- (2) The Contractor further agrees that time is of the essence in this Agreement and that all the work shall be prosecuted in such manner and with sufficient plant and forces to complete all work timely.

State University of New York  
Construction Agreement

**Section 3.02 Time Progress Schedule**

- (1) To show compliance with the requirements of Section 3.01 of the Agreement, provide and maintain a Time Progress Schedule in accordance with the General Requirements, Special Conditions, Section paragraph titled "Project Schedule". Unless otherwise accepted by the University, the Time Progress Schedule shall be strictly adhered to by the Contractor. The time for substantial completion shall be on or before the time specified on page one of the Agreement.
- (2) If through the fault of the Contractor or any subcontractor the Contractor shall fail to adhere to the time progress schedule, it must promptly adopt such other and additional means and methods of construction as will make up for the time lost and will assure completion in accordance with such schedule.
- (3) The failure of the Contractor to submit a Time Progress Schedule, the University's or the Consultant's acceptance of the Contractor's time progress schedule or lack of such acceptance, the means and/or methods of construction employed by the Contractor, including any revisions thereof, and/or its failure to revise the same shall not relieve the Contractor of its obligation to accomplish the result required by the Contract in the time specified on page one of the Agreement, nor shall the exercise of the Consultant's or the University's right to reject any portion of the work, create or give rise to any claim, action or cause of action, legal, equitable or otherwise, against the Consultant or the University.
- (4) The failure of the Contractor to submit and maintain a Time Progress Schedule in accordance with the General Requirements shall be deemed to be a waiver by the Contractor of all claims for additional compensation or damages as a result of any condition which is an alleged cause of delay in the completion of the work.

**Section 3.03 Time Progress Schedule for Shop Drawings and Samples**

The Contractor shall include activities for preparation and submission of all Shop Drawings, mock-ups and Samples in the Time Progress Schedule in Section 3.02.

**Section 3.04 Notice of Conditions Causing Delay**

- (1) Within ten (10) working days after the commencement of any condition which is causing or may cause delay in completion or require Contractor to request an extension of time, the Contractor must notify the Consultant and the University in writing of the effect, if any, of such condition upon the Time Progress Schedule, and must state why and in what respects, if any, the condition is causing or may cause such delay.
- (2) Contractor agrees that an express condition precedent to Contractor's entitlement to any extension of time on the project shall be full and complete compliance to the satisfaction of the University with the Contractor's obligations in Section 3.06, Contractor's Progress Reports. Failure to submit proper Contractor's progress reports in appropriate and timely fashion shall be deemed a waiver and relinquishment of any right, claim or privilege to obtain an extension of time for the performance of the Contractor's work.
- (3) Failure to strictly comply with this requirement may, in the discretion of the University, be deemed sufficient cause to deny any extension of time on account of delay in completion arising out of or resulting from any change, extra work, suspension, or other condition.
- (4) Except as otherwise set forth in this Section 3.04 all procedures set forth in Sections 2.02 and 2.03 of this Agreement shall be complied with by the Contractor. Furthermore, full and complete compliance with the requirements of this Article III is a condition precedent to the Contractor's entitlement to receive an extension of time.

**Section 3.05 Extension of Time**

- (1) Within ten (10) working days after the commencement of any condition which is causing or may cause the Contractor to incur, require or otherwise need an extension of time, the Contractor shall notify the Consultant and the University of such condition. Full and complete compliance with this paragraph 3.05(1) is a condition precedent to the Contractor obtaining an extension of time for performance of any portion or all of its work.
- (2) An extension or extensions of time for the completion of the work may be granted by the University subject to the provisions of this Section, but only upon written application therefor by the Contractor to the University and the Consultant.

State University of New York  
Construction Agreement

- (3) An application for an extension of time must set forth in detail the source and the nature of each alleged cause of delay in the completion of the work, the date upon which each such cause of delay began and ended and the number of days of delay attributable to each of such causes. It must be submitted prior to completion of the work.
- (4) If such an application is made, the Contractor may be entitled to an extension of time for delay in completion of the work caused solely: (a) by the acts or omissions of the University, its trustees, officers, agents or employees; or (b) by the acts or omissions of other contractors, not including subcontractors of the Contractor, on this Project; or (c) by unforeseeable supervening conditions entirely beyond the control of either party hereto (such as, but not limited to, acts of God or the public enemy, war or other national emergency making performance temporarily impossible or illegal, or strikes or labor disputes).
- (5) The Contractor may, however, be entitled to an extension of time for such causes only for the number of calendar days of delay which the University may determine to be due solely to such causes, and then only if the Contractor shall have strictly complied with all of the requirements of this Section and Section 3.04. The University shall make such determination within ninety (90) calendar days after receipt of the Contractor's application for an extension of time; provided, however, said application complies with the requirements of this Section.
- (6) The Contractor shall not be entitled to receive a separate extension of time for each one of several causes of delay operating concurrently, but, if at all, only for the actual period of delay in completion of the work as determined by the University, irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault or omission of the Contractor or of its subcontractors or material-men and would of itself (irrespective of the concurrent causes) have delayed the work, no extension of time will be allowed for the period of delay resulting from such an act, fault or omission.
- (7) The granting of an application for an extension of time for causes of delay other than those herein referred to shall be entirely within the discretion of the University.
- (8) If the Contractor shall claim to have sustained any damages by reason of delays, extraordinary or otherwise, or hindrances which it claims to be due to any action, omission, direction or order by the University or the Consultant, the Contractor shall be entitled only to an extension of time as hereinabove provided and shall not have or assert any claim or prosecute any suit, action, cause of action or proceeding against the University based upon such delays or hindrances, unless such delays or hindrances were caused by the University's bad faith or its willful, malicious, or grossly negligent conduct, or un contemplated delays, or delays so unreasonable that they constitute an intentional abandonment of the Contract by the University, or delays resulting from the University's breach of a fundamental obligation of the Contract.
- (9) The Contractor shall not be entitled to an extension of time for the performance of any or all of the Work set forth in allowances to the Contract. All allowance work shall be performed in accordance with the Contractor's schedule.

**Section 3.06 Contractor's Progress Reports**

After commencement of the work the Contractor shall furnish the Consultant with written monthly reports setting forth the condition and progress of the work, the percentage of each part of the work that has been finished, those parts of the work which have been completed within the scheduled time and those parts of the work which have not been finished within the scheduled time, and the general progress of the work that is being performed away from the site and the approximate date when such work will be finished and delivered to the site. Contractor agrees that compliance with this Section 3.06 is an express condition precedent to the Contractor's right, claim or entitlement to obtain an extension of time for the performance of the Contractor's work. Failure to comply with this Section 3.06 shall be a waiver and relinquishment of all such rights, claims and privileges to request or obtain an extension of time for the performance of Contractor's work.

**Article IV**  
**Payment**



State University of New York  
Construction Agreement

**Section 4.01 Compensation to Be Paid Contractor**

The University shall pay to the Contractor and the latter shall accept as full and complete payment for the performance of this Agreement, subject to additions or deductions as provided herein, the sum of identified on page one of this agreement which sum is the amount of the Contract consideration.

**Section 4.02 Value of Omitted and Extra Work**

(1) The amount by which the Contract consideration is to be increased or decreased by any Change Order or Field Order shall be determined by the University by one or more of the following methods:

- a. By applying the applicable price or prices set forth on the attached Schedule "I" of this Agreement or by applying a unit price agreed to by both parties. Subject to the provisions of Section 4.04, this method must be used if the Contract Documents contain applicable unit prices.
- b. By estimating the fair and reasonable cost of: (i) labor, including all wages, required wage supplements and insurance required by law (workers' compensation, social security, disability, unemployment, etc.) paid to or on behalf of foremen, workers and other employees below the rank of superintendent directly employed at the site of the Project; (ii) materials; and (iii) equipment, excluding hand tools, which, in the judgment of the University, would have been or will be employed exclusively and directly on the omitted work or extra work, as the case may be; and, in the case of extra work, where the same is performed directly by the Contractor, by adding to the total of such estimated costs a sum equal to 15 percent thereof, but, where the extra work is performed by a subcontractor, by adding a sum equal to 15 percent of said costs for the benefit of such subcontractor, and by adding, for the benefit of the Contractor (no further allowance will be made where extra work is performed by the sub-subcontractor), an additional sum equal to 10 percent of the first \$10,000 of the above-estimated costs, including the subcontractor's percentage override, plus 5 percent of the next \$90,000 of the total of said items, plus 3 percent of any sum in excess of \$100,000 of the total of said items. There is no markup on the premium portion of overtime labor. For the purposes of the aforesaid percentage overrides, the words "extra work" shall be defined as a complete item of added, modified or changed work as described in the Consultant's written instructions to the Contractor. Such "extra work" may include the work of one or more trades and/or subcontractors or sub-subcontractors and shall include all labor, materials, plant, equipment, tools and all incidentals directly and/or indirectly necessary, related, involved in or convenient to the successful completion of the extra work item. Where the Consultant's aforesaid written instructions to the Contractor involve both an increase and a reduction in similar or related work, the above percentage overrides will be applied only on the amount, if any, the cost of the increased work exceeds the cost of the reduced work.

No overhead and profit shall be retained by the Contractor on the cost of work determined by the method provided in Subparagraph (1)a.

All profit, overhead and expense of whatsoever kind and nature, other than those set forth above in items (i) through (iii), of the Contractor, its subcontractors and sub-subcontractors, are covered by the aforesaid percentage overrides and no additional payment therefor will be made by the University.

The University may make such cost estimate either before or after the extra work is completed by the Contractor.

- c. By determining the actual cost of the extra work in the same manner as in the above subdivision b except that actual costs of the Contractor shall be utilized in lieu of estimated costs. The University shall have the option to utilize this method provided it notifies the Contractor of its intent to do so prior to the time the Contractor commences performance of such extra work.
- (2) Irrespective of the method used or to be used by the University in determining the value of a Change Order or Field Order, the Contractor, within fifteen (15) working days after a request for the same, must submit to the University and the Consultant a detailed breakdown of the Contractor's estimate of the value of the omitted and/or extra work in a format approved by the University.
- (3) Equipment Watch Rental Rate Blue Book (published online by Intertec Penton Media, Inc.) or other published rates as approved by the University in writing, will be utilized for the equipment rental pricing. For the purposes of paragraph (1) hereof, the cost of equipment shall be determined, irrespective of the actual price for any rental or actual cost associated with such equipment as follows: take the monthly rate listed in Equipment Watch and dividing the same by 176 hours to establish an hourly rate and then multiplying such hourly rate by the actual number of

State University of New York  
Construction Agreement

hours that the equipment was used. The Contractor will submit an actual rental invoice, or acceptable quotation from a bonafide equipment rental supplier for rented equipment when equipment is not owned by the Contractor. The equipment rental supplier cannot be an "affiliate" of the Contractor, nor in any way be related to the Contractor. If submitted invoices/quotations are acceptable to the University, the Contractor will be reimbursed the actual rental cost including sales tax and appropriate mark-up. If no listing of rates for an item of equipment is contained in Equipment Watch, the University shall determine the reasonable rate of rental of the particular item of equipment by such other means as it finds appropriate. The edition Equipment Watch to be used shall be that in effect on the date of the receipt of bids for this Agreement. None of the provisions of Equipment Watch shall be deemed referred to or included in this Agreement excepting only the aforesaid monthly rates. To the cost of equipment as determined above, there is to be added the actual cost of gasoline, oil, grease and maintenance required for operation of such equipment and, in the case of equipment utilized only for extra work when, in the opinion of the Consultant, suitable equipment therefor was not available on the site, the reasonable cost of transporting said equipment to and from the site. Notwithstanding the foregoing, if the Consultant should determine that the nature or size of the equipment used by the Contractor in connection with the extra work is larger or more elaborate, as the case may be, than the size or nature of the minimum equipment determined by the Consultant to be suitable for the extra work, the cost of equipment will not be based upon the equipment used by the Contractor but instead will be based on the smallest or least elaborate equipment determined by the Consultant to have been suitable for the performance of the extra work.

- (4) Unless otherwise specifically provided for in a Change Order or Field Order, the compensation specified therein for extra work includes full payment for both the extra work covered thereby and for any damage or expense caused the Contractor by any delays to other work to be done under the Contract resulting from or on account of said extra work, and the Contractor waives all rights to any other compensation for said extra work, damage or expense.

**Section 4.03 Adjustment for Bond and Insurance Premiums**

Upon final acceptance of the work to be performed under this Agreement, the University may adjust the Contract consideration to reflect any changes in the cost of all required Bonds and liability and builder's risk insurance premiums which the Contractor had to pay for on all extra work and would have had to furnish and pay for on all omitted work. Unless such cost is agreed upon by the University and the Contractor, the University may calculate and determine the amount of the adjustment in the Contract consideration by estimating such costs. There is no markup on bond or insurance premium adjustment.

**Section 4.04 Unit Prices**

- (1) Except as otherwise provided in the second paragraph of this Section, the unit prices, set forth on the attached Schedule "I" of this Agreement, will be binding upon both the University and the Contractor in determining the value of omitted and/or extra work, and, in the case of extra work, such unit prices shall be deemed to include all profit, overhead and expenses of whatsoever kind and nature of the Contractor, its subcontractors and sub-subcontractors, and the Contractor agrees that it shall make no claim for any profit, overhead, expense or percentage override in connection therewith.
- (2) Where said Schedule "I" sets forth a unit price for added and/or deducted work, the University shall have the option, whenever it is found that the quantity of changed work varies by more than 15 percent from the quantity that is stated or that can be determined by the Contract Documents at the time of execution thereof, to accept or reject such unit price for the quantity that the changed work varies by more than 15 percent from the stated or determinable quantity. Where a quantity is not specifically stated in the Contract Documents, the University's determination of the amount of said quantity included in the Contract Documents shall determine the applicability of this paragraph. Where the University, pursuant to the foregoing provisions, exercises its aforesaid option, the amount of the increase or decrease in the Contract consideration for the quantity of work which varies by more than 15 percent from the stated or determinable quantity shall be determined in accordance with the provisions of Section 4.02 of the Agreement as if there was no unit price therefor set forth in said Schedule "I".

**Section 4.05 Allowances**

- (1) The Contractor acknowledges that the Contract consideration includes the allowances set forth on the attached Schedule "II" and "III" of this Agreement and, except for quantitative and field order allowances, it agrees to cause the work covered thereby to be done by such contractors for such sums as the University may direct. Where cash allowances are provided, the allowances shall be deemed to include the purchase of the materials and/or equipment and the delivery of same to the job site. Unless otherwise specified in the Contract

State University of New York  
Construction Agreement

Documents, cash allowances do not include the proper installation of the materials and/or equipment or the connection for final utilities thereto; the cost of said installation and/or connection having been included in the amount of the Contract consideration.

- (2) The Contractor acknowledges that the Contract consideration includes such sums for expenses and profit on account of cash allowances as it deems proper and that it shall make no claim for expenses or profit or any percentage override in addition thereto; said items having been included in the amount of the Contract consideration.
- (3) In the event any of the cash allowances listed below are either higher or lower than the cost of having the work done in accordance herewith, the Contract consideration shall be adjusted to reflect such variance, the amount of said adjustment to be the difference between the amount of the allowance and the actual cost of performing the work covered thereby.
- (4) When quantitative allowances are provided, progress payments thereof to the Contractor will be based upon the applicable unit prices set forth on the attached Schedule "I" of the Agreement, subject, however, to the provisions of paragraph (2) of Section 4.04. In the event any of said quantitative allowances are more than or less than the actual quantity of work performed, the Contract consideration shall be adjusted to reflect such variance, the amount of said adjustment to be determined in accordance with the provisions of Sections 4.02, 4.04 and 4.05A of the Agreement.

**Section 4.05A Field Orders**

When the Agreement contains a Field Order Allowance, the bid shall include the amount of such allowance. Said amount shall cover the cost of additional labor, materials and time for contingent activities within the scope of the Agreement as directed and described by the University in writing in a Field Order. The Field Order will include a description of the work and the method for determining the value of such work. The value of the work directed under this allowance will be determined by one or more of the provisions of Section 4.02. If the net cost(s) of all Field Orders issued are more or less than the specified amount of the allowance, the Contract sum will be adjusted by Change Order.

**Section 4.06 Deductions for Unperformed and/or Uncorrected Work**

- (1) Without prejudice to any other rights, remedies or claims of the University, in the event that the Contractor at any time fails or neglects to supply working forces and materials of the proper quantity and quality necessary, in the opinion of the Consultant or the University, to comply with the approved time progress schedule, or fails in any respect to prosecute the work with promptness and diligence or causes by any action or omission the stoppage or delay of or interference with the work of any other contractor having a contract with the University, or fails in the performance of any obligations and responsibilities under this Agreement, then, and in that event, the University, acting itself or through the Consultant, may, upon three (3) working days' notice to the Contractor, either itself provide or have any other contractor, including but limited to the University's Job Order Contracting Program, provide any and all labor or materials or both necessary, in its opinion, to correct any aforesaid deficiency of the Contractor, and the University will thereafter backcharge the Contractor by issuing a Change Order reducing the amount of the Contract consideration for all costs and expenses it incurs in connection with the correction of such deficiency. The Contractor agrees that the University may deduct from any application for payment made by the Contractor, any and all Design Professional, Consultant and/or Construction Management fees and costs incurred by the University together with a markup upon such hard costs in the amount of 15% for services required in connection with the correction of such deficiency(ies).
- (2) Notwithstanding any provisions in the Contract Documents to the contrary, if the University deems it inexpedient to correct work not done in accordance with the Contract or any work damaged as a result thereof, it shall notify the Contractor of such fact and the latter shall not remedy or correct the same. In such event, however, the amount of the Contract consideration shall be decreased by an amount, determined by the University, which is equal to the difference in value of the work as performed by the Contractor and the value of the work had it been satisfactorily performed in accordance with the Contract or which is equal to the cost of performing the corrective work, whichever shall be the higher amount.

**Section 4.07 Liquidated Damages**

In the event that the Contractor shall fail to substantially complete all the work within the time fixed for such completion on page one of this agreement, or within the time to which such completion may have been extended or in the event that

State University of New York  
Construction Agreement

the Contractor abandons the work and the same is not substantially completed within the aforesaid time for such completion, the Contractor must pay to the University as damages for each calendar day of delay in completing the work the amount set forth on page one of the Contractor's proposal, as stated on page one of this agreement. . In view of the difficulty of accurately ascertaining the loss which the University will suffer by reason of delay in completion of the work hereunder, said sum is hereby fixed and agreed as liquidated damages which the University will suffer by reason of such delay and not as a penalty. The University may deduct and retain out of the monies which may become due hereunder to the Contractor the amount of any such liquidated damages and, in case the amount which may become due to the Contractor under the provisions of the Contract may be less than the liquidated damages suffered by the University, the Contractor shall pay the difference, upon demand, to the University.

**Section 4.08 Contract Breakdown**

Prior to the submission of its first application for a progress payment, the Contractor shall present to the University and the Consultant for their approval a detailed schedule showing the breakdown of the Contract consideration. The Contract Breakdown Summary shall be further broken down as required by the Consultant and the University. Such schedule must contain the amount estimated for each part of the work and quantity survey for each part of the work. It shall also list the estimated value of the Contractor's guarantee obligations under the provisions of the Contract Documents, which is hereby fixed at \$5,000 or one-half of one percent (1/2%) of the Contract award amount, whichever is the lesser sum. Such schedule shall be revised by the Contractor until the same shall be satisfactory to the University and the Consultant and shall not be changed after the University and the Consultant have approved the same. The amounts set forth in the schedule will not be considered as fixing the basis for additions to or deductions from the Contract consideration.

**Section 4.09 Prompt Payment Requirements**

- (1) For the purposes of Article XI-A of the State Finance Law, the campus for which the work is being performed is the University's designated payment office. Applications for payment must contain the approval of the Consultant before being submitted to the University.
- (2) Whenever the Consultant's approval of an application for payment is required under the Contract, the Consultant shall have fifteen (15) calendar days, after receipt of such application, to inspect the work before acting on the application.
- (3) Until such time that the Contract is approved by the University, the thirty (30) day period, referred to in Article XI-A of the State Finance Law for the payment of invoices without interest, shall not begin.

**Section 4.10 Progress Payments**

- (1) Unless otherwise provided in the Contract, progress payments will be made as the work progresses upon applications submitted by the Contractor and approved by the Consultant and the University. Payment of such approved applications shall be made by the University within thirty (30) calendar days after such approval has been given.
- (2) The University shall make progress payments to the Contractor on the basis of such approved applications, less a retained amount equal to 5 percent thereof (i.e. retainage) , plus an amount necessary, in the University's judgment, to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged, , together with any back charges and offsets which are deemed necessary or likely to be incurred by the University as a result of any failure by the Contractor to fully, completely, accurately and timely perform its work, which it shall reserve from each such payment until all of the work covered by the Contract has been completed.
- (3) When the University and the Consultant have determined that all the work is substantially completed, or that a substantial portion of the permanent construction has been completed and accepted, the University shall make a progress payment to the Contractor, on the basis of an application submitted by the Contractor and approved by the Consultant and the University, which shall reduce the unpaid amount due to the Contractor under the terms of the Contract, including all monies retained by the University from previous progress payments to the Contractor, to an amount equal to two (2) times the cost, estimated by the Consultant, of performing, in accordance with the Contract, all uncompleted, unaccepted and corrective work, plus an amount necessary, in the University's judgment, to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged. As the remaining items of work are satisfactorily completed or corrected, the University shall make progress payments to the Contractor, on the basis of applications submitted by the Contractor and

State University of New York  
Construction Agreement

approved by the University and the Consultant, covering said items of work less an amount necessary, in the University's judgment, to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged.

**Section 4.11 Applications for Progress Payments**

The Contractor shall prepare all applications for progress payments for work performed, together with supporting data and computations as are deemed necessary by the Consultant to determine the accuracy of the application. The application for payment and all required supporting documentation shall be submitted using the University's prescribed forms. The Contractor shall include with such applications reports detailing actual payments to minority and women-owned businesses who participate on University projects. Failure of the Contractor to submit applications for progress payments, or lack of complete and accurate supporting data, shall be sufficient reason for withholding payment until such omissions or errors are rectified. Unless otherwise directed, such applications, signed and certified as correct by the Contractor, shall be delivered by the Contractor to the Consultant once each month showing the total value of work completed and in place on the last day of the payment period covered by the application.

**Section 4.12 Progress Payments for Materials Delivered to Site**

- (1) Progress payments made in accordance with Section 4.10 shall include a payment for materials and equipment to be furnished and installed under the Contract, after such materials and equipment have been delivered and accepted at the site of the work.
- (2) Materials and equipment for which such progress payment has been made shall not be removed from the site, shall be stored until incorporated into the work in a location approved by the Consultant and shall be adequately protected from fire, theft and vandalism, the effects of the elements and any other damage whatsoever, and shall at all times be available for inspection by the Consultant and the University.

**Section 4.13 Transfer of Title to Materials Delivered to Site**

Title to all supplies and materials to be furnished or provided by the Contractor to the University pursuant to the provisions of the Contract Documents shall immediately vest in and become the sole property of the University upon delivery of such supplies and materials to the site. Notwithstanding such transfer of title, the Contractor shall have the full continuing responsibility to install such materials and supplies, protect them, maintain them in proper condition and forthwith repair, replace and make good any damage thereto without cost to the University until such time as the work covered by the Contract is fully accepted by the University. Such transfer of title shall in no way affect any of the Contractor's obligations under the Contract. In the event that, after title has passed to the University, any of such supplies and materials are rejected as being defective or otherwise unsatisfactory, title to all such supplies and materials shall be deemed to have been transferred back to the Contractor.

**Section 4.14 Progress Payments for Materials Stored Off Site**

- (1) Progress payments made in accordance with Section 4.10 shall include a payment for materials and equipment which are in short and/or critical supply or have been specially fabricated for the Project. Materials and equipment, for which a progress payment is made pursuant to the preceding sentence, shall be stored by the Contractor, after fabrication, until such time as their delivery to the site is required, at a facility and location approved by the Consultant; shall be adequately protected from fire, theft and vandalism, the effects of the elements and any other damage whatsoever; and shall at all times be available for inspection by the Consultant and the University. No progress payment shall, however, be made for said materials and equipment until:
  - a. The Contractor furnishes to the University a bill of sale listing quantity and costs of said materials and equipment f.o.b. point of origin;
  - b. The Consultant shall have inspected said materials and equipment and recommended payment therefor; and
  - c. The Contractor furnishes to the University a builder's risk insurance policy, with the broad form extended coverage endorsement, for said materials and equipment, in an amount equal to 100 percent of the value thereof, which policy shall be maintained, at the sole cost and expense of the Contractor, until said materials and equipment have been incorporated into the Project. The said insurance policy shall contain a provision that the loss, if any, is to be made adjustable with and payable to the University as trustee for the insured, i.e., the University and the Contractor, and a provision that it shall not be changed or cancelled and that it will be

State University of New York  
Construction Agreement

automatically renewed upon expiration and continued in force unless the University is given thirty (30) calendar days written notice to the contrary.

- d. The Contractor shall develop and provide a preventive maintenance log for stored equipment when determined appropriate by the Consultant. The Contractor shall provide timely notification and opportunity for the Consultant and the University to view the Contractor's preventative maintenance efforts.
- (2) Materials and equipment for which a progress payment has been made by the University pursuant to this Section shall be, become and remain the sole property of the University; provided, however, that the Contractor shall have the full continuing responsibility to install such materials and equipment, to deliver it to the site, to protect it, to maintain it in proper condition and to forthwith repair, replace and make good any damage thereto without cost and/or additional time to the University until such time as the work covered by the Contract is fully accepted by the University. Such transfer of title shall in no way affect any of the Contractor's obligations under the Contract.

**Section 4.15 Withholding of Progress Payments**

Notwithstanding anything contained in the Contract to the contrary, the University may withhold payment of all or any part of a progress, final or guarantee payment, in such an amount as it may deem proper to enforce the provisions of the Contract and to satisfy the claims of third parties, when:

- a. The University shall learn of any claim, of whatsoever nature or kind, against the University or the Contractor, which in any way arises or is alleged to arise out of or as a result of or in connection with the performance by the Contractor of the work covered by the Contract or out of or in connection with the Contractor's operations or performance at or in the vicinity of the construction site, that, in the opinion of the University, may not be adequately covered by insurance.

If an action on such claim is timely commenced and the liability of the University and/or the Contractor shall have been established therein by a final judgment of a court of competent jurisdiction, or if such claim shall have been admitted by the Contractor to be valid, the University shall pay such judgment or admitted claim out of the monies retained by it under the provisions of the Contract and return the balance, if any, without interest, to the Contractor.

The University may withhold from the Contractor any payments retained by it until such time as all such claims are either satisfied or barred by law from being presented. At such time the University, upon written demand by the Contractor, shall return to the Contractor the amount so withheld, without interest.

- b. The Contractor has not complied with any lawful or proper direction of the Consultant or the University or their representatives concerning the work covered by the Contract or the performance of the Contract or the production of records as required under the provisions of the Contract.
- c. There exists any of the conditions, listed in Section 2.26, which would allow the University to declare the Contractor in default of the whole or any part of the work.
- d. The Contractor is a foreign contractor and has not furnished satisfactory proof that all taxes due by such Contractor under the provisions of the Tax Law have been paid. The Certificate of the New York State Tax Commission to the effect that all such taxes have been paid shall be conclusive proof of the payment of such taxes. The term "foreign contractor" as used herein means, in the case of an individual, a person who is not a resident of the State of New York; in the case of a partnership, one having one or more partners not a resident of the State; and in the case of a corporation, one not organized under the laws of the State of New York.
- e. The Contractor, upon request of the University at any time after the initial progress payment by the University to the Contractor, fails to furnish the University with such documentary evidence that the University may deem necessary to prove to it that material and labor paid for by the University under previous applications for payment submitted have been paid for by the Contractor and that there are no outstanding claims or liens in connection therewith or fails to satisfy the University that the Contractor, with good cause, has sufficiently provided for the payment and/or satisfaction of claims for said material and labor.

State University of New York  
Construction Agreement

**Section 4.16 Lien Law**

The attention of the Contractor is specifically called to the provisions of the Lien Law of the State of New York, wherein funds received by a Contractor for a public improvement are declared to constitute trust funds in the hands of such Contractor to be applied first to the payment of certain claims.

**Section 4.17 Substitution of Securities for Retainage**

Any time after 50 percent of all the work has been completed, the University, if the progress and performance of the work is satisfactory to it, on request of the Contractor, will allow the Contractor to withdraw up to 50 percent of the aforesaid amount retained by the University by depositing with the Comptroller of the State of New York government securities, of the type and kind specified in Section 139 of the State Finance Law, having a market value not exceeding par, at the time of deposit, equal to the amount so withdrawn. The Comptroller of the State of New York shall, from time to time, collect all interest or income on the obligations so deposited, and shall pay the same, when and as collected, to the Contractor. If the deposit be in the form of coupon bonds, the coupons as they respectively become due shall be delivered to the Contractor; provided, however, that the Contractor shall not be entitled to interest or coupons or income on any of the deposited securities, the proceeds of which have or will be used or applied by the University. In the event that the Contractor does not, in accordance with the terms and provisions of the Contract, comply with and fulfill all of its obligations and responsibilities thereunder, the Comptroller of the State of New York shall have the right to sell, assign, transfer or otherwise dispose of the aforesaid securities and the University shall have the right to use and apply all or any part of the monies obtained by the Comptroller of the State of New York from such a sale, assignment, transfer or disposition or from the collection of interest or income from said securities to the performance and fulfillment of said obligations and responsibilities. Notwithstanding the foregoing, when the University makes a payment under Section 4.10 (3) of the Agreement, it will return to the Contractor, as part of such payment, its substituted securities, and thereafter all retention of the University shall be in funds and not in substituted securities.

**Section 4.18 Final Payment**

Upon acceptance of all the work, except for the Contractor's guarantee obligations under Section 2.25 of the agreement and the Contractor's guarantee obligations under any provision of the Specifications, the Contractor shall prepare and submit to the University and the Consultant, for their approval, a final application for payment, which the University, within thirty (30) calendar days after its approval of same, shall pay. Such application and payment shall be in an amount equal to 100 percent of the Contract consideration, less:

- a. All previous payments by the University to the Contractor;
- b. All deductions authorized to be made by the University under the Contract; and
- c. An amount necessary, in the University's judgment, to satisfy any claims, liens or judgments against the Contractor which have not been suitably discharged.
- d. The Contractor shall not be entitled to any interest on the monies retained by the University pursuant to Subdivision c of Section 4.18 of the Agreement.

**Section 4.19 Acceptance of Final Payment**

- (1) The acceptance by the Contractor, or by any one claiming by or through it, of the final payment shall, except with respect to the amount retained by the University pursuant to the provisions of subdivisions b and c of Section 4.18 of the Agreement, constitute and operate as a release to the University from any and all claims of any liability for anything theretofore done or furnished for or relating to or arising out of the work covered by the Contract and for any prior act, neglect or default on the part of the University or any of its trustees, officers, agents or employees in connection therewith.
- (2) Should the Contractor refuse to accept the final payment as tendered by the University or should the Contractor refuse to execute the final application for payment without protest and without reserving any rights or claims against the University, it shall constitute a waiver of any right to interest on the amount of the payment so tendered and/or on the amount set forth in said final application for payment.

**Section 4.20 Contractor Limited to Money Damages**

Inasmuch as the Contractor can be compensated adequately by money damages for any breach of the Contract which may be committed by the University, the Contractor agrees that no default, act or omission of the University shall constitute a material breach of the Contract entitling it to cancel or rescind the same or to suspend or abandon

State University of New York  
Construction Agreement

performance thereof; and it hereby waives any and all rights and remedies to which it might otherwise be or become entitled to because of any wrongful act or omission of the University or its representatives, saving only its right to money damages.

**Section 4.21 No Estoppel or Waiver**

- (1) The University shall not be precluded or estopped by any inspection, acceptance, application for payment or payment, final or otherwise, issued or made under the Contract or otherwise issued or made by it, the Consultant, or any trustee, officer, agent or employee of the University, from showing at any time the true amount and character of the work performed, or from showing that any such inspection, acceptance, application for payment or payment is incorrect or was improperly issued or made; and the University shall not be precluded or estopped, notwithstanding any such inspection, acceptance, application for payment or payment, from recovering from the Contractor any damages which it may sustain by reason of any failure on its part to comply strictly with the Contract and any monies which may be paid to it or for its account in excess of those to which it is lawfully entitled.
- (2) Neither the acceptance of all or any part of the work covered by the Contract; nor any payment therefor; nor any order or application for payment issued under the Contract or otherwise issued by the University, the Consultant, or any trustee, officer, agent or employee of the University; nor any permission or direction to continue with the performance of the Contract before or after its specified completion date; nor any performance by the University of any of the Contractor's duties or obligations; nor any aid lent to the Contractor by the University in its performance of such duties or obligations; nor any delay or omission by the University to exercise any right or remedy accruing to it under the terms of the Contract or existing at law or in equity or by statute or otherwise; nor any other thing done or omitted to be done by the University, its trustees, officers, agents or employees; shall be deemed to be a release to the Contractor or its sureties from any obligations, liabilities or undertakings in connection with the Contract or the Performance Bond or a waiver of any provision of the Contract or of any rights or remedies to which the University may be entitled because of any breach thereof, excepting only a written instrument expressly providing for such release or waiver. No cancellation, rescission or annulment hereof, in whole or as to any part of the Contract, because of any breach hereof, shall be deemed a waiver of any money damages to which the University may be entitled because of such breach. No waiver by the University of any breach of the Contract shall be deemed to be a waiver of any other or any subsequent breach.

**Section 4.22 Limitation of Actions**

- (1) No action or proceeding shall be maintained by the Contractor, or anyone claiming under or through the Contractor, against the University, or its trustees, officers, agents or employees, upon any claim arising out of or based upon the Contract or any breach thereof or by reason of any act or omission or requirement of the University, or its trustees, officers, agents or employees, unless:
  - a. Such action or proceeding shall be instituted in the Court of Claims in the State of New York.
  - b. The Contractor or the person claiming under or through it shall have strictly complied with all requirements relating to the giving of notices and information with respect to such claims; and shall have provided the University with an electronic version of any claims, including all required information and copies of all contractually required notices that the Contractor provided to the University and the Consultant throughout the duration of the Contract;
  - c. Such action or proceeding by the Contractor shall be commenced within eighteen months after the date of substantial completion set by the University or its Consultant and issued in writing to the Contractor. Any action or proceeding not commenced within this time frame shall be dismissed with prejudice.
  - d. If the Contract is terminated or the Contractor declared in default by the University, such action is commenced within six (6) months after the date of such termination or declaration of default by the University.
  - e. The Parties shall use good faith efforts to amicably resolve any dispute arising under this Agreement. If the Parties are unable to amicably resolve the dispute within thirty (30) calendar days, then either Party may seek legal or equitable redress.



State University of New York  
Construction Agreement

- (2) Notwithstanding anything in the laws of the State of New York to the contrary, the Contractor, or anyone claiming under or through the Contractor, shall not be entitled to any additional time to begin anew any other action if an action commenced within the times herein specified is dismissed or discontinued for any reason whatsoever.

**Section 4.23 Electronic Payments**

The Contractor shall provide complete and accurate payment applications in order to receive payment. Payment applications submitted must contain all information and supporting documentation required by the University. Payment for applications submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the University's sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the Office of the State Comptroller's website at [www.osc.state.ny.us/epay/index.htm](http://www.osc.state.ny.us/epay/index.htm); by email at [epunit@osc.state.ny.us](mailto:epunit@osc.state.ny.us); or by telephone at 518-474-4032. The Contractor acknowledges that it will not receive payment on any invoices submitted under this Agreement if it does not comply with the State Comptroller's electronic payment procedures, except where the University has expressly authorized payment by paper check as set forth above.

**Article V**  
**Protection of Rights and Property**

**Section 5.01 Accidents and Accident Prevention**

The Contractor shall at all times take reasonable precautions for the safety of persons engaged in the performance of the work. The Contractor shall comply fully with all applicable provisions of the laws of the State of New York and OSHA and with all valid rules and regulations thereunder. The Contractor's attention is specifically called to the applicable rules and regulations, codes and bulletins of the New York State Department of Labor.

**Section 5.02 Adjoining Property**

The Contractor shall be required to protect all the adjoining property and to repair or replace any such properties damaged or destroyed by it, its employees or subcontractors through, by reason of or as a result of activities under, for or related to the Contract.

**Section 5.03 Emergencies**

- (1) In case of an emergency which threatens loss or injury to persons or property, the Contractor will be allowed to act, without previous instructions from the Consultant or the University, in a diligent manner, to the extent required to avoid or limit such loss or injury, and it shall notify the Consultant and the University immediately thereafter of the action taken by it and of such emergency. Where the Contractor has not taken action but has notified the Consultant or the University of an emergency which threatens loss or injury to persons or property, it shall act in accordance with the instructions and/or authorization by the Consultant or the University.
- (2) In the event that the Contractor performs extra work in accordance with the preceding paragraph, it will be compensated therefor in accordance with the provisions of Section 4.02.

**Section 5.04 Fire Safety**

- (1) If the existing building is to be partially occupied during the course of the project, all existing exits except those shown for closure, fire walls, fire barriers and fire protection systems shall be continuously maintained in the occupied phases in compliance with the Fire Code of New York State and as required by NFPA 241 and as recommended in its Annex A, Explanatory Material, or other measures must be taken which in the opinion of the Consultant will provide equal safety. Those portions occupied by the campus must be available for their use 24 hours a day, seven days a week during the contract period unless otherwise scheduled in these documents. Comply with all applicable State and Federal codes and regulations. Prior to removal of existing fire walls, fire barriers and fire protection systems, if such removal is part of the work, install equivalent temporary fire walls, fire barriers and fire protection systems. The cost of all labor, fire watches, variances, materials, installations, maintenance and removal of such temporary fire protection systems or modifications to the existing systems are the responsibility of the Contractor. Install permanent fire walls, fire barriers and fire protection systems, if provided as part of the work, as soon as practical and as required by NFPA 241 and as recommended in its Annex A, Explanatory Material.

State University of New York  
Construction Agreement

- (2) Solid fuel salamanders and heaters shall not be used by the Contractor or any of its subcontractors. All other salamanders used by the Contractor or any of its subcontractors shall require constant attendance of competent persons on each floor where in use.
- (3) All temporary fabric used by the Contractor or any of its subcontractors for curtains or awnings shall be either non-combustible or flame retarded so that it will not burn or propagate flame.

**Section 5.05 Risks Assumed by Contractor**

- (1) To the fullest extent permitted by law, the Contractor solely assumes the following distinct several risks whether they arise from acts or omissions (whether negligent or not and whether supervisory or otherwise) of the Contractor, of the University, of third persons or from any other cause, including unforeseen obstacles and difficulties which may be encountered in the prosecution of the work covered by the Contract, whether such risks are within or beyond the control of the Contractor and whether such risks involve a legal duty, primary or otherwise, imposed upon the State University Construction Fund, the Dormitory Authority of the State of New York, the State of New York or the State University of New York, excepting only risks which arise from defects in maps, plans, designs or Specifications prepared, acquired or used by the Consultant or the University, from the negligence of the University, its agents or employees or from affirmative acts of the, State University Construction Fund, the Dormitory Authority of the State of New York, the State of New York or the State University of New York or their trustees, officers, agents or employees committed with intent to cause the loss, damage and injuries herein below set forth:
  - a. The risk of loss or damage, direct or indirect, to the work covered by the Contract or to any plant, equipment, tools, materials or property furnished, used, installed or received by the University or by the Contractor or any subcontractor, material man or worker performing services or furnishing materials for the work covered hereunder. The Contractor shall bear such risk of loss or damage until the work covered by the Contract has been finally accepted by the University or until completion of removal of such plant, equipment, tools, materials or property from the construction site and the vicinity thereof, whichever event occurs last. In the event of such loss or damage, the Contractor shall forthwith repair, replace and/or make good any such loss or damage without cost to the University.
  - b. The risk of claims, just or unjust, by third persons against the Contractor, the State University Construction Fund, the Dormitory Authority of the State of New York, the State of New York, or the State University of New York on account of wrongful death, bodily injuries and property damage, direct or consequential, loss or damage of any kind whatsoever arising or alleged to arise out of or as a result of or in connection with the performance by the Contractor of the work covered by the Contract (whether actually caused by or resulting from the performance of the Contract) or out of or in connection with the Contractor's operations or presence at or in the vicinity of the construction site.
- (2) To the fullest extent permitted by law, the Contractor shall indemnify and save harmless the State University Construction Fund the Dormitory Authority of the State of New York, the State of New York and the State University of New York, their trustees, officers, agents or employees against all claims described above and for all costs and expenses incurred by them in the defense, settlement or satisfaction thereof, including attorneys' fees and court costs. If so directed, the Contractor shall at its own expense defend against such claims, in which event it shall not, without obtaining express advance permission from Counsel of the University, raise any defense involving in any way jurisdiction of the tribunal over the University, governmental nature of the University or the provisions of any statutes respecting suits against the University.
- (3) Neither the University's final acceptance of the work to be performed hereunder nor the making of any payment shall release the Contractor from its obligations under this Section. The enumeration elsewhere in the Contract of particular risks assumed by the Contractor or of particular claims for which it is responsible shall not be deemed to limit the effect of the provision of this Section or to imply that it assumes or is responsible for only risks or claims of the type enumerated.

**Section 5.06 Insurance Requirements**

- (1) General Provisions

State University of New York  
Construction Agreement

- a. Prior to the execution of the Agreement, the Contractor shall at its sole cost and expense, procure and furnish to the University a Certificate of Insurance and required endorsements in a form satisfactory to the University demonstrating that the Contractor has complied with the specific provisions of this Article and the Agreement, The Contractor shall maintain in force and effect at all times during the Agreement from Notice to Proceed until Final Acceptance, or as may otherwise be required by this Article and the Agreement, policies of insurance covering all operations under the Agreement whether performed by the Contractor or its subcontractors as herein set forth.
- b. All insurance required by the Agreement shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements of the Agreement shall be an admitted carrier approved by the New York State Department of Financial Services to issue insurance in the State of New York or meet such other requirements as may be acceptable to the University in its sole and exclusive discretion. If during the duration of coverage on the Agreement, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy with insurance that meets the requirements set forth herein.

(2) Submission of Insurance

- a. **Coverage Types.** The types of insurance coverage and policy limits required from the Contractor pursuant to the Agreement are specified in Paragraph (3) Specific Coverage below and limits outlined in Schedule A attached hereto ("Schedule A").
- b. **Policy.** Except as may be otherwise specifically provided herein or agreed to in writing by the University, policies of insurance must be maintained on an occurrence basis at all times during the Agreement from Notice to Proceed until Final Acceptance, or as may be otherwise required by this Article and the Agreement, with limits not less than those set forth in Schedule A and as required by the terms of the Agreement, or as required by law, whichever is greater. If such insurance contains an aggregate limit, it shall apply separately on a per project basis.
- c. **Certificates of Insurance.** The Contractor shall provide the University a Certificate or Certificates of Insurance, on the appropriate Certificate of Liability Insurance ACORD form, as well as the ACORD 855 NY form for liability insurance including required policy endorsements, in accordance with New York Insurance Law and submitted directly by the insurance broker or agent to the University, before commencing any work under the Agreement. The certificate C105.2 or the U26.3 (State Insurance Fund) are the only acceptable proof of coverage for Worker's Compensation. The DB120.1 is the only acceptable proof of coverage for Disability Benefits. Certificates must reference the NAIC number of the issuing company, policy number, effective dates of coverage, policy limits consistent with Schedule A and the Agreement requirements, name the Additional Insureds, and shall name the University as the Certificate Holder.
- d. **Primary Coverage.** The liability and protective policies of insurance shall provide primary and non-contributory coverage to the Additional Insureds required in Section 5.06(2)(h) below for any claim arising from the Contractor's work under the Agreement, or because of the Contractor's activities. Any other insurance maintained by the University or Additional Insureds shall be in excess of and shall not contribute to the Contractor's insurance or subcontractor's insurance, regardless of the "other insurance" clause contained in the University's or Additional Insured's policy of insurance, if any. A copy of the endorsement reflecting this requirement may be requested by the University.
- e. **Policy Renewal/Expiration.** Unless otherwise agreed to in writing by the University, all insurance policies must have a policy period of at least one year. Not less than five (5) business days prior to the expiration date or renewal date of the policy for insurance, the Contractor shall supply the University with updated replacement certificates of insurance and required endorsements. The Contractor shall give written notice to the University of any letter or notification that cancels, materially changes, or non- renews the policy and the Contractor shall require the insurance carrier(s) to copy the University on any letter or notification that cancels, materially changes, or non- renews the policy.

Unless otherwise agreed to in writing by the University, policies shall be written to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) calendar days' prior,

State University of New York  
Construction Agreement

written notice except for non-payment, in which case notice shall be provided as required by law from the insurance carrier to the University. In addition, if required by the University, the Contractor shall deliver to the University within three (3) business days of such request a copy of any or all certificates of insurance and required endorsements not previously provided.

If, at any time during the Agreement, the University determines that the insurance as required is not in effect as per the terms of the Agreement, or proof thereof is not provided to the University, or the Contractor has otherwise failed to strictly adhere to the provisions of this Article, the University may withhold further Agreement payments and shall have the option to (i) direct the Contractor to stop work with no additional cost or extension of time due on account thereof; or (ii) treat such failure as an event of default under Section 2.26 of the Agreement..

With exception of the A.M. Best rating requirements, if at any time the coverage provisions and limits of the policies of insurance required herein do not meet the provisions and limits set forth in Schedule A and the Agreement, the Contractor shall immediately cease work on the project site. Further, the Contractor will not be allowed access to the project site without providing proof of proper insurance. The Contractor shall not resume work on the project until permitted to do so by the University. Any delay or time lost as a result of the Contractor not having insurance or providing proof thereof as required by this Article and the Agreement shall not give rise to a delay claim or any other claim by the Contractor against the University. If required by the University, the Contractor shall deliver to the University within fifteen (15) business days of such request, full and complete copies of any or all policies of insurance and endorsements relating to the project that were not previously provided, certified by the insurance carrier as true and complete.

- d. **Self-Insured Retention / Deductibles.** Certificates must disclose any Deductible, Self-Insured Retention, Aggregate Limit or any exclusion to the policy that materially changes the coverage required by the Agreement, and Deductibles or Self-Insured Retentions above \$25,000 shall be subject to approval from the University. The Contractor shall be solely responsible for all claim expenses and loss payments within the Deductible or Self-Insured Retention.
- e. **Subcontractors.** Should the Contractor engage subcontractors, the Contractor shall impose on those entities the general insurance requirements of this Article and the Agreement. Required insurance limits shall be determined commensurate with the work of the subcontractor. The Contractor shall maintain the subcontractor certificates of insurance and required endorsements on file which shall be delivered to the University within three (3) business days of such request. If required by the University, the Contractor shall deliver to the University within fifteen (15) business days of such request, full and complete copies of any or all subcontractor policies of insurance and endorsements relating to the project that were not previously provided, certified by the insurance carrier as true and complete.
- f. **Additional Insureds.** The Contractor shall cause to be included in each of the liability insurance policies coverage for on-going and completed operations naming as Additional Insureds, The People of the State of New York, the State University of New York, the Dormitory Authority of the State of New York, the Fund, other such entities as named in Schedule A, and their officers, agents, and employees ("Additional Insureds"). An Additional Insured Endorsement evidencing such coverage shall be provided to the University prior to the commencement of the Agreement. Additional Insured protection afforded must contemplate on-going and completed operations, and the additional insured protection for products/completed operations must remain in place for three years after Final Acceptance. For Contractors who have Self-Insured Retention, the Contractor shall be obligated to defend and indemnify the above-named Additional Insureds with respect to Commercial General Liability insurance and Business Automobile Liability insurance, in the same manner that the Contractor would have been required to pursuant to this Article had the Contractor obtained such insurance policies.
- g. **Waiver of Subrogation.** Unless otherwise agreed to in writing by the University, with the exception of Disability policies, all policies of insurance must be endorsed to provide that there shall be no right of subrogation against the State of New York, the State University of New York, the Dormitory Authority of the State of New York, the Fund, the Additional Insureds, and their officers, agents and employees. To the extent that any of the policies of insurance prohibit such a waiver of subrogation, the Contractor shall secure the necessary permission to make this waiver.

(3) Specific Coverage

State University of New York  
Construction Agreement

The Contractor shall obtain and maintain in full force and effect, the following insurance with limits not less than those described in Schedule A and as required by the terms of the Agreement, or as required by law, whichever is greater:

- a. **Commercial General Liability Insurance.** A Commercial General Liability (“CGL”) insurance policy with coverage that shall include, but not be limited to, coverage for bodily injury, property damage, personal/advertising injury, premises liability, independent contractors/ subcontractors, blanket contractual liability including tort liability of another assumed in contract, liability arising from all work and operations under the Agreement, defense and indemnification obligations, including those assumed under the Agreement, cross liability coverage for Additional Insureds, products/completed operations for a term no less than three years commencing upon Final Acceptance, explosion, collapse, and underground hazards, contractor means and methods, and liability resulting from Section 240 or Section 241 of the NYS Labor Law. Such policy shall be written on ISO Occurrence form CG 00 01 or a substitute form that is acceptable to the University, providing equivalent coverage.

The General Aggregate limit included in the CGL insurance shall apply separately on a per project basis at the limits set forth herein in Schedule A.

Insurance policies that remove or restrict blanket contractual liability located in the “insured contract” definition (as stated in Section V, Number 9, Item f in the ISO CGL policy) so as to limit coverage against claims that arise out of the work under the Agreement, or that remove or modify the “insured contract” exception to the employers liability exclusion, or that do not cover the Additional Insureds for claims involving injury to employees of the Named Insured or subcontractors, are not acceptable.

In the event any work under the Agreement involves activity on or within 50 ft. of railroad property or a railroad right-of-way or requires entrance upon a railroad property or railroad right-of-way, or requires an assignment of a Railroad employee, any exclusion for such work must be deleted. In addition, the Contractor shall otherwise fully comply with Section 5.06 (3)h below. For purposes of this paragraph, a subway is also a railroad.

- b. **Comprehensive Business Automobile Liability Insurance.** A Commercial Automobile Liability insurance policy at the limits set forth herein in Schedule A covering liability arising out of the use of any motor vehicle in connection with the Agreement, 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. If the Agreement involves the removal of hazardous waste from the project site or otherwise transporting Hazardous Materials, pollution liability coverage for covered autos shall be provided.
- c. **Workers’ Compensation. New York State Workers’ Compensation** (including occupational disease) and Employer’s Liability insurance coverage during the life of the Agreement for the benefit of the Contractor’s and its subcontractors’ employees as are required to be covered by the New York State Workers’ Compensation Law.

In the event any of the work under the Agreement involves activity on or near a shoreline or on or near navigable waterways or when any part of the work under the Agreement is connected to water related activities, an endorsement to the Workers’ Compensation policy or the Protection & Indemnity policy providing coverage for all of the Contractor’s and its subcontractors’ employees under the Jones Act and the US Longshore and Harbor Workers’ Compensation Act will be required and shall be delivered to the University within three (3) business days of such request. A waiver of subrogation in favor of the Additional Insureds must be included on the policy. In addition, the Contractor shall otherwise fully comply with Section 5.06(3)g below.

Evidence of Workers’ Compensation and Employer’s Liability coverage must be provided to the University on forms specified by the Chairman of the New York State Workers’ Compensation Board.

- d. **Disability Benefits.** Disability coverage during the life of the Agreement for the benefit of the Contractor’s and its subcontractors’ employees as are required to be covered by the New York State Disability Benefits Law.

State University of New York  
Construction Agreement

Evidence of New York State Disability Benefits coverage must be provided to the University on forms specified by the Chairman of the New York State Workers' Compensation Board.

- e. **Umbrella and Excess Liability.** When the limits of the CGL, Auto, and/or Employers Liability policies procured are insufficient to meet the limits specified in Schedule A, the Contractor 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. Any insurance maintained by the University or Additional Insureds shall be considered in excess of and shall not contribute with any other insurance procured or maintained by the Contractor including primary, umbrella and excess liability regardless of the "other insurance" clause contained in either party's policy.
- f. **Contractor's Pollution Liability.** If the Agreement involves abatement, handling, removal, repair, replacement, enclosure, encapsulation and/or disposal of any pollutants, which includes but is not limited to, petroleum, petroleum products, Hazardous Materials or substances including asbestos, lead, mercury, PCBs, fungus and those as defined by applicable State and federal laws and regulations (collectively referred to as "Hazardous Activities"), the Contractor shall procure, or otherwise obtain through an approved subcontractor, and maintain in full force and effect throughout the term of the Agreement, from Notice to Proceed and for three years after Final Acceptance, Contractor's Pollution Liability with limits as set forth in Schedule A, providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit, or proceedings against the University or Additional Insureds arising from the Contractor's or its subcontractors' work under the Agreement.

In addition, in the event the Contractor or any subcontractor is engaged in Hazardous Activities related to the Agreement, the Contractor or subcontractor shall, to the fullest extent permitted by law, hold harmless and indemnify the Additional Insureds and their trustees, officers, agents or employees, for any claims or liabilities in connection with illness or sickness arising from work performed, not performed, or which should have been performed. The Contractor shall have said hold-harmless and indemnification conditions stipulated in all contracts with subcontractors.

- g. **Marine General Liability, Protection & Indemnity, Hull & Machinery, Jones Act and United States Longshore and Harbor Workers' Act Coverage.** In the event any of the work under the Agreement involves activity on or near a shoreline or on or near navigable waterways or when any part of the work under the Agreement is connected to water related activities (collectively referred to as "Marine Operations"), Marine General Liability, Protection & Indemnity and Hull and Machinery coverage is required. Hull and Machinery coverage shall be provided for the total value of the watercraft and equipment used. The Contractor shall obtain Marine General Liability and Protective and Indemnity Liability Insurance for all Marine Operations relating to the Agreement at the limits set forth herein in Schedule A. Any endorsements that eliminate or minimize coverage for claims related to the imposition of New York Labor Law are prohibited. Certificate of Liability Insurance must be provided that certifies the required coverage is in place and must be accompanied by an ACORD 855 form or its equivalent.
- h. **Railroad Protective Liability.** In the event any work under the Agreement involves activity on or within 50 ft. of railroad property or a railroad right-of-way, or requires entrance upon a railroad property or railroad right-of-way, or requires an assignment of a Railroad employee, the Contractor shall provide and maintain a Railroad Protective Liability ("RPL") Insurance Policy in the amount required by the respective railroad as set forth herein in Schedule A. For purposes of this paragraph, a subway is also a railroad.

The RPL policy must name the Railroad as the Named Insured. No Additional Insureds may be listed on the RPL policy and the definition of "physical damage to property" must be amended to mean direct and accidental loss of or damage to "all property of any Named Insured and all property in any Named Insured's care, custody or control."

State University of New York  
Construction Agreement

Evidence of RPL must be provided to the University on a Certificate of Insurance, and a detailed Binder pending issuance of the policy, or on an ISO-RIMA or equivalent form approved by the Railroad and meet any other requirements as specified by the Railroad and/or the University."

**Section 5.07 Builder's Risk**

- (1) The Contractor shall procure and maintain, at its own cost and expense, until final acceptance of all work covered by this Agreement or until the Project has been turned over for use by the State University of New York, whichever event occurs earlier, a builder's risk insurance policy covering all risks, with fire, extended coverage, vandalism and malicious mischief coverage. In the event the loss occurs at an occupied facility, the policy shall permit occupancy without the consent of the insurance company. The policy shall cover the cost of removing debris, including demolition as may be legally necessary by operation of any law, ordinance, or regulation, and property of the State held in their care, custody and/or control.
- (2) The policy shall be in an amount equal to the Project's insurable value, i.e., the Contract consideration less the cost of the Contractor's Performance and Labor and Material Bonds; the cost of trees, shrubbery, lawn grass, plants and the maintenance of the same; the cost of demolition; the cost of excavation; the cost of foundations, piers or other supports which are below the undersurface of the lowest basement floor, or where there is no basement, which are below the surface of the ground, concrete and masonry work; the cost of underground flues, pipes or wiring; the cost of earthmoving, grading and the cost of paving, roads, walks, parking lots or athletic fields; and the cost of bridges, tunnels, dams, piers, wharves, docks, retaining walls and radio and/or television towers and antennas.
- (3) The policy may contain a provision for a \$500 deductible for each loss to a Project having an insurable value of less than \$1,500,000 and a \$1,000 deductible for each loss to a Project having an insurable value of \$1,500,000 or more.
- (4) The University, the Contractor and its subcontractors, as their interests may appear, shall be named as the parties insured under said policy.
- (5) The Contractor shall have the sole responsibility to promptly report any loss to the insurer and/or its representatives and to furnish the latter with all necessary details relating to the occurrence of the loss and the amount thereof. The University, the Contractor and all subcontractors of the Contractor waive all rights, each against the others, for damages caused by fire or other perils covered by insurance provided under the terms of this Section, except such rights as they may have to the proceeds of insurance received; provided, however, this waiver shall not apply to any manufacturer, supplier or similar agent under any guarantee or warranty.
- (6) The Contractor shall not violate or permit to be violated any condition of such policy and shall at all times satisfy the fire safety requirements of the University and the insurance company issuing the same.
- (7) The procurement and maintenance of said policy shall in no way be construed or be deemed to relieve the Contractor from any of the obligations and risks imposed upon it by this Agreement or to be a limitation on the nature or extent of such obligations and risks.
- (8) Not less than thirty calendar days prior to the expiration date or renewal date, the Contractor shall supply the University with an updated replacement certificate of insurance and endorsements. The Contractor shall advise the University of any letter or notification that cancels, materially changes, or non- renews the policy and Contractor shall require the insurance carrier(s) to copy the University on any letter or notification that cancels, materially changes, or non- renews the policy. Before the Contractor shall be entitled to have any progress payment rendered on account of the work which is to be insured pursuant to this Section, it shall furnish to the University a certificate in duplicate of the insurance herein required. Such insurance must be procured from an insurance carrier approved by the University, licensed or authorized to do business in the State of New York and rated at least "A-" by A.M. Best Company.

**Section 5.08 Effect of Procurement of Insurance**

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

State University of New York  
Construction Agreement

**Section 5.09 No Third Party Rights**

Nothing in this Section or in this Agreement shall create or give to third parties, except the Dormitory Authority of the State of New York, the State of New York and the State University Construction Fund any claim or right of action against the Contractor, the Consultant, the State University of New York, the State University Construction Fund, the Dormitory Authority of the State of New York, or the State of New York and beyond such as may legally exist irrespective of this Section or this Agreement.

**Article VI**

**Minority and Women's Business Enterprises (MWBEs) / Equal Employment Opportunity (EEO) Provisions**

The University is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-145 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.

The requirements for the MWBE and EEO programs are set forth in "Exhibit A-1" which is attached hereto and made a part hereof, and shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein and, in the event any such provision is not inserted or is not correctly inserted, then, upon the application of either party, this Agreement shall forthwith be physically amended to make such insertion or correction.

**Article VII**

**Provisions Required by Law**

**Section 7.01 Provisions Deemed Inserted**

Each and every provision required by law to be inserted in the Contract, including, but not limited to, the applicable provisions set forth in Exhibit "A" which is attached hereto and made a part hereof, shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein and, in the event any such provision is not inserted or is not correctly inserted, then, upon the application of either party, this Agreement shall forthwith be physically amended to make such insertion or correction.

**Section 7.02 Wage Rates**

The Contractor shall post the appropriate prevailing wage schedules in a conspicuous place at the construction site. The Department of Labor shall provide the Contractor with posters relating to prevailing wage rates and same shall be displayed by the Contractor in a conspicuous place at the construction site. The Contractor shall also distribute wallet cards, to be provided by the Department of Labor, to all workers engaged at the construction site containing information relating to wage rates and telephone numbers to call if a worker believes his or her rights are being violated. The Contractor shall provide each worker with a written notice, informing them of the applicable prevailing wage requirements, and the Contractor must obtain a signed statement or declaration from such worker attesting to the fact that he or she has been given this information. Further, the Contractor is required to keep certified copies of its payrolls at the construction site.

**Section 7.03 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, in a court of competent jurisdiction, 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, in a court of competent jurisdiction. Consultant agrees to submit itself to such courts' jurisdiction.

**Article VIII**

**Vendor Responsibility**

- (1) The Contractor shall at all times during the Agreement term remain responsible. The Contractor shall provide the University with written notice as required by this Article of any issues impacting its responsibility, which shall minimally include updated responses to the it's filed vendor responsibility questionnaire. The Contractor agrees, if requested by the University, 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.



**State University of New York**  
**Construction Agreement**

- (2) The University, at its sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when the University discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Agreement activity may resume at such time as the University issues a written notice authorizing a resumption of performance under the Agreement.
- (3) Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate University officials or staff, the Contractor may be terminated by the University at the Contractor's expense where the Contractor is determined by the University to be non-responsible. In such event, the University may complete the contractual requirements in any manner that the University may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall termination of the Contract by the University be deemed a breach by the University thereof, nor shall the University be liable for any damages or lost profits or otherwise, which may be sustained by Contractor as a result of such termination.

**Article IX**  
**Use of Service-Disabled Veteran-Owned Business Enterprises in Contract Performance**

Article 17-B of New York State Executive Law acknowledges that Service-Disabled Veteran-Owned Businesses (SDVOBs) strongly contribute to the economies of the State and the nation. As defenders of our nation and in recognition of their economic activity in doing business in New York State, the Contractor for the Project and Work defined in this Agreement, agrees to, at no additional cost to the University, fully comply and cooperate with the University's implementation of New York State Executive Law Article 17-B and provide opportunities for SDVOBs in the fulfillment of the requirements of this Agreement. SDVOBs can be readily identified on the directory of certified businesses at: [http://www.ogs.ny.gov/Core/docs/CertifiedNYS\\_SDVOB.pdf](http://www.ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf).

State University of New York  
Construction Agreement

In accordance with the Chapter 17 of the Laws of 2023 certain University contracts are subject to review by the Office of the State Comptroller. As such a contract, the State shall have no liability under this Agreement and this Agreement is not valid, effective, or binding until it has been approved by the Office of the State Comptroller and filed in their office.

This Agreement may be amended only upon the mutual written consent of the Parties, and with the approval of the New York Attorney General and the Office of the State Comptroller if such approval is required.

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

*Agency Certification:*

*In addition to the acceptance of this contract, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.*

Contract Number: **\*Insert Contract Number\***

**\*Insert Contractor Name\***

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

Print: \_\_\_\_\_

Title: \_\_\_\_\_

**STATE UNIVERSITY OF NEW YORK**

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

Print: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED BY ATTORNEY GENERAL:**

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

By:

**APPROVED BY OFFICE OF THE STATE  
COMPTROLLER:**

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

By:

State University of New York  
Construction Agreement

**ACKNOWLEDGMENTS**

(ACKNOWLEDGMENT BY AN INDIVIDUAL)

STATE OF NEW YORK    )  
                                      ) ss.  
COUNTY OF                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 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 A PARTNERSHIP)

STATE OF NEW YORK    )  
                                      ) ss.  
COUNTY OF                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, 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  
themselves depose and say that they are a member of the firm of \_\_\_\_\_,  
consisting of themselves and \_\_\_\_\_, that he/she executed the foregoing  
instrument in the firm name \_\_\_\_\_, and that he/she had  
authority to sign the same, and that 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 A CORPORATION)

STATE OF                        )  
                                      ) ss.  
COUNTY OF                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally came  
\_\_\_\_\_, to me known, who, being duly sworn, did  
depose and say that he/she reside in \_\_\_\_\_; that he/she is the  
\_\_\_\_\_ of the \_\_\_\_\_, the  
corporation described in and which executed the above instrument; and that he/she/they signed his/her/their  
name(s) thereto by authority of the board of directors of said corporation.

\_\_\_\_\_  
Notary Public

State University of New York  
Construction Agreement

**Schedule I, II, III**

**SCHEDULE I                      Unit Prices**

Refer to Section 4.04 of the Agreement for additional information.

<u>Work or Material</u> <u>Description</u> _____	<u>Amount in Words</u>	<u>Amount in Figures</u>
---	------------------------	--------------------------

**SCHEDULE II                      Allowance(s)**

Refer to Section 4.05 of the Agreement for additional information. The amount(s) indicated below shall be included in the Total Bid amount and their total indicated on the Proposal in the space provided.

<u>Work or Material</u> <u>Description</u> _____	<u>Amount in Words</u>	<u>Amount in Figures</u>
---	------------------------	--------------------------

**SCHEDULE III                      Field Order Allowance**

Refer to Section 4.05A of the Agreement for additional information. The amount indicated below shall be included in the Total Bid amount and indicated on the Proposal in the space provided

**NONE**

\_\_\_\_\_  
(in words)

\_\_\_\_\_  
(in figures)

State University of New York  
Construction Agreement

**Schedule A**  
**Insurance Requirements**

Contract Number: **\*insert contract number\***

All certificate(s) of insurance/ACORD Form must be submitted pursuant to Contract Article 5.06 and include the following information:

- For each insurance certificate, the name and NAIC number of issuing company, number of policy, with effective dates and deductibles, if applicable
- Policy limits consistent with the requirements listed below
- Certificate must disclose that the policies are on a primary and non-contributory basis
- The contract/project number assigned by the University
- Admitted Carriers must meet the following criteria: (1) AM Best Company rating of A- or greater, (2) financial score of VII or greater

Insurance Type	Per Occurrence	Per Aggregate	Forms
Workers Compensation	As required by NYS		Form C105.2 (Certificate of NYS Workers' Compensation Coverage) or the U-26.3 (State Insurance Fund Certificate)
Disability	As required by NYS		Form DB120.1 (Certificate of Insurance Coverage under the NYS Disability Benefits Law)
Commercial General Liability	\$2,000,000 occurrence,	\$2,000,000 aggregate	ACORD 25 Certificate of Liability Insurance; and ACORD 855 Certificate of Liability Addendum
Automobile	\$1,000,000, combined single limit		ACORD 25 Certificate of Liability Insurance
Contractor's (or Subcontractor's) Pollution Liability	\$2,000,000 occurrence	\$2,000,000 aggregate	ACORD 25 Certificate of Liability Insurance
Builders Risk	Policy shall match the total contract value, or where appropriate - the value determined using the Builder Risk Insurance Breakdown		ACORD 25 Certificate of Liability Insurance

**Specific contract requirements for insurance may be found in section 5.06 of the Construction Agreement.**

**Additional Insureds for each liability insurance policy, including coverage for on-going and completed operations:**

- The People of the State of New York
- The State University of New York
- The Dormitory Authority of the State of New York
- The State University Construction Fund
- The Campus
- If applicable, Construction Manager
- If applicable, Railroad
- The officers, agents, and employees of those listed above
- If applicable, non-state landowner impacted by this work

Such policy shall be written on ISO Occurrence form CG 00 01 or a substitute form that is acceptable to the University, providing equivalent coverage.

**Guidance to Submit Insurance Certificates**

- Certificates must be signed
- Acord forms must be emailed directly by the agent or carrier
- Email certificates and other insurance related correspondence to [Gretchen.Fronczak@fredonia.edu](mailto:Gretchen.Fronczak@fredonia.edu)
- Include in the subject line the campus and contract number
- Please do not mail additional copies

**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; (c) and (d) 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 fifteen million dollars (\$15,000,000), 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 fifteen million dollars (\$15,000,000.00), 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 women 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 women-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. MWBE Contractor Compliance Report.**

Contractor is required to submit an MWBE Contractor Compliance

Report (Form 7557-112) to the University by the 5<sup>th</sup> 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. Compliance Reports for construction contracts (Form 7557-110) must be submitted on a monthly basis.

#### **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 \_\_\_\_\_ (%) for Certified Minority-Owned Business Enterprises and \_\_\_\_\_ percent (%) 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.

## Standard Contract Clauses

### State University of New York

# EXHIBIT A

June 21, 2023

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 or State University of New York, whether a Contractor, licensor, licensee, lessor, lessee or any other party; the State University of New York shall hereinafter be referred to as "SUNY"):

**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.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of SUNY and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. SUNY retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with SUNY. The Contractor may, however, assign its right to receive payments without SUNY's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** (a) In accordance with Section 112 of the State Finance Law, the State Comptroller's approval is required for the following contracts: (i) goods, services, construction, and construction-related services for State University hospital or healthcare facilities which exceed \$150,000; (ii) purchases utilizing an Office of General Services (OGS) centralized contract which exceed \$200,000 (iii) goods, services, construction, and construction-related services not described in (i) or (ii) and which exceed \$75,000;

(b) If this contract exceeds the threshold amounts listed above in Paragraph 3(a), or, if this is an amendment for any amount to a contract which, as so amended, exceeds said threshold amounts, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State, and the State shall bear no liability, until it has been approved by the State Comptroller and filed in his or her 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, nor, subject any individual to harassment, because of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. 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 the State of any State- 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 upon the submission of competitive bids, Contractor affirms, under penalty of perjury, 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 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, fee 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 SUNY, 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 well as SUNY and any other agencies 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.

(a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to SUNY 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 SUNY or the State 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 SUNY 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.

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 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:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women its workforce on State contracts 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, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) 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

(c) 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 because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" 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 clause. 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 certifications, 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 the Contractor either (a) has 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 of the New York 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 and Technology Development  
625 Broadway  
Albany, NY 12245  
Telephone: 518-292-5100

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 33<sup>rd</sup> Floor  
New York, NY 10017  
646-846-7364  
email: [mwbusinessdev@esd.ny.gov](mailto:mwbusinessdev@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) 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 Service 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 the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State 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, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5))

require that they be denied contracts which they would otherwise obtain.

NOTE: As of May 2023, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.**

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa, § 899-bb, and State Technology Law § 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 (as amended by Chapter 10 of the Laws of 2006), 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 contract is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this contract the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 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 contract by providing written notification to the Contractor in accordance with the terms of the contract.

**26. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.** To the extent this contract is a contract as defined by Tax Law § 5-a, if the Contractor fails to make the certification required by Tax Law § 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 contract, if SUNY determines that such action is in the best interests of the State.

**27. IRAN DIVESTMENT ACT.** By entering into this contract, 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: <https://ogs.ny.gov/iran-divestment-act-2012>.

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 SUNY receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications, SUNY 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 SUNY 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.

SUNY 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.

**28. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

---

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

---

**29.** 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.

**30. (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.

**31. Hospital Retained Authority:** Hospital Retained Authority: The Hospital retains direct, independent authority over the appointment and/or dismissal, in its sole discretion, of the facility's management level employees (including but not limited to, the Facility/Service Administrator/Director, the Medical Director, the Director of Nursing, the Chief Executive Officer, the Chief Financial Officer and the Chief Operating Officer) and all licensed or certified health care staff. The Hospital retains the right to adopt and approve, at its sole discretion, the facility's operating and capital budgets. The Hospital retains independent control over, and physical possession of the facility's books and records. The Hospital retains independent control over and physical possession of the facility's operating policies and procedures. The Hospital retains full authority and responsibility for, and control over, the operations and management of the facility. The Hospital retains the right and authority to independently adopt, approve and enforce, in its sole discretion, policies affecting the facility's delivery of health care services. The Hospital retains the right to independently adopt, approve and enforce, at its sole discretion, the disposition of assets and authority to incur debts. The Hospital retains the right to approve, at its sole discretion, contracts for administrative services, management and/or clinical services. The Hospital retains the right to approve, at its sole discretion, any facility debt. The Hospital retains the right to approve, at its sole discretion, settlements of administrative proceeding or litigation to which the facility is a party. No powers specifically reserved to the Hospital may be delegated to, or shared by, the Contractor or any other person. In addition, if there is any disagreement between the parties to this Agreement regarding control between the Hospital and the Contractor, the terms of this Section shall control.



## BID BOND

BOND NO. \_\_\_\_\_

KNOW ALL PERSONS BY THESE PRESENTS, that \_\_\_\_\_

having an office at \_\_\_\_\_

(hereinafter called the "Principal") and the \_\_\_\_\_

(hereinafter called the "Surety") are held and firmly bound unto the State University of New York (hereinafter called the University) in the full and just sum of \_\_\_\_\_

dollars (\$ \_\_\_\_\_)

(in words)

(in figures)

good and lawful money of the United States of America, or in the full and just sum of the difference between the Total Bid of the Principal and the Total Bid of the bidder submitting the next lowest bid, whichever sum shall be higher, for the payment of which said sum of money, well and truly to be made and done, the Principal binds itself, its heirs, executors, administrators, successors and assigns and the Surety binds itself, its successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted to the University a Proposal for Project No. \_\_\_\_\_

Titled \_\_\_\_\_

which Proposal is incorporated herein by reference and made a part hereof as fully and to the same extent as if set forth at length herein;

NOW, THEREFORE, the condition of this obligation is such that in the event (1) the Principal's Total Bid is the lowest one submitted and the Principal timely provides the Post-Bid Information required under Section 8 of the Information for Bidders or (2) the University shall accept the Proposal of the Principal and the Principal shall enter into a Contract with the University in accordance with the terms of such Proposal and/or enter into certain prescribed subcontracts in accordance with the terms of such Proposal and give such Bond or Bonds as may be specified in the Bidding or Contract Documents, then this obligation shall be null and void, otherwise to remain in full force and effect.



## BID BOND

The Surety, for value received, hereby stipulates and agrees that the obligation of said Surety and its Bond shall be in no way impaired or affected by any extension of the time within which the University may accept the Proposal of the Principal and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal has hereunto set its hand and seal and caused this instrument to be signed by its

\_\_\_\_\_ on this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Principal By \_\_\_\_\_

IN WITNESS WHEREOF, the Surety has hereunto set its hand and seal and caused this instrument to be signed by its

\_\_\_\_\_ on this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Surety By \_\_\_\_\_

**ACKNOWLEDGMENTS FOR BID BOND**

(Acknowledgment by Principal, unless it is a Corporation)

STATE OF NEW YORK )

) ss.: 

COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me personally came \_\_\_\_\_

\_\_\_\_\_, to me known and known to me to be the person(s) described in and who executed the foregoing instruments and acknowledged that he / she executed the same.

\_\_\_\_\_  
Notary Public

(Acknowledgment by Principal, if a Corporation)

STATE OF NEW YORK )

) ss.: 

COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, 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 instruments; that he / she knows the seal of said corporation; that the seal affixed to said instruments is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he / she signed their name thereto by like order.

\_\_\_\_\_  
Notary Public

(Acknowledgment by Surety Company)

STATE OF )

) ss.: 

COUNTY OF )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me personally came \_\_\_\_\_

\_\_\_\_\_, to me known, who, being by me 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 instruments; that he / she knows the seal of said corporation; that the seal affixed to said instruments is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he / she signed their name thereto by like order; and that the liabilities of said company do not exceed its assets as ascertained in the manner provided by the laws of the State of New York.

\_\_\_\_\_  
Notary Public





The State University  
of New York

**PROSPECTIVE BIDDERS NOTICE**  
**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE REQUIREMENTS:**  
**CONSTRUCTION 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, contractors 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 contracts in excess of \$100,000.

**Receipt of the MWBE utilization plan is required within seven (7) business days after the bid opening, for construction contracts only.** The Contract Administrator shall provide MWBE Utilization Plan Form (107) to the campus MWBE Program Coordinator for review and approval for the three apparent low bidders ("Contractor"). The MWBE forms identified below shall be submitted by all bidders.

- a. MWBE Utilization Plan (7557-107)
- b. MWBE-EEO Staffing Plan (7557-108)
- c. MWBE-EEO Policy (7557-104) or the vendor/contractor's own EEO Policy Statement

If the Contractor'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 contractor, 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 contractor 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 contractor 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 contractor should request a waiver.

The Waiver Request Form submitted by the Contractor 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 subcontracting opportunities, please provide documentation d, e, and f.
- d. Screenshot of searching results 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 Contractor Solicitation Letter
  - 7557-102 – MWBE Participation Quote
  - 7557-103 – MWBE Contractor Unavailability Certification

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

The State University of New York at Fredonia  
Gretchen Fronczak, Capital Project Assistant  
Facilities Planning  
280 Central Avenue  
Fredonia, NY 14063  
Phone: (716) 673-3722  
Email: [Gretchen.Fronczak@fredonia.edu](mailto:Gretchen.Fronczak@fredonia.edu)

- 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](mailto: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](mailto:MWBEprogram@suny.edu).

1. The three low bidding contractors ("Contractors") 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 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 contractor reasonably commits to the dollar values included in the plan for participation by MBE and WBE subcontractors 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. Contractors 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 subcontracting 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 subcontractors and/or suppliers are noted as such and the purchaser of the product identified (i.e. purchase by electrical sub)

The prime Contractor is responsible for ensuring participation provided by subcontractors 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 Contractor 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 contractor 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 contractor to provide sufficient documentation of the efforts made in the development of the Plan. The documentation should meet the good faith efforts standard under 5 NYCRR Part §141.6, and demonstrate the contractor's commitment to providing opportunities for MBE and WBE firms in the development of the plan.

A copy of the approved Utilization Plan will be provided to the contractor 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.

**Subcontractor Name & Address**

Name & Address of each MBE/WBE subcontractor or supplier

**MBE or WBE**

Minority (MBE) or Women (WBE) Designation

**Federal ID**

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

**Schedule**

This is the anticipated start and completion dates for each MBE/WBE subcontractor 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

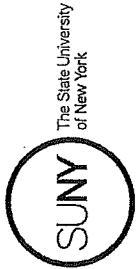
- The information included on the form is subject to verification by the campus MWBE Program Coordinator.
- The campus MWBE Program Coordinator must be notified prior to changes made to the approved MBE/WBE Utilization Plan.

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



# UNIVERSITY-WIDE MWBE PROGRAM UTILIZATION PLAN

SUNY Project No. \_\_\_\_\_ Bid Date: Click here to enter a date. Agreement/Contract Value: \_\_\_\_\_  
Contractor: \_\_\_\_\_ Primary Contact: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ E-Mail: \_\_\_\_\_

GOALS: MBE \_\_\_\_\_ % WBE \_\_\_\_\_ % Campus: \_\_\_\_\_

SUBCONTRACTOR	FEDERAL ID #	DOLLAR VALUE OF CONTRACT OR PURCHASE ORDER	DESCRIPTION OF WORK OR SUPPLIES	SUBCONTRACTOR/SUPPLIER SCHEDULE	
				START DATE	COMPLETION DATE
Company Name: _____ Street Address: _____ Contact Name: _____ E-Mail Address: _____ Check One: MBE <input type="checkbox"/> WBE <input type="checkbox"/>				Click here to enter a date.	Click here to enter a date.
Company Name: _____ Street Address: _____ Contact Name: _____ E-Mail Address: _____ Check One: MBE <input type="checkbox"/> WBE <input type="checkbox"/>				Click here to enter a date.	Click here to enter a date.
Company Name: _____ Street Address: _____ Contact Name: _____ E-Mail Address: _____ Check One: MBE <input type="checkbox"/> WBE <input type="checkbox"/>				Click here to enter a date.	Click here to enter a date.
Company Name: _____ Street Address: _____ Contact Name: _____ E-Mail Address: _____ Check One: MBE <input type="checkbox"/> WBE <input type="checkbox"/>				Click here to enter a date.	Click here to enter a date.

In accordance with the SUNY Contract Documents and Executive Law Article 15-A, my firm seriously expects to use the NYS certified MBE/WBE certified firms listed above. The Contractor shall immediately notify and request approval prior to any changes to this plan from the University-wide MWBE Program Office. ☐

NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_ COMPANY OFFICER'S SIGNATURE DATE: \_\_\_\_\_  
Click here to enter a date.

APPROVED: ☐ DEFICIENT: ☐ MWBE PROGRAM COORDINATOR: \_\_\_\_\_ DATE: \_\_\_\_\_





# EEO STAFFING PLAN

Instructions on page 2

<b>Solicitation No.:</b>	<b>Reporting Entity:</b>	<b>Report includes Contractor's/Subcontractor's:</b> <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force <input type="checkbox"/> Offerer <input type="checkbox"/> Subcontractor
<b>Offeror's Name:</b>		
<b>Offeror's Address:</b>	<b>Subcontractor's name</b> _____	

Enter the total number of employees for each classification in each of the EEO-Job Categories identified

Enter the total number of employees for each classification at each of the EEO-500 covered sites (continued)

EEO-Job Category	Total Work force	Work force by Gender		Work force by Race/Ethnic Identification						Disabled (M) (F)		Veteran (M) (F)				
		Total Male (M)	Total Female (F)	White (M) (F)	Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)					Native American (M) (F)		
Officials/Administrators																
Professionals																
Technicians																
Sales Workers																
Office/Clerical																
Craft Workers																
Laborers																
Service Workers																
Temporary /Apprentices																
Totals																

<b>PREPARED BY (Signature):</b>	<b>TELEPHONE NO.:</b> <b>EMAIL ADDRESS:</b>	<b>DATE:</b>
<b>NAME AND TITLE OF PREPARER (Print or Type):</b>		Submit completed with bid or proposal

**General instructions:** All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (ADM/EEO 100) and submit it as part of the bid or proposal package. For construction, except for contracts of \$100,000 or less, the three lowest bidders shall submit to the University for its approval an EEO Staffing Plan within seven (7) calendar days after the opening of bids. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or subcontractor's total work force, the Offeror shall complete this form for the contractor's and/or subcontractor's total work force.

**Instructions for completing:**

1. Enter the Solicitation number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Offerors' total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the M/WBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**RACE/ETHNIC IDENTIFICATION**

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this form, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

**OTHER CATEGORIES**

- **DISABLED INDIVIDUAL**

any person who:	-	has a physical or mental impairment that substantially limits one or more major life activity(ies)
	-	has a record of such an impairment; or
	-	is regarded as having such an impairment.
- **VIETNAMESE VETERAN**

a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
---
- **GENDER**

Male	or	Female
------	----	--------



The State University  
of New York

**PROSPECTIVE BIDDERS NOTICE**  
**SERVICE DISABLED VETERAN-OWNED BUSINESS ENTERPRISE REQUIREMENTS:**  
**CONSTRUCTION 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 contractors 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 contracts in excess of \$100,000.

**Receipt of the SDVOB Utilization Plan is required within seven (7) business days after the bid opening, for construction contracts.** The SDVOB Utilization Plan Form No. 7654-107 shall be submitted by the three apparent low bidders ("Contractor") to the campus MWBE Program Coordinator.

If the Contractor'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 Contractor, as required under 9 NYCRR § 252.2(l)(4).

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

- a. A list of NYS certified SDVOBs that the Contractor could potentially use within the contract scope of work;
- b. The name of any SDVOB that 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 Utilization Plan.

The Contractor 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(l) (5) to the MWBE Program Coordinator.

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

The Waiver Request Form submitted by the Contractor 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 subcontracting 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 MWBEs.
- f. Forms required to obtain this information are:  
7564-101 – SDVOB Contractor Solicitation Letter  
7564-102 – SDVOB Participation Quote  
7564-103 – SDVOB Contractor Unavailability Certification

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

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

The State University of New York at Fredonia  
Gretchen Fronczak, Capital Project Assistant  
Facilities Planning  
280 Central Avenue  
Fredonia, NY 14063  
Phone: (716) 673-3722  
Email: [Gretchen.Fronczak@fredonia.edu](mailto:Gretchen.Fronczak@fredonia.edu)

- - 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](mailto: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](mailto:MWBEprogram@suny.edu).

1. The three low bidding contractors ("Contractors") 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 Contractor *seriously expects* to include in the project activity.
4. The Contractor must reasonably commit to the dollar values included in the Utilization Plan for participation by SDVOB subcontractors 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 <https://online.ogs.ny.gov/SDVOB/search>. 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](mailto:veteransdevelopment@ogs.ny.gov).
6. Contractors 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 subcontractors and/or suppliers are identified as such and SDVOB Utilization credit shall be given for 60% of the total contract value of supply purchases or services rendered (for example, when an electrical subcontractor purchases from a 3rd party supplier an SDVOB utilization credit will be given for 60% of the total contract value).

The prime Contractor is responsible for ensuring participation provided by subcontractors 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 Contractor 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 Contractor 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 Contractor 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 Contractor'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 Contractor 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.

**Subcontractor Name & Address**

Name & Address of each SDVOB subcontractor or supplier.

**Federal ID**

Provide accurate Federal ID number of each SDVOB subcontractor 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 subcontractor or supplier.

**Schedule**

This is the anticipated start and completion dates for each SDVOB subcontractor 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.

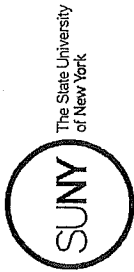
- The information included on the Form 7564-107 is subject to verification by the campus MWBE Program Coordinator.
- The campus MWBE Program Coordinator must be notified prior to changes made to the approved SDVOB Utilization Plan.

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@suny.edu



**UNIVERSITY-WIDE SDVOB PROGRAM  
UTILIZATION PLAN**

SUNY Project No. \_\_\_\_\_ Bid Date: Click here to enter a date. Agreement/Contract Value: \_\_\_\_\_  
Contractor: \_\_\_\_\_ Primary Contact: \_\_\_\_\_  
Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_ E-Mail: \_\_\_\_\_

GOALS: SDVOB \_\_\_\_\_ %

Campus: \_\_\_\_\_

SUBCONTRACTOR	FEDERAL ID #	DOLLAR VALUE OF CONTRACT OR PURCHASE ORDER	DESCRIPTION OF WORK OR SUPPLIES	SUBCONTRACTOR/SUPPLIER SCHEDULE	
				START DATE	COMPLETION DATE
Company Name: _____ Street Address: _____ Contact Name: _____ E-Mail Address: _____				Click here to enter a date.	Click here to enter a date.
Company Name: _____ Street Address: _____ Contact Name: _____ E-Mail Address: _____				Click here to enter a date.	Click here to enter a date.
Company Name: _____ Street Address: _____ Contact Name: _____ E-Mail Address: _____				Click here to enter a date.	Click here to enter a date.
Company Name: _____ Street Address: _____ Contact Name: _____ E-Mail Address: _____				Click here to enter a date.	Click here to enter a date.

In accordance with the SUNY Contract Documents and Executive Law Article 17-B, my firm seriously expects to use the NYS certified SDVOB firms listed above. The Contractor shall immediately notify and request approval prior to any changes to this Utilization Plan from the Campus MWBE Program Coordinator. ☐

NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_ COMPANY OFFICER'S SIGNATURE DATE: \_\_\_\_\_  
Click here to enter a date.

APPROVED: ☐ DEFICIENT: ☐ MWBE PROGRAM COORDINATOR: \_\_\_\_\_ DATE: \_\_\_\_\_





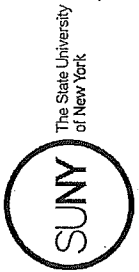
## UNIVERSITY-WIDE SDVOB PROGRAM UTILIZATION PLAN SDVOB FORM (107) INSTRUCTIONS

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 518-320-1340 or email [MWBEprogram@suny.edu](mailto:MWBEprogram@suny.edu).

1. The three low bidding contractors ("Contractors") are required to submit an SDVOB Utilization Plan (Form 7465-107) 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 after the opening of bids for commodity, service and construction related consultant service contracts exceeding \$25,000 for the lowest bidding Contractor.
3. The SDVOB goals are not related to any other goals. Dual certified firms may be used to meet both MBE and SDVOB or WBE and SDVOB goals.
4. The SDVOB firms included are businesses the bidder *seriously expects* to include in the project activity.
5. The Contractor must reasonably commit to the values included in the Utilization Plan for participation by SDVOB subcontractors and suppliers.
6. SDVOB firms must be certified by the New York State Office of General Services Division of Service-Disabled Veterans' Business Development. A directory of NYS Certified Service-Disabled Veteran-Owned Businesses is available on the internet at <http://ogs.ny.gov/Core/SDVOBA.asp>.
7. Contractors utilizing SDVOB firms for supplies/materials/equipment whose NYS certification profile designates them as a 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.
8. 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 the SUNY 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 NYS Office of General Services Directory of Certified SDVOBs. 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. ☐
9. Prior to submitting the Utilization Plan, the bidders should confirm the following:
  - a. SDVOB firms are NYS certified;
  - b. SDVOB designation ~ Dual certified firms may be used as *MBE/SDVOB and/or WBE/SDVOB*;
  - c. SDVOB firms are being used for item(s) within their certification product codes as indicated in their SDVOB Directory firm profile;
  - d. SDVOB firms will perform work for which they have been submitted; and
  - e. 2nd tier subcontractors and/or suppliers are identified as such and SDVOB Utilization credit shall be given for 60% of the total contract value of supply purchases or services rendered (for example, when an electrical subcontractor purchases from a 3rd party supplier an SDVOB utilization credit will be given for 60% credit of the total contract value).



## UNIVERSITY-WIDE SDVOB PROGRAM UTILIZATION PLAN

The prime Contractor is responsible for ensuring participation provided by subcontractors 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 Contractor 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 Contractor 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 Contractor to provide sufficient documentation of the efforts made in the development of the Utilization Plan. The documentation should be responsive to good faith efforts and demonstrate the Contractor'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 Contractor after issuance of Notice of Award.



## UNIVERSITY-WIDE SDVOB PROGRAM UTILIZATION PLAN

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

### Subcontractor Name & Address

Name & Address of each SDVOB subcontractor or supplier.

### SDVOB

Service-Disabled Veteran-Owned Designation.

### Federal ID

Provide accurate Federal ID number of each SDVOB subcontractor 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 subcontractor or supplier.

### Schedule

This is the anticipated start and completion dates for each SDVOB subcontractor 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 University-wide MWBE Program Office.
- The University-wide MWBE Program Office must be notified prior to changes made to the approved SDVOB Utilization Plan.

Questions regarding this form should be directed to the University-wide MWBE Program Office at (518) 320- 1452 or via e-mail: [mwbeprogram@sunv.edu](mailto:mwbeprogram@sunv.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](mailto:MWBEProgram@sunv.edu)

**FORM A**  
**Summary: Policy and Procedure of the State University of New York**  
**Relating to State Finance Law §§139-j and 139-k**

State Finance Law §§139-j and 139-k, enacted by Ch. 1 L. 2005, as amended by Ch. 596 L. 2005, effective January 1, 2006, regulate lobbying on government procurement, including procurements by State University to obtain commodities and services and to undertake real estate transactions.

Generally, the law restricts communications between a potential vendor or a person acting on behalf of the vendor, including its lobbyist, to communications with the officers and employees of the procuring agency designated in each solicitation to receive such communications. Further, the law prohibits a communication (a "Contact") which a reasonable person would infer as an attempt to unduly influence the award, denial or amendment of a contract. These restrictions apply to each contract in excess of \$15,000 during the "restricted period" (the time commencing with the earliest written notice of the proposed procurement and ending with the later of approval of the final contract by the agency, or, if applicable, the State Comptroller). The agency must record all Contacts, and, generally, must deny an award of contract to a vendor involved in a knowing and willful Contact. Each agency must develop guidelines and procedures regarding Contacts and procedures for the reporting and investigation of Contacts. The agency's procurement record must demonstrate compliance with these new requirements.

Accordingly, neither a potential vendor nor a person acting on behalf of the vendor should contact any individual at State University other than the person designated in this solicitation as State University's Designated Contact, nor attempt to unduly influence award of the contract. State University will make a record of all Contacts, and such records of Contact will become part of the procurement record for this solicitation. A determination that a vendor or a person acting on behalf of the vendor has made intentionally a Contact or provided inaccurate or incomplete information as to its past compliance with State Finance Law §§139-j and 139-k is likely to result in denial of the award of contract under this solicitation. Additional sanctions may apply.

A complete copy of the State University of New York Procurement Lobbying Policy and Procedure is available for review at [www.suny.edu/sunypp/](http://www.suny.edu/sunypp/).



**FORM B**

**Affirmation with respect to State Finance Law §§139-j and 139-k**

A complete copy of the State University of New York Procurement Lobbying Policy and Procedure is available for review at [www.suny.edu/sunypp/](http://www.suny.edu/sunypp/).

Procurement Description/ID No.

Offerer **AFFIRMS** that it has reviewed and understands the Policy and Procedure of the State University of New York, relating to State Finance Law §§139-j and 139-k, and agrees to comply with State University's procedure relating to Contacts with respect to this procurement.

Name of Offerer:

Address:

Person Submitting Form:

Name:

Title:



**FORM C**

**Disclosure and Certification with respect to State Finance Law §§139-j and 139-k**

Procurement Description/ID No. \_\_\_\_\_

1. Has a Governmental Entity, as defined in State Finance Law §139-j(1)(a), made a determination of non-responsibility with respect to the Offerer within the previous four years where such finding was due to a violation of State Finance Law §139-j or the intentional provision of false or incomplete information with respect to previous determinations of non-responsibility?

No \_\_\_\_\_

Yes \_\_\_\_\_

If yes, provide the following details:

Governmental Entity which made the finding:

Date of finding:

Basis of finding:

2. Has a Governmental Entity terminated or withheld a procurement contract with the Offer because of violations of State Finance Law §139-j or the intentional provision of false or incomplete information with respect to previous determinations of non-responsibility?

No \_\_\_\_\_

Yes \_\_\_\_\_

If yes, identify the following:

Governmental Entity which terminated the contract:

Date of contract termination or withholding:

Identify the related procurement contract:

Offerer **CERTIFIES** that all information provided by Offerer with respect to its compliance with State Finance Law §§139-j and 139-k is complete, true and accurate.

Name of Offerer:

Address:

Signature of Person Submitting Form: \_\_\_\_\_

Name:

Title:

Date:





## Bidder's Certifications

### NY HUMAN RIGHTS LAW EXECUTIVE ORDER 177 CERTIFICATION

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

Bidder Name: \_\_\_\_\_

By (signature): \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

## Bidder's Certifications

### NEW YORK STATE FINANCE LAW 139-L CERTIFICATION

By submission of this bid, each Bidder and each person signing on behalf of any Bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that the Bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such a policy shall, at a minimum, meet the requirements of section two hundred one-g of the Labor Law.

If the Bidder cannot make the foregoing certification, such Bidder shall so state and shall furnish with the bid a signed statement that sets forth in detail the reasons that the Bidder cannot make the certification.

Bidder Name: \_\_\_\_\_

By (signature): \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_

## Bidder's Certifications

### NON-COLLUSIVE BIDDING CERTIFICATION

By submission of this bid, Bidder and each person signing on behalf of Bidder certifies, 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 their knowledge and belief:

1. The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Bidder or with any competitor;
2. Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Bidder and will not knowingly be disclosed by the Bidder prior to opening, directly or indirectly, to any other Bidder or to any competitor; and
3. No attempt has been made or will be made by the Bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

A bid shall not be considered for award nor shall any award be made where [1], [2], [3] above have not been complied with; provided however, that if in any case the Bidder(s) cannot make the foregoing certification, the Bidder shall so state and shall furnish below a signed statement which sets forth in detail the reasons therefor:

Subscribed to under penalty of perjury under the laws of the State of New York, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ as the act and deed of said corporation or partnership.

IF BIDDER IS A SOLE PROPRIETER OR PARTNERSHIP, COMPLETE THE FOLLOWING:

NAMES OF PARTNERS OR PRINCIPALS	LEGAL RESIDENCE
_____	_____
_____	_____
_____	_____
_____	_____

IF BIDDER IS A CORPORATION, COMPLETE THE FOLLOWING:

NAME	LEGAL RESIDENCE
President: _____	_____
Secretary: _____	_____
Treasurer: _____	_____

*Joint or combined bids by companies or firms must be certified separately on behalf of each participant.*

### Bidder's Certifications

#### Identifying Data:

Bidder	
Address	
Telephone	
Name of Responsible Corporate Officer	
Title of Responsible Corporate Officer	

*Joint or combined bids by companies or firms  
must be certified separately on behalf of each  
participant.*

\_\_\_\_\_  
Legal name of person, firm or corporation

By (signature): \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

**State University of New York**  
**Checklist to Determine Contractor's Compliance with Omnibus Procurement Act**  
**For Contracts of \$1 Million or More**

1. Contractor has copy of the NYS Directory of Certified Minority-and-Women-Owned Business Enterprises:

Yes\_\_\_\_ No\_\_\_\_

2. Contractor has solicited quotes from firms listed in the Directory?

Yes\_\_\_\_ No\_\_\_\_

3. Contractor has contacted the NYS Department of Economic Development to obtain listings of NYS subcontractors and suppliers for products and services currently purchased from out-of-state/foreign firms?

Yes\_\_\_\_ No\_\_\_\_

4. Contractor has utilized other sources to identify NYS subcontractors and suppliers (such as Thomas Register, inhouse vendor list)?

Yes\_\_\_\_ No\_\_\_\_

If yes, please identify source.

5. Contractor has placed advertisement in NYS newspaper(s)?

Yes\_\_\_\_ No\_\_\_\_

6. Contractor has participated in vendor outreach conferences?

Yes\_\_\_\_ No\_\_\_\_

7. Contractor has provided New York State residents notice of new employment opportunities resulting from this contract through listing any such positions with the Community Services Division of the NYS Department of Labor, or providing such notification by another method?

Yes\_\_\_\_ No\_\_\_\_

8. Contractor attests to compliance with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended?

Yes\_\_\_\_ No\_\_\_\_

Note: If contractor has determined that New York State business enterprises are not available to participate in such contract, the contractor shall provide a statement indicating the method by which such determination was made. If contractor does not intend to use subcontractors, the contractor shall provide a statement verifying such intent.



**State University of New York  
Omnibus Procurement Act****Standard 15 Day Notification Form  
For Contracts for Goods and Services of \$1 Million or More  
To Out-of-State/Foreign Firms**

In compliance with Section 2879 subdivision 5 of the Public Authorities Law and Section 139-i of the State Finance Law, the Commissioner of Economic Development is hereby notified that:

CONTRACTING AGENCY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

FAX NUMBER: \_\_\_\_\_

CONTACT PERSON AT AGENCY: \_\_\_\_\_

is preparing to enter into a contract, on or about \_\_\_\_\_ with the following out-of-state/foreign  
firm: (date)

FIRM NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

FAX NUMBER: \_\_\_\_\_

BRIEF DESCRIPTION OF GOODS OR SERVICES: \_\_\_\_\_  
\_\_\_\_\_

AMOUNT OF PROPOSED CONTRACT: \_\_\_\_\_

TERM OF PROPOSED CONTRACT: \_\_\_\_\_

CONTACT PERSON AT FIRM: \_\_\_\_\_

DATE OF NOTICE TO DED: \_\_\_\_\_

For immediate notice to DED, please fax form to:  
Department of Economic Development  
Division for Small Business  
Procurement Unit  
30 South Pearl Street  
Albany, New York 12245  
Telephone (518) 292-5220 FAX (518) 292-5884





**State University of New York  
Public Officers Law**

**Form XIII**

**Purchasing and Contracting Procedures  
(Procurement)**

Inquiry to determine compliance with the provisions of Public Officers Law  
§ 73 (4)

Please indicate if you or any officer of your organization, or any party owning or controlling more than 10 percent of your stock if you are a corporation, or any member if you are a firm or association, is an officer or employee of the State of New York or of a public benefit corporation of the State of New York.

\_\_\_\_\_ Yes

\_\_\_\_\_ No



## LABOR AND MATERIAL BOND

KNOW ALL PERSONS BY THESE PRESENTS, that \_\_\_\_\_

(hereinafter called the "Principal") and \_\_\_\_\_

(hereinafter called the "Surety") are held and firmly bound to the State University of New York (hereinafter called the University) in the full and just sum of:

\_\_\_\_\_ dollars (\$ \_\_\_\_\_)

(in words)

(in figures)

good and lawful money of the United States of America, for the payment of which sum of money, well and truly to be made and done, the Principal binds itself, its heirs, executors, administrators, successors and assigns and the Surety binds itself, its successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract bearing date on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, with the University for the work contained in Project No. \_\_\_\_\_, a copy of which Contract is annexed to and hereby made a part of this Bond as though herein set forth in full; and

WHEREAS, the University has required this Bond guaranteeing prompt payment of monies due to all persons furnishing the Principal or any subcontractor of the Principal with labor or materials in the prosecution of the work provided in such Contract;

NOW, THEREFORE, the conditions of this obligation are such that if the Principal shall promptly pay all monies due to all persons furnishing the Principal or any subcontractor of the Principal with labor or materials in the prosecution of the Contract, then this obligation shall be null and void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, the said Surety, for value received, hereby stipulates and agrees that no change, extension, alteration or addition to the terms of the said Contract or Specifications accompanying the same, shall in any way affect its obligations under this Bond, and it does hereby waive notice of any such change, extension, alteration or addition; and further.

PROVIDED, HOWEVER, the place of trial of any action on this Bond shall be in the county in which the said Contract was to be performed, or if said Contract was to be performed in more than one county, then in any such county, and not elsewhere; and further

PROVIDED, HOWEVER, this Bond shall be enforceable in accordance with the terms and provisions of Section 137 of the State Finance Law.

IN WITNESS WHEREOF, the Principal has hereunto set its hand and seal and the Surety has caused this instrument to be signed by its attorney in-fact on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Principal

\_\_\_\_\_  
By

\_\_\_\_\_  
Surety

\_\_\_\_\_  
By

## PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS, that \_\_\_\_\_

(hereinafter called the "Principal") and \_\_\_\_\_

(hereinafter called the "Surety") are held and firmly bound to the State University of New York (hereinafter called the University) in the full and just sum of:

\_\_\_\_\_ dollars (\$) \_\_\_\_\_  
(in words) (in figures)

good and lawful money of the United States of America, for the payment of which sum of money, well and truly to be made and done, the Principal binds itself, its heirs, executors, administrators, successors and assigns and the Surety binds itself, its successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into a certain written Contract bearing date on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, with the University for the work contained in Project No. \_\_\_\_\_, a copy of which Contract is annexed to and hereby made a part of this Bond as though herein set forth in full; and

NOW, THEREFORE, the conditions of this obligation are such that if the Principal, its representatives or assigns, shall well and faithfully comply with and perform all the terms, covenants and conditions of said Contract on its part to be kept and performed and all modifications, amendments, additions and alterations thereto that may hereafter be made, according to the true intent and meaning of said Contract, including repair and/or replacement of defective work and guarantees of maintenance for the periods stated in the Contract, and shall fully indemnify and save harmless the University from all cost and damage which it may suffer by reason of failure to do so, and shall fully reimburse and repay the University for all outlay and expense which the University may incur in making good any such default, and shall protect the said University against, and pay any and all amounts, damages, costs and judgments which may or shall be recovered against said University or its trustees, officers, agents or employees or which the said University may be called upon to pay to any person or corporation by reason of any damages arising or growing out of the doing of said work, or the repair of maintenance thereof, or the manner of doing the same, or the neglect of the said Principal, or its agents, or the improper performance of the said work by the said Principal, or its agents, or the infringement of any patent or patent rights by reason of the use of any materials furnished or work done as aforesaid or otherwise, then this obligation shall be null and void; otherwise to remain in full force and effect;

PROVIDED, HOWEVER, the said Surety, for value received, hereby stipulates and agrees, if requested to do so by the University, to fully perform and complete the work mentioned and described in said Contract, pursuant to the terms, conditions, and covenants thereof, if for any cause the Principal fails or neglects to so fully perform and complete such work and the Surety hereby further agrees to commence such work of completion within ten (10) calendar days after written notice thereof from the University and to complete such work within ten (10) calendar days from the expiration of the time allowed the Principal in the Contract for the completion thereof. The surety shall fully perform and complete said work on its own, or through a contractor approved by the University, according to the terms, conditions and covenants of said Contract and specifications.

PROVIDED, HOWEVER, the Surety, for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety and its Bond shall be in no way impaired or affected by an extension of time, modification, omission, addition, or change in or to the said Contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer of any work to be performed or any monies due or to become due thereunder or by the University's takeover, use,

**PERFORMANCE BOND (Page 2)**

occupancy or operation of any part or all of the work covered by the Contract; and said Surety does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts, transfers, takeovers, uses, occupancies or operations, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to said Surety as though done or omitted to be done by or in relation to said Principal.

IN WITNESS WHEREOF, the Principal has hereunto set its hand and seal and the Surety has caused this instrument to be signed by its attorney-in-fact on this \_\_\_\_\_ day \_\_\_\_\_ of 20\_\_\_\_.

\_\_\_\_\_  
Principal\_\_\_\_\_  
By\_\_\_\_\_  
Surety\_\_\_\_\_  
By

## ACKNOWLEDGMENTS FOR LABOR AND MATERIAL BOND AND PERFORMANCE BOND

(Acknowledgment by Principal, unless it is a Corporation)

STATE OF NEW YORK       )  
                                      ) ss.:  
COUNTY OF                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me personally came \_\_\_\_\_  
\_\_\_\_\_, to me known and known to me to be the person(s) described in and who  
executed the foregoing instruments and acknowledged that he / she executed the same.

\_\_\_\_\_  
Notary Public

(Acknowledgment by Principal, if a Corporation)

STATE OF NEW YORK       )  
                                      ) ss.:  
COUNTY OF                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, 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 instruments; that he / she knows the seal of said corporation; that the seal  
affixed to said instruments is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he / she  
signed their name thereto by like order.

\_\_\_\_\_  
Notary Public

(Acknowledgment by Surety Company)

STATE OF NEW YORK       )  
                                      ) ss.:  
COUNTY OF                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me personally came \_\_\_\_\_  
\_\_\_\_\_, to me known, who, being by me 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 instruments; that he / she knows the seal of said corporation; that the  
seal affixed to said instruments is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that  
he / she signed their name thereto by like order; and that the liabilities of said company do not exceed its assets as ascertained in the manner  
provided by the laws of the State of New York.

\_\_\_\_\_  
Notary Public

## INSURANCE REVIEW CHECKLIST

### *Risk Management Review Checklist for Insurance Certificates For Construction and Construction Related Consultant Services Contracts*

Name of Contractor/Professional/Vendor \_\_\_\_\_  
Project Name \_\_\_\_\_  
Contract # \_\_\_\_\_ Project # \_\_\_\_\_ Date Contract Rec'd \_\_\_\_\_  
Contract Type: \_\_\_\_\_ Construction: \_\_\_\_\_ Design: \_\_\_\_\_ Other (Specify) \_\_\_\_\_

#### Authorized Carriers

*Authorized carriers must meet the following criteria: (1) AM Best Company rating of A- or greater, (2) financial score of VII or greater.*

- Carrier A Yes ☐ No ☒ Rating \_\_\_\_\_
- Carrier B Yes ☐ No ☒ Rating \_\_\_\_\_
- Carrier C Yes ☐ No ☒ Rating \_\_\_\_\_
- Carrier D Yes ☐ No ☒ Rating \_\_\_\_\_
- Carrier E Yes ☐ No ☒ Rating \_\_\_\_\_
- Worker's Comp Carrier Yes ☐ No ☒ Rating \_\_\_\_\_
- Disability Carrier Yes ☐ No ☒ Rating \_\_\_\_\_

#### The insurance certificates provided comply with the contract documents and Schedule A:

1. ☐ Commercial General Liability (CGL)
  - a. Additional Insureds in accordance with Schedule A
  - b. Limits in accordance with Schedule A
  - c. Occurrence based policy
2. ☐ Acord 855 Certificate of Liability Insurance Addendum has been reviewed and meets requirements.
3. ☐ Automobile Liability
4. ☐ Excess/Umbrella Liability (if applicable)
5. ☐ Workers' Compensation and Disability
  - a. SUNY is listed as certificate holder
  - b. Campus verified coverage on the Workers Compensation Board Website
6. ☐ Builder's Risk (for Construction)
7. ☐ Contractors Pollution Liability
  - a. Additional Insureds in accordance with Schedule A
  - b. Limits in accordance with Schedule A
  - c. Policy is in addition to the CGL policy
8. ☐ Professional Liability (for architecture and engineering)

\_\_\_\_\_  
Name and signature (Campus Representative)

\_\_\_\_\_  
Date Reviewed



## BUILDER'S RISK INSURANCE BREAKDOWN

*Instructions: This optional form may be used by the contractor to determine the total value of Builder's Risk Insurance required. Because certain aspects of the project are not insurable, those items do not have to be included in the total value of the builder's risk coverage.*

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

Title of Project: \_\_\_\_\_  
Location of Project: \_\_\_\_\_  
Project No.: \_\_\_\_\_

Name of Contractor: \_\_\_\_\_  
Address of Contractor: \_\_\_\_\_  
Estimated Completion Date: \_\_\_\_\_

Contract Amount: \_\_\_\_\_ \$ \_\_\_\_\_

Non-insurable items \_\_\_\_\_  
(amounts to be determined from Contractor's  
approved breakdown):

1. Cost of the contractor's Performance and Labor and Materials Bonds \$ \_\_\_\_\_
2. Cost of trees, shrubbery, lawn grass, plants and the maintenance of same \$ \_\_\_\_\_
3. Cost of demolition \$ \_\_\_\_\_
4. Cost of excavation
5. Cost of foundations, piers or other supports which are below the undersurface of the lowest basement floors, or where there is no basement, which are below the surface of the ground. Concrete and Masonry Work \$ \_\_\_\_\_
6. Cost of Underground flues, pipes or wiring \$ \_\_\_\_\_
7. Cost of earthmoving, grading, and the cost of paving, roads, walks, parking lots and athletic fields \$ \_\_\_\_\_
8. Cost of bridges, tunnels, dams, piers, wharves, docks, retaining walls and radio and/or television towers and antennas \$ \_\_\_\_\_

Total Non-insurable items: \$ \_\_\_\_\_

Amount of Builder's Risk Insurance to be procured: \$ \_\_\_\_\_

Office of the State Comptroller  
DIVISION OF PRE-AUDIT AND ACCOUNTING RECORDS  
BUREAU OF STATE EXPENDITURES

New York State Labor Law, Section 220-a

**Prime Contractor's Certification (AC 2947)**

1. That I am an officer of \_\_\_\_\_  
and am duly authorized to make this affidavit on behalf of the prime contractor on public contract  
No. \_\_\_\_\_.
2. That I fully comprehend the terms and provisions of Section 220-a of the Labor Law.
3. That, except as herein stated, there are no amounts due and owing to or on behalf of laborers  
employed on the project by the contractor. (Set forth any unpaid wages and supplements, if none,  
so state).

**Name**

**Amount**


4. That the contractor hereby files every verified statement(s) required to be obtained by the  
contractor from the subcontractor(s).
5. That, upon information and belief, except as stated herein, all laborers (exclusive of executive  
or supervisory employees) employed on the project have been paid the prevailing wages and  
supplements for their services through \_\_\_\_\_, (if more than one subcontractor  
list name and date separately) the last day worked on the project by their subcontractor(s), (Set  
forth any unpaid wages and supplements, if none, so state and utilize clause 5 (A)).

**Name**

**Amount**


- (5A) That the contractor has no knowledge of amounts owing to or on behalf of any laborers of its  
subcontractor(s).

**New York State Labor Law, Section 220-a**

**Prime Contractor's Certification (AC 2947) – page 2**

6. In the event it is determined by the Commissioner of Labor that the wages or supplements or both of any such subcontractor(s) have not been paid or provided pursuant to the appropriate schedule of wages and supplements, then the contractor shall be responsible for payment of such wages and supplements pursuant to the provision of Section 223 of the Labor Law.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

**ACKNOWLEDGEMENT:**

STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_: SS.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Before me personally came \_\_\_\_\_ to me  
known and known to me to be the person described in and who executed for foregoing instrument  
and acknowledged that she/he executed the same

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
County

If this affidavit is verified by an oath administered by a notary public in a foreign country other than Canada, it must be accompanied by a certificate authenticating the authority of the notary who administers the oath. (See CPLR 2309(c); Real Property Law, 311, 312).



Office of the State Comptroller  
DIVISION OF PRE-AUDIT AND ACCOUNTING RECORDS  
BUREAU OF STATE EXPENDITURES

New York State Labor Law, Section 220-a  
Subcontractor's Certification (AC 2948)

1. That I am an officer of \_\_\_\_\_  
a subcontractor on public contract No. \_\_\_\_\_ and I am  
duly authorized to make this affidavit on behalf of the firm.
2. That I make this affidavit in order to comply with the provisions of Section 220-a of the Labor Law.
3. That on \_\_\_\_\_ we received from \_\_\_\_\_  
the prime contractor a copy of the initial/revised schedule of wages and supplements.  
Prevailing Wage Schedule Case Number \_\_\_\_\_ (PRC) specified in the public  
improvement contract.
4. That I have reviewed such schedule(s), and agree to pay the applicable prevailing wages and  
to pay or provide the supplements specified therein.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

ACKNOWLEDGEMENT:

STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_: SS.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
before me personally came \_\_\_\_\_ to me  
known and known to me to be the person described in and who executed for foregoing instrument and  
acknowledged that she/he executed the same.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
County

If this affidavit is verified by an oath administered by a notary public in a foreign country other  
than Canada, it must be accompanied by a certificate authenticating the authority of the notary who  
administers the oath. (See CPLR 2309(c); Real Property Law, 311, 312).

Office of the State Comptroller  
DIVISION OF PRE-AUDIT AND ACCOUNTING RECORDSD  
BUREAU OF STATE EXPENDITURES

**New York State Labor Law, Section 220-a**  
**Sub-subcontractor's Certification (AC 2958)**

1. That I am an officer of \_\_\_\_\_ a subcontractor to \_\_\_\_\_ a subcontractor of \_\_\_\_\_, the prime contractor on public improvement contract No. \_\_\_\_\_ and I am duly authorized to make this affidavit on behalf of the firm.
2. That I make this affidavit in order to comply with the provisions of Section 220-a of the Labor Law.
3. That on \_\_\_\_\_ we received from \_\_\_\_\_ the (subcontractor of the) (contractor) a copy of the (initial) (revised) schedule of wages and supplements Prevailing Rate Schedule Case Number \_\_\_\_\_ (PRC) specified in the public improvement contract.
4. That I have reviewed such schedule(s), and agree to pay the applicable prevailing wages and to pay or provide the supplements specified therein.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

ACKNOWLEDGEMENT:

STATE OF NEW YORK  
COUNTY OF \_\_\_\_\_:SS.:

On this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ before me personally came \_\_\_\_\_ to me known and known to me to be the person described in and who executed for foregoing instrument acknowledged that she/he executed the same.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
County

If this affidavit is verified by an oath administered by a notary public in a foreign country other than Canada, it must be accompanied by a certificate authenticating the authority of the notary who administers the oath. (See CPLR 2309(c); Real Property Law, 311, 312).

## FREDONIA INSPECTION REQUEST FORM

Facilities Planning  
Markus Kessler: Code Manager  
Tel: 716.673.3722 Fax: 716.673.3103

Environmental Health & Safety  
Sarah Laurie: Code Coordinator  
Tel: 716.673.3796 Fax: 716.673.4860

### INSPECTION REQUEST

*The Inspection Request Form needs to be submitted by 3:00 p.m. in order for the inspection to occur within the next five business days to allow for scheduling.*

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

Project #: \_\_\_\_\_ Permit #: \_\_\_\_\_

Inspection Type: \_\_\_\_\_ Location: \_\_\_\_\_

*See Building Permit for Required Inspections Related to this Project*

Date Requested For Inspection: \_\_\_\_\_ Time Requested For Inspection: \_\_\_\_\_

Contractor: \_\_\_\_\_ Facilities Services \_\_\_\_\_ Outside Contractor  
\_\_\_\_\_ Department Labor \_\_\_\_\_

All work requested for inspection has been reviewed for compliance with the construction documents by \_\_\_\_\_ prior to this request for inspection.

Requested By: \_\_\_\_\_ Phone #: \_\_\_\_\_

### Code Compliance Manager/Coordinator Use Only

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

Date of Inspection: \_\_\_\_\_ Time of Inspection: \_\_\_\_\_ AM PM

Inspection Conducted By: \_\_\_\_\_

Inspection Result: ( ) Passed ( ) Conditional ( ) Partial ( ) Failed ( ) Not Ready

Comments: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Inspection Report Attached: \_\_\_\_\_ Yes \_\_\_\_\_ No



*The State University of New York at Fredonia*  
*Environmental Health & Safety & Sustainability Department*

**Title:** Fire Prevention in Use of Cutting and Welding Processes (Hot Work Program)

**Effective Date:** 6/05/08

**Revision Date:** 9/15/2015

**Page:** 1 of 6

## **I. INTRODUCTION**

This program has been implemented to ensure compliance with NFPA standard 51B and OSHA Standard 29CFR 1926.352.

Cutting and certain arc welding operations produce literally thousands of ignition sources in the form of sparks and hot slag. The electric arc or the oxy-fuel gas flame and the hot work pieces are also inherent ignition sources.

Anything that is combustible or flammable is susceptible to ignition by cutting, heating, and welding processes. The most common materials likely to become involved in fire are combustible building construction such as floors, partitions, and roofs; combustible contents such as wood, paper, textiles, plastics, chemicals, and flammable liquids and gases; and combustible ground cover such as grass and brush.

Preventing cutting, heating, and welding fires can best be achieved by implementing a hot work program which requires the separation of combustibles from ignition sources or the shielding of combustibles from sparks and molten slag.

## **II. RESPONSIBILITY**

### **A. Management**

EH&S&S at The State University of New York at Fredonia shall recognize its responsibility for the safe usage of cutting, heating and welding equipment on its property and:

1. Based on fire potentials, establish approved areas for cutting, heating and welding.
2. Design and implement a Hot Work Permit Program
3. Designate an EH&S&S Professional Staff member as the individual responsible for authorizing cutting, heating and welding operations in areas not specifically designed or approved for such processes.
4. Ensure that the person welding, cutting, heating and their supervisors are suitably trained in the safe operation of their equipment, the safe use of the process, and emergency procedures in the event of fire.
5. Insist that only approved equipment be used.



*The State University of New York at Fredonia*  
*Environmental Health & Safety & Sustainability Department*

**Title:** Fire Prevention in Use of Cutting and Welding Processes (Hot Work Program)

**Effective Date:** 6/05/08

**Revision Date:** 9/15/2015

**Page:** 2 of 6

6. Select contractors to perform cutting, welding, heating who have suitably trained personnel and who have an awareness of the magnitude of the risks involved.
7. Advise all contractors about flammable materials or hazardous conditions of which they may not be aware.

**B. Supervisors**

The supervisor of cutting, welding, heating operations in areas not designed or approved for such processes may be a foreman, plant manager, contractor, or other qualified individual. The supervisor shall:

1. Be responsible for the safe handling of the cutting, welding, or heating equipment and for the safety during the cutting, welding, heating process.
2. Determine the combustible materials and hazardous areas present or likely to be present in the work location.
3. Protect combustibles from ignition by the following:
  - a) Have the work moved to a location free from dangerous combustibles.
  - b) If the work cannot be moved, have the combustibles moved to a safe distance from the work or have the combustibles properly shielded against ignition.
  - c) See that cutting, welding, heating are so scheduled that operations that might expose combustibles to ignition are not started during cutting, welding, heating.
4. Secure authorization for the cutting, welding, heating from an EH&S&S Professional Staff member.
5. Determine that the person cutting, welding, heating, etc. secures approval that conditions are safe before going ahead with cutting, welding, heating.
6. Determine that fire protection and extinguishing equipment are properly located at the site.
7. Where firewatchers are required, see that they are available at the site.
8. Where a firewatcher is not required, make a final check-up one-half hour after the completion of cutting, welding, heating operations to detect and extinguish possible smoldering fires.

**C. Cutting, Welding, Heating, etc.**

*The State University of New York at Fredonia*  
*Environmental Health & Safety & Sustainability Department*

**Title:** Fire Prevention in Use of Cutting and Welding Processes (Hot Work Program)

**Effective Date:** 6/05/08

**Revision Date:** 9/15/2015

**Page:** 3 of 6

The person cutting, welding, heating shall handle the equipment safely and use it so as not to endanger lives and property, as follows:

1. Have approval by the supervisor before starting to cut or weld.
2. Cut or weld only where conditions are safe.
3. Continue to cut or weld only so long as conditions are unchanged from those under which approval was granted.

### **III. PERMISSIBLE AREAS**

Cutting, welding, heating shall be permitted only in areas that are or have been made fire-safe.

Permitted areas include:

1. Specific areas designed or approved for cutting, welding, heating.  
Designated welding, cutting, heating areas shall:
  - a) Be authorized as a designated cutting, welding, heating area by an EH&S&S Professional Staff member, and;
  - b) Not be permitted in sprinklered buildings while such protection is impaired, and;
  - c) Not be permitted in the presence of explosive atmospheres (mixtures of flammable gases, vapors, liquids, or dusts with air) or explosive atmospheres that may develop inside unclean or improperly prepared drums, tanks, or other containers and equipment that have previously contained such materials, and;
  - d) Not be permitted in areas where flammable materials are used or stored.
  - e) Not permitted in areas where heavy dust concentrations are present.
  - f) Not be permitted within 35 feet of exposed combustible materials.

### **IV. HOT WORK PERMITS**

- A. A Hot Work Permit determination is required to be performed for welding, cutting, heating in any area not designated as a welding, cutting, heating area per this program.

*The State University of New York at Fredonia*  
*Environmental Health & Safety & Sustainability Department*

**Title:** Fire Prevention in Use of Cutting and Welding Processes (Hot Work Program)

**Effective Date:** 6/05/08

**Revision Date:** 9/15/2015

**Page:** 4 of 6

- B. If it is determined that a Hot Work Permit is required, a permit for the scope of work must be obtained from an EH&S&S Professional Staff member.
- C. Before applying for a Hot Work Permit, and daily thereafter until work is completed, the supervisor (or designee) must inspect the area to ensure that it is a fire safe area. The following must be verified:
1. Cutting, heating, welding equipment to be used shall be in satisfactory operating condition and in good repair.
  2. Where combustible materials such as paper clippings, wood shavings, or textile fibers are on the floor, the floor shall be swept clean for a radius of 35 feet.
  3. Combustible floors shall be kept wet, covered with damp sand, or protected by fire-resistant shields. Where floors have been wet down, personnel operating arc welding, cutting, heating equipment shall be protected from possible shock.
  4. Where practical, all combustibles shall be relocated at least 35 feet horizontally from the work site. Where relocation is impractical, combustibles shall be protected with flameproofed covers or otherwise shielded with metal or fire-resistant guards or curtains. Edges of covers at the floor shall be tight to prevent sparks from going under them. This precaution is also important at overlaps where several covers are used to protect a large pile.
  5. All flammable materials and liquids will be removed from the area.
  6. All empty containers, which formerly held a flammable liquid, will be removed from the area.
  7. Heavy concentrations of dust will be eliminated to reduce potential fire hazard.
  8. Openings or cracks in walls, floors, or ducts within 35 feet of the site shall be tightly covered to prevent the passage of sparks to adjacent areas.
  9. Conveyor systems that might carry sparks to distant combustibles shall be suitably protected.
  10. Where cutting, heating, welding is done near walls, partitions, ceiling, or roof of combustible construction, fire-resistant shields or guards shall be provided to prevent ignition. If welding, cutting, heating is to be done on a metal wall, partition, ceiling, or roof precautions shall be taken to prevent ignition of combustibles on the other side, due to conduction or radiation, preferably by relocating combustibles. Where combustibles are not relocated, a fire watch on the opposite side from the work shall be provided. Welding, cutting, heating shall not be attempted on a metal partition, wall, ceiling, or roof having combustible covering, nor on walls or partitions of combustible sandwich-type panel construction.

*The State University of New York at Fredonia*  
*Environmental Health & Safety & Sustainability Department*

**Title:** Fire Prevention in Use of Cutting and Welding Processes (Hot Work Program)

**Effective Date:** 6/05/08

**Revision Date:** 9/15/2015

**Page:** 5 of 6

11. Cutting, welding, heating on pipes or other metal in contact with combustible walls, partitions, ceilings, or roofs shall not be undertaken if the work is close enough to cause ignition by conduction.
  12. Fully charged and operable fire extinguishers, appropriate for type of possible fire, shall be available at the work area. Where hose lines are available, they shall be connected and ready for service.
  13. When welding, heating, cutting is done in close proximity to a sprinkler head, a wet rag shall be laid over the head and then removed at the conclusion of the welding, heating, cutting operation. Special precautions shall be take to avoid accidental operation of automatic fire detection or suppression systems.
  14. Nearby personnel shall be suitably protected against heat, sparks, slag, etc.
- D. The Supervisor must use the "Pre-Hot Work Permit Checklist" found in this program to verify the items listed above.
- E. The Supervisor must send the completed "Pre-Hot Work Checklist" along with a completed "Temporary Hot Work Permit" to an EH&S&S Professional Staff member for review.
- F. An EH&S&S Professional Staff member will review the application. If approved the application will be sent back to the supervisor who must post it in the area where the hot work is to be preformed.
- G. Upon completion of the hot work, the supervisor will verify that the area was checked for smoldering fire one ½ hour after completion of hot work then send the completed Hot Work Permit and checklists back to an EH&S&S Professional Staff member for close out of the project.
- H. An EH&S&S Professional Staff member will keep copies of all applicable paperwork pertaining to the project on file in the EH&S&S office.
- I. An EH&S&S Professional Staff member or designated representative may inspect the work area prior, during, and after the job has been complete.

**V. FIRE WATCHERS**

- A. The supervisor responsible for the cutting, heating, welding process to take place in a non-designated cutting, heating, welding area will be required to use fire watchers where the following conditions exist:
1. Combustible material is in the building construction or combustible contents stored in the area are closer than 35 feet to the point of operation, or;
  2. Combustibles are stored more than 35 feet away but are easily ignited by sparks, or;

*The State University of New York at Fredonia*  
*Environmental Health & Safety & Sustainability Department*

**Title:** Fire Prevention in Use of Cutting and Welding Processes (Hot Work Program)

**Effective Date:** 6/05/08

**Revision Date:** 9/15/2015

**Page:** 6 of 6

3. Wall or floor openings within a 35-foot radius expose combustible material in adjacent areas including concealed spaces in walls or floors, or;
  4. Combustible materials are adjacent to the opposite side of metal partitions, walls ceilings, or roofs and are likely to be ignited by conduction or radiation, or;
  5. The fire suppression and/or detection system in the area has been disarmed or is disabled.
- B. Firewatchers shall have fire-extinguishing equipment readily available and be trained in its use, including practice on test fires.
- C. Firewatchers shall be familiar with the facilities and procedures for sounding an alarm in the event of a fire.
- D. Firewatchers shall watch for fires in all exposed areas, and try to extinguish them only when obviously within the capacity of the equipment available, or otherwise they must sound the alarm immediately.
- E. A fire watch shall be maintained for at least a half-hour after completion of cutting, heating, welding operations to detect and extinguish smoldering fires.

**VI. ADDITIONAL PRECAUTIONS**

- A. For the elimination of possible fire in enclosed spaces as a result of gas escaping through leaking or improperly closed torch valves, the gas supply to the torch shall be positively shut off at some point outside the enclosed space whenever the torch is not to be used or whenever the torch is left unattended for a substantial period of time, such as during the lunch period. Overnight and at the change of shifts, the torch and hose shall be removed from the confined space. Open end fuel gas and oxygen hoses shall be immediately removed from enclosed spaces when they are disconnected from the torch or other gas-consuming device.
- B. Drums, containers, or hollow structures which have contained toxic or flammable substances shall, before welding, cutting, or heating is undertaken on them, either be filled with water or thoroughly cleaned of such substances and ventilated and tested.
- C. Before heat is applied to a drum, container, or hollow structure, a vent or opening shall be provided for the release of any built-up pressure during the application of heat.

THE STATE UNIVERSITY OF NEW YORK AT FREDONIA  
PRE-HOT WORK CHECK LIST

Complete this check list and bring it, along with the requested permit, to the office of Environmental Health & Safety, 140 Hendrix Hall at least 24 hours before work is to begin.

This checklist must also be completed each day prior to beginning work. All completed checklists should be turned in to the EH&S office at the end of the project.

Follow these precautions:

- ☐ Sprinklers Operational
- ☐ Available sprinklers, hose streams and extinguishers are in service and good repair
- ☐ Have extinguishers available at work site
- ☐ Have work equipment in good repair
- ☐ Are covers off smoke detectors

Within 35 foot (11M) of work:

- ☐ Wet down combustible floors. Cover with damp sand or other shield.
- ☐ Remove flammable liquids, dust, lint, and oily deposits
- ☐ Cover all wall and floor openings
- ☐ Suspend fire resistant covers beneath work
- ☐ Cover or move combustible materials with fire resistive barriers
- ☐ Contractor ID issued and current
- ☐ Cover smoke heads with covers
- ☐ Fire extinguisher available and in place

Work on or near walls or ceilings:

- ☐ Move combustibles away from sides of walls
- ☐ When working with suspended ceilings be sure to protect concealed spaces

Floors:

- ☐ Sweep floor clean of combustibles

Work on enclosed equipment:

- ☐ Clean equipment removing all combustibles
- ☐ Purge equipment of flammable vapors

Fire watch and work monitoring:

- ☐ Fire watch should be provided during the hot work and one half hour after work is completed
- ☐ Train fire watch in use of hot work equipment and alarm systems
- ☐ A fire watch may be required above, below and in adjacent areas where work takes place

Signature of Supervisor (or designee) \_\_\_\_\_ Date \_\_\_\_\_

Assigned Permit # \_\_\_\_\_

# POST AT WORK SITE

## TEMPORARY HOT WORK PERMIT

Permit # \_\_\_\_\_

# POST AT WORK SITE

**PART I** – To be completed by supervisor

Room # \_\_\_\_\_ Building \_\_\_\_\_ Confined Space: Yes \_\_\_\_\_ No \_\_\_\_\_

Type of work to be performed: (be specific) \_\_\_\_\_

From \_\_\_\_\_ am/pm \_\_\_\_\_ Date \_\_\_\_\_ To \_\_\_\_\_ am/pm \_\_\_\_\_ Date \_\_\_\_\_

Requested by: \_\_\_\_\_

Department \_\_\_\_\_ Employee Name \_\_\_\_\_ Date \_\_\_\_\_

OR

Contractor Name \_\_\_\_\_ Date \_\_\_\_\_

Supervisor of Job Site (signature) \_\_\_\_\_ Date \_\_\_\_\_

Please forward this form to the Fire Code Coordinator along with a completed Pre Hot Work Check List

**PART II** – To be completed by the Fire Code Coordinator

Pre Hot Work Check List Received Yes \_\_\_\_\_ No \_\_\_\_\_

Note: If a fire detection or fire suppression system is disarmed, University Police and the EH&S Department must be notified and a fire watch set.

Additional Comments: \_\_\_\_\_

EH&S&S Professional Staff (signature) \_\_\_\_\_ Date \_\_\_\_\_

**PART III** – To be completed by the job site supervisor after hot work is complete

Fire suppression and fire detection systems have been returned to proper working order \_\_\_\_\_ (supervisor's initial)

Area has been inspected one ½ hour after completion of hot work; no fire was evident \_\_\_\_\_ (supervisor's initial)

Return completed form to an EH&S&S Professional:

Sarah Laurie  
140 Hendrix Hall

Phone: 673-3796 Fax: 673-3103

## SECTION 096400 - WOOD FLOORING

### PART 1 - GENERAL

#### 1.1 SUMMARY

A. Section Includes:

1. Field-finished wood flooring.
2. Underlayment
3. Miscellaneous accessories

#### 1.2 ACTION SUBMITTALS

- A. Product Data: For each type of product.
- B. Shop Drawings: For each type of floor assembly and accessory. Include plans, sections, and attachment details. Include expansion provisions and trim details.
- C. Samples: For each exposed product and for each color and texture specified, approximately **12 inches (300 mm) long** and of same thickness and material indicated for the Work and showing the full range of normal color and texture variations expected.
- D. Samples for Initial Selection: Manufacturer's color charts showing the full range of colors and finishes available for wood flooring.
1. Include Samples of accessories involving color and finish selection.
- E. Samples for Verification: For each type of wood flooring and accessory, with stain color and finish required, approximately [**12 inches (300 mm) long**] and of same thickness and material indicated for the Work and showing the full range of normal color and texture variations expected.

#### 1.3 MAINTENANCE MATERIAL SUBMITTALS

- A. Furnish extra materials that match products installed and that are packaged with protective covering for storage and identified with labels describing contents.
1. Wood Flooring: Equal to **5** percent of amount installed for each type, color, and finish of wood flooring indicated.

#### 1.4 DELIVERY, STORAGE, AND HANDLING

- A. Deliver wood flooring materials in unopened cartons or bundles.



- B. Protect wood flooring from exposure to moisture. Do not deliver wood flooring until after concrete, masonry, plaster, ceramic tile, and similar wet-work is complete and dry.
- C. Store wood flooring materials in a dry, warm, ventilated, weathertight location.

## 1.5 FIELD CONDITIONS

- A. Conditioning period begins not less than seven days before wood flooring installation, is continuous through installation, and continues not less than seven days after wood flooring installation.
  1. Environmental Conditioning: Maintain ambient temperature between 65 and 75 deg F (18 and 24 deg C) and relative humidity planned for building occupants in spaces to receive wood flooring during the conditioning period.
  2. Wood Flooring Conditioning: Move wood flooring into spaces where it will be installed, no later than the beginning of the conditioning period.
    - a. Do not install flooring until it adjusts to relative humidity of, and is at same temperature as, space where it is to be installed.
    - b. Open sealed packages to allow wood flooring to acclimatize immediately on moving flooring into spaces in which it will be installed.
- B. After conditioning period, maintain relative humidity and ambient temperature planned for building occupants.

## PART 2 - PRODUCTS

## 2.1 PERFORMANCE REQUIREMENTS

- A. Hardwood Flooring: Comply with NWFA A500 for species, grade, and cut.
  - 1. Flooring shall be Northern Hard Maple standard strip flooring 25/32" x 2 1/4", Standard Grade (MFMA No. 2 or better) edge grain.
  - 2. Certification: Provide flooring that carries NWFA grade stamp on each bundle or piece.
- B. Maple Flooring: Comply with applicable MFMA grading rules for species, grade, and cut.
  - 1. Certification: Provide flooring that carries MFMA mark on each bundle or piece.

## 2.2 FIELD-FINISHED WOOD FLOORING

- A. Solid-Wood Flooring, Field-Finished: Kiln dried to 6 to 9 percent maximum moisture content; tongue and groove and end matched; with backs channeled.
  1. Lengths: **Manufacturer's standard**
  2. Size: 25/32" x 2 1/2".
- B. Urethane Finish System: Complete **water-based** system of compatible components that is recommended by finish manufacturer for application indicated.

1. Floor Sealer: Pliable, penetrating type.
  2. Finish Coats: Formulated for multicoat application on wood flooring.
- C. Wood Filler: Compatible with finish system components and recommended by filler and finish manufacturers for use indicated. If required to match approved Samples, provide pigmented filler.

## 2.3 ACCESSORY MATERIALS

- A. Wood Sleepers and Subfloor: 2" x 6" SPF to match existing where required.
- B. Wood Underlayment: APA rated HPS panels 15/32" thick. Sanded one side.
- C. Wood Flooring Adhesive: Mastic recommended by flooring and adhesive manufacturers for application indicated.
- D. Fasteners: As recommended by manufacturer, but not less than that recommended in **NWFA's "Installation Guidelines."**
- E. Thresholds and Saddles: Refer to drawings.
- F. Cork Expansion Strip: Composition cork strip.
- G. Recessed floor box cover as indicated on drawing.

## PART 3 - EXECUTION

### 3.1 EXAMINATION

- A. Carefully remove existing wood flooring so as not to damage existing wood underlayment. Repair or replace damaged underlayment and or sleepers as required.
- B. Examine substrates, areas, and conditions, with Installer present, for compliance with requirements for maximum moisture content, installation tolerances, and other conditions affecting performance of wood flooring.
- C. Proceed with installation only after unsatisfactory conditions have been corrected.

### 3.2 INSTALLATION

- A. Comply with flooring manufacturer's written installation instructions, but not less than applicable recommendations in **NWFA's "Installation Guidelines."**
- B. Wood Sleepers and Subfloor: replace damaged sleepers as required

- C. Wood Underlayment: Install new underlayment over existing underlayment. Stagger joints.
- D. Provide expansion space at walls and other obstructions and terminations of flooring **of not less than 3/4 inch (19 mm)**
- E. Solid-Wood Flooring: Blind nail or staple flooring to substrate.

### 3.3 FIELD FINISHING

- A. Machine-sand flooring to remove offsets, ridges, cups, and sanding-machine marks that are noticeable after finishing. Vacuum and tack with a clean cloth immediately before applying finish.
  - 1. Comply with applicable recommendations in NWFA's "**Installation Guidelines.**"
- B. Fill and repair wood flooring defects.
- C. Apply floor-finish materials in number of coats recommended by finish manufacturer for application indicated, but not less than one coat of floor sealer and two finish coats.
  - 1. For water-based finishes, use finishing methods recommended by finish manufacturer to minimize grain raise.
- D. Cover wood flooring before finishing.
- E. Do not cover wood flooring after finishing until finish reaches full cure, and not before seven days after applying last finish coat.

### 3.4 PROTECTION

- A. Protect installed wood flooring during remainder of construction period with covering of heavy kraft paper or other suitable material. Do not use plastic sheet or film that might cause condensation.
  - 1. Do not move heavy and sharp objects directly over kraft-paper-covered wood flooring. Protect flooring with plywood or hardboard panels to prevent damage from storing or moving objects over flooring.

END OF SECTION 096400