

# **Construction Management Agreement for State University Project (Design Phase and Construction Phase)**

SUCF Project No. «proj»

THIS AGREEMENT made as of «date» by and between the State University Construction Fund, having its principal office and place of business at The State University Plaza, Albany, New York 12246 (hereinafter the “Fund”) and

«Company\_Name»

having its principal office and place of business at

«Address\_Line\_1»

«Address\_Line\_2»

«City»

(hereinafter the “Manager”).

WHEREAS, the Fund is authorized to have constructed the following project at the

«proj\_title»

«proj\_campus»

(hereinafter the “Project or Project(s)”) and

and

WHEREAS, the Fund desires to have the Project(s) constructed in as expeditious and efficient a manner as possible; and

WHEREAS, the Fund has determined that such results can be accomplished most effectively by retaining the services of a construction manager to work with the Fund, its Project Consultant(s), and the Contractor(s) for the Project(s), so that the Project(s) may be completed and ready for use at the earliest practicable date; and

WHEREAS, the Manager is ready, willing, and able to perform such services and represents that it is qualified in all respects to do so and that its officers and employees possess the knowledge, experience, and character necessary to qualify them individually for the particular duties they are to perform;

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, the parties

agree as follows:

## **ARTICLE 1**

### **Retention of Construction Manager**

The Fund hereby retains the Manager and the Manager hereby agrees to act as the Construction Manager for the Project(s) and to perform the services hereinafter described on the terms and conditions specified herein.

## **ARTICLE 2**

### **Services to Be Performed**

2.1 The services to be performed by the Manager hereunder shall be subject to the general direction of the Fund and shall consist of consulting with, advising, and making recommendations to the Fund, its Project Consultant, and the Contractors for the Project(s), as the case may be, in all aspects of the construction of Project(s) in order to accomplish the completion of the Work in accordance with the plans and specifications. The services to be performed by the Manager shall include the services described herein and in Schedule B, which is attached hereto and made a part hereof.

2.2 The Fund reserves the right to direct the Manager to provide additional services and the Manager agrees to provide such services.

2.3 If the Manager believes that any services it has been directed to perform are beyond the scope of this Agreement and constitutes additional services, it shall provide prompt written notification to the Fund, but not later than five business days after being directed to perform such services. The Fund shall then determine whether or not the services are additional and if the Fund agrees, the maximum contract amount set forth in Article 4 hereof shall be amended to reflect the cost of providing such additional services.

## **ARTICLE 3**

### **Additional Obligations and Responsibilities**

3.1 In performing its services hereunder, the Manager shall place emphasis on considerations that will aid in completing the construction of the Project(s) consistent with the construction standards and procedures of the Fund, including the Fund’s requirement for scheduling, coordination, and completion. The Manager acknowledges that time will be of the essence for the Project(s) and it agrees to use reasonable care and diligence and to exercise its best efforts to administer, coordinate, monitor and inspect the work of the Contractors so as to assist the Fund in having the Project(s) completed on or before its contract

completion date; provided, however, that the Manager, shall not be liable for any failure or inability of any of the Contractors to complete the Project(s) or any portion thereof within the time or times provided in their respective construction contracts.

The parties recognize that the Manager cannot and will not be in control of the Project Consultants' or Contractors' activities in connection with the Project, and therefore, the Manager cannot warrant or represent that the actual duration of each phase of construction will be consistent with the overall Project construction schedule. In addition, the parties recognize that the Manager is not a guarantor of the Contractors' work, and the Manager shall not be responsible for defective or non-conforming work performed by Contractors or for the means, coordination and methods of construction employed by the individual Contractors or for the safety precautions and programs in connection with the Project, since these are solely the Contractor's responsibility. The Manager shall use its best efforts to obtain satisfactory performance from each of the Contractors. The Manager shall recommend courses of action to the Fund when requirements of a Contract are not being fulfilled. The Manager shall advise the Fund regarding the performance by each of the Contractors. Disputes with a Contractor relating to the execution or progress of the Work or the interpretation of the requirements of the Contract Documents (except interpretations of the drawings and specifications which shall be referred to the Consultant) shall be referred to the Manager who may make such recommendations to the Fund as Manager may deem necessary for the proper execution and timely progress of the Project. The Fund, at its discretion, shall take whatever action it deems necessary. The services of the Manager are intended to compliment and supplement but not replace or duplicate those of the Consultants, Contractors or Testing and Inspection agencies engaged by or through the Fund.

3.2 All recommendations that will affect the cost of the project shall be made by the Manager to the Fund and the Project Consultant in writing. The Fund may also require other recommendations and communications by the Manager to be made or confirmed by it in writing. All recommendations shall be made in writing directly to the Fund and the Project Consultant. After approval by the Fund and/or the Project Consultant, the Manager shall issue instructions directly to the Contractors.

3.3 The services to be performed hereunder shall be performed by the Manager's own staff, unless otherwise authorized in writing by Fund. The employment of, contract with, or use of the services of any other person or firm by the Manager, as consultant or otherwise, shall be

subject to the prior written approval of Fund. No provision of this Agreement, or such authorization, shall, however, be construed as constituting an agreement between the Fund and any such person or firm.

3.4 The Manager shall designate one person as a Project Executive who, on its behalf, shall be responsible for coordinating all of the services to be rendered by it hereunder. The designation and continuance shall be subject to the approval of the Fund. All personnel assigned by the Manager to its performance of this Agreement shall cooperate fully with personnel assigned to the Project(s) by the Fund and the Project Consultant, and, in the event the Fund determines that any personnel of Manager have failed so to cooperate, the Manager, at the request of the Fund, shall replace such personnel.

3.5 For the Construction Phase, the qualifications of the field staff to be maintained at the site of the Project(s) shall have the following minimum qualifications:

- a. Project Manager: A minimum of eight (8) years' experience with the Manager.
- b. Project Superintendent: A minimum of five (5) years' experience with the Manager.
- c. Assistant Project Superintendent: A minimum of three (3) years' experience with the Manager.
- d. Project Engineers and Accountants: A minimum of three (3) years' experience in the construction industry with similar responsibilities to that to be assigned to such personnel for the Project(s).

The Manager shall submit to the Fund for its review and approval its staff to be assigned to provide the services required under this Agreement prior to the commencement of those services. The Fund, during the course of the Project, reserves the right to approve staffing levels and the substitution of staff previously approved by the Fund.

3.6 The Fund shall include in all Contract Documents a requirement that the Contractors name the Manager as an additional Insured on all insurance coverage provided by the Contractors for the Project(s).

3.7 The Manager shall not be responsible for the consequences of: Acts of God (such as tornado, flood, hurricane, etc); the Fund's, the State University of New York's, the State of New York's, Consultants', Contractors', vendors or other Project participants' (and their respective agents', employees', consultants', vendors' and subcontractors') acts, omissions to act or

failures to timely act; strikes, lockouts or other labor disturbances; riots, insurrections, terrorist acts or civil commotions; embargoes; shortage or unavailability of materials, supplies, labor and equipment; sabotage; vandalism; the requirements of laws, statutes, regulations, and other legal requirements of governmental authorities; casualties requiring reconstruction or repair to the Project(s) or any parts(s) thereof; or any other matters beyond the reasonable control of the Manager. If the Manager's duties are suspended as a result of such occurrence(s), the Manager's compensation shall be accordingly deferred or equitably adjusted.

3.8 The Manager shall understand the functions, contractual relationships and levels of authority of the Fund, the campus where the Project(s) are located (Campus), Project Consultants, Contractor(s) and others with respect to each other and the Project(s) and shall conduct all activities accordingly. The Campus is the Fund's client and the ultimate owner/ user of the Project(s), and the Manager will provide communication, collaboration and coordination as appropriate to the ongoing activities and services while understanding that all direction and authorization to the Campus is provided by Fund. The Manager will not act on any direction or request received directly from the Campus.

3.9 The Manager, during performance of services in providing the work authorized in this Agreement, shall ensure that all appropriate requirements for the work are in place prior to commencement of the work and that the work is properly performed and completed as necessary to produce the intended results. For example, but not limited to the following, the Manager shall insure that the work is performed by licensed entities or persons and that the wages and supplements determined by the Industrial Commissioner of the State of New York as prevailing in the locality of the site at which the work will be performed are paid; that the Manager's staff gives its constant personal attention to all the work while it is in progress; that work is performed in accordance with the instructions of the Project Consultant and permits, if any; and that work is performed by competent and suitable workers and equipment which shall be sufficient to prosecute all the work to full completion in the manner and time required. The Manager shall also consult with the Fund to ensure that the proper insurance is in place prior to commencement of the work.

#### **ARTICLE 4 Payment for Services**

4.1 For the time directly and exclusively devoted by the

Manager to the performance of the services required by this Agreement, the Fund shall pay to the Manager and the Manager shall accept from the Fund, as the total compensation for all of the latter's services under this Agreement, an amount equal to the direct labor cost of the Manager plus a sum equal to that direct labor cost times the multiplier set forth in Schedule C. For the time directly and exclusively devoted by the Fund approved subconsultants to the Manager, and the Manager shall accept from the Fund, as the total compensation for all of the subconsultants' services under this Agreement, an amount equal to the direct labor cost of the subconsultants plus a sum equal to that direct labor cost times the multiplier set forth in Schedule C. For the purpose of this Agreement "direct labor cost" means the regular gross pay, exclusive of any premium for overtime or cost for employee benefits (required by law or otherwise), actually paid by the Manager to its employees for time directly and exclusively devoted to the applicable services. Said total compensation includes all salary, overhead, profit, employee benefits, required by law or otherwise, and except as hereinafter provided, all other costs and expenses incurred in providing the services.

4.2 The Fund will reimburse the Manager for the expenses it actually and necessarily incurs in performing the services hereunder as follows:

- a. Computer and electronic data processing services, including programming and equipment rental, requested and/or approved in writing by the Fund, shall be paid for by the Fund on the basis of the actual cost thereof to the Manager.
- b. Traveling expenses, including transportation, meals and lodging, and long distance telephone calls, 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 travel expenses for field staff shall not be reimbursable unless such travel is to and from the home office of the Fund or the Project Consultant, or is approved in writing by the Fund.
- c. Testing and additional services authorized in writing by the Fund shall be paid for by the Fund on the basis of the Manager's actual cost thereof. Said authorizations will be made in accordance with SUCF Directive 1C-4 – Extra Compensation Authorizations. This document is available at <http://www.sucf.suny.edu/pdf/dir/1C-4.pdf>.
- d. Reproductions of Contract Documents, reports, and other data and documents requested by and furnished

to or on behalf of the Fund shall be paid for by the Fund on the basis of the actual cost thereof to the Manager.

- e. The maximum reimbursement for the reimbursables listed in paragraphs a, b, and d above shall be \$«Reimbursable\_expenses» (dollar amount in words).
- f. The maximum reimbursement allowance for testing and additional services listed in paragraph c shall be \$Testing expenses (dollar amount in words).

4.3 Notwithstanding the foregoing, the total compensation and reimbursable expenses payable to the Manager under this Agreement shall in no event exceed the sum of \$«total\_compensation» (dollar amount in words).

4.4 Said compensation and reimbursable expenses shall be paid by the Fund to the Manager in monthly installments on a reimbursement basis for actual costs incurred or in proportion to the services rendered by the Manager as determined by the Fund on its receipt of reports from the Manager, as to the services provided hereunder; subject, however, to the Fund's approval of such services. The Manager shall submit for the Fund's approval a properly executed Application for Payment, on a form prescribed by the Fund, together with appropriate backup supporting the amount billed.

4.5 Whenever any payment to or fee of the Manager is dependent in whole or in part on the Manager's or its consultants' cost or costs, the Manager shall maintain efficient and accurate cost and accounting records as to all such costs and the Manager shall require its consultants to maintain similar records. The Manager, at any time during the term of this Agreement or within six (6) years thereafter, shall make such records and require its consultants to make their 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, any item not supported by reason of the unavailability of such records shall, at the election of the Fund, be disallowed and, if payment therefor has already been made, the Manager, on demand, shall refund to the Fund the amounts so disallowed. Payment to the Manager and/or approval by the Fund of any invoice submitted by the Manager shall in no way affect the Manager's obligations hereunder or the right of the Fund to obtain a refund of any payment to or fee of the Manager that was in excess of that to which it was lawfully entitled.

4.6 Upon satisfactory completion by the Manager of all

services required by this Agreement or, if this Agreement is terminated by the Fund, all services provided prior to said termination, the Fund shall make a final payment to the Manager. Acceptance by the Manager of the final payment shall operate as, and shall be, a release of the Fund from all liability to the Manager for anything provided or arising in connection with this Agreement.

4.7 No payment, final or otherwise, by the Fund shall in any way release or affect the obligations and responsibilities of the Manager hereunder.

4.8 Although the Manager may recommend and contract with others for laboratory testing, inspection services and special investigations, when approved by the Fund, nothing in this Agreement shall be deemed to require, or authorize, or permit the Manager to perform any act which would constitute design services, laboratory testing, inspection services, special investigations, or the practice of architecture, professional engineering, certified public accounting or law. The recommendations, advice, budgetary information and schedules to be furnished by the Manager under this Agreement are for the sole use of the Fund and shall not be deemed to be warranties or guarantees or constitute the performance of licensed professional services.

It is expressly understood that the Manager is not a guarantor or insurer of the Contract Documents, including the plans and specifications, or of any Work which is to be performed and managed by others.

Nothing in this Agreement shall be construed to mean that the Manager assumes any of the responsibilities or duties of the Consultant or other Project participants. The Consultant is solely responsible for the Project design and for performing in accordance with the agreement between the Consultant and the Fund.

Unless otherwise provided in this Agreement, the Manager and its consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB), mold or other toxic substances.

4.9 The Manager shall provide complete and accurate billing invoices in a format required by the Fund 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 5**

##### **Field Office**

The Fund shall either provide to the Manager or reimburse the Manager for its actual cost of providing a field office, together with required furniture and equipment therefor, approved in writing by the Fund. The Fund shall also either provide for the normal operating and maintenance of said field office, including telephone expenses, or reimburse the Manager for its actual cost of so operating and maintaining the field office. All furniture and equipment either provided by the Fund or the cost of which the Manager is reimbursed hereunder shall be and remain the property of the Fund.

#### **ARTICLE 6**

##### **Ownership of Documents**

All reports, estimates, schedules, and other documents and data, including, but not limited to, computer data and files, prepared by and for the Manager pursuant to this Agreement shall be the property of the Fund and, upon its request, the Manager shall promptly deliver all of the same to the Fund.

#### **ARTICLE 7**

##### **Bidding on Project(s)**

Neither the Manager nor any firm of which any officer, director, supervisory employee, or principal stockholder of the Manager is an officer, director, supervisory employee, or principal stockholder, or of which the Manager is a principal stockholder, shall, during the term of this Agreement and until final payment for the services provided for herein is made by the Fund, make or cause to be made, without the prior written approval of Fund, any bid on the Project(s) covered under this Agreement. For purposes of this provision, the term "principal stockholder" shall mean any stockholder holding ten percent (10%) or more of the capital stock of such corporation in his/her or its own name or that is held directly or indirectly for his/her or its account or ten percent (10%) or more ownership of or interest in any firm either in his/her or its own name or directly or indirectly for his/her or its account.

#### **ARTICLE 8**

##### **Liability and Insurance**

To the fullest extent permitted by law, in addition to any liability or obligations of the Manager to the Fund that may exist under any other provisions of this Agreement or by statute or otherwise, the Manager 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 Manager, its officers, subconsultants, agents, suppliers, subcontractors or employees, errors or omissions of the Manager, its subconsultants, suppliers, agents or employees, or the failure by the Manager, 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 this Agreement, the performance of the services, or the work.

To the fullest extent permitted by law, the Manager 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 Manager 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 Manager'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 Manager, the Manager 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 that is approved by the Fund. 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 Agreement; 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 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 Manager's work under this Agreement, or as a result of Manager'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 Manager 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 Manager shall supply the Fund with updated replacement certificates of insurance and endorsements. The Manager shall advise the Fund of any letter or notification that cancels, materially changes, or non-renews the policy and the Manager 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, the Manager 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 Manager engage a subconsultant or subcontractor, the Manager shall impose the insurance requirements in this document on those entities, unless otherwise agreed to in writing by the Fund. The Manager shall keep the subconsultant and subcontractor certificates of insurance on file and produce them upon the demand of the Fund.

The Manager 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 Agreement, 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 as required by New York State.

iii. Comprehensive Business Automobile Liability Insurance with a limit of no less than \$1,000,000 each accident covering liability arising out of the use of any motor vehicle in connection with the work, including owned, leased, hired, and non-owned vehicles bearing, or, under the circumstances under which they are being used, required by the Motor Vehicle Laws of the State of New York to bear license plates. Such policy shall name the State of New York, State University of New York, and the 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

Manager shall procure and maintain during and for a period of three (3) years after the completion of the Agreement, professional liability insurance with a limit of \$2,000,000 per claim and in the aggregate. 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 Manager shall provide coverage of the Manager'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 Manager 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, Manager 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 Manager hereunder.

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

#### **ARTICLE 9**

##### **Nature of Contractual Relationship**

9.1 Nothing contained herein shall be deemed to create any contractual relationship between the Manager and the Project Consultant, or any of the Contractors, subcontractors, or material suppliers on the Project(s) or to make the Manager responsible or liable to the Project Consultant or any of the Contractors.

9.2 The relationship of the Manager to the Fund shall be that of independent Contractor, and the Manager shall have no authority to bind the Fund in any way with third parties without the prior written consent of the Fund. It is further understood that this Agreement is intended to secure the services of the Manager because of its particular ability and experience and that this Agreement shall not be assigned, sublet, or transferred without the prior written consent of the Fund.

#### **ARTICLE 10**

##### **Termination of Agreement**

At any time during the effective term of this Agreement, the Fund shall have the right, on seven (7) calendar days' written notice to the Manager, to terminate the Agreement or to postpone, delay, suspend, or abandon all or any part of the Project(s) and, in the event of such termination, postponement, delay, suspension, or abandonment, the Manager shall deliver to the Fund all plans, drawings, specifications, reports, and other data and records pertaining to the Project(s) and the Fund shall pay to the Manager all amounts for satisfactory services earned to the effective date of such termination. Except as expressly provided in the previous sentence, such termination, postponement, delay, suspension, or abandonment shall not give rise to any claim or cause of action against the Fund for damages, extra compensation, or for loss of anticipated profits on services unperformed. In the event any postponement, delay, suspension, abandonment, or termination is due to the Manager's failure to properly perform its obligations hereunder, the Manager shall be liable to the Fund for all damages suffered by it by reason therefor and the Fund shall have the right to withhold any moneys due to the Manager hereunder and to apply such monies toward the payment of such damages.

#### **ARTICLE 11**

##### **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 Manager 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”). Manager’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 Agreement and New York State Executive Law Section 316.
- D. Manager 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 Manager 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 \_\_\_% for Minority-Owned Business Enterprises (MBE) participation and \_\_\_% 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 Section 10.2A hereof, the Manager 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, Manager 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 Manager acknowledges that if the Manager 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 agreement and the Manager shall be liable to the Fund for liquidated or other appropriate damages, as set forth herein.

- D. Where it appears that the Manager is unable to comply with the MWBE participation requirements, the Manager may submit in writing for the Fund’s consideration, the reasons for the Manager’s inability to meet any or all of the participation requirements together with an explanation of the efforts taken by the Manager 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. Manager 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. Manager shall comply with the following provisions of Article 15-A:

- i. Manager 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, Manager shall submit an EEO policy statement to the Fund within ten (10) calendar days after a receipt of a request thereof.

iii. If the Manager or sub-consultants do not have an existing EEO policy statement contact the Fund to obtain a model statement.

iv. The Manager's EEO policy statement shall include the following language:

a. The Manager 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 Manager 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 Manager 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 Manager'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, Manager 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 Manager 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. Manager shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Manager and subconsultants 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 Manager represents and warrants that Manager has submitted a Subconsultant/MWBE Staffing List at the time of submission of the proposal, qualifications, or negotiated Agreement.

B. Manager 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. Manager 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 Manager's non-responsiveness.

#### 5. Compliance Report

Manager 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 the Manager is not in compliance with the requirements of the Agreement and refuses to comply with such requirements, or if the Manager is found to have willfully and intentionally failed to comply with the MWBE participation goals, the Manager 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 Manager 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, the Manager 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 Manager 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 12**

**Provisions Required 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 A, the word "Contractor" therein shall be deemed to refer to the Manager

**ARTICLE 13**  
**General Provisions**

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

13.2 No action or proceeding shall lie or be maintained by the Manager, or anyone claiming under or through the Manager, 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 alleged breach thereof or by reason of any act or omission of the Fund, or its trustees, officers, agents and 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 final acceptance of the construction work on the Project(s) or termination of this Agreement, whichever event shall first occur. All such actions or proceeding shall be governed by the laws of the State of New York.

13.3 No delay or omission by the Fund to exercise any right or remedy accruing to it under 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 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 accrual of such right or remedy, upon the occurrence of any subsequent event of the same or of a different nature.

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

13.5 The term "Contractors" as used in this Agreement shall be deemed to include all Contractors who have previously or may hereafter be awarded construction contracts by the Fund for the Project(s).

13.6 The terms "Project Consultant" and "Consultant" as used herein shall mean the person(s) or firm(s) designated by Fund as the Consultant(s) for the Project(s).

13.7 The captions of the Articles 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.

13.8 As used in this Agreement, the singular of any word or designation, whenever necessary or appropriate, shall include the plural.

13.9 This Agreement, together with the Letters of Authorization and their attachments, and the Fund's Bulletin on the Payment of Consultant's Fees, as may be revised, constitutes the entire Agreement between the parties hereto and supersedes all previous understandings and agreements with respect to Project(s) or any of the provisions hereof. No statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, that 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. Manager's Agreement

#### **ARTICLE 14**

##### **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

James Cesare, Director – Job Order Contracting  
Construction Management  
State University Plaza, 353 Broadway, Albany, NY 12246  
Telephone Number: 518.320.3206

E-mail address: james.cesare@suny.edu

##### The Manager

«Company\_Name»

«attention»

«Address\_Line\_1»

«City»

Telephone Number: XXX

E-mail address: XXXX

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 sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

#### **ARTICLE 15**

##### **State Finance Law § 139-k**

The Manager 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 it is found that the certification filed by the Manager in accordance with State Finance Law 139-k was intentionally false or intentionally incomplete.

#### **ARTICLE 16**

##### **Iran Energy Sector Divestment Compliance**

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 a 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 17 Vendor Responsibility**

1. The Manager shall at all times during the Agreement term remain responsible. The Manager 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 Manager. In the event of such suspension, the Manager will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Manager 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 Manager, and a reasonable opportunity to be heard with appropriate Fund officials or staff, the Manager may be terminated by the Fund at the Manager's expense where the Manager 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 Manager as a result of such termination.

#### **ARTICLE 18 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 19 Duration of Agreement**

This Agreement shall be in effect for sixty (60) months from the date of the Notice to Proceed or through the Final Payment to the Contractor(s) being managed, whichever is longer.

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

STATE UNIVERSITY CONSTRUCTION FUND

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

By \_\_\_\_\_

\_\_\_\_\_  
(Print or type name of authorized representative and title)

Date \_\_\_\_\_

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

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

*(If Corporation, affix Corporate Seal)*

## 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 "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: [mwb certification@esd.ny.gov](mailto:mwb certification@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.

**SCHEDULES B, BC AND/OR BD**

**SCOPE OF WORK**

**TO BE INSERTED –**

**PROJECT SPECIFIC**

**SCHEDULE “C”**  
**SUCF Project No. XXXXXX**  
**Contract No. T00XXXX**

The direct labor multipliers<sup>1</sup> for this project are as follows:

Construction Manager (CM Firm Name.)

Pre-Construction Phase (*if applicable*) - X.XX

Construction Phase (*if applicable*) - X.XX

Approved Subconsultants

XXXXXXXXX - X.XX

XXXXXXXXX - X.XX

XXXXXXXXX - X.XX

XXXXXXXXX - X.XX

Other Subconsultants – A direct labor multiplier shall be set forth in the Fund’s written approval of any other subconsultants proposed by the Construction Manager.

<sup>1</sup> See Article 4 Paragraph 4.1 on page CM-3 of the Agreement.