

# CONSULTANT'S AGREEMENT

Project No.: [REDACTED]

This Agreement made as of October 3, 2014 by and between the State University Construction Fund, having its principal office and place of business at The State University Plaza, 353 Broadway, Albany, New York 12246, hereinafter referred to as the "Fund", and

[REDACTED] Consultant Name

, having its principal office and place of business at

[REDACTED] Address

hereinafter referred to as the "Consultant".

WHEREAS, the Fund contemplates the

[REDACTED] Project Name

including all usual, appropriate and necessary attendant facilities at

State University of New York [REDACTED] Campus

hereinafter referred to as the "Project"; and

WHEREAS, the Fund desires the Consultant, and the Consultant is willing, to undertake the design and the administration of construction of the Project; and

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

## Article I

### Consultant's Basic Services

The Consultant shall provide complete consultant services necessary to complete planning, design, and construction administration of the Project. The Consultant agrees that it will begin the services herein described upon receipt of the Notice to Proceed that time is of the essence in this Agreement and that required services shall be performed in a diligent manner and with sufficient staffing such that all design phase services required to provide complete bidding documents shall be entirely completed and performed before the date specified in Schedule B. Consultant services shall include, but are not limited to, the following:

#### Section A General Services

- (1) Determine, select and manage the staffing and subconsultants necessary for the timely performance of the services required hereunder to meet the Fund's program requirements, including the services of a Cost Analyst if required by the Fund.
- (2) Periodically advise the Fund of the progress of the planning, design and construction of the Project and any anticipated delay in the same.
- (3) Attend, together with its subconsultants, all conferences reasonably required by the Fund, and take, prepare and promptly distribute minutes of all such conferences.
- (4) Provide written responses within ten business days to all written comments submitted by the Fund.
- (5) Coordinate all the services to be provided hereunder with other projects being undertaken by the Consultant or by others.

#### Section B Specific Services

Additional required services are set forth below, listed in the Schedule "B" and the Program Directives, which are incorporated herein by reference.

##### (1) Program Verification Phase

- a. Attend orientation meetings at the Project site and/or Fund office to review the Project, Fund requirements at various development phases, and the Program of the Project. For the purposes of the Agreement, the term "Program" includes: this Agreement, Project schedules, Justification and Scope of Work, Fund Program Directives, and the comprehensive Project program including campus plan requirements, site program, facilities program, equipment program, budgets, schedules and program addenda.

- b. Review, analyze, and evaluate the contents of the Project Program. Prepare an analysis including the following factors: intended use, space and sequencing requirements; site and property requirements; environmental considerations; provision of all utilities; local building practices; time schedules for all phases of the Project; budget and cost forecasts; pedestrian access and egress patterns; public transportation facilities; vehicular traffic and parking availability and requirements; relationship to other projects either existing or proposed; sufficiency and adequacy of the Program; and other relevant factors.
- c. Prepare a written report verifying the function, scope, sequencing, content and practicability of the Project Program and identifying any possible deficiencies and, when deemed necessary by the Fund, prepare planning drawings including the contract limits of each of the proposed construction contracts.

(2) Concept Phase

- a. Prepare an analysis of the site and, in the case of the rehabilitation of an existing building, the existing condition of the building, including, but not limited to, determining the location, measurement and other essential data of existing architectural, equipment, structural, mechanical, electrical and utility features, and submit a report to the Fund setting forth such analysis and confirming that the data available is sufficient to proceed with the design of the project. Provide additional information reasonably determined by the Fund to be necessary or desirable, such as topography, soil data, and municipal agency and utility company projects and/or a plan for accessing such information.
- b. Identify such testing, measurements, verification, and/or surveys as may be required to properly execute the design of the project.
- c. Prepare diagrammatic studies of the Project showing, in the case of a project involving a structure, the relationship of rooms and spaces to the program requirements of the Fund and to the site, services, utilities and other structures; and in the case of a project involving sitework, the relationship of site systems to the site, services, utilities, and structures.
- d. Confirm the Project Budget and Schedule and identify and justify any proposed changes.
- e. Prepare a construction phasing analysis, which shows the time frames provided by the campus and maintains adjacent occupancies, including a description of temporary construction and facilities necessary to maintain campus operations; establish a general sequence of the phasing demonstrating the continuity of campus operations.
- f. Prepare a Code Analysis providing for compliance with all applicable requirements.

- g. Prepare a concept phase cost estimate verifying that the Project can be completed within the program budget.
- h. Prepare a Concept Phase Report in a format acceptable to the Fund, setting forth in detail the function, scope and intent of the Project and illustrating three or more design concepts which satisfy the basic program requirements of each proposed design. Submission of the aforesaid report by the Consultant shall constitute its acceptance of the Program, Budget and Time Schedule, unless otherwise specified and agreed to by the Fund in writing.

(3) Schematic Design Phase

- a. Prepare a Schematic Design Report which shall include, but not be limited to:
  - i. Such graphic material, code analysis, and information as is necessary or appropriate to fully illustrate the proposed design and the construction materials of the Project, and the relationship of the Project to other projects on the campus, either existing or proposed, and such other factors as may affect the design of the Project or otherwise involve or relate to the Project.
  - ii. Engineering reports analyzing and economically justifying: the proposed structural, mechanical, electrical and other systems in the Project; the constructability of the structure and components, including the fabrication and production of components and maintainability and operational efficiency of the completed project; the effect of proposed work on the existing components and systems; and the historical performance of the proposed components and systems.
  - iii. A "Schematic Cost Estimate", indicating that the proposed design can be constructed within the limitations of the Program Budget.

(4) Design Manual Phase

- a. Prepare preliminary plans of the Project, including elevations and/or sections, which plans shall be based on the approved schematic design, and the Fund's comments and changes, and shall fully develop graphically the design, scope and concept of the various systems of the Project.
- b. Prepare outline specifications describing building systems, performance criteria, design and composition of all components and systems, and such other work and details as may be required to complete the design of the Project.
- c. Show all relevant furniture, furnishings and equipment, and layouts of all rooms and spaces in the Project.
- d. With respect to any building, prepare an analysis of the relationship of the designed gross and net square foot areas to programmed areas of the Project.

- e. Prepare study perspectives and models illustrating in detail the architectural design of the Project.
- f. Prepare a detailed cost estimate based upon a quantity takeoff of all work necessary for the complete construction of the Project, which estimate is hereinafter referred to as the "Design Manual Cost Estimate". The Design Manual Cost Estimate shall be in sufficient detail to demonstrate to the Fund that the work designed is within the Fund's Program Budget.
- g. Prepare scope descriptions and cost estimates of such feasible design alternatives as will allow for construction contract award flexibility.
- h. Prepare a Design Manual Report acceptable to the Fund, incorporating design decisions, preliminary plans, outline specifications, cost estimate, time schedules and such other information required by the format of the Design Manual Report.
- i. At the request of the Fund, present the Design Manual Report to State University of New York and Fund representatives.

(5) Construction Document Phase

- a. Prepare complete final working drawings which clearly define all architectural, structural, mechanical, electrical, sanitary, heating, equipment and site details, alternates and all other details necessary to complete the design and construction of the Project. The Consultant's compensation, if any, for services in connection with alternates shall be determined in accordance with the provisions of Section D (8) of Article III hereof.
- b. Prepare a complete set of final specifications setting forth in detail and describing the work to be performed by each trade and the finish and the quality of materials and workmanship to be required of the contractor.
- c. Apply to the Labor Department of the State of New York for wage schedules for each construction contract and incorporate the same in the specifications for each contract.
- d. Prepare a detailed cost estimate, based upon the complete contract documents of all work necessary for the complete construction of the Project, which estimate is hereinafter referred to as the "Final Cost Estimate". This Final Cost Estimate shall be consistent with the Program Budget and shall include quantity takeoff of all work and equipment included, with unit prices and markups reflecting current market conditions, without lump sums of any kind. In the event the bids of all qualified, responsible and reliable contractors for the construction of the Project are in excess of the amount of the current Program Budget of the Fund, the Consultant, to the extent necessary, in the Fund's judgment, to bring the cost of the Project within said Program Budget, shall revise, subject to the approval and acceptance by the Fund, all or any part of the drawings and specifications of the Project that the Fund may deem

advisable or, if the construction contract for the Project has been awarded by the Fund, the Consultant shall prepare all credit change orders, including any necessary revisions to the drawings and specifications that the Fund may deem advisable to bring the cost of the Project within the said Program Budget. Notwithstanding any other provisions of this Agreement, all of the services to be provided by the Consultant under the provisions of this paragraph shall be provided without reimbursement of costs or any additional compensation therefor, unless the Fund determines, in its sole discretion, that the factors that caused the variance between the low bid and the said Program Budget were not the responsibility of the Consultant or could not reasonably have been anticipated by the Consultant.

- e. Prepare a Pre-Bid Report, in both hard copy and computer readable form, in accordance with the formats specified by the Fund, which shall include, but not be limited to, the final working drawings, final specifications and Final Cost Estimate. The Pre-Bid Report is to be submitted to the Fund for its review and approval a minimum of four (4) weeks prior to the date set for the advertisement for bids from contractors. The Consultant assumes complete responsibility for the correctness, accuracy and completeness of the final working drawings and final specifications and for their coordination with the work of any subconsultants. The approval of such drawings and specifications by the Fund shall in no way affect or limit this responsibility of the Consultant.
- f. Assemble and distribute the bid documents to prospective bidders and to distribution points designated by the Fund.
- g. Assist the Fund during the bid and award period in the preparation of instructions to bidders, forms of proposals, advertisement for bids, seeking of bidders, opening and analysis of bids, investigation and selection of bidders, and recommendations relative to the award of each contract for the construction of each Project.

(6) Construction Phase

- a. Furnish general administration of each construction contract awarded for the Project, including phased work within each contract, until final completion and acceptance by the Fund of the Project.
- b. Furnish such field administration of each construction contract and inspection of the work of each contractor as may be necessary or appropriate to assure that materials and workmanship conform with the contract documents. The Consultant shall use all reasonable care and diligence and exercise its best efforts to assure that the Project is constructed in accordance with the drawings and specifications. The Consultant shall use all reasonable care and diligence and exercise its best efforts to discover any breach of the construction contract, and if it becomes aware of any breach, it shall immediately notify the Fund thereof. In the event of such breach, the Consultant shall submit to the Fund its recommendations for appropriate remedial

action. The Consultant, however, does not guarantee that a contractor will not breach its contract.

- c. Arrange for and/or provide, at regular intervals, and at such times as directed by the Fund, field administration and inspection of each construction contract by home office personnel of the Consultant and its subconsultants who are expert in the technical areas of work involved in the Project. The Consultant shall provide such field administration and inspection not less than twice a month during the Construction Phase and shall require its subconsultants to provide such field administration and inspection not less than twice a month during the Construction Phase when work in the subconsultants specialty is in progress. Said services shall be provided without additional compensation except that, when the total Direct Labor Cost of the services and a sum equal to 150%, or as identified in Schedule B, of that amount exceeds one half of the Construction Phase fee, and when the cost of additional field services is unrelated to any fault or omission of the Consultant or its subconsultants, the Fund, may provide written approval for payment of all or part of such excess cost in accordance with the provisions of subdivision (3) of Section D and subdivision (2) of Section E of Article III hereof.
- d. Furnish a Field Representative and such assistants as are required, where the same are requested and approved in writing by the Fund, to provide full-time personal field administration of each construction contract and inspection of, and attention to, all the work to be performed by each contractor. The field administration, inspection and attention provided by the Field Representative and/or his or her assistants shall not be in lieu of, or a substitute for, the administration, inspection and attention required to be furnished by the Consultant hereunder, but shall be in addition thereto. The Consultant's compensation for such Field Representative and assistants shall be determined in accordance with the provisions of Section D (7) of Article III hereof.
- e. Obtain and review each contractor's time progress schedule and permit such contractor to commence and continue work only when such schedule is satisfactory. The Consultant shall use all reasonable care and diligence and exercise its best efforts to see that the completion date for the construction of the Project, as set forth in each construction contract, is met, and to this end, it shall periodically review the construction progress and performance and advise the Fund of same. Each construction contract for the Project shall provide that time is of the essence for the completion and construction of the Project and the Consultant agrees to assist the Fund in achieving the specified completion date and advise the Fund of actions that could be taken to prevent or eliminate delays. The Contractor shall have responsibility for its means and methods of construction and for construction site safety.
- f. Develop with each contractor a time schedule covering the preparation and submission of all shop drawings and

samples, which schedule shall be designed to avoid delays during construction and to assure an even flow of work. The Consultant shall utilize all reasonable care and diligence and exercise its best efforts to see that each contractor adheres to such schedules. The Consultant shall review and approve shop drawings and samples furnished by each contractor within fifteen (15) working days of receipt of same; provided, however, the same are submitted in accordance with the aforesaid time schedule. Provide responses to Requests for Information from the Contractors as soon as possible but not later than 15 calendar days from receipt.

- g. Assume complete responsibility for its interpretation of the drawings and specifications. For interpretations affecting contract cost and/or material substitution, concurrence of the interpretation must be obtained from the Fund.
- h. Take positive action, within the limits of the Consultant's authority hereunder and under the provisions of the applicable construction contract, to safeguard the interests of the Fund and the State University of New York whenever necessary or appropriate.
- i. Prepare and submit to the Fund a detailed estimate, evaluation, and recommendation on any proposed change orders or field orders and contractor's proposals for such work. After obtaining the Fund's written approval of a proposed change order, the Consultant shall prepare the change order. Except in the case of an emergency which threatens safety or substantial injury to property, neither the Consultant nor any of its representatives can authorize any change order or field order or change in the work covered by the construction contract without the prior written approval of the Fund. The Consultant's compensation, if any, for services in connection with change orders or field orders shall be determined in accordance with the provisions of Section D (6) of Article III hereof.
- j. Keep records and logs setting forth the field progress, the submission and processing of shop drawings and samples, requests for information and their disposition, non-conformance and open items and their disposition, and the progress of the Project as it relates to each requisition for payment of each contractor.
- k. Review and approve, when the same are satisfactory, partial and final requisitions submitted by each contractor; such review and approval to be based upon the Consultant's records and inspection of the construction work.
- l. Conduct field meetings, at least twice a month, with representatives of the various trades and of the contractors engaged in the construction of the Project and prepare and distribute minutes of such meetings.
- m. Submit monthly progress reports to the Fund during the Construction Phase of the Project based upon personal observation of the Consultant or its staff, which reports shall include, but are not limited to, an analysis of the

construction time schedule in relation to field progress and anticipated delays in construction.

- n. Review and approve assembled written guarantees, manuals and record drawings required of each contractor and submit the same to the campus.
- o. Inspect the Project thirty (30) to forty-five (45) days prior to the time the Fund is to take over, use, occupy or operate any part or all of the Project, and furnish a punch list and/or report to the Fund of observed discrepancies, deficiencies and incomplete items for each contractor. The Consultant, together with its subconsultants, shall use all reasonable care and diligence and exercise their best efforts to see that such discrepancies, deficiencies and incomplete items are promptly remedied, and shall monitor and inspect such work items until they are satisfactorily completed.
- p. Use all reasonable care and diligence and exercise its best efforts to see that all discrepancies and deficiencies covered by guarantees provided by each contractor are promptly remedied; inspect the Project forty-five (45) to sixty (60) days prior to the end of the one (1) year general guarantee period; furnish a list and/or report to the Fund observed discrepancies and deficiencies covered by contractor guarantees; and monitor and inspect the performance of the required remedial work.

#### (7) Additional Specific Services

- a. At each phase, if requested to do so by the Fund, the Consultant shall make a presentation demonstrating the design and plans at that phase, including such models, mock-ups or other presentation aids as may be appropriate. Such presentation shall be made at the Fund headquarters or such other site as the Fund may specify in the request.
- b. Any report, presentation, estimate, schedule or analysis required by this section shall be submitted to the Fund for approval, which approval shall not be unreasonably withheld.
- c. At each phase, the Consultant shall be responsible for reconciling the cost estimate with the Program Budget, and shall make any design changes required to keep the Project within the Program Budget, provided that if the Fund reduces the Program Budget, the Consultant shall be compensated for such changes pursuant to Section D (5) of Article III.
- d. At each phase, the Consultant shall be responsible for coordinating and reviewing commissioning services.

## **Article II Additional Obligations and Responsibilities Of the Consultant**

### **Section A Sequence of Services**

Except as otherwise expressly herein provided, the services described in Article I hereof to be furnished by the Consultant under the Program Verification Phase, Concept Phase, Schematic Design Phase, Design Manual Phase, Construction Documents Phase, and Construction Phase, shall be rendered in the same sequence as they appear in this Agreement, and, where the Project includes more than one construction contract to be let by the Fund, the Consultant shall provide all of the services required under this Agreement for each such construction contract.

### **Section B Subconsultants**

- (1) The Consultant shall not engage, contract for or use the services of any subconsultant without obtaining the prior written approval of the Fund. No provision of this Agreement and no approval by the Fund of the scope of the services to be provided by the subconsultants shall, however, be construed as an agreement by the Fund to pay any subconsultant of the Consultant or any person, firm or corporation engaged by, contracted with, or whose services are utilized by the Consultant, or in any way affect the responsibilities of the Consultant hereunder, and, unless otherwise agreed to in writing by the Fund, the fees of any subconsultants retained by the Consultant shall be deemed covered by the Total Fee to be paid by the Fund to the Consultant.
- (2) The Consultant and its Fund-approved subconsultants shall design every part or item of a project that requires licensed professional design services, and shall not delegate the design of any such part or item of the project to any other person or entity including, but not limited to, contractors, subcontractors, manufacturers, or suppliers or to a design professional hired by the foregoing persons or entities, unless the Fund specifically authorizes such delegation in writing. The procedure for obtaining such authorization and the circumstances where such authorization may be permitted by the Fund are contained in the Fund's Program Directives.

### **Section C Personnel**

The Consultant shall be responsible for all personnel assigned by the Consultant or subconsultants to the Project. The Consultant shall submit to the Fund for its approval a list of personnel who will be assigned to the project. Once approved by the Fund, such project staffing will not be changed without the Fund's prior written approval. The consultant and its subconsultants shall employ personnel who have sufficient experience, skills and licenses to properly and satisfactorily complete the assigned work within the time allotted. All such personnel shall be required to cooperate fully with the Fund. In the event the Fund determines, in its sole discretion, that corrective action is required in order to provide satisfactory services or to achieve or maintain cooperation, the Consultant shall replace any person so assigned with a suitable substitute at no additional cost to the Fund.

## Section D **Coordination**

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

## Section E **Codes, Regulations and Permits**

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

(2) Attend all conferences and provide all necessary drawings, specifications, documents, calculations, forms, reports and statements required for compliance with the Building Code of New York State, as requested by the Fund who will issue required building permits and certificates of occupancy.

(3) For all other permits, when directed by the Fund, attend all conferences requested by the applicable authority having jurisdiction, submit all necessary drawings, specifications, documents, calculations, forms, reports and statements for the approval of such authority having jurisdiction and revise any and all drawings and specifications for the Project to comply with the requirements of the aforesaid authority having jurisdiction. However, in the judgment of the Fund, the Consultant will be entitled to extra compensation for revisions and related extra work, in accordance with the provisions of Section D (3) of Article III, if any of such revisions are caused by a change in the requirements of the authority having jurisdiction and are found to be necessary after the Consultant's performance of part of the work to be revised, and any such conferences, documents, calculations, forms, reports and statements are not otherwise required by Section B of Article I or the Building Code of New York State.

## Section F **Patents**

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

## Section G **Grants and Loans**

In the event that the Fund or the State University of New York is a recipient of or applicant for a grant or loan for the Project from any individual, firm, association, corporation or foundation or from any governmental department or agency, the Consultant, when directed by the Fund, shall attend all conferences requested by the party making the grant or loan, submit all necessary drawings, specifications, documents, forms and estimates for the approval of such party, prepare reports for grant or loan

requirements during the Construction Phase and revise any and all drawings and specifications for the Project to comply with the requirements of the aforesaid party in connection with the grant or loan; provided, however, that if, in the judgment of the Fund, any of such revisions are caused by a change in the requirements of the party making the grant or loan and are found to be necessary after the Consultant's performance of part of the work to be revised, the Consultant will be entitled to extra compensation for such revisions and related extra work in accordance with the provisions of Section D (3) of Article III hereof.

## Section H **Reproductions**

The Consultant, at its own cost and expense, shall supply reproductions of plans, specifications, reports and other data and documents pertaining to the Project for its own use, for interoffice use with its subconsultants and for use of the Fund. The Fund shall be entitled to be supplied by the Consultant with six (6) reproductions of any plans, specifications, reports and other data and documents required to be prepared by the Consultant pursuant to Article I hereof, one (1) set in Portable Document Format (.pdf), and other electronic copies as specified in the Fund's Program Directives.

## Section I **Claims**

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

## Section J **Changes and/or Revisions**

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

## Section K **Budgets**

For each of the phases set forth in Section B of Article I hereof, the Fund shall establish a separate Program Budget. The estimated cost of construction of the Consultant's design of the Project shall at all times be within the applicable Program Budget. In the event that such estimated cost is at any time in excess of the Fund's Program Budget, the Consultant, to the extent necessary in the Fund's judgment to bring the cost of the

Project within said Budget, shall revise, at its own cost and expense, subject to the acceptance and approval by the Fund, all or any part of the drawings and specifications of the Project that the Fund may deem advisable. Unless otherwise directed by the Fund, the cost analysis and all cost estimates referred to in subsections (1)b, (2)g, (3)aiii, and (4)f and (5)d of Section B of Article I hereof shall be prepared by a Cost Analyst approved by the Fund and shall be prepared in accordance with the formats prescribed therefor by the Fund.

#### Section L **Supervision and Direction**

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

### **Article III Payment for Services**

#### Section A **Basic Compensation**

- (1) Except as otherwise specifically provided for herein, as the total compensation for all services rendered by the Consultant up to and including completion of the Construction Document Phase, the Fund shall pay to the Consultant a fee which shall be computed as follows:
  - a. A sum computed by multiplying the appropriate amount in the Schedule of Fees annexed hereto, as determined by the approved Program Verification Phase Program Budget, by 5 percent (which sum shall hereinafter be referred to as the "Program Verification Payment"); plus
  - b. A sum computed by multiplying the appropriate amount in the Schedule of Fees annexed hereto, as determined by the approved Concept Cost Estimate, by 5 percent (which sum shall hereinafter be referred to as the "Concept Payment"); plus
  - c. A sum computed by multiplying the appropriate amount in the Schedule of Fees annexed hereto, as determined by the approved Schematic Design Cost Estimate, by 10 percent (which sum shall hereinafter be referred to as the "Schematic Design Payment"); plus
  - d. A sum computed by multiplying the appropriate amount in the Schedule of Fees annexed hereto, as determined by the approved Design Manual Cost Estimate, by 25 percent (which sum shall hereinafter be referred to as the "Design Manual Payment"); plus
  - e. A sum computed by multiplying the appropriate amount in the Schedule of Fees annexed hereto, as determined by the

approved Final Cost Estimate of the project, excluding the field order allowance, by 25 percent (which sum shall hereinafter be referred to as the "Construction Documents Payment").

Notwithstanding any of the provisions of the preceding sentence, in the event that the approved Final Cost Estimate is more than 5 percent in excess of the average of all base bids (excluding alternates) submitted by all bidders, then, and in that event, the average amount of all base bids submitted for construction of the Project, plus 5 percent thereof, shall be used in lieu of the Final Cost Estimate, whenever reference is made to the latter, for the purpose of calculating the Construction Documents Payment.

The total of the sums calculated in accordance with the provisions of subdivisions a through e above is the "Basic Design Fee".

Notwithstanding the foregoing, in the event that the Fund, during one of the Phases of the Project, suspends all or any part of the Project, the Consultant, in lieu of the method hereinabove provided, shall be paid for its services during such Phases as follows: (1) for services performed by the Consultant prior to such suspension, a sum computed by multiplying the appropriate amount in the Schedule of Fees annexed hereto, as determined by the Fund's Program Budget at the time of such suspension, by the applicable percentage set forth above for such Phase and multiplying the product thereof by the percentage of completion of such Phase prior to the suspension; and (2) for services performed by the Consultant following the resumption of all or any part of the Project, a sum computed by multiplying the appropriate amount in the Schedule of Fees annexed hereto, as determined by the approved Cost Estimate at the conclusion of such Phase, by the applicable percentage set forth above for such Phase and multiplying the product thereof by the percentage of completion of such Phase following the resumption of all or any part of the Project.

In the event that the Fund shall, in its sole discretion, elect to divide the Project into more than one general construction contract, then, from the time that the Fund has made its aforesaid election, the amount of the Consultant's Basic Design Fee and the amount and time of the payments to be made by the Fund thereof shall be separately calculated and determined for each such general construction contract; provided, however, that the following shall not be considered additional general construction contracts: purchase of materials, assignment of subcontracts, designation of subcontractors, division of the Project into a prime contract for general construction work and one or more prime contracts for the major specialty trades (such as electrical, plumbing, heating and ventilating, etc.). In the event that the Fund shall elect to divide the Project, for purposes of separate and independent bidding and letting, into a separate prime contract for general construction work and one or more prime contracts for the aforesaid major specialty trades, then, the Consultant shall be paid for the

extra services to be provided by it in connection with the preparation of separate bidding documents and the administration of separate prime contracts either in accordance with the provisions of Section D (3) of Article III or by increasing, from the time that the Fund has made its aforesaid election, the Consultant's Total Fee by an amount equal to 10 percent of the remaining unearned portion of said fee; the manner of payment to be determined by the Fund within sixty (60) days after its award of the last construction contract for the Project.

In the event that the scope of the Project is at any time reduced by the Fund, except where the scope has been reduced to stay within the Fund's Program Budget, the fees previously paid to the Consultant for the work eliminated by the Fund's reduction in the scope of the Project shall thereafter be excluded in determining the amount of the Consultant's Basic Design Fee and the amount of all future payments to be made to the Consultant after such reduction.

- (2) Except as otherwise specifically provided for herein, as the total compensation for all services rendered by the Consultant during and after the Construction Phase of the Project, the Fund shall pay to the Consultant a fee computed by multiplying the appropriate amount in the Schedule of Fees annexed hereto, as determined by the construction cost of the Project, by 30 percent, which fee is hereinafter referred to as the "Basic Construction Phase Fee"; provided, however, in the event that the construction cost of the Project is more than 10 percent in excess of the Fund's Program Budget as of the bid date, the amount determined by adding together the construction cost of the Project and said Program Budget and dividing the resultant sum in half shall be used in lieu of the construction cost of the Project in determining the Basic Construction Fee. For each general construction contract let by the Fund, the amount of the Consultant's Basic Construction Phase Fee and the amount and time of the payments to be made by the Fund thereof shall be separately calculated and determined.

In the event that the Fund shall, in its sole discretion, elect to let a single construction contract which includes the Project and work covered by other agreements with the Consultant, the Consultant's Basic Construction Phase Fee hereunder shall, in lieu of the method provided in the preceding paragraph, be computed by either multiplying the appropriate amount in the Schedule of Fees annexed hereto, as determined by the total of the construction cost for all the work covered by the said single construction contract, by 30 percent and by dividing the resultant sum by the proportion that the approved Final Cost Estimate of the Project bears to the total approved Final Cost Estimate for all the work covered by the said single construction contract, or by multiplying the total construction cost by the proportion that the approved Final Cost Estimate of the Project bears to the total approved Final Cost Estimate for all the work covered by said single construction contract, to determine the construction cost apportioned to the Project, for use in computing the Basic Construction Phase Fee allocable to the Project as described above. The Fund shall

choose between the methods above and issue its determination in writing.

For the purposes of this Agreement, the term "construction cost" shall mean the accepted bid price, including alternates that are accepted by the Fund, for the Project less the amount of any change orders to the construction contract issued to bring the cost of the Project within the Fund's Program Budget.

- (3) For the purposes of this Agreement, the term "Total Fee" shall mean the total compensation payable to the Consultant under the provisions of subdivisions (1) and (2) of this Section. Except as otherwise expressly provided in the Agreement, all of the services required to be provided by the Consultant hereunder shall be deemed to be covered by the Total Fee and the Consultant shall not be entitled to extra compensation or reimbursement of its expenses in providing the same.
- (4) Notwithstanding the provisions of subdivisions (1) and (2) above, if the bid or bids are not accepted by the Fund within six (6) months after its approval of the final working drawings and final specifications, then, the Consultant, unless it and the Fund otherwise agree in writing, shall be paid only the Basic Design Fee and it shall be deemed to have been released by the Fund from rendering any additional services hereunder.

## Section B Time of Payment of Basic Compensation

- (1) Phases
  - a. During the Program Verification Phase, the Fund shall make monthly installment payments to the Consultant of the Program Verification Payment, which installment payments shall total a sum equal to 100 percent of the Program Verification Payment.
  - b. During the Concept Phase, the Fund shall make monthly installment payments to the Consultant of the Concept Phase, which installment payments shall total a sum equal to 100 percent of the Concept Phase Payment.
  - c. During the Schematic Design Phase the Fund shall make monthly installment payments to the Consultant of the Schematic Payment, which installment payments shall total a sum equal to 100 percent of the Schematic Design Payment.
  - d. During the Design Manual Phase, the Fund shall make monthly installment payments to the Consultant of the Design Manual Payment, which installment payments shall total a sum equal to 100 percent of the Design Manual Payment.
  - e. During the Construction Document Phase the Fund shall make monthly installment payments to the Consultant of the Construction Documents Payment,



which installment payments shall total a sum equal to 100 percent of the Construction Documents Payment. Said payment shall be broken down into two parts; 95 percent of the construction document payment will be paid upon completion of Article 1, Section B (5), items a through e. The remaining 5 percent of the payment will be paid upon completion of Article 1, Section B (5) items f and g.

- (2) The amount of the monthly installment payments referred to in the above subdivision (1) shall be in proportion to the amount of services rendered by the Consultant as determined by the Fund on its receipt of reports from the Consultant as to the progress of the services to be furnished in the respective phases.
- (3) During the Construction Phase the Fund shall make monthly installment payments to the Consultant of the Basic Construction Phase Fee, the amount of which installment payments shall be in proportion to the amount of services rendered by the Consultant, as determined by the Fund, based upon the percentage of the contract completed, which installment payments shall total a sum equal to 100 percent of the Basic Construction Phase Fee. Notwithstanding the foregoing, 4 percent of the Consultant's Basic Construction Phase Fee or five hundred dollars (\$500), whichever is the higher amount, will be retained by the Fund until the end of the one- (1) year general guarantee period.
- (4) At the end of the one (1) year general guarantee period, adjustment shall be made to the payments previously made to the Consultant by increasing or decreasing the same, as the case may be, to make the same equal to the Total Fee. In the event that such adjustment results in additional fees being due to the Consultant, the Fund shall promptly pay to the Consultant such additional fees. In the event that such adjustment results in a reduction of the fees due to the Consultant hereunder, the Consultant, upon demand, shall promptly pay to the Fund any excess payments it has received.

#### Section C Reimbursable Expenses

- (1) Traveling expenses, including transportation, meals and lodging expenses necessary, in the judgment of the Fund, to the performance of the services of the Consultant and its subconsultants shall be paid for by the Fund on the basis of the Fund's "*Bulletin on Payment of Consultant Fees*", as revised to the date hereof; provided, however, that the Fund's obligation to pay for such traveling expenses shall be limited to 10 percent of the Total Fee unless otherwise agreed to in writing by the Fund.
- (2) Except as otherwise provided for in Section H of Article II hereof, all reproductions of plans, specifications, reports and other data and documents requested by and furnished to or on behalf of the Fund and all required application fees in connection with the Project shall be paid for by the Fund on the basis of the Consultant's actual expenditure therefor; provided, however, that the Consultant shall not be entitled

to any reimbursement for the cost of typing or drafting of the same.

#### Section D Extra Compensation

Except when contemplated or required as part of the Consultant's responsibility under this agreement:

- (1) Final models, photographs and other architectural renderings, as contrasted to study or preliminary models, photographs or other architectural renderings, will be paid for by the Fund either on a lump-sum basis agreed to in writing by the parties hereto or on the basis of the Consultant's Direct Labor Cost plus a sum equal to 150 percent thereof, or as identified in Schedule B, plus reimbursable expenses incurred in connection with preparing the same; the manner of payment to be determined by the Fund prior to the completion of performance of such services.
- (2) As-built drawings and Operational and Maintenance Manuals will be paid for by the Fund either on a lump-sum basis agreed to in writing by the parties hereto or on the basis of the Consultant's Direct Labor Cost plus a sum equal to 150 percent thereof, or as identified in Schedule B, plus reimbursable expenses incurred in connection with preparing the same; the manner of payment to be determined by the Fund prior to the completion of performance of such services.
- (3) Special technical, engineering and/or consultation services will be paid for by the Fund either on a lump-sum basis agreed to in writing by the parties hereto or on the basis of the Consultant's Direct Labor Cost plus a sum equal to 150 percent thereof, or as identified in Schedule B, plus reimbursable expenses incurred in connection with performing the same; the manner of payment to be determined by the Fund prior to the completion of performance of such services.
- (4) Testing laboratory services, topographic, utility, traffic volume, air/water quality and property surveys, test borings, construction progress photos, and, in case of the rehabilitation of an existing building, determining the location, measurement and other essential data of existing architectural, structural, mechanical, electrical and utility features, the details of which, in the judgment of the Fund, are grossly deficient from a review of existing information and drawings and/or a physical inspection, shall be paid for by the Fund either on a lump-sum basis agreed to in writing by the parties hereto or on the basis of the Consultant's Direct Labor Cost plus a sum equal to 150 percent thereof, or as identified in Schedule B, plus reimbursable expenses incurred in connection with preparing the same; the manner of payment to be determined by the Fund prior to the completion of performance of such services.
- (5) Except for changes and/or revisions prepared by the Consultant in order to conform to the project budget, all changes and/or revisions to drawings or specifications,

resulting from a significant program change of the State University or the Fund prior to the award of a construction contract shall be paid for by the Fund either on a lump-sum basis agreed to in writing by the parties hereto or on the basis of the Consultant's Direct Labor Cost plus a sum equal to 150 percent thereof, or as identified in Schedule B, plus reimbursable expenses incurred in connection with preparing the same; the manner of payment to be determined by the Fund prior to the completion of performance of such services. Notwithstanding any of the other provisions of this paragraph, whenever any program change results in an increase or decrease in the estimated cost of the Project, the Consultant's Basic Design Fee for services rendered prior to said change shall be based on the last approved Cost Estimate and the Consultant's Basic Design Fee for all services rendered after such change shall be based on the approved Cost Estimate for the phase after the change was made.

- (6) All services rendered by the Consultant in connection with any extra work item, included in a change order or field order to a construction contract, which results from either: (a) a program change of the State University of New York or the Fund, or (b) conditions which, in the judgment of the Fund, could not have been reasonably anticipated or foreseen by the Consultant at the time bids for construction of the Project were received, will be paid for by the Fund on the basis of the approved value of said item multiplied by 5 percent. All services rendered by the Consultant in connection with all other extra work items and all deleted work items, included in a change order or field order to a construction contract, shall be deemed to be covered by the Total Fee.
- (7) Notwithstanding any of the other provisions of this Section, all services, including those for which the Consultant would be entitled to extra compensation under any of the other subdivisions of this Section, rendered by a Site Representative or his or her assistants will be paid for by the Fund on the basis of the Consultant's Direct Labor Cost of furnishing such personnel plus 85%. In addition, the Fund will reimburse the Consultant for such field office expenses (other than salaries and fringe benefits), required or approved in writing by the Fund which, as a result of the nature of the Project, are, in the judgment of the Fund, substantially in excess of those field office expenses normally incurred by a Consultant in furnishing field administration of a construction contract and inspection of construction work.
- (8) Additive and deductive alternates, in which changes in design are involved, as contrasted to a material or equipment substitution or addition which, in the judgment of the Fund, does not involve design changes, will be paid for by the Fund either on the basis of the Consultant's Direct Labor Cost plus a sum equal to 150 percent thereof, or as identified in Schedule B, plus reimbursable expenses incurred in connection with preparing the same, or on the basis of the amount the Construction Documents Payment would have been increased had the value of such alternates

been added to the amount of the approved Final Cost Estimate; the manner of payment to be determined by the Fund within sixty (60) days after the award of the construction contract. For the purposes of the preceding sentence, deductive alternates shall be added to, rather than subtracted from, the Final Cost Estimate and the value of all alternates shall be deemed to be an amount equal to the bid quoted for the alternates by the lowest bidder or, in the event that the lowest bidder does not submit a bid for such alternates, an average of all bids submitted therefor. Notwithstanding the foregoing, unless otherwise agreed to in writing by the Fund, the Consultant shall not be entitled to reimbursement of costs or any additional compensation in connection with any alternates for any construction contract or part thereof which is being rebid because all bids previously received by the Fund were in excess of the amount of the Program Budget of the Fund therefor and were rejected by the Fund.

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

- (9) In the event the Consultant is caused to furnish services, not provided for herein and not previously performed, as a result of the Fund declaring a contractor in default, damage to the Project by fire or other casualty, or a delay, through no fault or omission of the Consultant, in completion of construction of more than one (1) year after the specified completion date in a construction contract, the Fund shall pay the Consultant for such services, but, in the case of delayed construction completion, for only those services performed after said one (1) year period, on the basis of the Consultant's Direct Labor Cost plus a sum equal to 150 percent thereof, or as identified in Schedule B, plus reimbursable expenses incurred in connection with furnishing such services; provided, however, that the Consultant shall not be entitled to extra compensation for monitoring and inspecting either punch list work or guarantee work items except for monitoring and inspection services performed by the Consultant after the expiration of eighteen (18) months from the commencement of the one (1) year general guarantee period.
- (10) Notwithstanding the foregoing, the Consultant shall not be entitled to extra compensation under any of the preceding subdivisions of this Section unless the services to be provided by the Consultant hereunder have been requested and approved in writing by the Fund. Fund written approval is a condition precedent to payment as set forth in the Fund's Extra Compensation Program Directive.

## Section E **Payment of Reimbursable Expenses and Extra Compensation**

- (1) Requests for payment of reimbursable expenses and extra compensation, and any documentary support thereof required by the Fund, must be submitted prior to the expiration of the one year guarantee period. After the Fund has approved any such request(s) the Consultant shall submit its invoice, which the Fund shall promptly process and pay.
- (2) For the purpose of this Agreement, refer to the “*Fund’s Bulletin on the Payment of Consultant’s Fees*”, as currently amended, for the definition of “Direct Labor Cost.” Direct Labor Cost of members, principals or partners of the firm of the Consultant shall not exceed ninety dollars (\$90) per hour.
- (3) Pursuant to any extra compensation under Section D (1) through (9) of Article III , when services are furnished by a person, firm or corporation other than the Consultant, the Fund will only pay the Consultant for such services on the basis of the Consultant’s actual expenditure for obtaining such services plus a sum equal to 10 percent thereof; provided, however, that the Consultant shall not be entitled to said 10 percent override when, in connection with or related to the services furnished by said person, firm or corporation, the Consultant has been or will be compensated by the Fund for the Direct Labor Costs of its technical personnel.
- (4) Whenever any payment to or fee of the Consultant is dependent in whole or in part on the Consultant’s costs, the Consultant shall be responsible for maintaining and providing clear and accurate cost and accounting records as to all such costs. The Consultant, at any time during the term of this Agreement or within six (6) years thereafter, shall make such records available to the Fund or its authorized representatives for review and audit. In the event all or any part of such records are not maintained or made available to the Fund, the Fund may withhold or disallow such payment or fee, and, if payment therefor has already been made, the Consultant, upon demand, shall refund to the Fund the amounts so disallowed. Payment to the Consultant and/or approval by the Fund of any invoice submitted by the Consultant shall in no way affect the Consultant’s obligations hereunder or the right of the Fund to obtain a refund of any payment to or fee of the Consultant which was in excess of that to which it was lawfully entitled.

## Section F **Special Compensation**

For the special services listed on Schedule "B", which is attached hereto and made a part hereof, that the Consultant agrees to furnish and perform, the Fund shall pay the Consultant the fees listed on said Schedule.

Upon completion and approval by the Fund of each of said services, the fee therefor shall become due and payable by the Fund within thirty (30) days after approval by the Fund of the

Consultant’s invoice describing the services furnished and performed and the computation of the cost thereof.

## Section G **Credit Adjustment to the Fund**

The Fund shall receive any credit listed on Schedule "B": which is attached hereto and made a part hereof, in the amount or percentage listed thereon. Each credit, shall be first applied, until extinguished in its entirety, against any fee, compensation or expense of the Consultant for which payment is to be made by the Fund pursuant to any of the provisions of this Agreement.

## Section H **Electronic Payments**

The Manager shall provide complete and accurate billing invoices in order to receive payment and, at the request of the Fund, shall use the Fund’s electronic payment submittal system. Billing invoices submitted must contain all information and supporting documentation required by this Agreement, the Fund and the State Comptroller. Payments shall be made in accordance with ordinary State procedures and practices. Enrollment in the Office of the State Comptroller’s electronic payment program is encouraged. Authorization forms are available at the State Comptroller’s website at [www.osc.state.ny.us/vendors/ePayments.htm](http://www.osc.state.ny.us/vendors/ePayments.htm); by email at [epayments@osc.state.ny.us](mailto:epayments@osc.state.ny.us) ; or by telephone at (855) 233-8363.

## **Article IV Ownership of Documents**

The plans, drawings, specifications, reports, renderings, models, and other documents, and electronic files to be prepared and furnished by the Consultant pursuant to this Agreement shall be the property of the Fund. Without in any way limiting the foregoing, the Fund expressly reserves the right to make any or all of the documents, including electronic files, available to bidders and contractors. The Consultant shall not publish or disseminate to third parties information pertaining to the Project, or any part or aspect thereof, without first obtaining written approval from the Fund for such publication or dissemination and of the format and content thereof.

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

## **Article V Surveys, Borings and Test Pit Data**

The Fund shall furnish the Consultant such topographic, utility and property surveys, borings and test pit data as it may have and the Consultant shall obtain topographic, utility and property surveys, borings and test pit data as may be required to complete the final working drawings and final specifications for each of the construction contracts, if provided for in Schedule B.

Additional surveys, borings and data, the acquisition of which is approved in writing by the Fund, shall be paid for by the Fund in accordance with the provisions of Section D (4) of Article III. The Consultant agrees that it will make no claim against the Fund by reason of surveys, borings and data provided by the Fund unless the same are found to be inaccurate and solely as a result thereof the Consultant, in the opinion of the Fund, is caused to revise and/or redesign all or any part of the Project, in which case the Fund will compensate the Consultant for such revision and/or redesign pursuant to the provisions of Section D (5) of Article III hereof.

## **Article VI Termination of Agreement**

### **Section A Personal Services**

This Agreement is intended to secure the personal services of the Consultant because of its ability and reputation and that no responsibility of the Consultant shall be assigned, delegated or transferred without the prior written consent of the Fund.

### **Section B Death or Disability**

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

### **Section C Termination**

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

including, but not limited to, any excess costs incurred in completing the Project by the use or employment of other Consultants.

## **Article VII Liability of the Consultant**

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

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

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

Prior to the commencement of the work to be performed by the Consultant, the Consultant shall submit to the Fund, certificates of insurance showing evidence of compliance with all insurance requirements contained in the Agreement. Certificates of Insurance (with the exception of Workers' Compensation and Disability) must be provided on an ACORD 25 Certificate of Insurance, or an equivalent form. Certificates of Insurance shall disclose any deductible, self insured retention, aggregate limit or any exclusion to the policy that materially changes the coverage required by the contract; specify the additional insureds and named insureds as required therein; and be signed by an authorized representative of the insurance carrier or producer.

Deductibles or self-insured retentions above \$250,000 are subject to approval by the Fund and additional security may be required. Only original documents with original signatures will be accepted.

All insurance shall provide that the required coverage apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to the Fund for any claim arising from the Consultant's work under this Agreement, or as a result of Consultant's activities.

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

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

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

i. Commercial General Liability Insurance

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

ii. Workers Compensation and Disability Benefits

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

iii. Comprehensive Business Automobile Liability Insurance

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

iv. Professional Liability Insurance

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

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

Unless otherwise agreed to in writing by the Fund, policies must be endorsed to provide that there shall be no right of subrogation against the Fund. To the extent that any of the policies of

insurance prohibit such a waiver of subrogation, Consultant shall secure the necessary permission to make this waiver.

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

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

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

## Article VIII

### Minority and Women Owned Business Enterprise Participation/Equal Employment Opportunity

#### 1. General Provisions

- A. The Fund is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Consultant agrees, in addition to any other nondiscrimination provision of the Agreement and at no additional cost to the Fund, to fully comply and cooperate with the Fund in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Consultant's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- C. 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, liquidated damages pursuant to this Article, or enforcement proceedings as allowed by the Contract and New York State Executive Law Section 316.

D. Consultant will include the provisions of this Article in each and every Agreement and/or Contract in such a manner that the provisions of this Article will be binding upon each subconsultant and Contractor as to work in connection with and related to this Agreement. All subconsultants must be approved by the Fund and the MWBE Utilization plans are subject to approval by both the Fund's Opportunities Program and Design Staff.

E. The Consultant shall be bound by and comply with all the duly promulgated and lawful MWBE Regulations of the New York State Department of Economic Development's Division of Minority and Women's Business Development pertaining thereto and the provisions of Article 15-A of the New York State Executive Law.

#### 2. Agreement Goals

A. For purposes of this Agreement the Fund hereby establishes goals of [REDACTED] % for Minority-Owned Business Enterprises (MBE) participation and [REDACTED] % for Women-Owned Business Enterprises ("WBE").

B. For purposes of providing meaningful participation by MWBEs on the Agreement and achieving the Agreement Goals established in VIII.2A hereof, Consultant should reference the directory of New York State Certified MBWEs found at the following internet address:  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>.

C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Consultant must document "good faith efforts" to provide meaningful participation by MWBEs as sub-consultants, subcontractors in the performance of the Agreement. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Consultant acknowledges that if Consultant is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Agreement, such a finding constitutes a breach of contract and the Consultant shall be liable to the Fund for liquidated or other appropriate damages, as set forth herein.

D. Where it appears that the Consultant is unable to comply with the MWBE participation requirements, the Consultant may submit in writing for the Fund's consideration, the reasons for the Consultant's inability to meet any or all of the participation requirements together with a detailed explanation of the efforts taken by the Consultant to obtain the required MWBE participation pursuant to the provisions of New York State Executive Law Section 313 and the MWBE Regulations.

### 3. Equal Employment Opportunity (EEO)

A. Consultant agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.

B. Consultant shall comply with the following provisions of Article 15-A:

- i. Consultant and sub-consultants shall undertake or continue existing EEO 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, EEO 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.
- ii. Prior to the execution of the Agreement, Consultant shall submit an EEO policy statement to the Fund within ten (10) calendar days after a receipt of a request thereof.
- iii. If Consultant or sub-consultants do not have an existing EEO policy statement contact the Fund to obtain a model statement.
- iv. The Consultant's EEO policy statement shall include the following language:
  - a. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs 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.
  - b. The Consultant shall state in all solicitations or advertisements for employees that, in the performance of the Agreement, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

#### C. Staffing Plan

To ensure compliance with this Section, the Consultant shall submit a staffing plan to document the composition of the proposed workforce to be utilized in

the performance of the Agreement, or where required, information on the Consultant's total work force, including apprentices, broken down by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Prior to the execution of the Agreement and within ten (10) calendar days after a receipt of a request thereof, Consultant shall submit the staffing plan to the Fund. The form of the staffing plan shall be supplied by the Fund.

#### D. Workforce Utilization Report

After award of the Agreement, the Consultant shall submit to the Fund a work force utilization report, in a form and manner required by the Fund, of the work force actually utilized on this Agreement, broken down by specified ethnic background, gender, and Federal occupational categories or other appropriate categories specified by the Fund.

E. Consultant shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Consultant and sub consultants 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.

### 4. Subconsultant/MWBE Staffing List

- A. The Consultant represents and warrants that Consultant has submitted a Subconsultant/MWBE Staffing List at the time of submission of the proposal, qualifications, or negotiated Agreement.
- B. Consultant agrees to use such Subconsultant/MWBE Staffing List for the performance of MWBEs on the Agreement pursuant to the prescribed MWBE goals set forth in this Article.
- C. Consultant further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Agreement. Upon the occurrence of such a material breach, the Fund shall be entitled to any remedy provided herein, including but not limited to, a finding of Consultant non-responsiveness.

### 5. Compliance Report

Consultant is required to submit a Compliance Report to the Fund with every application for payment or by request of the Fund and such report must document the progress made towards achievement of the MWBE goals of the Agreement.

## 6. Liquidated Damages - MWBE Participation

- A. Where the Fund determines that Consultant is not in compliance with the requirements of the Agreement and refuses to comply with such requirements, or if Consultant is found to have willfully and intentionally failed to comply with the MWBE participation goals, Consultant shall be obligated to pay to the Fund liquidated damages.
- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
  1. All sums identified for payment to MWBEs had the Consultant achieved the contractual MWBE goals; and
  2. All sums actually paid to MWBEs for work performed or materials supplied under the Agreement.
- C. 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 Fund, Consultant shall pay such liquidated damages to the Fund within sixty (60) days after they are assessed by the Fund unless prior to the expiration of such sixtieth day, the Consultant 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 the Director renders a decision in favor of the Fund.

### **Article IX**

#### **Provisions Required to be Inserted by Law**

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

### **Article X**

#### **Release of the Fund**

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

## **Article XI General Provisions**

### **A. Approval**

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

### **B. Delays or Omissions**

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

### **C. Captions**

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

### **D. Singular - Plural; Male - Female**

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

### **E. Actions or Proceedings Against the Fund**

No action or proceeding shall lie or be maintained by the Consultant, or anyone claiming under or through the Consultant against the Fund or any of its trustees, officers, agents or employees, upon any claim arising out of or based upon this Agreement or any breach thereof or by reason of any act or omission of the Fund or its trustees, officers, agents or employees, unless such action or proceeding is instituted in the Supreme Court of the State of New York in and for the County of Albany and such action or proceeding is commenced within one (1) year after the Fund's acceptance of the construction work, or termination of this Agreement, whichever shall first occur.

### **F. Entire Agreement**

This Agreement, together with the Fund's Bulletin on the Payment of Consultant's Fees, which is hereby incorporated into and made a part hereof, constitutes the entire agreement between the parties hereto and supersedes all previous understandings and agreements with respect to the Project or any of the provisions hereof. No statement, promise, condition,



understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.

Conflicts between the documents shall be resolved in the following order of precedence:

1. Schedule "A" Standard Clauses
2. Consultant's Agreement
3. Schedule "B"
4. Program Directives

## Article XII Notices

1. All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (a) via certified or registered United States mail, return receipt requested;
- (b) by personal delivery;
- (c) by expedited delivery service; or
- (d) by email.

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

### The State University Construction Fund

Name [REDACTED]  
Title [REDACTED]  
State University Plaza  
353 Broadway  
Albany, NY 12246  
Telephone Number: 518.320. [REDACTED]  
E-Mail address: [REDACTED]@suny.edu

### Consultant

Consultant [REDACTED]  
Name [REDACTED]  
Title [REDACTED]  
Address [REDACTED]  
City, State, zip code [REDACTED]  
Telephone Number: [REDACTED]  
E-Mail Address: [REDACTED]

2. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of email, upon receipt.
3. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of

implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

## Article XIII Iran Energy Sector Divestment

Pursuant to New York State Finance Law §165-a, Iran Divestment Act of 2012 (Act), the Office of General Services is required to post on its web site a list of persons who have been determined to engage in investment activities in Iran ("prohibited entities list"), as defined by the Act. New York State Public Authorities Law § 2879-c, with certain exceptions, prohibits the Fund from entering into or awarding an Agreement with persons identified on the prohibited entities list and requires that the person (as defined in paragraph (e) of subdivision one of section one hundred sixty five-a of the state finance law) entering into the Agreement with the Fund certify, under penalty of perjury, that it is not on the prohibited entities list. By signing this Agreement with the Fund, each person (as defined in paragraph (e) of subdivision one of section one hundred sixty five-a of the state finance law) and each person signing on behalf of any other party certifies, and in the case of joint bid or proposal or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the prohibited entities list.

## Article XIV State Finance Law § 139-k

The Consultant certifies that all information provided to the Fund with respect to **State Finance Law Section 139-k** is complete, true and accurate.

The Fund reserves the right to immediately terminate this Agreement in the event that is found that the certification filed by the Consultant in accordance with **State Finance Law 139-k** was intentionally false or intentionally incomplete.

## Article XV Vendor Responsibility

1. The Consultant shall at all times during the Agreement term remain responsible. The Consultant agrees, if requested by the Fund, 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.
2. The Fund, at its sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when the Fund discovers information that calls into question the responsibility of the Consultant. In the event of such suspension, the Consultant will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Consultant must comply with the terms of the suspension order. Agreement activity may resume at such time as the Fund issues a written notice authorizing a resumption of performance under the Agreement.

3. Upon written notice to the Consultant, and a reasonable opportunity to be heard with appropriate Fund officials or staff, the Consultant may be terminated by the Fund at the Consultant's expense where the Consultant is determined by the Fund to be non-responsible. In such event, the Fund may complete the contractual requirements in any manner that the Fund may deem advisable and pursue available legal or equitable remedies for breach.

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

**Article XVI**  
**Severability**

If any provision of the Agreement, or the application thereof, is determined to be invalid or unenforceable, the remainder of those provisions and all other provisions of the Agreement shall remain valid and enforceable.

**Article XVII**  
**Time of Performance**

This Agreement shall be in effect for sixty (60) month from the date of receipt of the Notice to Proceed by the Consultant or until completion of Consultant Services necessary for the final payment made to the Contractor(s) managed under the terms of this Agreement, whichever is longer.

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

STATE UNIVERSITY CONSTRUCTION FUND

By \_\_\_\_\_  
General Manager  
Robert M. Haelen

Consultant Name

By \_\_\_\_\_

Printed Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Federal ID # \_\_\_\_\_

SFS ID # \_\_\_\_\_

*(If Corporation, affix Corporate Seal)*

SUCF Project No. \_\_\_\_\_

ACKNOWLEDGMENTS

(ACKNOWLEDGMENT BY 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 described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

Notary Public

(ACKNOWLEDGMENT BY 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 h self depose and say that he is a member of the firm of consisting of h self

and \_\_\_\_\_, that he executed the foregoing

instrument in the firm name of \_\_\_\_\_, and that he had authority to sign same, and he did duly acknowledge to me that he executed the same as the act and deed of said firm

of \_\_\_\_\_,for the uses and purposes mentioned therein.

Notary Public

(ACKNOWLEDGMENT BY CORPORATION)

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

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

\_\_\_\_\_, to me known, who, being duly sworn, did depose

and say that he/she/they reside(s) in \_\_\_\_\_; that he/she/they is (are) the \_\_\_\_\_ (president

or other officer or director or attorney in fact duly appointed) of the \_\_\_\_\_ (name of corporation), the corporation described in and which

executed the foregoing instrument; that he/she/they signed his/her/their name(s) thereto by authority of the Board of Directors of said corporation.

Notary Public

# SCHEDULE OF FEES

COST ESTIMATE OR CONSTRUCTION COST	BASIC FEE	ADJUSTMENT TO BASIC FEE
\$ 0 to \$ 20,000	14.00%	
20,001 to 30,000	2,680 plus 10.50% over 20,000	
30,001 to 40,000	3,840 plus 9.00% over 30,000	
40,001 to 50,000	4,840 plus 8.25% over 40,000	
50,001 to 70,000	6,000 plus 7.95% over 50,000	
70,001 to 90,000	7,980 plus 7.60% over 70,000	
90,001 to 110,000	9,800 plus 7.40% over 90,000	
110,001 to 130,000	11,550 plus 7.30% over 110,000	
130,001 to 150,000	13,180 plus 7.20% over 130,000	
150,001 to 170,000	14,760 plus 7.15% over 150,000	
170,001 to 190,000	16,180 plus 7.10% over 170,000	
190,001 to 210,000	17,440 plus 7.05% over 190,000	
210,001 to 230,000	18,720 plus 7.00% over 210,000	
230,001 to 250,000	19,940 plus 6.95% over 230,000	
250,001 to 300,000	21,360 plus 6.90% over 250,000	
300,001 to 350,000	24,870 plus 6.85% over 300,000	
350,001 to 400,000	28,280 plus 6.75% over 350,000	
400,001 to 450,000	31,600 plus 6.65% over 400,000	
450,001 to 500,000	34,730 plus 6.50% over 450,000	
500,001 to 550,000	37,680 plus 6.40% over 500,000	
550,001 to 600,000	40,440 plus 6.30% over 550,000	
600,001 to 650,000	43,000 plus 6.20% over 600,000	
650,001 to 700,000	45,500 plus 6.10% over 650,000	
700,001 to 1,000,000	49,300 plus 6.00% over 700,000	
1,000,001 to 1,500,000	68,000 plus 5.97% over 1,000,000	
1,500,001 to 2,000,000	97,300 plus 5.85% over 1,500,000	
2,000,001 to 2,500,000	125,830 plus 5.60% over 2,000,000	
2,500,001 to 3,000,000	153,830 plus 5.25% over 2,500,000	
3,000,001 to 3,500,000	180,080 plus 5.00% over 3,000,000	
3,500,001 to 100,000,000	205,080 plus 4.70% over 3,500,000	
100,000,001 or over	To Be Negotiated	
		BASIC FEE PLUS <span style="background-color: #cccccc; display: inline-block; width: 20px; height: 1em; vertical-align: middle;"></span> %

**SCHEDULE "A"**  
**PROVISIONS REQUIRED TO BE INSERTED BY LAW**

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this 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 Fund, whether a contractor, licenser, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 376 of the Education 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. NON-ASSIGNMENT CLAUSE.** 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 Fund'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 the Fund where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The Fund retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the Fund. The Contractor may, however, assign its right to receive payments without the Fund's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. 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.

**4. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all

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

**5. 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.

**6. 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 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 the Fund a non-collusive bidding certification on Contractor's behalf.

**7. 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 Fund within five (5) business days

of such conviction, determination or disposition of appeal (2NYCRR 105.4).

**8. SET-OFF RIGHTS.** The State and the Fund 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 and the Fund'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 and the Fund 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 and the Fund for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State and the Fund shall exercise its set-off rights in accordance with normal State and Fund practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State, the Fund, its representatives, or the State Comptroller.

**9. 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 the Fund, 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. The Fund 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 Fund 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, the State's or the Fund's right to discovery in any pending or future litigation.

**10. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.**

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

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the Fund 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 Fund 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.

**11. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby the Fund 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 Fund; or (ii) a written agreement in excess of \$100,000.00 whereby the Fund 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 work force 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, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the Fund, 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 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 Fund's 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 Fund shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The Fund 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, the Fund 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.

**12. 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 Schedule A, the terms of this Schedule A shall control.

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

**14. 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. For the purposes of Article 11-A of the State Finance law, the Controller's Office of the State University Construction Fund, whose mailing address is the State University Plaza, 353 Broadway, Albany, New York 12246, is the Fund's designated payment office.

**15. 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.

**16. 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 Fund's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the Fund, in writing, of each and every change of address to which service of process can be made. Service by the Fund to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**17. 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 Section 165 of the State Finance Law, (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 §165 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.

**18. 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.

**19. 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  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

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

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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

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

the documentation of these efforts to be provided upon request to the Fund;

(b) The Contractor has complied with the Federal Equal 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 Fund upon request; and

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

**20. 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 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

**21. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.**

Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**22. 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 the Fund, the Department of Civil Service and the State Comptroller.

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

**24. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**25. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:  
<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the Fund. During the term of the Contract, should the Fund receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the Fund will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the Fund shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The Fund 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.

# SCHEDULE "B"

1. **Special Compensation**

2. **Credit Adjustment**

Contract No.    NA                      Amount of Credit NA

3. **ECA Multiplier Adjustment**

The maximum multiplier, based on the most recent audited financial statement, is:

4. Unless otherwise specifically agreed to in writing by the Fund, Design Phase Services required to provide complete bidding documents shall be entirely completed and performed before December 4, 2015.

5. **Additional Specific Services:**

6. **Special Compensation Services:**

End of Schedule B