



IFB #010124RM

Term Contract for Trades Information for Bidders

SUNY Oswego

Bid Opening January 30, 2024 2:00PM

Term Contract for Trades

1. **Invitation to Bid**
2. **Instruction to Bidders**
3. **Labor & Material Calculations**
4. **General Conditions**
5. **Attachments**
 - Exhibit A – Standard Contract Clauses
 - Exhibit A-1 – Affirmative Action Clauses
 - Attachment A – Bid Form ([Form 7554-24](#))
 - Attachment B - Contractor Minimum Qualification Requirements ([Form 7554-22](#))
 - Attachment C – Term Contract ([Form 7554-23](#))

FORMS REQUIRED WITH THE BID:

1. Bid Form ([Form 7554-24](#))
2. Contractor Minimum Qualification Requirements ([Form 7554-22](#))
3. Vendor Responsibility Questionnaire- OSC's [Vendrep - Online System](#) or [Link to paper forms](#)
4. State Finance Law §§139-j and 139-k Forms
 - 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 and 139-k

ADDITIONAL FORMS (NOT required with bids)

5. Term Contract (Form 7554-22)
 - [Exhibit A](#)
 - [Exhibit A-1](#)
6. Bonds and Certificate of Insurance
 - a. [Form 7554-11](#) Labor & Materials and Performance Bonds
 - b. [Form 7554-12](#) Insurance Requirements
7. Minority & Women Owned Business Enterprise Requirements
 - c. [Form 7557-121b](#) – MWBE Prospective Bidders Notice
 - d. [Form 7557-107](#) - M/WBE Utilization Plan (*required within seven days of the bid*)
 - e. The Contractor's EEO Policy Statement or [Form 7557-104](#) (*required within seven days of the bid*)
 - f. [Form 7557-108](#) - M/WBE-EEO Work Plan (*required within seven days of the bid*)
8. Request for Construction Term Estimate ([Form 7554-26](#))
9. Construction Term Estimate ([Form 7554-27](#))
10. Construction Term Release ([Form 7554-28](#))
11. Construction Term Daily Logs ([Form 7554-29](#))

1 INVITATION TO BID

SUNY Oswego invites you to submit a bid for consideration for a term contract for work to be completed on a time and material basis. The intent of this bid is that a contract will be signed with selected contractors to engage and complete specific construction trade related projects each with a value not-to-exceed \$75,000, **in accordance with SUNY procedures**. The total contract remuneration will not exceed \$500,000.00. Each separate project will be issued based on estimated time and material and is called a **“Release”**. The contract will be issued for a period of three years. The Campus intends to award a contract to one bidder for each trade.

Qualifications required by Contractors are outlined in the Instruction to Bidders and Attachment B. Contractors may bid on multiple trades, if qualified.

Separate term contracts will be executed for the following trades:

1. Carpentry
2. Painting
3. Plumbing
4. Roofing

This contract will be subject to Prevailing Wage. **PRC #2024000196**

This contract will be subject to Minority and Women Owned Business Goals, as defined in Section 2.11. For the purposes of this solicitation, overall goal of 30% for MWBE participation, 15% for Minority-Owned Business Enterprises (“MBE”) participation and 15% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).

2. INSTRUCTION TO BIDDERS

2.1 Definitions

All definitions set forth in the Contract are applicable to the Notice to Bidders, Instruction to Bidders, and the Proposal, all of which are hereinafter referred to as the Bidding Documents.

2.2 Pre- Bid Meeting

A non-mandatory pre-bid conference will be held on Wednesday January 17, 2024 at 10:00am at which time the University will consider questions on bidding. All Bidders and other interested parties are invited to attend. Any clarifications as a result of this meeting will be in writing and issued as an addendum. Oral decisions will not be binding upon this contract unless specifically written into the addenda.

Pre-bid conference will be held via Zoom. Please send an email to Richard.merritt@oswego.edu if you would like to participate.

2.3 Opening of Bids

2.3.1 All bids will be received, opened, evaluated and awarded by the Purchasing Department. Bids will be opened publicly on Tuesday January 30, 2024 at 2:00pm, 402 Culkin Hall, Oswego, NY 13126. Sealed bids will be opened with the following information read aloud: names of the contractors, the trade for which they are bidding, and the markup percentages entered on the Bid Form.

2.3.2 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.

2.4 Method of Award

2.4.1 It is the intent of the University to award the contracts to the lowest responsible bidder in each trade, provided the bid has been submitted in accordance with the requirements of the bid documents.

2.4.2 Bid Evaluation

The bids received will be reviewed and analyzed by the University to meet the minimum qualifications as per **Attachment B**. All qualified bid(s) will be tabulated based on the lowest bid. Bids shall be weighted.

Labor 50% (bid % should be only for profit amount)

Materials 30%

Subcontractors 20%

b. Award

The responsible low bidder will be recommended for award only for the trade as indicated in the contract award. Upon approval by the University, a contract will be awarded.

2.4.3 Award

Subject to the rights hereinafter reserved, the contract will be awarded within one hundred twenty (120) calendar days after the opening of bids. Every bid shall be firm and not revocable for a period of one hundred twenty days (120) after the bid opening.

Subsequent to such one hundred twenty days (120), any bid is subject to withdrawal communicated in writing signed by the bidder.

2.5 Qualification of Bidders

All Prospective bidders are required to complete and submit the forms listed below with their bid.

a. Vendor Responsibility Questionnaire

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/state-vendors/vendrep/file-your-vendor-responsibility-questionnaire> or go directly to the VendRep online at

<https://esupplier.sfs.ny.gov/psp/fscm/SUPPLIER/?cmd=login>. 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.

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

b. State Finance Law §§139-j and 139-k Forms - 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 and 139-k

c. Documentation as evidence that the contractor meets the minimum qualifications requirements set forth in Attachment B.

The bidder must be able to prove to the satisfaction of the University that they have the skill and experience, as well as the necessary facilities, financial resources, organizational ability, and general reliability to do the work to be performed under the provisions of the contract in a satisfactory manner. The Contractor will primarily **self-perform** work assigned under the contract, any sub-contractors must be approved by the University (as stated under Section 4.2.6.6). Bidders must satisfy the "Contractor Minimum Qualification Requirements" as set forth on **Attachment B**. All minimum qualifications set forth on **Attachment B** will be evaluated on a "pass/fail" basis. Bidders must submit supporting documentation as evidence of their ability to satisfy each qualification. If any bidder is not able to satisfy any qualification, their bid will be rejected.

2.6 Form and Style of Bids/Proposal

- 2.6.1 Provide mark-up ONLY for labor, equipment/material and subcontractor costs as provided on the bid form and requirements of the **Attachment A**.
- 2.6.2 All “tools of the trade” will be provided by the contractor. Costs associated must be reflected within contractor’s overhead and profit. Refer to General Conditions paragraph 4.4.1 for the definition of “tool of the trades” vs. Contractor’s owned rental equipment.
- 2.6.3 Proposals must be submitted in duplicate on the forms provided by the University. Proposals shall be addressed to the University in a sealed envelope, marked with the name and address of the bidder, marked as TERM CONTRACTS. The trade(s) for which the bidder is submitting must also be clearly marked on the outside of the envelope.
- 2.6.4 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 language of the Proposal or in the items mentioned therein.
- 2.6.5 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.
- 2.6.6 Bids may be modified, withdrawn or canceled only by written notice received by the University prior to the time of opening of bids designated in the Bidding and Contract Documents. A written notice of modification, withdrawal, or cancellation shall be marked by the bidder with the name and address of the bidder, and upon receipt by the University, shall be sealed in an envelope by a duly authorized employee of the University, who shall sign and note thereon the date and time of receipt and shall thereupon attach said written, notice of modification, withdrawal or cancellation to the envelope submitted by the bidder pursuant to paragraph (2) of this section.
- 2.6.7 Contract Documents
- 2.6.7.1 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 are to include all materials, plans, equipment, tools, skill, and labor of every kind necessary for the proper execution of the work and also those items which may be reasonably inferable from the Contract Documents as being necessary to produce the intended results.
- 2.6.7.2 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: (1) Exhibit A and A-1, (2) Term Contract; (3) Bonds (4) Invitation for Bid; (5) Contractors Bid Form.

2.6.7.3 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 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.

2.7 Addenda & Interpretation of Documents

- 2.7.1 Prospective bidders shall examine the Bidding and Contract Documents carefully and, before bidding, shall make written request 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 will be issued in writing by the University as an Addendum, which will be sent by email to each person recorded as having received a copy of the Bidding and Contract Documents from the Campus, and which also will be available at the places where the Bidding and Contract Documents are available for inspection by prospective bidders. Addendum will become a part of the Bidding and Contract Documents and will be binding on all bidders.
- 2.7.2 Only the written interpretation or correction given by Addendum shall be binding. Prospective bidders are warned that no employee of the University 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.

2.8 Additional Terms and Conditions

- 2.8.1 The terms and conditions of the Contract Documents shall apply.
- 2.8.2 The resulting Contract 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.
- 2.8.3 The Contract 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.
- 2.8.4 The relationship of the Successful Bidder to the University shall be that of independent contractor.
- 2.8.5 Compliance with the post-employment restrictions of the Ethics in Government Act is required.
- 2.8.6 The submission of a proposal constitutes a binding offer to perform and provide said services.
- 2.8.7 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.

- 2.8.8 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.
- 2.8.9 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.
- 2.8.10 The Successful Bidder will be responsible for the work, direction and compensation of its employees, consultants, agents and contractors. Nothing in the resulting Contract 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.
- 2.8.11 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.
 - f. 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.
 - g. 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.

2.9 Contract

2.9.1 Contract Term

2.9.1.1 Upon the evaluation, the term contracts(s) will be issued to the qualified low bidder for each trade.

2.9.1.2 The term of the contract(s) is for three (3) years commencing upon final execution of the contract, including approval by the Attorney General and Office of State Comptroller if required.

2.9.1.3 Each contract shall be for the total cumulative dollar value of Releases made during the contract period.

2.9.1.4 The University intends to utilize the contractors who are awarded term contracts. However, this contract is not exclusive and does not constitute commitment by the University to release a predetermined amount of work under the contract. The University maintains its right to award work to other contractors in accordance with SUNY procurement procedures and NYS laws and regulations.

2.9.2 Release of Individual Projects

The contractor(s) will be presented with a scope of work, specifications, sketches, etc. describing the work to be accomplished. The contractor will be expected to furnish a detailed/itemized NOT TO EXCEED estimate for the specified project. For any single material item greater than \$5,000 in value, the contractor is required to obtain the lowest price by providing a minimum of three (3) quotes from suppliers, which have been approved by the University. Upon evaluation and approval of this estimate by the University, a notification to proceed will be issued, known as a "Release", and the contractor would be expected to start as per requirements of General Conditions, Item 4.3 Time, Paragraph 4.3.1.

2.10 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 Contract, 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 Contract. SDVOBs can be readily identified on the directory of certified businesses at: http://www.ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf.

2.11 Minority and Women-Owned Business Enterprises

2.11.1 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.

- 2.11.2 For purposes of this solicitation, the University hereby establishes the overall goals listed on page three of this solicitation. For additional information please refer to the MWBE requirements outlined in the Prospective Bidders Notice (Form 7557-121b) and Exhibit A-1.
- 2.11.3 For guidance on how the University will determine a Contractor's "good faith efforts," refer to 5 NYCRR §142.8.
- 2.11.4 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).
- 2.11.5 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.
- 2.11.6 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.
- 2.11.7 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:

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

- 2.11.8 Successful contractors will be required to submit to the University the following MWBE Documentation with each individual project that is excess of \$25,000:

- Form 106 – Contract Breakdown (schedule of values)
- Form 107 – Utilization Plan (breakdown of MWBE subs)
- Form 108 – EEO Staffing Plan (breakdown of all workers on project)

- Form 109 – Affidavit and Verification
- Form 110 – Monthly EEO Utilization Report (verifies participation)
- Form 111 – Monthly Compliance Report (verifies MWBE subs paid)
- Form 112 – Quarterly EEO Utilization Report (verifies participation)
- Form 113 – Quarterly Compliance Report (verifies MWBE subs paid)

2.12 Equal Employment Opportunity Requirements

- 2.12.1 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.
- 2.12.2 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.
- 2.12.3 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.
- 2.12.4 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.
- 2.12.5 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.

3 LABOR AND MATERIAL CALCULATIONS

3.1 Labor

Fair and reasonable costs for labor shall include 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 for services performed for the benefit of the University and approved by the University;

Rates to be per current State Prevailing Wage Rates as provided by this document. For any future adjustment The Contractor is required to obtain the prevailing wage rates from State of New York Department of Labor web site (www.labor.state.ny.us).

Note: Any proposed change in the rates, due to change of prevailing wage rates, or state and/or federal taxes and insurances, must be submitted to the University by written notice along with the documents referring the new rates.

3.2 Material, Equipment & Subcontractors

Contractor billing cost to the University for material, third party equipment rentals and subcontractor time and material charges must be the Contractor's actual cost plus the markup percentages approved on the Bid Form. The costs shall include the costs to be delivered to the project site plus overhead and profit as indicated in the Bid Form. The contractor will be required to furnish the original invoices for the materials, equipment, and subcontractors

3.3 Bonds

The contractor must procure, execute, maintain, and deliver to the University, a Performance Bond and a Labor/Material Bond, in an amount not less than 100% of the total amount of the term contract, both of which bonds shall be in the form prescribed by the University, prior to contract award. 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.

Attorneys-in-fact who execute said bonds on behalf of the Surety must affix thereto a certified and effectively dated copy of their power of appointment.

4 GENERAL CONDITIONS

4.1 General Provisions

4.1.1 Examination of the Site and Local Conditions

4.1.1.1 The Contractor shall examine the site in order to become acquainted with local conditions.

4.1.1.2 The work shall be done under the coordination, scheduling, and inspection of the University. Any such coordination, scheduling, or inspection by the University shall not relieve the Contractor from its responsibilities specified hereunder.

- 4.1.1.3 If the Contractor's work adjoins that of others done after the date of this order, the Contractor shall notify the Facilities Office immediately in writing of any condition, which may affect completion of the work or the cost thereof. Absence of such notification shall constitute an acceptance of the conditions at the site.
- 4.1.1.4 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.
- 4.1.1.5 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 from the Contractor's aforesaid inspection and examination of the site, it shall give immediate notice to the University of such conditions before they are disturbed. The University 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 shall be issued.

4.2 Contract Administration and Conduct

- 4.2.1 Supervision: 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 University who shall have authority to act for the Contractor and who shall be accountable to the University to the extent provided in the Contract.
- 4.2.2 Employment of Workers
- 4.2.2.1 The work shall be executed by a professional trades person, in strict conformity with the best standard practice. The site shall be kept free of waste as the work progresses and, on completion, left "broom clean". In case of a dispute, the University may remove waste at the Contractor's expense.
- 4.2.2.2 Unless otherwise specified, all materials furnished by the contractor shall be new and of the most suitable grade of their respective kinds for the application. The Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.
- 4.2.2.3 The Contractor shall be responsible for receiving, unloading, moving, storing, and protecting the materials and equipment delivered to the job site and will perform these functions with contractor's personnel.
- 4.2.2.4 In order to comply with the University's requirement for overall job physical orderliness, the Contractor's tools, equipment, and materials furnished for or

associated with the work shall be so placed and maintained as to permit unobstructed access to the work and to minimize exposure to personal injury or fire loss. Equipment placement and material storage shall be at locations approved by the University.

4.2.2.5 While on University property, the Contractor's employees shall confine themselves to areas designated by the University.

4.2.2.6 The Contractor shall ensure there are not excessive noises and/or distractions throughout the Contractor's work area. The University prohibits the use of radios, music players, etc.

4.2.2.7 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 the manner and time specified. All workers engaged in specially or skilled work shall have had sufficient experience in such work to properly and satisfactorily perform the same. Should the University 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 University 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 campus to be performed under the Contract without obtaining the prior written approval of the University.

4.2.3 Permits: 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 Contract, 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 New York State Uniform Fire Prevention and Building Code and the applicable Federal and State Health and Labor Laws and Regulations. The building permit for the work shall be issued by the Campus Code Compliance Officer for conspicuous posting by the contractor at the job site.

4.2.4 Separate Contracts

4.2.4.1 The University reserves the right to let other contracts in connection with this work. The Contractor shall afford other Contractors reasonable cooperation in the execution of their work, and shall properly coordinate its work with theirs.

4.2.4.2 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 party or in connection with the 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 under a provision similar to the following provision which has been or will be inserted in the Contract with such other contractors.

- 4.2.4.3 Should any other contractor, having or who shall hereafter have a contract with the University relating to the Project or in connection with the work on sites adjoining or adjacent to that on which the work covered by this Contract is to be performed, sustain any damage, during the progress of the work hereunder, through any act or omission of the Contractor, the Contractor agrees to reimburse such other contractor for all such damages and it further agrees to indemnify and save harmless the University and the State of New York from all claims for such damages.
- 4.2.4.4 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 University, 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 execution of the work covered by the Contract, except as to latent defects which may be discovered thereafter.
- 4.2.5 Independent Contractor: The employees, methods, equipment, and facilities used by the Contractor shall at all times be under its exclusive direction and control. Contractor's relationship to the University under this Contract shall be that of an independent contractor, and nothing in this Contract shall be construed to constitute Contractor, or any of its employees or officers, an agent, associate, joint venture, or partner of the University.
- 4.2.6 Subcontractors
- 4.2.6.1 All subcontractors must be approved by the University. The University uses the following criteria to determine qualifications for a contractor listed as a subcontractor for any Releases issued against this contract: A) The subcontractor regularly employs and continually maintains on his payroll, skilled craftsmen in the trade. These skilled craftsmen shall be registered in the trade when such registration is required. B) The subcontractor owns the tools and equipment normally associated with the trade. C) The subcontractor has previously performed in the trade on projects similar in scope, size, complexity, and cost to the Release.
- 4.2.6.2 The prime contractor of the term contract will be responsible for the actions of any subcontractors. All billing of the subcontractors will be routed through the prime contractor for payment. The subcontractor will be expected to follow the terms and conditions as outlined in this document.
- 4.2.6.3 No subcontractor shall be permitted to work at the site until it has furnished satisfactory evidence of the insurance required to the Contractor.
- 4.2.6.4 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 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

4.2.6.5 The Contractor shall execute with each of its subcontractors and shall require all subcontractors to execute with their sub-subcontractors a written agreement that shall bind the latter to the terms and provisions of this Contract insofar as such terms and provisions are applicable to the work to be performed by such subcontractors.

4.2.6.6 Contractor shall not subcontract work hereunder without prior written consent of the University.

4.2.7 Substitutions

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

4.2.7.2 The Contractor shall have and make no claim for an extension of time or for damages by reason of the time taken by the University in considering a product proposed by the Contractor or by reason of the failure of the University to approve a product proposed by the Contractor.

4.2.8 Guarantees

4.2.8.1 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 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.

4.2.8.2 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.

4.2.9 Default of Contractor: In the event that either party hereto shall default in the substantial performance of any material obligation specified herein the non-defaulting party shall notify the other party in writing (subject to the provisions of the Safety and Health and and Hazard Articles herein) and, if such default is not remedied within fifteen (15) days from date of such

notice, then the non-defaulting party shall have the right to terminate this Contract immediately. If, in the University's sole opinion, such default may result in substantial property damage, injury, accident, or death, the University may, at any time, immediately suspend this Contract without penalty or damages. Termination under this provision or under any other provision of this Contract shall not relieve or release either party hereto from any rights, liabilities, or obligations, which it has accrued prior to the date of such termination.

4.2.10 Termination for Convenience

4.2.10.1 The University may terminate this Contract at any time on thirty (30) days prior written notice without cause or liability, except for obligations or liabilities due for services rendered prior to the effective date of termination.

4.2.10.2 If Contractor should refuse or fail to supply sufficient quantity of properly skilled personnel, or if it should fail to make prompt payment to subcontractor or material men for labor and material used hereunder, or it should disregard or be in violation of any laws, ordinances, or governmental regulations, or it should otherwise violate any of the provisions of this Contract, or if the University, in good faith, determine that any of its material or equipment used hereunder is in danger of destruction, damage, or mishandling, or that the University's title thereto is in jeopardy, or that Contractor's credit or financial position is impaired, then the University may, without prejudice to any other right and remedy, terminate or suspend this Contract, without liability, on written notice, take possession of all the University materials and equipment, and finish or engage a third party to finish the work by whatever means the University deems expedient. In such event, the Contractor shall receive no further payments hereunder until the work is finished, at which time Contractor will be reimbursed for costs and expenses incurred prior to termination less any costs and expenses to the University arising from such termination which the University would have incurred absent such termination. Termination under this provision or under any other provision of this Contract shall not relieve or release either party hereto from any rights, liabilities, or obligations, which it has accrued prior to the date of such termination.

4.2.10.3 The University reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with New York State Finance Law §139-k was intentionally false or intentionally incomplete. Upon such finding, the University may exercise its termination right by providing written notification to the Contractor/Consultant in accordance with the written notification terms of this contract.

4.2.11 Records, Inspections & Testing

4.2.11.1 All materials and workmanship shall be subject to inspection, examination, and testing by 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 University. If, however, the tests and any attendant re-inspection or re-examination prove that the materials and/or work tested do not meet the requirements of the Contract, then the entire cost of such tests is to be borne by the Contractor. The

University will have the right to reject defective material and workmanship furnished by the Contractor or requires its correction. The Contractor, without charge therefor, shall satisfactorily and promptly correct all rejected work and replace all rejected material with proper material.

- 4.2.11.2 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 and/or it may cancel the Contract and terminate the Contractor's employment as provided in the Contract.
- 4.2.11.3 The Contractor, without additional charge therefor, shall promptly furnish all reasonable facilities, labor, and materials necessary for the safe and convenient inspection and testing that may be required by the University.
- 4.2.11.4 If the Contract Documents 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 University timely notice of its readiness for such testing or inspection 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 University, should be covered up prior to such testing or inspection, the Contractor, at its sole cost and expense, must, if directed by the University, uncover the same for testing or inspection and reconstruct the 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.
- 4.2.11.5 Should it be considered necessary or advisable by the University 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.
- 4.2.11.6 Inspection of material and furnished articles to be incorporated in the work may be made at the place of production, manufacturer, 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.
- 4.2.11.7 Contractor shall maintain, in accordance with Generally Accepted Accounting Principles and Practices, such records as may be necessary to adequately reflect the accuracy of Contractor's charges and invoices for reimbursement under this Contract and maintain such other additional records as

the University may from time to time reasonably require in connection with this Contract.

4.2.11.8 Contractor shall preserve such records for a minimum period of six (6) years from the date of their last payment without additional reimbursement or compensation thereof.

4.2.11.9 The University's representatives shall have the right to visit, observe, and inspect during regular business hours, any Contractor facility related to this Contract, and the University's materials and property wherever located.

4.2.12 Temporary Facilities: Toilet facilities, water, and electrical power, as they exist, will be made available to the Contractor at no cost, from a location designated by campus. The Contractor will be responsible for all connections to the above utilities, and the removal and restoration of same upon completion of the work.

4.3 Time

4.3.1 Commencement, Prosecution and Completion of Work

4.3.1.1 The Contractor agrees that it will begin work within ten (10) calendar days of a project Release being issued by the University, and that it will prosecute the same with such diligence that all work covered by the Contract shall be entirely completed and performed on or before the time specified by The University.

4.3.1.2 The Contractor agrees that it will provide term estimates to the University within ten (10) calendar days after a request has been made by The University.

4.3.1.3 It is the Contractor's sole responsibility to track the costs of the project, including but not limited to labor, material, and equipment rentals. The contractor may NOT exceed the estimate and the formal Release without PRIOR approval from the campus.

4.3.1.4 The Contractor's designated superintendent for each project shall submit a Daily Project Log to the University, for all work completed each day they are on campus. If a contractor is working on multiple projects simultaneously, a Daily Project Log must be submitted for each project. Daily Project Logs generated by individual contractors are permissible so long as the forms list the names of the employees on site, number of hours worked, summary of equipment used/rented. If contractors do not have their own forms, the University will provide them.

4.3.2 Notice of Conditions Causing Delay

4.3.2.1 Within ten (10) working days after the commencement of any condition which is causing or may cause delay in completion, 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.

4.3.2.2 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.

4.3.2.3 Neither party shall be liable for delay in performance or nonperformance caused by fire, flood, explosion, accident, labor trouble, war, act of Government, or any other causes reasonably beyond its control, but said party shall use all reasonable efforts to minimize the extent of the delay.

4.4 Payment

4.4.1 Cost of Work

4.4.1.1 Contractor shall be reimbursed for such actual costs and expenditures as are included in the following items when such reimbursements have been approved in advance by the University.

- Actual wages and salaries including wage taxes and welfare plans of the Contractor for all field personnel (except as specifically noted to the contrary herein) including all premiums for overtime authorized by the University. The Contractor shall submit in advance to the University, and obtain approval of, salary and wage schedules of reimbursable personnel.
- Materials and supplies furnished at the University's request.
- Licenses and fees paid by Contractor.
- Transportation expenses incurred with the University's prior approval.
- Rental for all Contractor owned major equipment, which has a purchase price greater than \$3,000 at rates and terms approved by the University prior to moving said equipment to the project site. Personal vehicles are NOT permitted. Acceptable company vehicles must be owned, registered, and insured in company name. Reimbursable expenses for Contractor owned equipment that meet these requirements shall be based and not exceed prices set for in the Blue Book published by Intertec Publishing, Green Book published by Associated Equipment Distributors of Oakbrook, IL, or EquipmentWatch by Penton Media at <http://equipmentwatch.com/> or similar credible source approved by The University.
- Rental actually paid by the Contractor to third parties for construction equipment at rates and terms approved by the University prior to the execution of such rental agreements.
- Field office facilities including storage for tools and equipment to the extent authorized by the University.
- Subcontracts as approved by the University.

- Overhead (including supervision and contract administration), insurance, and profit as quoted. No profit or overhead may be added to premium time. Percentage allowance for insurance, overhead, and profit are not to be pyramided.

4.4.1.2 Reimbursements shall **not** include the following items [Provisions for the following, if any, must be included in the markup for overhead and profit]:

- Salaries and expenses incurred in conducting Contractor's main or regularly established branch office.
- Overhead expenses unless otherwise specifically authorized herein.
- Interest on capital employed or on borrowed money.
- Premium for fidelity insurance and crime insurance or losses sustained by the contractor due to embezzlement, robbery, or larceny in any form.
- Costs or losses incurred by the Contractor as a result of automotive accidents or by any other form of liability claim of third parties.
- Licenses, registrations, permits, privilege taxes, etc. required by the Contractor to do business in the jurisdiction.
- Welfare plans, such as pension plans, bonus, insurance plans, continuity of service plans, etc. which the contractor may have in effect except those covered in Section 4.7.2.2.
- Gross receipts taxes, business and occupation taxes, etc. imposed solely by the State of New York.
- Federal income taxes.
- Membership dues in trade associations.
- Travel expense to and from the job site for personnel.
- Employee owned vehicles.
- Any expense incurred by the Contractor on work not performed under this contract even though such expense may result from his activities hereunder, i.e., increased Unemployment Compensation rate, increased insurance rates, etc.
- Use of Contractor owned tools and equipment having a purchase price of less than \$3,000.
- Any other item not specifically stated to be reimbursable or not otherwise authorized and approved by the University.

4.4.1.3 With respect to reimbursable items. Contractor shall promptly remit or credit to the University allowances, commissions, rebates discounts, premiums, fees, or royalties allowed to it or received by it incidental to the performance of the contract.

4.4.2 Value of Omitted and Extra Work/Change in Work

4.4.2.1 The amount by which the Contract consideration is to be increased or decreased by any Change Order shall be determined by the University by applying the applicable price or prices set forth in the Attachment A of this Contract.

4.4.2.2 The Contractor, within ten (10) working days after a request for the same, must submit to the University a detailed/itemized breakdown of the Contractor's estimate of the value of the omitted and/or extra work including, if any, additional days to complete.

4.4.2.3 Unless otherwise specifically provided for in a Change 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.

4.4.3 Deductions for Unperformed and/or Uncorrected Work

4.4.3.1 The Contractor shall remove material and equipment furnished hereunder which does not meet the specifications whether incorporated in the work or not, and shall re-execute the work at no cost to the University, shall pay for making good other work damaged thereby.

4.4.3.2 If the Contractor does not remove nonconforming work promptly, the University may do so and store materials or equipment at Contractor's expense. If Contractor does not pay the expense thereof within ten (10) days, the University may sell the materials and equipment and account to the Contractor for the proceeds, after deducting all expenses, which must be borne by Contractor.

4.4.3.3 Neither acceptance of nor payment for work shall relieve the Contractor of their responsibility for faulty materials, equipment, or workmanship, whether furnished by the Contractor or its subcontractors. The Contractor shall remedy, as soon as possible defects appearing within one (1) year from the date of final payment and shall pay for resulting damage to other work. The University shall give prompt notice of observed defects.

4.4.3.4 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, 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 Contract, then, and in that event, the University, acting by itself or through

the Consultant, may, upon three (3) working days' notice to the Contractor, either itself provide or have any other contractor 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 back charge 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.

4.4.3.5 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.

4.4.4 Payments

4.4.4.1 Requests for payments shall be consistent with the amounts authorized in the formal Release provided prior to commencement of any work. It is the Contractor's sole responsibility to track the costs of the project, including but not limited to labor, material, and equipment rentals.

4.4.4.2 The following documents must be included for all requests for payments.

A. Payment Application and Certification for Payment on the form provided by the University (Attachment – H). must be included for all requests for payment:

B. Expense and Fee Summary (TCP1):

- Total Labor Expense plus markup
- Total Material Used plus markup
- Total Equipment Used/Rented plus markup
- Total Subcontractor Costs plus markup

C. Labor Expense Summary (TCP2):

- List of Employees
- Hours worked
- Billing Rate

D. Employee Labor Rate Worksheet (TCP3):

- Name of Employee
- Trade Classification
- Hourly Rate
- Last four digits of social security number
- Detailed labor rate breakdown

E. Material Expense Report (TCP4):

- Material used
- Quantity

- Unit Costs

F. Subcontractor Expense Report (TCP5)

G. Receipts shall be provided for:

- Labor and material billed to contractor (subcontractor billings)
- Materials installed in project
- Supplies
- Equipment Use Charges
- All other incidental charges applicable

H. Certified Payrolls

I. Prime Contractor's Certification and Subcontractor's Certifications

J. All MWBE documents as set forth in Section 2.9.6:

- Form 110 – Monthly EEO Utilization Report (verifies participation)
- Form 111 – Monthly Compliance Report (verifies MWBE subs paid)

4.4.4.3 Billings must be submitted within thirty (30) calendar days from the completion of the work, including costs for both labor and materials, and shall include complete documentation listed in Section 4.4.4.1.

4.4.4.4 Final payment will be made after completion and acceptance by the University and receipt of Release of Liens and all other required closing documents. (Closing documents may include any or all of the following: Electrical Certificate, Manufacturer's Warranty, Operating Manuals, As-Built Drawings, Elevator Certificate, Test Reports, Safety and Fire Marshal's Inspection Reports, and other equipment warranties and documentation as applicable.)

4.4.5 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.

Contractor shall furnish the University a complete Release of Liens at intervals requested by the University and in all cases before final payment is made. If any lien is filed or remains unsatisfied after final payment, Contractor shall indemnify the University for all costs incurred in discharging such lien.

4.5 Protection of Rights and Property

4.5.1 Safety & Health

4.5.1.1 The contractor shall comply with all federal, state, local and university regulations including, but not limited to:

- Confined Space

- Trenching and Shoring
- Underground Utility Protection
- Lockout/Tagout
- Cutting and Welding
- Lead Exposure
- Other special provisions as may be set forth.

4.5.1.2 Designate one person to be responsible for carrying out the Contractor's obligation under this Article.

4.5.1.3 Promptly report to the Campus Public Safety for incident report, cases of death, occupational disease, and OSHA – recordable injury caused by work on the job.

4.5.1.4 Maintain an educational program to assure the inclusion of safety instruction as a part of job assignment.

4.5.1.5 Arrange for first-aid treatment and job-incurred injuries in accordance with requirements of its insurer for Workmen's Compensation Insurance.

4.5.1.6 If the University notifies the Contractor of any noncompliance with the provisions of this Article and the action to be taken, the Contractor shall make all reasonable efforts to correct the existing conditions immediately, if directed by the University to do so, or, if not so directed, no later than forty-eight (48) hours after receipt of such notice. If the Contractor fails to do so, the University may stop all or any part of the work hereunder. When satisfactory corrective action is taken by the Contractor, a start order will be issued by the University. No part of the time lost due to any such work stoppage shall be made subject for claim for extension of time or for additional costs or damages by the Contractor.

4.5.2 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, OSHA, and with all valid rules and regulations adopted or promulgated by the agencies of the State of New York pursuant thereto. The Contractor's attention is specifically called to the applicable rules and regulations, codes and bulletins of the New York State Department of Labor.

4.5.3 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.

4.5.4 Emergencies

In the case of an incident that requires immediate action and could if ignored threaten 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 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 incident. Where the Contractor has not taken action but has notified the Consultant or the University of an incident that requires

immediate action that could if ignored threaten loss or injury to persons or property, it shall act in accordance with the instructions and/or authorization by the Consultant or the University.

4.5.5 Fire Safety

All solid fuel salamanders and U.L. approved heaters used by the Contractor or any of its subcontractors shall be arranged in a standard manner. 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.

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.

4.5.6 Risks Assumed by Contractor

4.5.6.1 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 University, 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:

4.5.6.2 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, materialmen, or worker performing services or furnishing materials for the work covered hereunder.

4.5.6.3 The Contractor shall bear such risk of loss or damage until the work covered by the Contract has been fully 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.

4.5.6.4 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. The Contractor shall bear such risk for all such deaths, injuries, damages or losses sustained or alleged to have been sustained prior to the final acceptance by the University of all work covered by the Contract. The Contractor shall also bear the risk of claims for wrongful death occurring subsequent to said final acceptance provided such death is caused, contributed to, or is a consequence of bodily injuries sustained or alleged to have been sustained prior to said final acceptance.

4.5.7 Indemnification

4.5.7.1 Contractor shall fully indemnify the University against all liability, loss, and expense (including reasonable attorney's fees, settlements, judgments and costs) resulting from injury to or death of any person (including, without limitation, injury to or death of employees of the Contractor or the University) or loss of or damage to property (including, without limitation, damage to the University's or Contractor's property) or the environment incurred by the University or a third party and resulting in any way from any act or omission, negligent or otherwise, on the part of the University or Contractor, its agents, employees, subcontractors, or assignees, in connection with the performance of this Contract, except when such loss and expense are caused solely by the willful misconduct or negligence of the University.

4.5.7.2 The Contractor shall indemnify and save harmless the University, 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.

4.5.7.3 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 remuneration 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 renumeralated.

4.5.8 Patents, Trademarks and Copyrights

4.5.8.1 Contractor shall hold and save the University harmless from liability of any kind, including costs and expenses, for or on account of any alleged invention made or used by the Contractor or any Subcontractor in the performance of the work under this Contract or involved in the use or disposal by or on behalf of the University hereunder; provided, however, that this indemnification shall not be applicable to infringement of patents of third parties which results from acts of Contractor complying with specific written instructions furnished by the University or from the use of apparatus fabricated and/or installed by the Contractor in accordance with plans and specifications furnished by the University.

4.5.8.2 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 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 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 anytime both before or after the University's final acceptance of all the work to be performed under the Contract.

4.5.8.3

4.5.9 Compensation and Liability Insurance

4.5.9.1 The Contractor shall procure and maintain, at its own cost and expense, until final acceptance by the University of all the work covered by this Contract, the following kinds of insurance on the applicable forms:

a. Workers' Compensation Insurance.

A policy complying with the requirements of the laws of the State of New York.

b. General Liability and Property Damage Insurance.

A standard general comprehensive liability insurance policy or a commercial general liability insurance policy issued to and covering the liability of the Contractor for all work and operations under this Contract, including, but not limited to, contractual and completed operations coverage. The coverage under such policy shall not be less than the following limits:

Bodily Injury and Property Damage Liability
\$ 1,000,000 Each Occurrence
\$ 2,000,000 Aggregate

The aforesaid insurance requirements will be deemed met by the Contractor's procurement and maintenance of either of the aforesaid policies and, in addition thereto, an umbrella policy providing similar coverage; provided, however, that the total amount of insurance coverage is at least equal to the requirements above set forth.

c. Automobile Liability and Property Damage Insurance.

A policy covering the use in connection with the work covered by the Contract Documents of all owned, non-owned and hired 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. The coverage under such policy shall not be less than the following limit:

Bodily Injury and Property Damage Liability
\$ 1,000,000 Each Occurrence

d. Owner's Protective Liability Insurance.

A policy issued to and covering the liability for damages imposed by law upon the University, the State of New York and the State University of New York, their trustees, officers, agents or employees, with respect to all operations under the Contract by the Contractor and its subcontractors, and/or their interest in the Project and the property upon which work under the Contract is to be performed, including omissions and supervisory acts of the former. Said insurance shall be in the same amounts, as that required under subdivision b above.

e. Asbestos Abatement Insurance.

A liability insurance policy issued to and covering the liability, of the Contractor and/or subcontractor engaged in the removal, handling or wrapping of asbestos, if any of such work is to be performed under the Contract, for bodily injury, illness, sickness or property damage caused by exposure to asbestos in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. The Contractor and/or its aforesaid subcontractor shall either obtain an endorsement to the aforesaid required insurance policy adding the University, the State of New York and the State University of New York, their trustees, officers, agents or employees, as additional parties insured thereunder or shall obtain a separate owner's protective liability insurance policy for such parties with coverage similar to that required by the first sentence of this subdivision. In addition, any Contractor or subcontractor engaged in the removal, handling, or wrapping of asbestos shall hold harmless and indemnify the University, the State of New York and the State University of New York, 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

The aggregate insurance limit set forth above shall apply separately to each project for which a certificate of insurance and/or policy is issued.

Before commencing the performance of any work covered by the Contract, the Contractor shall furnish to the University a certificate or certificates in duplicate of the insurance required under the foregoing provisions. Such certificates shall be on a form prescribed by the University, shall list the various coverages and shall contain, in addition to any provisions hereinbefore required, a provision that the policy shall not be changed or canceled and that it will be automatically renewed upon expiration and continued in force until final acceptance by the University of all the work covered by the Contract, unless the University is given fifteen (15) days' written notice to the contrary. Upon request, the Contractor shall furnish the University with a certified copy of each policy.

All insurances required to be procured and maintained as aforesaid must be procured from insurance companies approved by the University and comply with all requirements of the

laws of the State of New York.

If at any time any of the above-required insurance policies should be canceled, terminated, or modified so that insurance is not in effect as above required, then, if the University shall so direct, the Contractor shall suspend performance of the work covered in the Contract. If the said work is so suspended, no extension of time shall be due on account thereof. If said work is not suspended, then the University may, at its option, obtain insurance affording coverage equal to that above required, the cost of such insurance to be payable by the Contractor to the University.

4.5.10 Builder's Risk Insurance

4.5.10.1 The Contractor shall procure and maintain, at its own cost and expense, until final acceptance of all work covered by this Contract 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 with fire, extended coverage, vandalism and malicious mischief coverage.

4.5.10.2 The policy shall be in an amount equal to the Project's insurable value, i.e., the Contract consideration; 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.

4.5.10.3 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.

4.5.10.4 The University, the Contractor and its subcontractors, as their interests may appear, will be named as the parties insured under said policy.

4.5.10.5 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.

4.5.10.6 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.

4.5.10.7 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 Contract or to be a limitation on the nature or extent of such obligations and risks.

4.5.10.8 Such policy shall contain a provision that it shall not be changed or canceled and that it will be automatically renewed upon expiration and continue in force until final acceptance by the University of all the work covered by the Contract, unless the University is given fifteen (15) days' written notice to the contrary. 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 company approved by the University and authorized to do business in the State of New York.

4.6 Vendor Responsibility

- 4.6.1 The Contractor shall at all times during the Contract 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.
- 4.6.2 The University, at its sole discretion, reserves the right to suspend any or all activities under this Contract, 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. Contract activity may resume at such time as the University issues a written notice authorizing a resumption of performance under the Contract.
- 4.6.3 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.

4.7 Required Provisions

4.7.1 Provisions Deemed Inserted

Each and every provision required by law to be inserted in the Contract, including, but not limited to, the provisions set forth in Exhibit A and A-1 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 Contract shall forthwith be physically amended to make such insertion or correction.

4.7.2 Wage Rates

The Contractor shall post the appropriate prevailing wage schedules in a conspicuous place at the construction site. The University shall provide the Contractor with prevailing wage rate schedules for posting and the 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.

Contractor assumes full responsibility for the payment of all Social Security, Unemployment Compensation, and other taxes and charges for all employees engaged by Contractor in the performance of the services hereunder, and it will require each of its subcontractors, if any, to do the same.

4.7.3 OSHA 10-Hour Construction Safety and Health Course

Effective July 18, 2008, the New York State Department of Labor, Labor Law §§220 and 220-h requires that on all public work projects of least \$250,000 all laborers, workers and mechanics working on the site, be certified as having successfully completed the OSHA 10-hour construction safety and health course. THE UNIVERSITY reserves the right to request proof of completion and certification of the OSHA-10 hour construction safety and health course of any laborer, worker or mechanic working on the site. In the event a laborer, worker or mechanic working on the site cannot provide proof of certification within five (5) business days of the University's request, said laborer, worker or mechanic shall be removed from the site until such time as he/she provides proof of completion of the course.

4.7.4 Diesel Emissions Reduction Act of 2006 (the "Act")

The Contractor certifies and warrants that all heavy duty vehicles, as defined in New York State Environmental Conservation Law (ECL) section 19-0323, to be used by the Contractor, its Agents or Subcontractors under this Contract, will comply with the specifications and provisions of ECL section 19-0323 and any regulations promulgated pursuant thereto, which requires the use of Best Available Retrofit Technology ("BART") and Ultra Low Sulfur Fuel ("ULSD"), unless specifically waived by DEC. Qualification for a waiver under this law will be the responsibility of the Contractor.

4.8 Additional Conditions

4.8.1 Parking: The College's parking regulations are available online at: <http://www.oswego.edu/administration/parking/parkingregs.html>

4.8.2 Contractor Parking - With authorization by the College, the "Company" service trucks (those with signage) may be able to use service entrances to campus buildings. Contractors may not use main pedestrian entrances. "Company" vehicles of Contractor may park within their approved work zones, however all vehicles need to be registered with campus parking. Private, Contractor worker vehicles shall park in parking lots as designated by the College. Contractors and their employees must abide by any and all college and state parking and traffic laws and regulations. Contractors and their employees are solely responsible for any traffic or parking tickets they incur. Parking permits are obtained at the College Parking

Office. All vehicles are required to have a valid parking permit which is issued by the College. Obtain permits at the College parking office located on Route 104 near the main campus entry.

- 4.8.3 Identification/key/card access: All Contractor personnel are required to visibly wear an employer issued identification while on the College campus. The identification must include the name of company they are employed by, the employee name, and a recent picture of the employee. Upon authorization, the College will provide keys upon written request of the Contractor or agency. Authorized keys will be “signed out” by Contractor supervisors on the appropriate form. These keys may only be used to enter work areas during authorized contract work hours as directly associated with their work. The Contractor, not the individual, will be solely responsible for any costs of extra work or re-keying required by the loss of said keys.
- 4.8.4 The entire campus is TOBACCO FREE. There will be no smoking or any tobacco use within the buildings or on the grounds owned or leased by The University as well as in any vehicle on The University property. Contractors must communicate this policy to all individuals, employees, subcontractors, vendors, etc. prior to their assignment to The University.
- 4.8.5 The University strictly enforces a ZERO TOLERANCE policy regarding workplace violence. Violations will not be tolerated and will be subject to disciplinary action, including immediate removal from campus, and, if appropriate, shall be prosecuted to the full extent of the law. Incidents of workplace violence, threats of workplace violence (either explicit or implied), or observations of workplace violence are not be ignored by any member of the College community. Any employee, representative, contractor, consultant or vendor, who believes that a violation exists, or that an imminent danger exists, must contact the University Police Department or call 911 immediately.
- 4.8.6 The SUNY Board of Trustees has adopted a Policy on MANDATORY REPORTING and Prevention of Child Sexual Abuse. This policy requires ALL SUNY employees, contractors, vendors, students and volunteers to report incidents of child sexual abuse that occur on SUNY property and at SUNY sponsored events. Anyone who witnesses or has reasonable cause to suspect any sexual abuse of a child (defined as a person under the age of 17) occurring on The University property or while off campus during official College business or College sponsored events is REQUIRED to immediately report such conduct to the University Police Department immediately, or if appropriate call 911. Any person found in violation of this policy will be subject to disciplinary action, including immediate removal from campus, and, if appropriate, shall be prosecuted to the full extent of the law. Please note, to report an incident, it is not required to have proof – or even to be absolutely certain – that sexual abuse has occurred. Rather, someone reporting abuse needs only to SUSPECT abuse based on his or her observations.

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 in 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 33rd Floor
New York, NY 10017
646-846-7364
email: mwbebusinessdev@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 subcontract 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.

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

- ii. Contractor intends to use to perform the State contract; 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 other information which the MWBE Program Office determines to be relevant to the MWBE Utilization Plan.
- iv.

(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 5th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract. 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 an 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 _____ percent (____%) 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.

ATTACHMENT - A
BID FORM

Company Name: _____

Trade: _____

SUNY Oswego will receive sealed bids for Term Contract(s) for each trade Tuesday January 30, 2024 at 2:00pm, along with all required attachments specified herein. Sealed bids shall be submitted in person or by overnight carrier to SUNY Oswego, Purchasing Department, 402 Culkin Hall, Oswego, NY 13126. In the event the bid will be hand delivered to the bid opening prior to the date and time listed, it must be delivered to 402 Culkin Hall.

By submission of a bid, the Contractor acknowledges that they have read and understand the Bid Documents and its obligations thereunder as they pertain to the work; is familiar with the conditions that affect the work; will comply with the requirements indicated in the Description of Work (below); will furnish the insurance indicated herein; will take all necessary safety and security measures necessary for the protection of its workers, property and the public; will comply with all laws, rules, orders, regulations and requirements of Federal, State and municipal governments applicable hereto; understands that the State University of New York is a tax exempt State agency; and will cooperate and coordinate the work with the campus.

DESCRIPTION OF THE WORK

The contractor shall furnish all labor, materials, tools, equipment, and supervision necessary to perform each assigned project. The work shall include, but not be limited to the requirements of this bidding document, all local laws and regulations, Exhibit A and A-1, and the Prevailing Wage Rates. Most work is anticipated to be performed during normal business hours; however, contractor is to be available 24 hours a day, 7 days a week, 365 days per year with adequate notice.

LABOR RATES

Rates to be per current NYS Dept. of Labor Prevailing Wage Rates as provided by this document. For any future adjustment the Contractor is required to obtain the prevailing wage rates from State of New York Department of Labor web site (www.labor.state.ny.us). In the event the Contractor has no online capability, the Contractor may contact the University to obtain the prevailing wage rates via a written request.

Billing costs to the University for labor shall be the actual costs of the Contractor, including prevailing wage rates, state and federal taxes and insurances, plus the agreed upon markup percentage submitted on the Contractors' Bid Form and approved by the University.

Billing cost to the University for material, third party rentals, contractor owned equipment or subcontractors shall be contractor's actual cost plus agreed upon markup percentage submitted on the Contractors' Bid Form and approved by the University.

* For Contractor's owned equipment over \$3000 value, the Blue Book published by Intertec Publishing, Green Book published by Associated Equipment Distributors of Oakbrook, IL or similar credible sources approved by the University may be used.

PROPOSAL

The submission of a proposal constitutes a binding offer to perform and provide said services.

Company Name: _____

Trade: _____

<p>Labor Rate</p>	<p>Rates to be per current State Prevailing Wage Rates as provided by this document</p>	<p>_____ % Fee Mark-Up (in numbers)</p> <hr/> <p>Percentage Fee Mark-Up (written)</p>
<p>Equipment & Material Costs</p>	<p>Contractor billing cost to the University for material, equipment and third party equipment rentals</p>	<p>_____ % Fee Mark-Up (NOT TO EXCEED 15%)</p> <hr/> <p>Percentage Fee Mark-Up (written)</p>
<p>Subcontractor & Subcontractor Material Costs</p>	<p>Contractor billing costs for subcontractor time and material</p>	<p>_____ % Fee Mark-Up (NOT TO EXCEED 10%)</p> <hr/> <p>Percentage Fee Mark-Up (written)</p>

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 include 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 above items (a), (b), and (c) 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 therefore. 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 Assistant 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.

The bidder agrees that if awarded the Contract, it will commence work within (10) calendar days after date of receipt of a fully executed Contract and that it will fully complete the work by the date stated herein.

The undersigned acknowledges the receipt of the following addenda, but agrees that it is bound by all addenda whether or not listed herein.

Addendum Number

Date
____/____/____
____/____/____
____/____/____

Submitted by: _____
Name *Title*

_____ / ____ / ____
Signature *Date*

Federal I. D. Number

(if corporation affix seal)

NAME OF BIDDER (Company)

ADDRESS OF BIDDER (Company)

Phone Number

Fax

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.

Public Notary

(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.

Public Notary

(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

ATTACHMENT - B

Contractor Minimum Qualification Requirements

Bidders must satisfy the following minimum qualifications. All qualifications will be evaluated on a “pass/fail” basis. Bidders must submit supporting documentation to evidence their ability to satisfy each qualification. If any bidder is not able to satisfy any qualification, their bid will be rejected.

1. Location/Proximity:

The contractor must be within 100 miles or 2 hours traveling distance/time to the campus of SUNY Oswego. 7060 State Route 104, Oswego, NY 13126.

2. Financial Status: The contractor must have the ability to obtain bonding for the \$500,000.00 total contract allowance.

3. Years in Business: The contractor must have been in the same trade for a minimum of five (5) years.

4. Prior Similar Size Work: The contractor must have self-performed at least ten (10) projects over \$37,500.00 within the last three years in the contractor’s specified trade.

Electric bidders must include evidence of experience installing, repairing and conducting preventative maintenance duties for projects up to 480 volt.

5. Licensing/Certification:

Electric - Contractors bidding for Electrical must hold a license in that field from a New York municipality.

Abatement - Abatement Contractor must have all required certifications.

6. Personnel Qualification: Bidders must provide a list of key personnel whom the Contractor intends to use on the campus for term contract projects. The Supervisor / Foreman / Journeyman to be used for these projects must have a minimum of five years of relevant experience.

TERM CONTRACT FOR TRADES

Contract Number: {insert}

Trade: {insert}

Contractor: {insert}

This Agreement made as of the _____ day of _____, 20____, for Contract Number _____ by and between STATE UNIVERSITY OF NEW YORK, a corporation organized and existing under the laws of the State of New York, with its principal office located at State University Plaza, 353 Broadway, Albany, New York 12246, on behalf of State University of New York at _____ located at _____ hereinafter referred to as "University" and _____ having its principal office located at _____, and a Federal ID or Social Security No. of {insert number}, hereinafter referred to as "the "Contractor".

WITNESSETH:

The parties hereto agree that:

- 1) The Contractor shall perform all work and duties required for the construction of each subsequent Term Contract Release ("Release"), subject to the authorization to execute such work under the term contract. Each Release shall include the Request for Term Estimate (including specifications, drawings, or other descriptions of the work to be performed) and the Term Estimate. Subject to authorized adjustments the work and duties contained in the same shall be completed within required schedule provided by the University.
 - a) Contract Documents include the following, which are incorporated by reference to this Contract:
 1. Exhibit A and A-1 Standard Contract Clauses
 2. This Contract
 3. Bonds
 4. Invitation for Bid
 5. Contractors Bid Form
- 2) The University shall pay, and the Contractor shall accept such payment for the performance of work, as per the attached labor and markup rates in accordance with the documents contained on the Contractors Bid Form (Form 7554-20). The contract maximum shall not exceed {insert contract value}.
- 3) This Contract shall be interpreted according to the laws of the State of New York. Contractor shall comply with all laws, rules, orders, regulations and requirements of federal, state, and municipal governments applicable thereto including the provisions contained in the rider attached hereto and made part hereof as Exhibit A.
- 4) All notices permitted or required hereunder shall be in writing and shall be transmitted either: via certified or registered United States mail, return receipt requested; by personal delivery; by expedited delivery service; or by email if actually received by the University. Contractor bears the burden 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:

{Insert Campus}

Designated Contact Name: {insert}

Title: {insert}

Address: {insert}

Telephone Number: {insert}

E-mail address: {insert}

{Insert Company Name}

Designated Contact Name: {insert}

Contact Title: {insert}

Address: {insert}

Telephone Number: {insert}

E-mail Address: {insert}

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.

- 5) This Contract constitutes the entire agreement of the parties hereto and all previous communications between the parties, whether written or oral, with reference to the subject matter of this contract are hereby superseded.
- 6) The relationship of Contractor to University and the State of New York arising out of this Contract shall be that of independent contractor.

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

Contract Number: *Insert Contract Number*

Insert Contractor Name

STATE UNIVERSITY OF NEW YORK

Sign: _____ Date: _____

Sign: _____ Date: _____

Print: _____

Print: _____

Title: _____

Title: _____

APPROVED BY ATTORNEY GENERAL:

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

_____ Date: _____

_____ Date: _____

By:

By:

SAMPLE

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

**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/sunyppl/.

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/.

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:

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:



Kathy Hochul, Governor

Roberta Reardon, Commissioner

SUNY Oswego
Richard Merritt, Purchase Associate
7060 State Rt 104
Oswego NY 13126

Schedule Year 2023 through 2024
Date Requested 01/05/2024
PRC# 2024000196

Location SUNY Oswego
Project ID# 010124RM
Project Type Various projects using term contracts for carpentry, painting, plumbing, and roofing

PREVAILING WAGE SCHEDULE FOR ARTICLE 8 PUBLIC WORK PROJECT

Attached is the current schedule(s) of the prevailing wage rates and prevailing hourly supplements for the project referenced above. A unique Prevailing Wage Case Number (PRC#) has been assigned to the schedule(s) for your project.

The schedule is effective from July 2023 through June 2024. All updates, corrections, posted on the 1st business day of each month, and future copies of the annual determination are available on the Department's website www.labor.ny.gov. Updated PDF copies of your schedule can be accessed by entering your assigned PRC# at the proper location on the website.

It is the responsibility of the contracting agency or its agent to annex and make part, the attached schedule, to the specifications for this project, when it is advertised for bids and /or to forward said schedules to the successful bidder(s), immediately upon receipt, in order to insure the proper payment of wages.

Please refer to the "General Provisions of Laws Covering Workers on Public Work Contracts" provided with this schedule, for the specific details relating to other responsibilities of the Department of Jurisdiction.

Upon completion or cancellation of this project, enter the required information and mail **OR** fax this form to the office shown at the bottom of this notice, **OR** fill out the electronic version via the NYSDOL website.

NOTICE OF COMPLETION / CANCELLATION OF PROJECT

Date Completed: _____ Date Cancelled: _____

Name & Title of Representative: _____

Phone: (518) 457-5589 Fax: (518) 485-1870
W. Averell Harriman State Office Campus, Bldg. 12, Room 130, Albany, NY 12226