Addendum No. 2
September 10, 2010

ARCHITECTURAL DESIGN SERVICES
REQUIREMENTS CONTRACTS RFQ
Project No. CITYW-CUCF-08-10

Amendments to the RFQ

- The Response Due Date is changed to September 23, 2010, by 12:00 Noon.
- Consistent with RFQ Section I. Purpose & Description, this Addendum conveys a DRAFT form of the contract which is available for downloading at www.cuny.edu/constructionsolicitations.

Contact: Michael Feeney, DDCM.ContractsDept@mail.cuny.edu

By signing in the space provided below, the Responder acknowledges receipt of this Addendum. This Addendum must be signed by the Responder and submitted with the Response.

Name of Responder

Name of Authorized Responder Representative

Signature

Title

Date
DRAFT

CITY UNIVERSITY CONSTRUCTION FUND

REQUIREMENTS CONTRACT FOR
ARCHITECTURAL DESIGN SERVICES

PROJECT NO: CITYW-CUCF-08-10

For the Services of

______________________________

______________________________

______________________________
**PART I – GENERAL PROVISIONS**

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REQUIREMENTS CONTRACT FOR ARCHITECTURAL DESIGN SERVICES
TERMS & CONDITIONS

PART I - GENERAL PROVISIONS

ARTICLE 1 – REQUIREMENTS CONTRACT FOR ARCHITECTURAL DESIGN SERVICES

The CITY UNIVERSITY CONSTRUCTION FUND ("CUCF"), a public benefit corporation organized and existing pursuant to Article 125-B of the Education Law of the State of New York, with an office located at 555 West 57th Street, 10th Floor, New York, New York 10019, and ____________________, with an office located at ____________________, with an office located at ____________________, ("Consultant") agree as set forth above and as follows this _____ day of _______, 20___:

1.0 CUCF proposes to undertake the following “REQUIREMENTS CONTRACT FOR ARCHITECTURAL DESIGN SERVICES” for projects as assigned by CUCF ("Project") on various sites (“Sites”) located throughout The CITY UNIVERSITY OF NEW YORK (“CUNY”) for the rehabilitation, construction, renovation or expansion of CUNY-owned sites and facilities comprised of 23 institutions located throughout the five boroughs of New York City that include 293 buildings on 26 million square feet of space at an estimated construction cost anticipated not to exceed fifteen million dollars ($15,000,000), in whole or in part, (“Approved Construction Budget”) per project.

1.1 As of the date fixed pursuant to Article 1.3 hereof, CUCF hereby retains the Consultant to perform, and the Consultant agrees to perform for CUCF, the Architectural Design Services in the Categories of Work designated in this Contract in Appendix C.1, without exception, in connection with each project assigned hereunder by CUCF, by Task Order, for a duration of three (3) years from the date of execution or the Notice to Proceed, whichever occurs later.

1.2 CUCF Representative - The CUNY Vice Chancellor for Facilities Planning, Construction and Management (FPCM) and its Executive Director of the Department of Design, Construction & Management (DDCM) are the principal and exclusive representatives of CUCF, either of whom may designate in writing to the Consultant from time to time the identity of any other person to serve as a CUCF representative.

Whenever any action is to be taken, or acceptance or approval or permission given by CUCF in relation to this Contract, it may be taken or given only by the said Vice Chancellor, Executive Director or by such designated representative. No permission, acceptance, approval or action taken or given by anyone other than its representative shall become binding upon CUCF.

1.3 Effective Date and Term - This Contract shall be effective as of the date it is executed by an officer of CUCF, and shall continue until each project assigned hereunder by CUCF, by Task Order, is completed or until CUCF makes final payment, whichever occurs later.

1.4 Not-To-Exceed Amount – This Contract has a not-to-exceed amount of $5,000,000 for assigned services.

1.5 Consultant Status and Services - The Consultant represents (a) that it is expert in the services referred to and required by this Contract, including Article 2 hereof and PART II - SPECIFIC
REQUISITES OF REQUIREMENTS CONTRACT FOR ARCHITECTURAL DESIGN SERVICES hereof (“Services”); (b) that it is duly licensed by the appropriate authority, e. g., the State of New York (“State”) with respect to the profession, e.g., of Architect or Engineer, with a valid certificate to practice this profession in the State of New York and to perform the Services and (c) that it will take all steps necessary and advisable to maintain its current licenses related to the Services, giving CUCF prompt notice of any lapse of a license pertaining to the Consultant or the Consultant’s Staff, as defined herein. Consistent with Part II of this Contract, the Consultant shall plan, design and produce the drawings, plans and specifications for the project, and provide services during the construction of the assigned project. The Consultant shall provide CUCF with all of the project’s drawings, plans, specifications and comparable documents that CUCF will need to award a contract to a contractor selected by competitive bidding, or comparable process, to complete the project. The Consultant shall design the project so that the cost of construction will not exceed 110% of the Approved Construction Budget. For convenience, the parties refer in this Contract to the contractor which will complete construction of the project as “Contractor,” “Contractors” or “Construction Manager”; these words do not refer to the Consultant, except as a provision otherwise expressly provides.

1.6.0 Construction Cost Estimates - The Consultant shall develop and provide to CUCF with each submittal required by Part II hereof an estimate of the total cost to construct the project. In addition, the Consultant shall inform CUCF immediately in writing upon learning of any factor which, in its opinion, might increase its estimated cost of construction. The Consultant’s estimate for the total cost of construction shall include a base construction cost, costs for the general conditions and the fee of a construction manager, costs of bonds and insurance, costs for contractors’ overhead and profit, an appropriate design contingency, bidding contingency, escalation computed to the mid-point of construction, and change order (i.e. construction) contingency, as directed by CUCF. The Consultant shall develop each such estimate using the latest estimating tools and will be based upon the prevailing market price of the construction work and material at the time of the submission of the respective plans and specifications for each design submittal phase and an estimate based upon the Consultant’s projection of costs contemporaneous with the date on which CUCF advises that CUCF will solicit bids on one or more contracts to construct the project. The Consultant shall explain in writing to CUCF its assumptions and demonstrate its methodology for projecting each estimate of the cost to construct the project, with the estimated total cost of construction not to exceed 110% of the Approved Construction Budget.

1.6.1 The Consultant acknowledges that CUCF may retain consultants and others, such as a construction manager, from time to time, to develop one or more estimates of the cost of construction, to advise CUCF on matters relating to the project, to organize and oversee the construction of the project, and to assist the Consultant in the performance of value engineering services. As part of its Services, the Consultant agrees to cooperate with CUCF, its consultants and the construction manager to reconcile differences between and amongst the estimates of the cost of construction. In the event, if any, that CUCF requests to explain further the Consultant’s assumptions or methodologies or both of them, shall examine anew all of its assumptions and methodologies, and expeditiously may either confirm its then current cost estimate, assumptions and methodologies, or revise them and its design and specifications, or any combination of these, but shall do so promptly.

1.6.2 At times, or at any time, during any phase of design, if either party determines that the estimated total cost of construction of the project exceeds the Approved Construction Budget, then the party shall notify the other of its determination; subsequent to any such determination CUCF may direct the Consultant to revise the project’s plans in order to reduce the estimated cost of construction to a sum within the Approved Construction Budget, and the Consultant shall revise, at its own cost and expense and as part of its Services, all or any part of the Schematic Deliverables, the Design Development
Deliverables, the Construction Documents or the Bid Documents, as the case may be, in order to bring the estimated cost of construction within the Approved Construction Budget. In any such revision, by way of illustration and without limitation, the Consultant shall: (i) provide value engineering; (ii) assist CUCF in redefining the scope of the project; (iii) incorporate all CUCF-approved scope reductions and project modifications into the modified Schematic Deliverables, Design Development Deliverables, Construction Documents or Bid Documents; (iv) develop and incorporate bid alternates into the Bid Documents and Construction Documents; or (v) undertake any combination of these. With respect to any question concerning any estimated cost of construction or any change to the project, or portion thereof, the CUCF decision shall be final.

1.7 Time is a material term of this Contract. The Consultant understands and acknowledges that time is of the essence in the performance of its obligations under this Contract, including, without limitation, its performance of the Services and the completion of the project. The Consultant understands and acknowledges that CUCF will incur damages if the project is not completed on time. The Consultant shall at all times carry out its duties and responsibilities as expeditiously as possible and in accordance with the project Design Schedule, the project’s construction schedule and in accordance with all other applicable schedules.

1.8 Contract Contingent upon Funding

Funding for this Contract is contingent upon the continued availability to CUCF of funds from the Dormitory Authority of the State of New York (“DASNY”), the City or the State or a combination of them, and continued funding authorization for the Project.

The Consultant agrees that, in the event such funding may lapse, be suspended or terminate, in addition to any other right CUCF has or may have, CUCF may suspend or terminate this Contract in accordance with the terms of this Contract.

ARTICLE 2 - SCOPE OF SERVICES

2.0 Architectural Design Services

2.0.1 In addition to any requirements detailed in Part II, the Services of the Consultant shall be performed under the general direction of CUCF. The Consultant shall be responsible at all times for the competency, integrity and adequacy of all of its personnel and the accuracy and completeness of all documents pertaining to the Services that the Consultant creates or provides to CUCF. The Consultant agrees that it shall at all times employ, supervise, maintain and assign to the performance of the Services a sufficient number of competent and qualified architects and other personnel, including, without limitation, structural, mechanical, plumbing, environmental and electrical engineering and/or other staff necessary or advisable to assure the Consultant’s timely performance of the Services to meet the CUCF Program Requirements. The Consultant shall create and maintain a written quality control program with respect to all areas of the Consultant’s work, including, without limitation, the review of all drawings and specifications prior to submission to CUCF. Upon request, the Consultant shall furnish to CUCF a copy of such program. The parties shall cooperate with each other and coordinate their respective work efforts to permit the Consultant to perform the Services.

2.0.2 Consistent with the Consultant’s proposed project team comprising the Consultant’s staff submitted in response to the Request for Qualifications for this Contract, appended in Appendix C.2, who will work on the project for each Designated Category of Work in Appendix C.1, the Consultant may
replace, remove or add from time to time any such listed individual, but only after the Consultant obtains the written approval from CUCF to do so. The Consultant shall provide CUCF in writing with its reason for any such change and the qualifications of the additional or replacement individual. The Consultant represents it shall not add or replace anyone such listed individual without the prior written approval of CUCF. The Consultant acknowledges CUCF’s right from time to time to withhold or deny its approval of any such addition or replacement.

2.0.3 The Consultant agrees not to enter into any subcontract for the performance of any of its obligations, in whole or in part, under this Contract without the prior written approval of CUCF of each such subcontract. For convenience, anyone with whom the Consultant so subcontracts, including, without limitation, subcontractors, consultants, agents and the like, is referred to in this Contract as a ‘sub-consultant.’ The Consultant shall require that any sub-consultant who provides services regulated by the State or City, such as engineering or architectural services, to provide documentary evidence of its license from the relevant regulatory authority to perform such services. The Consultant shall maintain a copy of each such document, and upon request furnish it promptly to CUCF.

2.0.4 Each subcontract between the Consultant and a sub-consultant shall contain provisions specifying:

1. The work of this Contract to be performed by the sub-consultant and the fee or sum, as the case may be, to be charged for such work,

2. That the work of the subcontract to be performed by the sub-consultant shall be in accordance with the terms of the Contract between CUCF and the Consultant,

3. That nothing contained in such subcontract shall impair any right of CUCF,

4. That nothing contained in such subcontract, or under the Contract between CUCF and the Consultant, shall create any contractual relation between the sub-consultant and CUCF, nor shall create any right to be paid by CUCF or any duty by CUCF to pay such sub-consultant,

5. That the sub-consultant shall make no claim against CUCF, CUNY, the City or State of New York or DASNY, its officers, agents or employees, by reason of such subcontract or of any act or omission of the Consultant,

6. That the sub-consultant expressly agrees to be bound to the Consultant by the confidentiality and audit provisions set forth in this Contract,

7. That the sub-consultant expressly agrees to be bound to the Consultant by the provisions set forth in this Contract relating to CUCF’s ownership of the work and materials furnished to CUCF,

8. That the contract, including, without limitation, all goods to be provided and all services to be performed by the sub-consultant, including all of the material terms of such sub-consultant’s agreements related to the project, may be assigned to CUCF without charge, and

9. Except as required by statute, within fourteen (14) calendar days of the receipt of any
payment from CUCF, the Consultant shall pay the sub-consultant the proceeds from such payment that represents the value of the work performed or materials furnished by the sub-consultant, and reflects the percentage of the sub-consultant’s work completed in the invoice approved by CUCF and based upon the actual value of the contract, less an amount necessary to satisfy any claim, lien, or judgment against the sub-consultant which have not been suitably discharged and less any retained amount agreed to by the sub-consultant.

(a) The Consultant agrees that it is fully responsible to CUCF for the acts and omissions of the sub-consultants and of persons either directly or indirectly employed by them.

(b) The Consultant shall not in any way be relieved of any responsibility under this Contract by any subcontract.

(c) The Consultant shall bond, vacate or discharge promptly all liens related to this Contract, and at its own expense, but no later than ten (10) days after the filing of any and all such liens and which may be placed against the real property on which the project is located or against the funds for this Contract.

2.0.5 The Consultant shall take all steps necessary or advisable, with respect to the security measures at the Site, to comply with CUCF’s and CUNY’s security requirements including, without limitation:

(a) Badges – Consultant, Consultant’s Staff and the sub-consultants shall wear on the outermost garment CUCF or CUNY visitors’ ID badges.

(b) Vehicles – Consultant shall identify each of its vehicles at the Site appropriately and shall park each in a designated parking area, if available, unless otherwise directed by CUCF. All vehicles shall be properly registered, insured and have all required lights in good working order.

2.0.6 The Consultant acknowledges that its Services will result in work that CUCF will use to contract with others to construct all or a portion of the project and that CUCF and those with whom CUCF contracts to construct any portion of or the entire project will rely upon and use the Consultant’s work to perform their obligations under construction contracts, particularly during Construction Administration, as defined herein. The Consultant represents that, with respect to any such reliance, it will use its best efforts to coordinate the timely performance of its Services with the efforts of CUCF and the parties who contract with CUCF to construct the project.

2.1 Environmental Goal – If applicable, the Consultant shall cause the project to comply with Executive Order No. 111 of the Governor of the State of New York, New York City Department of Environmental Protection, and to meet the criteria to obtain “Silver” certification per The Leadership in Energy and Environmental Design (“LEED”) Green Building Rating System™ of the United States Green Building Council (“USGBC”). If applicable, the Consultant shall require the Project to be commissioned in accordance with Executive Order No. 111, the Green Building Tax Credit, as set forth at 6 NYCRR 638.8, State Environmental Quality Review (SEQR), 6 NYCCR Part 617, the USGBC LEED™ rating system, and CUCF’s Commissioning Guidelines. If applicable, the Consultant shall apply to the USGBC and, as a material term of this Contract, obtain from it a “Silver” certification of the Project. CUCF shall retain from others the services of a commissioning authority.
2.2 **Milestones and Guides** – The Consultant shall perform its Services generally with respect to the scheduled milestones and the guides referred to in this section.

2.2.1 **Schedules**

(a) **Design Schedule** - Prior to commencing performance of its Services, the Consultant shall submit for CUCF’s approval a schedule of its performance during design and construction. The proposed schedule shall be logically sequenced; indicate major activities in the pre-schematic, schematic design development, and construction document phases; and provide allowances for periods for CUCF’s review and approval of submissions and for approvals of others specified by CUCF and of authorities having jurisdiction over the Project. The Consultant shall maintain the progress of its performance of Services in accord with the approved schedule, and, except for reasonable cause, shall not delay its performance. The Consultant agrees that, after it receives any written request from CUCF to recover any time lost due to the Consultant’s delay, it shall accelerate its performance at no additional cost to CUCF by, among other means, employing additional staff and by working evenings and weekends, until it eliminates the effects of any such delay.

(b) **Construction Schedule** – The Consultant shall furnish a simple, logical-sequence diagram for construction during the design development phase, and refine it during the design process through to completion. This diagram shall serve as a guide for the construction contractors. During the construction phase, the Consultant shall review and analyze the schedule for construction and each update to it, both of which will be developed by others; the Consultant shall advise CUCF of its analysis of the schedule and the updates and recommend steps CUCF may take to correct any errors found by the Consultant or to recover the time lost to any delay.

2.2.2 **Progress Reports** - Once every other week, the Consultant shall submit an updated progress logical-sequence schedule showing the status of the work. If progress is delayed, the Consultant shall state in the schedule the reason(s) for such delay.

2.2.3 **Conference Attendance, Regulatory Approvals, and Other Construction Services** - As required for the Project from time to time, the Consultant shall secure in a timely manner all applicable approvals and permits from the governing authorities, private entities and utilities specified by CUCF or with jurisdiction over the Project. Without limitation, the Consultant shall assist CUCF in making timely application for rezoning, if necessary, site plan approval, local variances, utility and other approvals, including, without limitation, the Consultant’s completion of all necessary applications and development of supporting documentation. During the design phase, the Consultant or its duly authorized representative shall attend biweekly conferences with CUCF, and such other conferences as directed by CUCF from time to time, and shall submit written minutes of each conference within seven (7) business days of the date of the conference as directed by CUCF. During the construction phase, the Consultant or its duly authorized representative shall attend scheduled job meetings at the site, and other meetings as are reasonably required by CUCF, shall interpret in writing the construction documents, and shall review, reject for cause or accept or approve, as the case may be, shop drawings and other submittals. The Consultant shall perform other construction related and administration services, including, without limiting this list of services: interpreting timely the plans and specifications, responding promptly in writing to every written request for information about any aspect of the design, answering promptly every question about the plans and specifications, and promptly advising CUCF of inadequacies of, and conflicts and differences within, between or amongst, drawings, specifications or any combination of them. For convenience, the duties referenced by the two (2) preceding sentences are referred to in this Contract as “Construction Administration.”
2.2.4 Guides - Without limiting the standards of performance of Services, the Consultant shall be guided by the standards of its profession and by the current CUNY Consultant Design Guidelines (Manual), which the Consultant shall use as a guideline for its performance and as a source of answers to common questions before the Consultant obtains specific direction or answers from CUCF’s staff. Any inconsistency or difference between the Contract and the Manual shall be resolved by harmonizing the Manual to conform with the Contract.

2.3 Site Data

2.3.1 In addition to any requirements detailed in Part II of this Contract, initially within ten (10) business days of the effective date of being assigned a project under this Contract and from time to time as required or advisable, the Consultant shall visit and inspect the Site, and visit other locations where it has reason to believe records exist pertaining to the Site, and undertake all measurements, observations, reviews of records, and other comparable investigations of the Site for the Project. After the Consultant initially completes such visits and inspections, it shall prepare a report with digital photographs of its analysis of the Site and the Site’s conditions; within a commercially reasonable period after any visit to or inspection of the Site subsequent to the initial visit and inspection, the Consultant shall provide CUCF with a report of its finding and analysis. The Consultant’s initial report shall include, without limitation, its determination of the (1) location, dimensions, and other essential data relevant to the Project, including, without limitation, existing architectural, structural, mechanical, electrical, environmental, utility and other pertinent features of the Site, and (2) information it needs, in addition to that which it develops, to perform its Services, including, without limitation, the results of tests of the geotechnical, subsoil or subsurface condition, of tests for the presence of hazardous substances, and of tests of the load bearing capability of the soil.

2.3.2 With respect to all surveys and tests that will yield the additional information the Consultant reports it needs, subject to an adjustment of the fee set forth in Article 3 hereof pursuant to Article 4 hereof, the Consultant shall (i) specify each required test and survey, (ii) prepare the complete scope of work for each, (iii) coordinate all testing and surveying and determine timing and order of all testing and surveying, (iv) evaluate all test and survey results and report its evaluation to CUCF, and (v) incorporate all relevant information from such tests and surveys into its Services.

2.4 Additional Staff Provisions

2.4.1 The Consultant acknowledges that CUCF may retain others to perform one or more functions related to Project. Among those with whom CUCF may designate the Consultant to work may be a construction manager with a specified responsibility for the progress of the construction of the Project. The Consultant shall, and shall cause each and every member of Consultant’s Staff and the sub-consultants’ staffs, to cooperate fully and timely with CUCF personnel, CUCF’s agents, and those designated by CUCF from time to time. In the event, if any, CUCF determines that any of the Consultant’s Staff or sub-consultants’ staff has failed to so cooperate, CUCF may require the Consultant to relieve immediately of all duties under this Contract each such person identified by CUCF, and the Consultant shall comply promptly with any such requirement and not use that person to perform any further Services.

2.4.2 Designation – The Consultant shall designate in writing one person from the Consultant’s Staff who shall be responsible for coordinating on its behalf all of the Services to be rendered by the Consultant...
hereunder. Such designee shall be subject to the continued approval of CUCF, and shall not be changed for the term of the Contract without the prior written permission of CUCF.

2.5 Defense of Claims – The Consultant shall render diligently to CUCF, without additional compensation, any and all assistance, and provide all documentation and other data as may be required by CUCF from time to time, in the defense against every claim or suit brought against CUCF related to any act or omission by the Consultant. In addition, the Consultant shall render diligently to CUCF, subject to an adjustment of the fee set forth in Article 3 hereof pursuant to Article 4 hereof, any and all assistance, and provide all documentation and other data as may be required by CUCF from time to time, in the defense against every claim or suit brought against CUCF related exclusively to the acts or omissions of others and unrelated in every respect to any act or omission by the Consultant.

2.6 Documents: Production and Ownership

2.6.1 The Consultant shall furnish CUCF from time to time with copies of draft plans and specifications for CUCF’s review, comment and acceptance. The Consultant shall furnish the number of sets of complete final plans and specifications for the Project as set forth in Part II of this Contract, subject to CUCF’s written acceptance. The Consultant shall furnish all copies in both a digital format specified by and acceptable to CUCF and in hard-copy. The Consultant shall provide CUCF timely with additional copies of the final documents as required by CUCF from time to time in excess of the number set forth in Part II hereof, and CUCF will pay the Consultant the actual cost of reproduction of any additional documents.

2.6.2 All original drawings, tracings, documents, calculations, specifications, diaries, daily records of labor, materials and equipment used, notes, designs, reports, estimates, schedules, charts, graphs, maps, photographs and all other material prepared for or furnished to CUCF by the Consultant in relation to the Project shall be the property of CUCF. The Consultant hereby expressly waives all right, title and interest it had, has or may have in all such material, expressly waiving any lien rights to the documents, and, as required by CUCF from time to time, shall obtain and provide to CUCF written waivers of its own claims and of those of the Consultant’s Staff and sub-consultants’ staffs. In addition, all copyrightable works, including, without limitation, original drawings, tracings, documents, calculations, specifications and all other material, created or prepared by the Consultant or the Consultant’s Staff or sub-consultants’ staffs, or any combination of them, in the performance of this Contract and relating to the Project shall be "works for hire" (as that term is defined in the copyright laws of the United States) for CUCF, and all copyrights therein are expressly intended by the parties hereto to be wholly owned and the copyright to be held by CUCF. To the extent that any such copyrightable works may not, by operation of law, be works for hire, the Consultant, on its own behalf, on behalf of the Consultant’s Staff and on behalf of the sub-consultants’ staffs, hereby assigns to CUCF the ownership of copyright in such items, and CUCF shall have the right to obtain and hold in its own name copyrights, registrations and similar protection which may be available in such items. The Consultant agrees to give, to cause the Consultant’s Staff to give, and to cause its sub-consultants staff to give CUCF or its designee all assistance reasonably required or advisable to perfect such rights, including, without limitation, executing written assignments of copyright. The consultant represents and warrants that it, the Consultant’s Staff and the sub-consultants staffs each and in an combination are and shall be joint and/or sole author, as the case may be, of any and all such materials, and that the copyrightable works are and shall be original works not subject to any prior agreement, lien or other rights. The Consultant further represents and warrants that the materials do not and shall not contain libelous, plagiarized, injurious or other such matter, and that they do not and shall not infringe any copyright or violate any other right of any person whatsoever. The Consultant shall defend with counsel acceptable to CUCF, indemnify and hold CUCF, CUNY, the City of New York, the
State of New York, and DASNY harmless against any and all claims, damages or expenses, including, but not limited to, attorney's fees and costs of litigation, arising out of a breach of any such warranty pertaining to copyrightable works. This subdivision 2.6.2 shall not terminate with the term of this Contract, shall not be suspended, and shall survive any termination or expiration of it.

2.7 Patented and/or Proprietary Items and Patent Ownership - The materials prepared by the Consultant shall not, without the prior written approval of CUCF, specify or require the use of anything, such as a patented or branded article, design or process, that requires payment by CUCF, CUNY, the City or the State or DASNY of any royalty for its use or which is of a proprietary nature. The Consultant acknowledges that during the term of the Contract it may conceive or reduce to practice an invention or discovery, whether or not patentable, relating to the Project, and shall report to CUCF promptly each such invention or discovery with complete information concerning it. The Consultant agrees that CUCF owns each such invention or discovery as a ‘work for hire,’ as that term is defined under the laws of the United States; CUCF retains all right, title and interest to any such invention or discovery; and retains the sole right to determine whether a patent application will be filed. The Consultant shall cooperate fully with CUCF and its designee to enable CUCF to secure the rights retained under this paragraph, and shall execute promptly all documents that CUCF deems necessary or advisable to do so.

2.8 CUCF Decision Final - CUCF's decision as to all matters arising in connection with or relating to this Contract shall be final, binding and conclusive. With respect to any dispute the Consultant may have with the CUCF in relation to this Contract, the Consultant shall file a notice of claim with the CUCF in accordance with the provisions of this Article and other relevant legal requirements. The notice shall be in writing, sworn to by or on behalf of the Consultant, and shall set forth: (1) the Consultant’s name and post-office address, and that of any attorney for the Consultant; (2) the nature of the claim, including any provision or provisions of this Contract related to the claim; (3) the time when, the place where and the manner in which the claim arose, supplemented by documentation of the facts underlying the claim; (4) the items of damage or injuries claimed to have been sustained, so far as then practicable, and supplemented by documentation of the damages or injuries; and, (5) to the extent known, the amount of damages to which the Consultant claims to be entitled. The Consultant shall deliver each such notice by registered or certified mail to the Executive Director of the CUCF within thirty (30) calendar days after the date on which the claim arose, with time being a material, independent condition of this provision. This notice requirement shall not be read to replace any other notice requirement contained in the Contract. The CUCF may require the Consultant to provide additional information, documentary or testamentary or both, relative to the claim. In any event that the Consultant receives a final written decision from the Executive Director of the CUCF regarding its claim or forty-five (45) calendar days after the date on which the Consultant files its claim with the CUCF and the Consultant receives within that period no decision regarding its claim, it may avail itself of any remedy provided under this Contract. In the event the Consultant fails to file timely any such notice of claim or fails to provide the CUCF with the additional information about its claim, which is requested by the CUCF, such claim is deemed waived.

ARTICLE 3 - PAYMENT FOR SERVICES - COMPENSATION FOR BASIC SERVICES AND REIMBURSABLE COSTS

Subsequent to contract execution as the need arises in a particular Category of Work, CUCF will identify those firms eligible to compete for project specific assignments and send them a written description of the assignment and the criteria that will be used for selection. The firms will have an opportunity to submit a written response to the request, including a fee, based upon a format that will be provided to the firms by CUCF. The responses will be reviewed and evaluated by CUCF according to the criteria, after which the
firm that best meets the criteria will be selected for the assignment at a fee determined by CUCF to be fair and reasonable. See Part II, Section 1.1 for a description of the Scope of Work for each Category of Work. See Appendix C.1 for a list of the Categories of Work designated for this Contract. CUCF reserves the right to limit active assignments to a firm to two (2) projects per Category of Work.

**ARTICLE 4 - PAYMENT FOR SERVICES - COMPENSATION FOR ADDITIONAL SERVICES**

4.1 **Changes Not Involving Scope**

4.1.1 At any time during the term of this Contract, the Consultant shall revise and correct, without additional compensation, any and all drawings, specifications, etc., until the same shall be accepted by CUCF.

4.1.2 Should any substantial change, other than a change in Project scope, make it necessary for the Consultant to change drawings or specifications after acceptance of the Design Development, CUCF shall direct such change in writing.

4.1.3 Should any substantial change constitute a revision of previously accepted design concepts in the Construction Development Phase, such changes shall constitute extra services (“Extra Services”) for which compensation shall be fixed in accordance with Article 4.7 hereof.

4.1.4 Should any substantial change, other than a change in Project scope, make it necessary for the Consultant to change drawings or specifications after acceptance of the final documents, subject to prior written approval by CUCF, such change shall constitute Extra Services and for which compensation shall be fixed in accordance with Article 4.7 hereof.

4.2 **Changes Increasing Scope** - If the Consultant is of the opinion that anything that CUCF has directed it to do is beyond the scope of this Contract and constitutes Extra Services, it shall submit a verified, written request for a determination, with supporting documents, to the CUCF Representative within ten (10) days after receipt of such direction. As an independent condition of this provision, time is essential to each filing of such request by the Consultant. In the event, if any, the Consultant fails to give to CUCF any such request within such period, then the Consultant waives its rights to compensation for any claimed Extra Services related to the direction referenced in the request. CUCF’s determination as to whether or not such work constitutes Extra Services shall be final, binding and conclusive.

4.3 **Changes Decreasing Scope** - CUCF shall have the right to reduce the Project scope in its best interest upon written notice to the Consultant. Notwithstanding any exercise by CUCF of this right, the Consultant shall be fully compensated for work performed and related to such reduced Project Scope until the date it receives any such notice. Payment for Extra Services resulting from such a decrease shall be compensated as provided in Article 4.7 hereof.

4.4 **Additional Compensation for Separate Contracts** - If CUCF directs the Consultant to prepare separate contract documents in addition to those enumerated, additional compensation shall be paid to the Consultant in accordance with Article 4.7 hereof. The Consultant acknowledges that should CUCF desire to prosecute the work of the Project on a ‘fast-track’ basis, therefore and notwithstanding any other provision of this Contract, CUCF may require the Consultant to prepare separate contract documents for the demolition, excavation, and foundation portions of the Project.
4.5 **Change Attributable to Fault of the Consultant** - In no event will CUCF pay or be liable to the Consultant for any change required in the Construction Documents that CUCF attributes to a design defect, the un-workability of details specified by the Consultant in the Construction Documents, or any other fault, error, omission or negligence of the Consultant or any of the Consultant’s sub-consultants.

4.6 **Cancellation of Contract** - In accordance with the provisions of this Contract covering termination of the contract for the convenience of CUCF, the CUCF reserves the right to cancel the Contract in the event of any substantial change in the Project Scope, in its best interest and without liability in excess of that referred to in such provisions.

4.7 **Method of Payment for Extra Services** - The Consultant shall be paid additional compensation for work constituting Extra Services under Articles 4.1, 4.2, and 4.3 or 4.4 hereof consistent with the fee approved for the project pursuant to Article 3 of this Contract & determined by CUCF to be fair & reasonable.

**ARTICLE 5 - GENERAL PAYMENT PROVISIONS**

5.1 This Contract and all payments hereunder shall be subject to audit by CUCF, CUNY, the New York State or the New York City Comptroller or DASNY, or any combination of them. The Consultant shall create and maintain contemporaneous, complete, detailed and accurate cost, accounting and other records of its Services and its other work related to the Project. During the term of this Contract and at any time within six (6) years thereafter from time to time, the Consultant shall make such records available to CUCF or its designated representatives for inspection, review, copying and audit at such place or places as may be designated by CUCF. With respect to each contract with every sub-consultant, subcontractor and others it retains in relation to this Contract, the Consultant agrees to include a requirement that each creates and maintains contemporaneous, complete, detailed and accurate cost, accounting and other records of its services and its other work related to the Project, and that during the term of this Contract and at any time within six (6) years thereafter from time to time, if required by CUCF, each will make such records available to CUCF or its designated representatives for inspection, review, copying and audit at such places as may be designated by CUCF.

5.1.1 In the event any part or all of such records are not made available to CUCF or its designated representatives and for any other reason, any item not supported by reason of the insufficiency or unavailability of such records or any other reason, at the sole election of CUCF shall be disallowed and, if payment therefore has already been made, the Consultant, upon demand, shall refund to CUCF the amounts so disallowed. Payment to the Consultant or approval by CUCF of any application for payment submitted by the Consultant, shall not affect any of the Consultant’s obligations hereunder or the right of CUCF to obtain a refund of any payment to the Consultant in excess of that to which the Consultant is lawfully entitled.

5.1.2 CUCF 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 "POL") provided that: (a) the Consultant shall give timely written notice to CUCF that such records should not be disclosed; (b) such records shall be sufficiently identified; and (c) designation of such records as exempt under the POL is reasonable. Nothing contained herein shall diminish, or in any way adversely affect CUCF’s or CUNY’s or the City’s or the State's or DASNY’s right to discovery in any pending or future litigation.

5.1.3 **Requisitions and Invoices for Payment** - The Consultant shall submit on forms acceptable to CUCF each requisition for payment of a sum certain for Services verified by an officer or principal of the
Consultant, including all documentation and computations in support of the requisition, showing the date of the requisition and, (1) for a requisition covering a phase, (a) the total value of Services for the phase and (b) the deliverable tendered to CUCF, or (2) for any progress payment, the Consultant must indicate on the requisition (a) the period covered by the requisition, (b) the last date of the period, (c) the then cumulative value of the Services performed in relation to the phase, and (d) the value of Services performed for the phase. With respect to progress payments, the Consultant may requisition payments during a phase that equal cumulatively no more than that amount set forth in this Contract and correspond to the phase for which the Consultant performed the Services, and CUCF shall be obligated to pay no greater sum for any phase than as specified in this Contract. No requisition submitted by the Consultant shall conform with the requirements of this Contract in any event if it does not contain all of the information required by this Contract, including, without limitation, a sum certain, a description of the Services performed, a required date, supporting documentation and computations acceptable to CUCF, and a verification by an officer or principal of the Consultant. Each invoice and requisition for payment submitted by the Consultant to CUCF shall contain a breakdown of the compensation amounts for Services performed by each of the Consultant’s Staff, by each sub-consultant, and by phase, and for materials referenced by an invoice. The Consultant shall similarly identify and separate the compensation amounts for Extra Services and reimbursable expenses; each invoice and requisition for payment shall identify the compensation for the Services performed and Extra Services performed separately from reimbursable expenses, showing the amount of each cost category that has been billed to date and the amount remaining to be billed in each cost category in the future. The Consultant shall provide supporting documentation as CUCF may reasonably request from time to time, including, without limitation, support for reimbursable expenses, expenses pertaining to Extra Services and of services performed on the basis of hourly rates. Minimum acceptable documentation for reimbursable expenses shall include copies of invoices and receipts.

5.1.4 The Consultant shall provide CUCF with an executed waiver and release of lien, in form and substance acceptable to CUCF, with each monthly or other periodic invoice or requisition for the amount of the payments made through the date of such invoice or requisition and from each of its sub-consultants.

5.2 The Consultant acknowledges that all payments made to it shall be paid by the State or City of New York or DASNY out of such monies as may be reserved by the State or City of New York or DASNY for the purposes herein provided.

5.3 Notwithstanding any other provision of the Contract, it is expressly understood that in the event, if any, the projected compensation for Extra Services exceeds five percent (5%) of the total fee payable hereunder, the Consultant agrees not to seek and shall not be entitled to compensation for services in excess of five percent (5%) of the Total Fee without the prior written approval of CUCF, which may require also the prior written approval of the New York City &/or New York State Director of the Budget or of the New York City or State Office of the Comptroller or DASNY, as the case may be.

5.4 For Services performed to the satisfaction of CUCF, the CUCF shall make a payment to the Consultant in the amount corresponding to any phase set forth in this Contract, after CUCF receives the corresponding deliverable for the phase and a conforming requisition, verified by an officer or principal of the Consultant, for such an amount. Alternatively, for such Services CUCF may make progress payments in arrears to the Consultant after: (a) the Consultant performs a portion of the Services related to a deliverable due under a phase, which performance it describes in the requisition; (b) CUCF receives from the Consultant a verified, periodic requisition for a sum certain, no more frequently than monthly, acceptable in all respects to CUCF and conforming with the requirements of this Contract; (c) CUCF confirms receipt of the percentage of the Services for which the Consultant requisitions payment; and (d)
with respect to the last payment for a phase, CUCF receives the deliverable for the phase not later than with the requisition for the payment, and, when added to all prior payments for Services performed during the relevant phase, the amount of that payment will not exceed the total amount due for that phase.

5.5 **Continuation of Contract for Payment Purposes** - In the event a Task Order is issued by the CUCF during the term of this Contract, including the last day thereof, and the time frame for completion of such Task Order extends beyond the term of the Contract, the Contract shall remain in effect FOR PAYMENT PURPOSES ONLY through the time frame for completion of such Task Order as set forth in the Task Order.

**ARTICLE 6 - SUSPENSION OR TERMINATION OF PERFORMANCE**

6.1 **Suspension of Performance** - In its best interest CUCF may suspend the Consultant’s performance from time to time pursuant to written notice. The Consultant agrees to suspend its performance immediately upon receipt of any such notice or on any later date set forth in such notice. Within ten (10) calendar days of its receipt of a written notice from CUCF to recommence its performance, the Consultant shall resume performance of the Contract. The Consultant agrees that, in exchange for suspending its performance pursuant to such a notice, CUCF shall extend the time due for the Consultant’s performance one day for each day of the duration of any such suspension. The Consultant expressly waives all claims against CUCF to any other consideration for its suspension of performance, including, without limitation, any compensation for delay.

6.1.1 **By Reason of CUCF** - If the Consultant is delayed in performing any obligation hereunder by any act or omission of CUCF, CUNY, the City, the State or DASNY, other than by a suspension of work pursuant to Article 6 hereof, the Consultant will be allowed an extension of time to perform equal to the number of days or parts thereof it was so delayed. The Consultant shall request in writing such an extension prior to expiration of the time to complete the Services. The Consultant may request a renegotiation of the Total Fee in any event that the cumulative duration of all suspensions by CUCF pursuant to this Article exceeds three hundred sixty-five (365) days.

6.1.2 **By Reason of the Consultant** - If the Consultant is delayed in performing any obligation hereunder by any act or omission of the Consultant or its agents, it shall receive no increase in the Total Fee and no extension of time for completion.

6.2 **Termination**

6.2.1 **For Convenience** - CUCF may terminate this Contract in its best interest or for its convenience by giving written notice to the Consultant in which CUCF specifies the termination date, which date shall be not fewer than seven (7) calendar days after the date such notice is given. In the event of such termination, the Consultant shall be paid such amount as shall compensate it for that portion of the Services satisfactorily performed prior to such termination date. Such amount shall be fixed by CUCF, after consultation with the Consultant, and shall be subject to audit by the Comptroller. Termination under this Article shall not give rise to any claim against CUCF, CUNY, the City, the State or DASNY or any combination of them for damages or for compensation in addition to that provided hereunder, all of which claims the Consultant hereby waives and deems discharged by CUCF’s payment required by this Article.
For Cause - In any event if the Consultant at any time:

(a) fails to supply the professional skill, labor, materials, equipment, supervision or other things reasonably required of it in quantities or for durations or of the quality to perform the Services with the professional skill, conformity, promptness and diligence also required hereunder;

(b) causes interference, stoppage, or delay to the Project or to an activity necessary to complete the Project;

(c) files a petition under the United States Bankruptcy Code, is adjudged bankrupt, makes a general assignment for the benefit of creditors, becomes insolvent, or becomes subject to a receivership;

(d) fails to make payment properly and promptly for all labor, materials and services provided in the performance of the Services;

(e) fails to perform the Services promptly and timely;

(f) certifies or files a document that is found to be intentionally false or incomplete, including, without limitation, any document filed by the Consultant with the Department of Tax and Finance of the State of New York and any disclosure by the Consultant with regard to any non-responsibility determination within the four (4) year term preceding the date of the Contract, which is based on: (A) impermissible contact or other violation of the State of New York State Finance Law §139-j; or (B) the intentional provision of false or incomplete information to a governmental entity; or

(g) fails in CUCF’s reasoned judgment in the performance or observance of any of the covenants, conditions, or other terms of this Contract; then in every such event, if any, each of which shall constitute a default hereunder by the Consultant, in addition to every other right or remedy otherwise provided by this Contract or by law or by equity, or by any combination of them, after giving the Consultant written notice of default and no shorter a period than of forty-eight (48) hours within which to cure said default, except in any event the claimed breach affects the public health or safety, then any duration that CUCF deems sufficient, CUCF shall have the right to exercise any and every remedy available to it, in any combination, including without limitation, the following:

(I) require that the Consultant, at no expense to CUCF, perform its Services outside its ordinary hours of business, including performing its Services on Saturdays, Sundays, holidays, and in excess of eight (8) hours a day and of forty (40) hours a week and during additional shifts as necessary to overcome the consequences of any delay attributable to the Consultant’s uncured default;

(II) attempt to remedy the uncured default by whatever means CUCF may deem necessary or appropriate, including, without limitation, correcting, furnishing, performing, or otherwise completing the Services, or any part thereof, by itself or through others, utilizing where appropriate any agreements with a sub-consultant for the relevant portion of the Services, and, without limiting or diminishing any other remedy available to CUCF, deducting the cost thereof from any monies due or to become due to the Consultant under any agreement between the Consultant and CUCF;

(III) after giving the Consultant written notice of an additional forty-eight (48) hours within which to cure the default (at any time following the expiration of the initial forty-eight (48) hours’ notice and cure period) and the Consultant fails to cure within such additional period, excepting only the filing of bankruptcy and then only with leave of the bankruptcy court, terminate this Contract in whole or
part, without thereby waiving or releasing or suspending any right or remedy against the Consultant or of any sureties, and by itself or through others commence and complete performance of the Services or any portion thereof, and take over for CUCF’s sole and unencumbered benefit any or all or any combination of the contracts, purchase orders, subcontracts, and materials of the Consultant relating to the Services, all of which the Consultant hereby transfers, assigns and sets over to CUCF upon termination for and until the completion of the Services and securing CUCF the payment of its costs and other damages under the Contract and for the breach thereof; it being intended that, for the stated purposes, CUCF shall be the assignee of and have a security interest in the property described above to the extent related to the Services; and

(IV) recover from the Consultant all costs, losses, damages, penalties and fines, whether actual or liquidated, direct or indirect or special or consequential, and all reasonable attorneys’ fees and other sums related to CUCF’s enforcement against the Consultant its rights under this Contract, suffered or incurred by CUCF by reason of or as a result of the Consultant’s uncured default.

6.2.3 In case of termination for cause of this Contract in whole or part, the Consultant shall not be entitled to receive any further payment under this Contract, except as provided herein. The Consultant shall not be entitled to receive any such further payment until the Services shall be completed wholly to the satisfaction of CUCF, at which time, if any unpaid balance of the Total Fee, as adjusted by compensation for Extra Services, at the time of the Consultant’s default shall exceed the costs and expenses incurred by CUCF in completing the Services and curing the Consultant’s default, such excess shall be paid to the Consultant. CUCF’s costs and expenses shall include the cost of completing the Services to its satisfaction and of performing and furnishing all labor, services, materials, equipment and other items required therefore, and all losses, damages, costs and expenses, whether direct or indirect or special or consequential, including, without limitation, attorneys’ and legal fees and disbursements, sustained, incurred or suffered or to be sustained, incurred or suffered by CUCF by reason of or resulting from any default by the Consultant. From time to time during the course of CUCF’s completion of the Services or such part thereof or at any time thereafter, CUCF shall certify to the amount of the expense incurred by CUCF in the completion of the Services or such part thereof, and such certificate shall be final and conclusive upon the Consultant and admissible as evidence against the Consultant in any litigation arising or growing out of this Contract. If the cost of completion of the Services together with any other damages or losses sustained or incurred by CUCF, shall exceed the undisbursed balance of the Total Fee, the Consultant and any of its guarantors or sureties shall pay CUCF the difference within fifteen (15) days of written demand from CUCF.

6.2.4 CUCF’s remedies shall be considered separate and cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. The Consultant represents that its guarantors, surety, or sureties agree it and they are bound to CUCF with respect to such remedies notwithstanding any provision of any bond provided by the Consultant.

6.2.5 Except as limited by this Contract and subject to the laws of the State of New York, the Consultant shall have the rights and remedies available at law or in equity for a breach of this Contract by CUCF. Any default by CUCF shall be deemed waived unless and until the Consultant shall have given CUCF written notice thereof within five (5) days after the occurrence of such default. The Consultant shall be entitled to suspend its Services or terminate this Contract only, and for no other reason than, on account of CUCF’s failure to pay an amount to the Consultant pursuant to the terms of a final order filed by a court of competent jurisdiction that is not appealable by CUCF (“CUCF’s Default”). The Consultant
shall not be entitled to suspend, delay or stop performance of its Services on account of CUCF’s Default unless CUCF’s Default shall have continued for more than ten (10) days after CUCF’s receipt of written notice of CUCF’s Default from the Consultant of the Consultant’s intent to suspend, delay or stop performance of its Services.

6.2.6 The Consultant shall be entitled to terminate this Contract only in the event, and for no other cause, that CUCF’s Default shall have continued for at least an additional thirty (30) days after CUCF shall have received the Consultant’s written notice of its intention to terminate this Contract at least thirty (30) days prior to any such termination. This paragraph states the Consultant’s sole and complete right to terminate this Contract, and the Consultant hereby disclaims any broader or different right to terminate this Contract.

6.3 Additional Requirements upon Termination

Upon termination, the Consultant shall:

(a) In the event of a termination for cause, turn over to CUCF all documents, reports and material of any nature specifically relating to this Contract, which may use the same at its sole discretion without additional payment to the Consultant; and

(c) Submit, with respect to a termination for convenience and within ninety (90) calendar days after the date of such termination, a final requisition for payment and report made and certified by a Certified Public Accountant or a Licensed Public Accountant.

ARTICLE 7 - PERSONAL SERVICES OF THE CONSULTANT

The Consultant represents that this Contract secures as a material term the delivery to CUCF of the personal services of the Consultant and those specified in the Consultant’s project team appended in Part II. Consistent with Articles 2.02 & 2.03, failure of the Consultant for any reason to make the personal service of such specific person(s) or sub-consultants available to CUCF to the extent necessary to perform the Services to the satisfaction of CUCF may be a breach of a material term of this Contract and a cause for CUCF to terminate this Contract.

ARTICLE 8 – LAWS, PERMITS, LICENSES & CERTIFICATIONS

Consultant shall:

(a) procure as a reimbursable cost of the Services under this Contract each permit, license, certification and the like required by CUCF or by the governmental entity with jurisdiction over it; and

(b) comply with all laws, codes, ordinances, rules, regulations, orders, requirements, and the like, of federal, state, and local governments, courts, governmental authorities, legislative bodies, boards, agencies, commissions, and the like (“Laws”). If there is a conflict between or among any Laws and any specific requirement of this Contract, then the stricter provision shall apply. Engineer is not relieved of any obligation to comply with all Laws, and CUCF does not waive or suspend any right it may have with respect to such compliance.
ARTICLE 9 - CONTRACT SUCCESSION

In the event of the death or disability of the Consultant performing or directly involved with the Work of this Contract, any qualified partner or associate of the Consultant may be authorized in writing, at the option of CUCF within thirty (30) days after any such event, to assume, continue, perform and complete all of the terms, covenants and provisions contained in this Contract; otherwise this Contract shall terminate on the thirtieth day after any such event.

ARTICLE 10 - NO THIRD PARTY BENEFICIARIES

This Contract is solely for the benefit of CUCF on behalf of CUNY and its constituent colleges and the Consultant. No other person or entity is intended or designated to receive any benefit under this Contract or any of its provisions, or as a result of the performance of the Contract, and no other person or entity may claim any rights hereunder.

ARTICLE 11 - EXTENSION OF TIME

11.1 Request for Extension - If the Consultant has been delayed by others and as a result will be unable to complete performance fully and satisfactorily within the time fixed therefore, the Consultant shall, upon submission of satisfactory evidence of the causes of the delay by others, and at the discretion of CUCF, be granted an extension of time for performance equal to the period the Consultant was actually and necessarily delayed.

11.2 Damages for Delay – the Consultant shall make no claim for damage for delay occasioned by any act or omission of the City, the State, CUCF, CUNY or DASNY or any of its or their officers, agents or employees, and hereby agrees that any such claim shall be fully compensated by an extension of time to complete performance of the Project.

ARTICLE 12 - MONIES WITHHELD

The Consultant hereby grants CUCF the right to withhold from any payment and from time to time, as an additional reserve and without limiting any other right or remedy or both that CUCF may have, an amount of money sufficient: (i) to defend, satisfy and discharge any asserted claim that the Consultant has failed to make satisfactory payment for labor, services, materials, equipment, taxes, or other items or obligations furnished or incurred in connection with the Services or has caused damage to the Project; (ii) to complete the Services if it appears that funds remaining to be paid under the Contract, including retainage and exclusive of back charges, are insufficient to complete the Services; (iii) to reimburse CUCF for any back charges incurred as a result of any act or omission by the Consultant hereunder; (iv) to protect CUCF from the possible consequences of any material breach or default of a material provision by the Consultant; or (v) to secure CUCF with respect to any breach by the Consultant under any other agreement with CUCF; or (vi) to cover any combination of these.

Any amount so withheld may be retained by CUCF for such period as it may deem advisable, and after written notice to the Consultant, may be applied in satisfaction of any purpose described in this Article. This provision is intended solely for the benefit of CUCF, and no person shall have any right or claim against CUCF by reason of CUCF withholding such amounts or its failure or refusal to withhold monies. No interest shall be payable by CUCF on any amounts withheld under this provision. This article shall not be intended to limit or in any way prejudice any other right or remedy of CUCF.
The Consultant shall be entitled to the payment, pursuant to the provisions of the Contract pertaining to payment for Services, of monies withheld by CUCF pursuant to this Article upon any of the following conditions or any combination of them: (a) the Consultant obtains and serves upon CUCF a final, unappealable judgment from a court of competent jurisdiction in which the court orders CUCF to release certain monies, and then only to the extent of the judgment; or (b) the Consultant provides CUCF with documentation that demonstrates to CUCF’s sole satisfaction that the reason no longer exists for CUCF to retain certain monies withheld under the terms of this Article.

ARTICLE 13 - ACCEPTANCE OF FINAL PAYMENT

The acceptance by the Consultant, its successors or assigns of any payment made on the final requisition under this Contract, or of any final payment due upon termination of this Contract, shall constitute a full and complete release of CUCF, CUNY, the City, the State and DASNY from any and all claims, demands and causes of action whatsoever which the Consultant, its successors or assigns have or may have against CUCF, CUNY, the City, the State or DASNY related to this Contract.

ARTICLE 14 – LIABILITIES AND CLAIMS

14.1 Any claim that may be made by the Consultant arising out of any act or omission by an officer, agent or employee of CUCF, CUNY, the City, the State or DASNY in the execution or performance of this Contract shall be made against CUCF, CUNY, the City, the State or DASNY and not against such officer, agent or employee.

14.2 Nothing in this Contract shall be construed to give any person other than CUCF, CUNY, the City, the State or DASNY and the Consultant any legal or equitable right, remedy or claim under this Contract; any legal or equitable right, remedy or claim under this Contract shall be held to be for the sole and exclusive benefit of CUCF, CUNY, the City, the State, DASNY and the Consultant.

14.3 The Consultant shall care for and protect all property of CUCF, which comes into possession or custody of the Consultant, and shall, at its own cost and expense, repair or restore any such property, which is lost or damaged due to its negligence.

14.4 No action or proceeding shall lie or be maintained by the Consultant, or anyone claiming under or through the Consultant against CUCF or any of its trustees, officers, agents or employees, upon any claim arising out of or related to this Agreement or any breach thereof or by reason of any act or omission of CUCF or its trustees, officers, agents or employees, unless such action or proceeding is commenced pursuant to the provisions of the Education Law of the State of New York; if no such provision pertains to any such action or proceeding or if the action or proceeding also includes as a party CUCF, the City, the State, or DASNY, or any combination of them with CUCF, no such action or proceeding shall lie or be maintained by the Consultant, or anyone under or through the Consultant unless it is instituted in the Supreme Court of the State of New York in and for the County of New York and such action or proceeding is commenced within one (1) year after CUCF's final payment to the Consultant under this Agreement or after termination of this Agreement, whichever shall first occur. In addition to any other provision of law and notwithstanding any other provision of this Agreement, the Consultant agrees that it shall not commence any action or proceeding related to this Agreement unless and until service of notice of such action or proceeding is made upon CUCF’s Office of the General Counsel. Each party hereby waives its right to trial by jury in any action, proceeding or counterclaim related to this Agreement or to the Project.
14.5 The Consultant agrees that in the event, if any, it disagrees with any final decision or final determination by CUCF, or any part thereof, its only remedy shall be an appeal pursuant to Article 78 of the Civil Practice Laws and Rules of the State of New York.

14.6 The Consultant shall not be liable for any damage to CUCF arising from an unforeseeable cause beyond the control and without the fault or negligence of the Consultant, and approved by CUCF, including, without limitation, acts of God or of the public enemy, acts of CUCF, epidemics, quarantines, labor strikes, freight embargoes, and unusually severe weather. CUCF shall not be liable for any damage to the Consultant arising from an unforeseeable cause beyond the control and without the fault or negligence of CUCF, including, without limitation, acts of God or of the public enemy, epidemics, quarantines, labor strikes, freight embargoes, and unusually severe weather.

14.7 Defense of Claims:

A. The Consultant shall diligently render to CUCF and CUNY, without additional compensation, any and all assistance in the defense against claims or suits due solely to negligence of the Consultant in connection with this project, brought against CUCF and CUNY as may be required.

B. Should any claim be made or any legal action brought in any way relating to the project, except as provided in A of this Paragraph, the Consultant shall diligently render to the CUCF and CUNY, after additional compensation is mutually agree upon, any and all assistance which CUCF and CUNY may require of the Consultant. The amount of payment due the Consultant from CUCF and CUNY shall be diminished to the extent the negligence of the Consultant is determined to be responsible for the claim or lawsuit brought against CUCF and CUNY. The Consultant shall promptly pay any refund due CUNY and CUCF.

ARTICLE 15 - INSURANCE

15.1 Required coverage - Consistent with Appendix C.3, the Consultant shall procure and maintain for the duration of the Contract and provide CUCF with evidence of insurance against claims for injuries to persons or damage to property that may arise from or in connection with the performance of the duties hereunder by the Consultant, its agents, representatives, employees and sub-consultants. The Consultant shall bear all costs of such insurance. The Consultant shall procure all insurances from and maintain them with one or more insurance companies licensed by the State of New York, Department of Insurance (“Company”).

15.1.1 Worker’s Compensation Insurance - Before performing any Services on the Contract, the Consultant shall procure statutory Worker’s Compensation Insurance in accord with the Laws of the State of New York on behalf of all employees who are to provide labor or service under this Contract.

15.1.2 Employer’s Liability Insurance - Before performing any Services on the Contract, the Consultant shall procure Employer’s Liability Insurance, at least $5,000,000 per each accident, affording compensation because of bodily injury by accident or disease sustained by any employee of the insured arising out of and in the course of its employment by the insured.

15.1.3 Commercial General Liability Insurance - Before commencing any Services on the Contract, the Consultant shall procure commercial general liability insurance in the Consultant’s name and naming CUCF, CUNY, the City of New York, the State of New York and DASNY as additional insureds. The policy shall protect CUCF, CUNY, the City, the State, DASNY, the Consultant and its sub-consultants from claims for bodily injury and/or property damage which may arise from operations under this
Contract. Such insurance shall be in an amount not less than $1,000,000 per occurrence combined single limit.

15.1.4 Professional Liability - Shall comply with the most current version of CNA DESIGN PROFESSIONALS or equivalent; covering as insured, the Consultant with a limit of liability of not less than $2,000,000.

The Consultant’s liability policies shall include an endorsement whereby the Consultant indemnifies and holds harmless CUCF, CUNY, the City, the State, DASNY and any officer, agent and employee of CUCF, CUNY, the City, the State or DASNY against all claims against any of them, for personal injury or wrongful death or property damage arising out of the negligent performance by the Consultant, including, without limitation, any member of the Consultant’s Staff, of this Contract or caused by an error, omission or negligent act of the Consultant or anyone employed by the Consultant. The Consultant Liability Policies shall also provide for extended Discovery Clause Coverage to three (3) years after the Services are completed.

All sub-consultants to the Consultant providing services for this Project shall also provide evidence of Professional Liability Insurance to CUCF at limits appropriate to the exposures of the sub-consultant’s work, with deductibles suitable for the financial capacity of the sub-consultant and through carriers and on forms acceptable to CUCF; in each case, a sub-consultant shall provide the coverage required of the Consultant by CUCF, except that the Consultant may request CUCF to consent to lower amounts of coverage with other deductible amounts with respect to a sub-consultant and upon written CUCF’s consent any such sub-consultant may provide evidence of Professional Liability Insurance with such lower amounts.

15.2 Miscellaneous Insurance Provisions

15.2.1 The Consultant shall make the following endorsements on all certificates and policies provided by the Consultant.

(a) Notice under the Policy of the Insured shall be addressed to CUCF.

(b) Notice of Accident shall be given by the Insured within one hundred and twenty (120) days after notice has been sent to CUCF of such accident.

(c) Notice of Claim shall be given to the Company within one hundred twenty (120) days after such notice is filed with CUCF, CUNY, the City or State Comptroller or DASNY.

(d) Notice of Cancellation of Policy: The policy shall not be canceled, terminated, modified or changed by the Company unless sixty (60) days’ prior written notice is sent to the insured and to CUCF by Registered Mail, and the policy shall not be canceled, terminated, modified or changed by the insured without the prior written consent of CUCF.

15.2.2 The following shall be applicable to all insurance coverage required for this Contract:

(a) The Consultant shall obtain and maintain insurance set forth herein.

(b) The insurance required for this Contract shall be on forms acceptable to CUCF and
offered by insurers acceptable to the New York State Insurance Department.

(c) Where circumstances warrant, CUCF may, at its sole discretion, accept letters of credit or custodial accounts in lieu of specific insurance requirements.

(d) The Consultant shall be solely responsible for payment of all premiums of insurance and shall be solely responsible for the payment of all deductibles to which such policies are subject, whether or not CUCF is an insured under the policy.

(e) Claims-made policies will be accepted only for professional liability and such other risks as are authorized by the New York State Insurance Department. All such policies shall have an extended reporting period option or automatic coverage of not less than two (2) years. If provided as an option, Engineer agrees to purchase the extended reporting period on cancellation or termination unless a new policy is in effect with a retroactive date, including at least the last policy year.

(f) The policies shall contain no exclusions or endorsements which are not acceptable to CUCF.

(g) The Consultant shall promptly notify CUCF of any accidents arising in the course of operations under the Contract causing bodily injury or property damage.

(h) The Consultant may apply to CUCF for approval of higher deductibles based on financial capacity and quality of the carrier affording coverage.

(i) Should the policies provided for any of the insurance coverage required by the Contract expire during the Contract term, certificates confirming renewal of such insurance coverage shall be presented to CUCF not fewer than thirty (30) days prior to the expiration date of coverage. In addition, a copy of the actual renewal policy, with all endorsements, shall be provided to CUCF no later than thirty (30) days after the expiration of the policy previously provided to CUCF. Failure to provide any renewal policy shall be grounds to suspend payments to the Consultant.

(j) For all insurance coverage required for the Contract, two (2) certificates of such insurance shall be furnished to CUCF not later than twenty (20) days after receipt of Notice of Award, unless otherwise directed by CUCF. In addition, with respect to all insurance coverage required by the Contract, with the exception of Workers’ Compensation and Employer’s Liability Insurance, two (2) executed copies of the insurance shall be provided to CUCF as soon as is practicable, but in no event later than thirty (30) days after the commencement of work. No Contract payments will be accepted for processing until such policies are received and approved, and failure to provide the required policies shall be grounds for declaring the Consultant in default.

(k) Protection of CUCF Property - If CUCF property is lost, damaged or destroyed as result of the operations of the Consultant or its sub-consultants, in the performance of this Contract, of from it or their failure to comply with any of the provisions of this Contract, or of law, the Consultant shall indemnify and hold CUCF harmless from any and all costs and expense which CUCF may be subjected to or which it may suffer or incur by reason thereof.
ARTICLE 16 - INDEMNITY

16.1 The Consultant shall defend, with counsel acceptable to CUCF, indemnify and save harmless CUCF, CUNY, the City, the State, DASNY and each officer, agent and employee of any of them from any and all suits, claims, demands, damages, fines, liens, actions and costs of any kind, including attorney's fees, to which any or all of them may be subjected or put by reason of any act or omission of the Consultant, its employees, sub-consultants or agents in relation to this Contract. The Consultant shall be solely responsible for any and all injuries to persons, including, without limitation, death, and all damage to property resulting from any act or any negligence or carelessness on the part of the Consultant, its employees, sub-consultants or agents in the performance of Services, and the whole or so much of the monies due or to become due to the Consultant under this Contract, as shall or may be considered necessary by the respective comptroller, may be retained by CUCF until all such suits or claims shall have been settled or otherwise disposed of, and evidence to that effect furnished to the satisfaction of the Comptroller. The provisions of this Section shall survive the expiration of the Contract.

16.2 The Consultant shall defend, with counsel acceptable to CUCF, indemnify and hold harmless CUCF, CUNY, the City, the State, DASNY and each officer, agent and employee of any of them from all claims against any of them for the alleged infringement of any copyright, patent or any other proprietary right arising out of the use of any plans, design, drawings or specifications furnished by the Consultant in the performance of this Contract.

ARTICLE 17 - NOTICES

17.1 Each party hereto hereby designates the respective business address each sets forth in Article 1 hereof and any other corresponding representative and address each specifies herein where all notices, directions, or communications from one party to the other party shall be delivered or to which they shall be mailed in order to effect delivery to the other party under this Contract. Delivery by certified mail, return receipt requested, in the custody of the United States Postal Service or by a generally recognized overnight courier that obtains and provides receipts of delivery or by actual, physical delivery of any such notice, direction or communication to a party at its designated address shall be deemed to be sufficient delivery upon such party as of the date such notice, direction or communication is received by the party. Nothing in this section shall be deemed to serve as a waiver or suspension or amendment of any requirement for the service of notice or process in the institution of an action or proceeding as provided by law.

17.2 CUCF hereby designates for delivery required under this Contract the following additional representative and address:

Director of Procurement Services  
Office of Facilities, Planning, Construction & Management  
The City University of New York  
555 West 57th Street – 11th Floor  
New York, NY 10019

17.3 The Consultant hereby designates for delivery permitted under this Contract the following additional representative and address:
17.3 At any time and from time to time a party may designate a different or additional address by giving notice as provided above to the other party.

**ARTICLE 18 - CONFLICT OF INTEREST**

18.1 The Consultant represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with its performance of this Contract. The Consultant further represents and warrants that no person having such interest shall be employed by the Consultant during the term of this Contract. No elected official or other officer or employee of the State, the City, DASNY, CUNY or CUCF, nor any person whose salary is payable, in whole or in part, from the City Treasury, or State Funds shall participate in any decision relating to this Contract which affects their personal interest or the interest of any corporation, partnership or association in which it is, directly or indirectly interested; nor shall any such person have any interest, direct or indirect in this Contract or the proceeds thereof.

18.2 The Consultant affirms that to the best of its knowledge there exists no actual or potential conflict between the Consultant's family, business, or financial interests and its services under this Contract. The Consultant shall notify CUCF of all changes in any of the interests referred to by this Article during the term of this Contract. CUCF reserves the right to determine whether or not any of the interests required to be disclosed by this paragraph will disqualify the Consultant from performing the services called for by this Contract.

**ARTICLE 19 - PROVISIONS REQUIRED TO BE INSERTED BY LAW**

19.1 It is the mutual purpose, intent and understanding of the parties to this Contract that each and every provision of law required to be inserted in this Contract shall be and hereby is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Contract shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law, without prejudice to the rights of either party hereunder.

**ARTICLE 20 - LEGAL INSERTIONS AND/OR ERRORS, INCONSISTENCIES, OR DISCREPANCIES IN CONTRACT**

20.1 If this Contract contains any unlawful provision, not an essential part of the Contract and which appear not to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect, and shall upon the application of either party be stricken from the Contract without affecting the binding force of the Contract as it shall remain after omitting such provision.

20.2 If this Contract contains any error, inconsistency, ambiguity, or discrepancy, including, without limitation, typographical error, Engineer shall request a clarification of same by writing to CUCF, whose decision shall be binding upon the parties.

20.3 Headings are inserted only as a matter of convenience and for reference; they do not define, limit or describe the scope or purpose of this Agreement or otherwise affect this Agreement.
ARTICLE 21 - ANTITRUST LAWS

The Consultant hereby assigns, sells, and transfers to CUCF all right, title and interest in and to each and every claim and cause of action arising under the antitrust laws of the City, the State or the United States and relating to this Contract.

ARTICLE 22 - BINDING CONTRACT

This written Contract contains all the terms and conditions agreed upon by the parties hereto, and no other contract, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

ARTICLE 23 – PERFORMANCE EVALUATION

23.1 CUCF may evaluate from time to time the performance of the Consultant during the Contract term. The Consultant acknowledges that CUCF plans to do so at least at the midpoint of its performance and upon completion. CUCF may rate the Consultant “Satisfactory,” “Unsatisfactory” or “Needs Improvement” or on a similar scale. The Consultant’s performance shall be based at least upon: timely & effectively complying with all contractual obligations, responding to and addressing CUCF’s directions in a timely & effective manner, and satisfying MBE/WBE goals. CUCF reserves the right, in its sole discretion, to report the results of such evaluations to the New York City VENDEX and any other comparable database, such as the New York State Vendor Evaluation or Vendor Responsibility Systems Indices.

23.2 This Contract is subject to VENDEX Requirements and/or other comparable New York State Vendor Evaluation or Vendor Responsibility Systems Indices.

ARTICLE 24 - COVENANTS OF CONSULTANT

24.1 Employees - The Consultant covenants that none of the experts, sub-consultants, staff or employees of the Consultant who perform work under this Contract is an employee of CUCF, CUNY, the City, the State or DASNY and none is under contract to perform any service for or to any of them, and the Consultant alone is responsible for their work, direction, compensation and personal conduct during performance under the Contract; and it covenants to provide the best professional skill to perform the Services. Nothing in this Contract shall impose any liability or duty on CUCF, CUNY, DASNY, the City or the State, or any combination of them, for the acts, omissions, liabilities or obligations of the Consultant or any person, firm, company, agency, association, corporation or organization engaged by the Consultant as expert, architect, engineer, sub-consultant, independent contractor, specialist, trainee, employee, servant, or agent, or for taxes of any nature, including, but not limited to, unemployment insurance, workers' compensation, disability benefits and social security, or, except as specifically stated in this Contract, to any person, firm, or corporation.

24.2 No Strike - The Consultant shall not employ or utilize any labor, materials or means whose employment or utilization during the course of this Contract may tend to or in any way cause or result in a strike, work stoppage, delay, suspension of work or similar action by employees or agents of the Consultant, or by any of the trades working in or about the buildings and premises where work is being performed under this Contract, or by the Consultant or its sub-consultants pursuant to other contracts, or on any other building or premises owned or operated by CUCF, CUNY, DASNY, the City or State and
their respective agencies, departments, boards or authorities. Violation by the Consultant of this section shall be deemed sufficient cause for CUCF to declare the Consultant to be in default of this Contract and for CUCF, CUNY, DASNY, the City or State or any or all of them to take action against it or such other action as it or they may deem proper.

24.3 Immigration Reform and Control Act - The Consultant acknowledges that for the purposes of the Immigration Reform and Control Act of 1986 (the "Act"), it is an "independent contractor" as defined in the Act and its regulations, and that CUCF is not an "employer" under the terms of the Act and its regulations with regard to the Services. As a result, the responsibility of complying with the provisions of the Act lies solely with Engineer. The Consultant expressly represents that it is aware of the requirements of the Act with regard to the employer's responsibility for ensuring compliance with the Act and its regulations, and for obtaining and maintaining the proper documentation showing that the its processes were completed. The Consultant expressly represents to CUCF its intention to abide by the provisions of the Act. The Consultant furthermore agrees that to the extent permitted by law, shall indemnify and hold CUCF, CUNY, DASNY, the City and the State harmless for any penalty which may be applied to any one or all of them as the result of the hiring by the Consultant of any unauthorized person during the term of this Contract.

24.4 Non-Assignment – The Consultant shall not assign, delegate, subcontract or otherwise dispose of this Contract, or any of its rights or obligations under this Contract, without the prior written consent of CUCF. Any attempt by the Consultant to do so without CUCF's prior written consent shall be null and void, and shall constitute a material breach of this Contract. If CUCF consents to any assignment of all or part of any moneys due or to become due under this Contract, the Consultant agrees that its instrument of assignment shall contain a clause substantially to the effect that the assignee agrees that the assignee's right in and to any moneys due or to become due to the Consultant shall be subject to the laws of the State of New York, including, without limitation, Article 3A of the Lien Law, and to all claims in connection with the performance of the Services of which CUCF has received notice. The transfer after the Effective Date of this Contract of a controlling interest in the Consultant shall constitute an assignment. CUCF may assign at any time and from time to time and without the consent or approval of the Consultant any part or all of this Contract.

24.5 Independent Contractor Status - The Consultant and CUCF agree that the Consultant is an independent contractor and not an employee of CUCF or CUNY or DASNY or the City or State of New York, and that in accordance with such status as independent contractor, the Consultant covenants and agrees that neither it nor its partners, associates, employees or agents will hold themselves out as, nor claim to be, officers or employees of CUCF or CUNY or DASNY or the City or State of New York, or of any department, agency or unit thereof, by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of CUCF or CUNY or DASNY or the City or State of New York, including, but not limited to, Worker's Compensation coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

24.6 Protection of Property

(a) Without being limited to any sum that is available pursuant to any relevant insurance policy, the Consultant assumes the risk of, and shall be responsible for, any loss or damage to City or DASNY or CUNY or CUCF or State property, including property and equipment leased by the City or CUCF or CUNY or DASNY or the State, used in the performance of this Contract, and caused, either directly or indirectly, by the acts, conduct, omissions or lack of good faith of the Consultant, its officers,
managerial personnel, partners, associates, and employees, or any person, firm, company, agent or others engaged by the Consultant as expert, specialist or sub-consultant hereunder.

(b) In the event that any such City or CUCF or CUNY or DASNY or State property is lost or damaged, except for normal wear and tear, by any act or omission by the Consultant, then CUCF shall have the right to withhold further payments hereunder for the purpose of set-off, in sufficient sums to cover such loss or damage.

(c) The rights and remedies of CUCF, CUNY, DASNY, the City and the State provided herein shall be cumulative, not exclusive, and are in addition to any other rights and remedies provided by law or by this Contract.

24.7 Confidentiality

24.7.1 The Consultant represents that it collects from, on behalf of, and maintains for its clients information related to construction projects that its clients deem to be sensitive and confidential, the impermissible release of which would harm the affected client or the related construction project; the Consultant represents that it maintains its clients’ sensitive and confidential information with the high degree of care that it uses for the care of its own most sensitive and confidential information, but not less than a reasonable degree of care to assure that it maintains the sensitivity and confidentiality of the information. The Consultant hereby invites CUCF to rely upon this representation and to entrust it with sensitive and confidential information related to the Project, and with the collection of such information, that the Consultant deems necessary or advisable for its performance of the Services and of its other obligations under this Contract. Because of such inducement and in reliance upon these representations and promises, CUCF agrees to trust the Consultant with confidential information it designates from time to time in accordance with this Contract and to provide the Consultant with the access necessary or advisable to perform its Services.

24.7.1.1 The parties hereto acknowledge that examples of information that CUCF deems to be sensitive and confidential, without limitation, are the Construction Cost, Consultant’s estimate of the cost to CUCF to build the Project, the prices and costs included in the calculation of the Consultant’s estimate, the identity of prospective bidders, and reports the Consultant prepares for CUCF. The Consultant covenants to preserve the confidentiality of all such information, except that which is found (a) to have been rightfully in the possession of the Consultant from a source other than CUCF or developed independently by the Consultant prior to the time of disclosure, or collection, of said information (“Time of Receipt”); (b) to have been in the public domain prior to the Time of Receipt; (c) to have become part of the public domain after the Time of Receipt by a publication or by any other means, except an unauthorized act or omission or breach of this Contract by the Consultant; (d) to have been received by the Consultant after the Time of Receipt without restriction from another who is under no obligation to CUCF to maintain such information in confidence; or (e), after the Consultant provides CUCF promptly upon receipt of any demand made upon the Consultant for its disclosure in relation to any governmental hearing and after a final determination by a court of competent jurisdiction that such information is to be disclosed, to be required for production in relation to a governmental or court hearing.

24.7.2 During any and all periods designated by CUCF, including, without limitation, when CUCF solicits bids or proposals for any contract related to the Project, the Consultant shall restrict its communications in accord with this Article. In particular, the Consultant shall not communicate, except as set forth in this Article, about the Project with anyone who may be or might become a prospective bidder, or any of such bidder’s employees, subcontractors, suppliers or agents, unless and until CUCF
specifically authorizes the communication or contact, as the case may be, that the Consultant may have with any such person. With respect to any question posed to it by or any request for information from anyone, other than those designated in writing by CUCF, the Consultant shall reply with the name, address and other relevant contact information of the CUCF-designated representative. The Consultant shall have no other communication or contact with those delimited in this Article during the bid or proposal evaluation period for the Project. Without limiting the generality of the foregoing provisions of this Article, the Consultant shall disclose only to CUCF and to its most trusted employees, and shall not disclose to anyone else, the estimated cost of the work for the Project or any of its phases; the Consultant shall not disclose the name of any prospective bidder or of those who have obtained the bid documents. The Consultant acknowledges that its breach of any provision of this Article shall be deemed a material breach of this Contract.

24.7.3 All of the reports, information or data, furnished to or prepared, assembled or used by the Consultant under this Contract are to be held confidential, and prior to publication, the Consultant agrees that the same shall not be made available to any individual or organization without the prior written approval of CUCF.

24.7.4 With respect to any information the Consultant receives from or develops for CUCF, the Consultant shall not permit it or cause it to be posted on the Internet or to be moved outside the geographic borders of the United States for any purpose whatsoever, whether by email, mail or otherwise, without the prior express written permission of CUCF.

24.7.5 In the event, if any, CUCF sustains any loss or damage related to any breach of the terms and conditions of the Consultant’s duty to preserve the confidentiality of such information by the Consultant, its employees, agents or those to whom the Consultant provides access, the Consultant agrees to defend, with counsel acceptable to CUCF, indemnify and hold CUCF, CUNY, the City, the State, DASNY, its and their directors, officers and employees harmless from any and all loss and damage incurred by any of them, or any combination of them, including, without limitation, reasonable legal fees and costs of litigation incurred by any of them in any proceeding, including, without limitation, any proceeding against the Consultant, any of the Consultant’s employees, any agent of the Consultant or those who are provided access to such information through the Consultant.

24.7.6. The Consultant recognizes that irreparable harm can be occasioned to CUCF by the unauthorized disclosure, reproduction, or use of information designated by CUCF to be confidential, and that monetary damages will be inadequate to compensate CUCF for such breach. The Consultant agrees that in the event of any such breach or alleged breach, CUCF shall be entitled, without having to post any security, to a preliminary injunction and an order of seizure and impoundment under Section 503 of the Copyright Act based upon an ex parte application to protect and recover the information, and the Consultant will not object to the entry of an injunction or other equitable relief against the Consultant on the basis of an adequate remedy at law or other reason. This remedy shall be in addition to any other remedies available to CUCF.

24.7.7. In performing its Services, the Consultant understands that CUCF does not wish to receive from the Consultant any information that may be considered confidential or proprietary or both to the Consultant or to anyone else or any combination of them. CUCF does not undertake to secure the confidentiality of such information.

24.7.8 Where performance of this Agreement involves use by the Consultant of any papers, files, data or records at CUCF or CUNY facilities or offices, the Consultant shall not remove any such papers, files, data or records therefrom without the prior written approval of CUCF or CUNY, as the case may be.
24.8 Publicity

(a) At any time during the term of this Contract and for a term of three (3) years thereafter, the Consultant may make no statement to the press or publish any information through any medium of communication relating to the Project, except as and to the extent the Consultant requests in writing the approval of CUCF for the Consultant to make such statement or publish such information through a specified medium and obtains in advance CUCF’s express written approval, which approval shall not be unreasonably withheld.

(b) If the Consultant shall, with CUCF’s approval, if any, publish a work dealing with any aspect of the Project, or of its performance under this Contract, or of the results and accomplishments attained in such performance, CUCF shall have free of royalties, nonexclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use such publication.

24.9 Inventions, Patents and Copyrights

(a) Any discovery or invention arising out of or developed in the course of performance of this Contract shall be promptly and fully reported to CUCF, and if this work is supported by a federal grant of funds, shall be promptly and fully reported to the Federal Government for determination as to whether patent protection of such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.

(b) No report, document or other datum produced in whole or in part with Contract funds shall be copyrighted by the Consultant nor shall any notice of copyright be registered by the Consultant in connection with any report, document or other data developed for the Contract.

(c) In no case shall Subsections "a" and "b" of this section apply to, or prevent the Consultant from asserting or protecting its rights in any report, document or other data, or any invention which existed prior to or was developed or discovered independently from the activities directly related to this Contract.

ARTICLE 25 – RESOLUTION OF DISPUTES

25.1 Generally

A. With respect only to this Contract, all claims or disputes the Consultant may have against CUCF (each a “Dispute”), to the extent permitted by law, shall be resolved solely and exclusively by the procedure set forth in this Article. Without limitation, this procedure covers Disputes concerning the scope of the Services related to this Contract, any direction given by CUCF or any governmental agency, the interpretation of Contract Documents, the amount to be paid for Extra Services or disputed Services performed in connection with this Contract, the conformity of the Services with this Contract or the acceptability and quality of the Services, and any combination of these. Independent of any other provision, time is of the essence to this procedure.

B. The terms of this Contract shall remain in full force and effect during the period of this dispute resolution procedure. The Consultant agrees to continue to perform the Services
during this period in accordance with this Contract and as directed by CUCF, including, without limitation, any and all matters covered by the Dispute. Failure of the Consultant to continue to discharge its obligations hereunder, including, without limitation, to perform the Services as directed, shall constitute a material breach of this Contract and a waiver by the Consultant of each Dispute then under review in this procedure.

C. During the investigations integral to this procedure, each party shall provide to the other party copies of all information that each provides in response to any requests for information made by the Executive Director of the Department of Design, Construction and Management of CUNY (the “Executive Director”) and by the Vice Chancellor for Facilities Planning, Construction and Management of CUNY (the “Vice Chancellor”).

D. In any event the Consultant fails (a) to submit timely any Notice of Dispute, Dispute Report, Notice of Appeal, or any other information or document required or requested to be provided or (b) to attend without good cause any meeting it is required or requested to attend, pursuant to this procedure, its Dispute shall be deemed waived and CUCF shall be deemed released of all liability for it.

E. As either may deem appropriate from time to time, the Executive Director and Vice Chancellor each may obtain technical and other expertise for assistance in evaluating the information related to a Dispute. Each may use mediation and select as a neutral mediator a CUNY employee, who is from a department or office not under the supervision of the Executive Director or Vice Chancellor, or hire a neutral mediator, who is not employed by CUCF or CUNY, provided the Consultant agrees to pay CUCF one-half of any fee for the services of a mediator not employed by CUCF or CUNY. All mediation sessions shall be confidential and the parties agree that no mediation session may be the sole source of any information used in any other forum, such as litigation of the Dispute.

25.2 Commencement

Within fifteen (15) business days of any act or omission that gives rise to a Dispute, the Consultant must submit to the Executive Director verified, written notice of its Dispute. In each such notice, the Consultant must identify (a) the date on which the Dispute arose, and (b) a brief description of it (with these elements comprising a “Notice of Dispute”). The Consultant may add other information it deems relevant. This notice requirement shall not replace any other notice requirement set forth in this Contract. For cause, the Executive Director and the Vice Chancellor may extend in writing by no more than ten (10) business days the period within which the Consultant may file the Notice of Dispute.

25.3 Filing the Dispute

Within twenty (20) business days after submission of a verified Notice of Dispute, the Consultant must submit to the Executive Director an original and one copy (a) of a verified, full written description of its Dispute, (b) of the resolution it requests CUCF to adopt, (c) of all documentation related to the Dispute, such as written orders from CUCF, and, as to any resolution that includes a payment of any sum, all supporting documentation that specifies the sum at issue and all computations required to arrive at the sum, and (d) of any other findings or decisions the Consultant asks CUCF to reach (with all of these elements comprising a “Dispute Report”). The Consultant may add other information it deems relevant. For cause, the Executive Director and the Vice Chancellor may extend in writing by no more than ten
(10) business days the period within which the Consultant may file the Dispute Report.

25.4 **Investigation, Meetings, and Notice of Appeal**

A. After receipt of the Dispute Report, the Executive Director shall investigate it, may require additional information from CUCF staff and from the Consultant, and may convene meetings with the Consultant and CUCF staff to resolve the Dispute. The Executive Director may resolve the Dispute by negotiating terms acceptable to both the Consultant and CUCF (a “Negotiated Resolution”). The Executive Director shall put in writing any Negotiated Resolution to be executed by the Consultant and CUCF. Alternatively, after completing this investigation of the Dispute, the Executive Director may issue written findings and resolve the Dispute unilaterally, without negotiation, in a written decision (a “Unilateral Resolution”) that CUCF shall send to the Consultant by certified mail, return receipt requested, and to the CUCF staff for implementation. Any Unilateral Resolution rendered by the Executive Director, and not timely appealed by the Consultant pursuant to the procedure described below, shall be final and binding upon the parties upon expiration of the tenth day after the Consultant receives any such Unilateral Resolution.

B. The Consultant may request an appeal (a) if the Executive Director is unable to reach a Negotiated Resolution or (b) the Consultant receives a Unilateral Resolution with which the Consultant disagrees. The Consultant must commence any such appeal by submitting a verified, written notice to the Vice Chancellor requesting the Vice Chancellor to resolve the Dispute or to revise the Unilateral Resolution, as the case may be (“Notice of Appeal”). The Consultant must file the Notice of Appeal within thirty (30) consecutive calendar days after the Executive Director receives the Dispute Report in the case of a failure to reach a Negotiated Resolution or, within ten (10) consecutive calendar days after the Consultant receives any Unilateral Resolution with which the Consultant disagrees. In addition, the Consultant must submit to the Executive Director a copy of the Notice of Appeal.

25.5 **Appeal**

A. After receipt of the Consultant’s Notice of Appeal, the Vice Chancellor shall investigate the Dispute, may require additional information from CUCF staff and from the Consultant, and may meet with the Consultant and CUCF staff to resolve the Dispute. The Vice Chancellor may resolve the Consultant’s Dispute by negotiating terms acceptable to both the Consultant and CUCF.

B. The Vice Chancellor shall put in writing any such resolution to be executed by the Consultant and the CUCF. Alternatively, after completing this investigation of the Dispute, the Vice Chancellor may issue written findings and resolve the Dispute unilaterally, without negotiation, in a written final decision that CUCF shall provide to the Consultant and to the Executive Director for implementation. If the Vice Chancellor is unable to resolve the Dispute within thirty (30) consecutive calendar days after receiving the Notice of Appeal or if within ten (10) consecutive calendar days after the Consultant receives from the Vice Chancellor a written final decision with which the Consultant disagrees, the Consultant may appeal the Dispute in accordance with ARTICLE 14, Paragraph 14.5 of this Contract.
ARTICLE 26 - MISCELLANEOUS

26.1 Waiver

(a) Any failure of CUCF, CUNY, DASNY, the City or the State, or any combination of them, to insist upon performance or strict performance of any term, covenant or condition of this Contract shall not be deemed a conditioning, suspension, diminution or waiver of any right or remedy under this Contract or recognized by law or by equity, or any combination of them, that CUCF, CUNY, DASNY, the City, or the State, or any combination of them, had, has or may have. Any waiver by CUCF of a provision of this Contract or of a breach by the Consultant of any provision of this Contract and any waiver by CUCF of any right or remedy granted by this Contract, by law or by equity must be in writing and signed by a representative of CUCF. Any such waiver shall not be deemed to be a waiver of any other breach or subsequent breach of that or any other provision of this Contract, and shall not be construed to be a modification of any term or covenant or condition of the Contract unless and until the same shall have been agreed to in writing by CUCF and incorporated into this Contract.

(b) CUCF and the Consultant shall not be precluded or estopped by any payment or certificate made or given by the Consultant, CUCF or other officer, agent or appointee thereof under any provision of this Contract from, at any time either before or after the completion of all of the Consultant’s obligations under this Contract and payment therefore, showing the true and correct classification, amount, quality and character of the Services performed and materials furnished by the Consultant, or from showing at any time that such certificate is untrue or incorrect or improperly made in any particular or that the Services and materials or any part thereof do not in fact conform with the requirements of this Contract. CUCF and the Consultant shall not be precluded or estopped, notwithstanding any certificate and payment in accordance therewith, from demanding and recovering from the Consultant such damages as it may sustain by reason of its failure to comply with the Contract Documents.

(c) Neither the acceptance by CUCF or any of the employees or agents of CUCF, nor any order, measurement or certificate by CUCF for payment of money nor any payment for, nor acceptance of, the whole or part of the Services nor any extension of time, nor any possession taken by CUCF shall operate as a waiver or suspension of any portion of this Contract or of any power herein reserved to CUCF or of any right to damages herein provided; nor shall any waiver of any breach of this Contract be held to be a waiver or suspension of any other or subsequent breach.

26.2 Contract Documents Contain All Terms - This Contract, the appendices hereto, the Technical Specifications, the Contract Drawings, if any, and the Scope of Services are the Contract Documents which collectively shall constitute the Contract. These Contract Documents contain all the terms and conditions agreed upon by the parties hereto, and no other agreement or understanding, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms or conditions contained herein. If any provision of this Contract or any application thereof shall be invalid or unenforceable, the remainder of the Contract and any other application of such provision shall not be affected thereby.
26.3 Modification - This Contract may be modified by the parties only in writing; it may not be altered or modified orally. The Terms and Conditions of this Contract along with Appendices A and B are statutory in nature and cannot be modified. The Consultant agrees to all such provisions, requirements and obligations, without exception.

26.4 Paragraph Headings - Paragraph headings are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or purpose of this Contract and in no way affect this Contract.

26.5 No Removal of Records from Premises - Where performance of this Contract involves use by the Consultant of any papers, files, data or records at CUCF or CUNY facilities or offices, the Consultant shall not remove any such papers, files, data or records therefrom without the prior written approval of CUCF or CUNY, as the case may be.

26.6 Inspection at Site - Representatives of government agencies, of CUCF and of CUNY shall at all times have the right to inspect the Project.

26.7 Tax Exemption - CUCF and CUNY are exempt from the payment of any State and Local sales and use taxes. The Consultant’s Total Fee shall not include the amount of any such tax, and the Consultant shall not requisition any payment of a tax with its requisition for payment of any sum under this Contract.

26.8 Tax Certification Requirements

(a) During the term of the Contract, the Consultant shall submit completed New York State Department of Taxation and Finance Form ST-220, Contractor Certification as applicable, pursuant to Section 5-a of the New York State Tax Law (“Contractor Certification ST-220”), on an annual basis if the duration of the contract exceeds one (1) year or, if this Contract permits renewal at the conclusion of a specified term, upon expiration of an initial or renewal term. Form ST-220 is provided with additional information in Appendix C.6.

(b) Such Contractor Certification ST-220, with true copy(ies) of any certificate(s) of authority held by the Consultant, the Consultant’s affiliate(s) as defined in Tax Law Section 5-a, Consultant’s sub-consultant(s) and sub-consultant’s affiliates are hereby incorporated into and made part of the Contract.

(c) If the Consultant fails to comply with the requirements of this Article or if CUCF discovers that any Contractor Certification ST-220 filed by the Consultant was false when made, then such failure or falsity shall be a material breach of this Contract and an event of default.

26.9 New York State Lobbying Law

The Consultant shall comply fully with the requirements of State Finance Law Sections 139-j and 139-k.

26.10 Termination for Non Compliance with the Lobbying Law
26.11 Contract Funding

Funding for the Work of this Contract is contingent on the continued availability of New York City and/or New York State funding and continued funding authorization for the project activities.

CUCF hereby places the Consultant on Notice, that should such funding lapse, be suspended or terminated for any reason, CUCF may suspend the Work through a Stop Work Order for an amount of time until funding is restored; or terminate the Contract for convenience.

Should the Contract be suspended until funding is restored or reappropriated through a new Certificate to Proceed (“CP”) the Consultant’s sole remedy shall be an extension of time to complete the work equal to the time the work was suspended due to lack of funding. There are no money damages due the Consultant for such lack of funding delay.

FPCM’s Chief of Contracts shall not execute a contract modification that causes or will cause an increase in funds without having first obtained a certification of fund availability.

26.12 CUCF Decision Final

CUCF shall determine the amount, quality, acceptability and fitness of the Work. CUCF’s decision as to all matters arising in connection with or relating to this Contract shall be final, binding and conclusive.

26.13 Equal Employment Opportunity

A. The Consultant agrees to the terms and conditions of non-discrimination as set forth within and applicable law (NYS Executive Law Article 15-A; and Executive Order 50 of the City Of New York, as it pertains to CUNY community colleges). As a precondition to entering into a valid and binding agreement with CUCF and during its performance of this Contract, the Consultant shall comply with the following:

B. The Consultant shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status, sexual orientation, or affectional preference. The Consultant shall undertake or continue existing programs of affirmative action 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, marital status, sexual orientation, or affectional preference. The Consultant shall make and document its conscientious and active efforts to employ and utilize minority group members and women on this Contract in a format & frequency as prescribed by CUCF.

26.14 Goals for Minority and Women’s Business Enterprise Participation

The Consultant shall exert good faith efforts to achieve a 7.25% participation goal for Minority Business Enterprises and a 4.75% participation goal for Women’s Business Enterprises and report in a form & frequency as prescribed by CUCF.

26.15 Audit by the Department and the Comptroller of the City of New York
All vouchers or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said voucher or invoices are base, are subject to audit by CUCF and by the Comptroller of the City of New York pursuant to the powers and responsibilities as conferred upon CUCF and said Comptroller by New York State Law and the New York City Charter and Administrative Code of the City of New York, as well as all orders and regulations promulgated pursuant thereto.

The Consultant shall submit any and all documentation and justification in support of expenditures or fees under this Contract as may be required by CUCF and said Comptroller so that they may evaluate the reasonableness of the charges and shall make its records available to CUCF and to the Comptroller as they consider necessary.

All books, vouchers, records, reports canceled checks and any and all similar material may be subject to periodic inspection, review and audit by the United States, the State of New York and the City of New York and all duly authorized agencies of each or any of them.

The Consultant shall not be entitled to final payment under the Contract until all requirements have been satisfactorily met.

ARTICLE 27 - INVESTIGATIONS

27.1 The parties to this Contract agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a CUCF or CUNY or DASNY or the State or the City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

27.2 (a) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with CUCF, CUNY, DASNY, the City, the State, or any political subdivision of the State or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or;

(b) If any person refuses to testify for a reason other than the assertion of his or her privilege against self incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with CUCF, CUNY, DASNY, the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

27.3 (a) The agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure
of a person to testify.

(b) If any non-governmental party to the hearing requests an adjournment, the agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to paragraph 26.5 below without the City incurring any penalty or damages for delay or otherwise.

27.4 The penalties which may attach after a final determination by the agency head may include but shall not exceed:

(a) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

(b) The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Contract, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

27.5 The agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (c) and (d) below in addition to any other information which may be relevant and appropriate;

(a) The party’s good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(b) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(c) The nexus of the testimony sought to the subject entity and its Contracts, leases, permits or licenses with the City.

(d) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under ARTICLE 26.4 hereof, provided that the party or entity has given actual notice to the agency head upon the acquisition of the interest, or at the hearing called for in ARTICLE 26.3(a) hereof gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

27.6 (a) The term "license" or "permit" as used herein shall be defined as a license, permit,
franchise or concession not granted as a matter of right.

(b) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

(c) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

(d) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

27.7 In addition to and notwithstanding any other provision of this Contract the agency head may in his or her sole discretion terminate this Contract upon not less than three (3) days written notice in the event the Consultant fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Contract by the Consultant, or affecting the performance of this Contract.

**ARTICLE 28 - ORDER OF PRECEDENCE**

Any conflict or difference between or among the documents that cannot be harmonized, so as to retain all provisions, shall be resolved using the following Order of Precedence: Part II of this Contract, followed by Part I of this Contract Appendix A, Appendix B, Appendix C, Appendix D and any other attachments and/or exhibits.

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PART II - SPECIFIC REQUISITES OF REQUIREMENTS CONTRACT FOR ARCHITECTURAL DESIGN SERVICES

SECTION 1 - SCOPE OF WORK - CATEGORIES OF WORK

1.1 Architectural Design Services - Categories of Work

The Consultant shall provide appropriately licensed professionals on an “as needed” basis, by Task Order, as assigned by CUCF, to perform the following services at any designated CUNY site in the designated Categories of Work specified in Appendix C.1, as more fully described in this Section below.

A. Architectural Design Services

In general, the Scope of Work for these assignments will consist of:

1. Survey of the existing conditions;
2. Design services – pre-schematic through final design;
3. Preparing contract documents (i.e., drawings and specifications);
4. Providing construction related services as described herein;
5. Filing with the NYC Department of Buildings and other agencies, and obtaining approval when required;
6. Preparing cost estimates; and
7. Construction administration.
8. Feasibility studies.

The types of Architectural Design Assignments included, but not limited to, in this solicitation are:

- New building or renovation of, or additions to, existing buildings;
- Urban design, including consideration of project siting, massing and relationship to adjacent buildings and related work;
- Site design, including consideration of pedestrian and vehicular circulation, adjacent off-site conditions, existing site conditions as well as zoning regulations, campus needs and environmental effects and related work;
- ADA improvements;
- Interior design including furniture specifications;
- Innovative exterior materials and cladding systems;
- Roofing systems including planted roof systems and those with photovoltaic applications;
- Specialized security systems;
- Presentations/Renderings.

B. Building Envelope Design Services

In general, the Scope of Work for these assignments will consist of:

1. Survey of the existing conditions;
2. Design services as well as preparing contract documents (i.e., drawings and specifications);
3. Providing construction related services as described herein;
4. Filing with the NYC Department of Buildings and other agencies and obtaining approval when required;
5. Preparing cost estimates; and
6. Construction administration.

The types of Building Envelope Design Assignments included, but not limited to, in this solicitation are:

- Building envelope maintenance and improvements including roof replacements and associated work to flashings, copings and parapets; masonry restoration; repointing; structural repair of shelf angles, lintels, columns and beams; window repairs and/or replacement; repair or replacement of other building façade systems;
- Local Law 11 evaluation and repairs/improvements including the preparation and filing of LL11 reports with the NYC Department of Buildings.

C. **High Performance Design Services**

In general, the Scope of Work for these assignments will consist of:

1. Survey of the existing conditions;
2. Design services as well as preparing contract documents (i.e., drawings and specifications);
3. Providing construction related services as described herein;
4. Filing with the NYC Department of Buildings and other agencies and obtaining approval when required;
5. Preparing cost estimates; and
6. Construction administration.

The types of High Performance Design Assignments included, but not limited to, in this solicitation are:

- Renovation of existing structures with new High Performance Systems consistent with LEED;
- Improvement of existing systems into High Performance Systems;
- Specialized systems for improved energy use, improved indoor environment;
- Systems for resource reduction, pollution prevention and recycling;
- Building operations resource management.

D. **Historic Preservation Design Services**

In general, the Scope of Work for these assignments will consist of:

1. Survey of the existing conditions/historical research;
2. Design services as well as preparing contract documents (i.e., drawings and specifications);
3. Providing construction related services as described herein;
4. Filing with the NYC Department of Buildings, Landmarks and State Historic Preservation Office and other agencies and obtaining approval when required;
5. Preparing cost estimates; and
6. Construction administration.

The types of Historic Preservation Design Assignments included, but not limited to, in this solicitation are:
- Additions to, or renovations of landmark or historically significant structures;
- Renovation or restoration of existing landmark or historically significant buildings with High Performance Systems consistent with LEED;
- Architectural lighting systems;
- Specialized security systems.

E. Landscape Design Services

In general, the Scope of Work for these assignments will consist of:

1. Survey of the existing conditions;
2. Design services as well as preparing contract documents (i.e., drawings and specifications);
3. Providing construction related services as described herein;
4. Filing with the NYC Department of Buildings and other agencies and obtaining approval when required;
5. Preparing cost estimates; and
6. Construction administration.

The types of Landscape Design Assignments included, but not limited to, in this solicitation are:
- Landscapes at new facilities;
- ADA sidewalks and paths;
- Vehicular access and parking;
- Restoration of existing landscapes;
- New specialized native plant landscapes;
- Landscapes intended for improved drainage/storm water control.

F. Signage and Interpretation Design Services

In general, the Scope of Work for these assignments will consist of:

1. Survey of the existing conditions;
2. Design services as well as preparing contract documents (i.e., drawings and specifications);
3. Providing construction related services as described herein;
4. Preparing cost estimates; and
5. Construction administration.
The types of Signage and Interpretation Design Assignments included, but not limited to, in this solicitation are:

- Campus maps and wayfinding directories and Kiosks;
- Building identification signs;
- Building directories and wayfinding signs;
- Department and room identification signs;
- Historic or landmark buildings identification and informational signs;
- Donor recognition signs or plaques.

1.2 Procedure - Generally

A. As the need arises in a particular Category or Categories of Work, CUCF will identify those firms eligible to compete for project specific task order assignments & send them a written description of the task order assignment and the criteria that will be used for selection.

B. From time to time, at CUCF’s sole discretion, the identified firms may have the opportunity to inspect the site & review documents. The Consultant shall submit, within the prescribed timeframe, a written proposal response to the proposal documents with a fee proposal, based upon a format that will be provided by CUCF.

C. The written proposal response will be reviewed and evaluated by CUCF according to the criteria. The proposal response that best meets the criteria will be selected for the task order assignment at a fee determined by CUCF to be fair and reasonable.

D. CUCF reserves the right to limit active assignments to a firm to two (2) projects per Category of Work.

1.3 Task Order Responsibilities

A. The Consultant shall provide, to the satisfaction of the FPCM Chief of Contracts, design and construction administration and other related services in accordance with the Project specified in the Task Order.

B. The Consultant shall not perform services hereunder until the FPCM Chief of Contracts has issued a Task Order.

C. The Consultant shall be paid for such services on the basis of the fee proposal accepted by CUCF.

D. Consultant Proposals: The Consultant agrees to submit Project Specific Proposals, at no cost to CUCF, in response to Project Specific Proposal Documents issued by the FPCM Chief of Contracts. The Consultant shall not be entitled to any compensation for costs incurred in connection with the preparation of such Proposals.

E. Once the Task Order work has begun, CUNY shall designate a Project Manager as its fully authorized and empowered representative to act on its behalf. The CUNY Project Manager shall examine documents submitted by the Consultant, and render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Consultant's work. The Project Manager shall attend Task Order progress meetings scheduled by the Consultant and shall be empowered to make project decisions and commitments at such meetings.

F. CUNY shall furnish information and/or survey of the site, which may include giving grades and lines of streets, alleys, pavement and adjoining property, rights of way, restrictions,
easements, encroachments, zoning, deed restrictions, boundaries, elevations at grid points; locations, dimensions, and data pertaining to existing buildings, utilities and trees; a schedule or time frame within which the work must be completed, and other requirements for the project. If there are no historic plans and drawings available, CUCF may in its sole discretion, as necessary, assign such research Work to the Consultant. CUCF shall pay as a Reimbursable Service, in accordance with Part I, Article 3 & Part II, Article 1.4.A, for any tests and/or reports required for determining subsoil and other site conditions.

1.4 Scope of Task Order Services

A. Issuance of Task Orders by FPCM Chief of Contracts: Throughout the term of the Contract, as the need arises for Architectural Design Services, the FPCM Chief of Contracts shall issue a Task Order to the Consultant. The FPCM Chief of Contracts may issue separate and/or supplementary Task Orders to the Consultant for the performance of services for different phases or portions of the Project. Each Task Order issued hereunder will specify the items set forth below, and may specify additional items as appropriate:

- The Category or Categories of Work to be performed: Architectural Design Services, Building Envelope Design Services, High Performance Design Services, Historic Preservation Design Services, Landscape Design Services, Signage and Interpretation Design Services
- Scope of services
- Evaluation Criteria & Weights

B. Supplementary Task Orders: In the event of any changes to the Task Order, the FPCM Chief of Contracts shall issue a Supplementary Task Order to the Consultant. The Consultant shall be bound by the terms and conditions of any such Supplementary Task Order issued by the FPCM Chief of Contracts.

C. No Right to Reject a Task Order: The Consultant shall have no right to reject or decline to perform any Task Order issued under the Contract. Accordingly, any rejection of a Task Order by the Consultant, either expressly made or implied by conduct, shall constitute a material breach of this Contract.

1.5 Scope of Required Additional Services

A. When required, the Consultant shall provide the following:

i) Survey and assessment of existing conditions, including testing, sampling and analysis, including investigation for presence of hazardous materials;

ii) Presentation of design alternatives with cost estimates;

iii) Response to comments of CUCF and College;

iv) A design acceptable to CUCF within projected budget;
v) Layout & specification of equipment;

vi) Attendance at project meetings and production of minutes;

vii) Cost estimates at each major phase of Design – Pre-Schematic, Schematic, Design Development, 60% Complete Construction Documents, 100% Complete Construction Documents;

viii) Bid documents (drawings, project manual, specifications);

ix) Obtain approvals from CUCF, the College, and all State/City oversight agencies;

x) Assistance during the bidding phase;

xi) Construction phase services, including submittal reviews and construction oversight; and

xii) other architectural/engineering services required for a completed project.

1.6 Deliverables

The Consultant shall include the cost of all submissions and deliverables relating to the tasks and assignments as set forth in the Task Order as assigned by the Director of Procurement in the Fee Proposal, except for items specifically identified as reimbursable expenses.

A. The deliverables that Consultant may be required to provide, in digital or printed form, during the course of the Project are detailed in other portions of the Contract and summarized as follows:

i) Firm brochures of similar projects for Board of Trustees (ten (10) sets as a reimbursable);

ii) Programming/Pre-schematic Design Alternatives, with estimates based on initial project scope and budget – six (6) sets;

iii) Schematic Design, with estimates based upon initial project scope and budget – six (6) sets;

iv) Design Development and outline specifications with cost estimate – six (6) sets;

v) 60% Complete Construction Documents, including specifications with cost estimate – six (6) sets;

vi) Final Documents (Construction Documents – CD) and complete specifications with cost estimate – six (6) sets;

vii) Bid Documents (drawings, project manuals, specifications) – plus CD– three (3) complete sets;

viii) Interim Documents for review, as required;

ix) CAD files in AutoCAD – latest versions – three (3) sets;

x) As-Built drawings reviewed by the Consultant – two (2) sets; and

xi) Reports of the review and analysis of the Project Schedule prepared by others,
with monthly updates as the project develops.

B. With respect to each phase, in response to all comments provided by CUCF, the Consultant shall provide typewritten responses.

SECTION 2 – PROGRAMMING/PRE-SCHEMATIC DESIGN PHASE

2.1 Consultant shall:

(a) visit and thoroughly inspect the Project Site, including any structures and natural or man-made features to be modified;

(b) familiarize itself with the survey of the location of all existing buildings, utilities, conditions, streets, equipment, components and other attributes having or likely to have an impact on the Project;

(c) familiarize itself with CUCF’s layout and design requirements, conceptual design objectives and Approved Construction Budget;

(d) report any code violations;

(e) familiarize itself with pertinent Project information and programming needs;

(f) review and analyze all Project geotechnical, Hazardous Substance, structural, chemical, electrical, mechanical and construction materials tests, investigations and recommendations, and advise CUCF of additional testing requirements;

(g) familiarize itself with, review and analyze local zoning restrictions and requirements including:

   (I) Determining the compliance (or noncompliance) of the proposed structure(s) with the zoning codes, rules and regulations of the City of New York;

   (II) Completing the CUCF’s “Planning and Zoning Information Form” and;

   (III) Submitting the “Planning and Zoning Information Form” to CUCF for review;

(g) review the New York City Building Code and Project with New York City Building Department officials and related agencies to determine Project requirements;

(h) gather any other information necessary for a thorough understanding of the Project;

(i) prepare the Pre-Schematic Plan and Report for presentation as deliverables; and

(j) attend the Project kick-off meeting.

2.2. Using the Services and their products referred to by Section 2.2.2, the Consultant shall develop a Pre-Schematic Plan and Report to include, without limitation:

(a) a series of alternate solutions/options that explore a full range of building and site development possibilities including alternative mechanical, plumbing, electrical and structural considerations;

(b) a basic Project strategy by addressing critical relationships among program elements;

(c) a cost estimate based upon measurement of physical characteristics, using costs appropriate for the type of work and design stage, based upon experience and nationally
recognized Construction Specifications Institute (CSI) based estimating systems using most accepted standard cost estimating system acceptable to CUCF, and including an appropriate design contingency, bidding contingency, contractor’s overhead and profit, escalation and trade contractor or construction manager general conditions costs as directed by CUCF; the estimate shall be prepared using the CUCF-provided “Cost Estimating Workbook;” upon prior written approval of CUCF, Engineer may prepare the estimate in an alternative format, provided the estimate includes, at a minimum, all information contained in CUCF-supplied format;

(d) incorporating the response of CUCF, and of those it designates, to the alternate solution, one overall solution or combination of solutions that best address the needs of CUCF;

(e) a completed “Planning and Zoning Information Form” for review and comment.

(f) a review of findings of the Building Code review and prepare a code checklist for the project; and

(g) update existing program to include new spaces, as described above.

2.3 Delivery of Pre-Schematic Plans and Report - Within eight (8) weeks/fifty-six (56) consecutive calendar days or such other date as set forth in the Task Order after written notice to commence work, the Consultant shall deliver to CUCF the Pre-Schematic Plan and Reports. CUCF shall make revisions to such Plan and Report, in its best interest.

2.4 Acceptance of Pre-Schematic Plans and Report - After CUCF has accepted such Plan and Report, the Consultant shall prepare and submit four (4) copies of the revised report.

2.5 Design Reviews: The Consultant shall provide typewritten responses to all design review comments provided by CUCF and its consultants.

SECTION 3 - SCHEMATIC PHASE

3.0 The Consultant shall prepare schematic plans and studies in strict compliance with each and every requirement of all applicable building codes and regulations. The Consultant shall review programs furnished by CUCF to ascertain the requirements of the Project and shall review the understanding of such requirements with CUCF.

The Consultant shall submit drawings and descriptions for:

(a) Location Plan - Showing the Project location at a scale of 100' - 1".

(b) Site Plan - Shall include location of building or buildings in relation to the immediate area around it, all existing and/or proposed necessary utility lines, grading and site improvement, lighting, walks, roads and parking and basic topography to the extent of existing information.

(c) Floor Plan (1/4 scale is preferred but no less than 1/16 scale) shall include all required spaces, doors, windows, stairs, square footage, planned occupancies, exits and major items of fixed equipment, and illustrating reasonable compatibility with routings of
mechanical and electrical services.

(d) Program space numbers shall be used to identify programmed spaces. Programmed and actual areas shall be indicated on the plans.

(e) Sections (1/4 scale is preferred but no less than 1/16 scale) shall include major cuts in two directions for all structures with basic vertical dimensions.

(f) Elevations – All elevations at no less than 1/16 scale.

(g) Flow diagram to show circulation. Stair, Corridor and Exit count figures to show compliance with New York City Building Code.

(h) General description of Project indicating use, architectural concept, conformance to requirements, zoning, lot coverage, codes followed, material and methods of construction, toilet and exit calculations, heating and air conditioning systems and security systems.

(i) Energy model analysis and load calculations.

(j) Submit gas and electric load letters to utility companies to request new service layout.

(k) Preliminary estimate of Construction Costs and an economic justification of systems with cost benefit analysis including operation costs.

(l) Outline Specifications for Site Development, Architectural, Structural, Mechanical, Plumbing, Electrical and Site Utilities.

(m) The Consultant shall provide minutes of all meetings and reports of all reviews and comments received from others. Meetings shall be held on a biweekly basis.

3.1 Delivery of Schematic Plans and Reports - Within twelve (12) weeks/eighty-four (84) consecutive calendar days or such other date as set forth in the Task Order after written notice to commence work, the Consultant shall deliver to CUCF the Schematic documents for the Project which shall conform to all provisions of this Contract.

3.2 Acceptance of Schematic Design Documents - After CUCF provisionally accepts a Scheme, the Consultant shall incorporate all changes requested by CUCF and prepare and submit four (4) copies of such Scheme together with a cost estimate of the revised Scheme.

3.3 Design Reviews: The Consultant shall provide typewritten responses to all design review comments provided by CUCF and its consultants.

SECTION 4 - DESIGN DEVELOPMENT PHASE - Upon acceptance and written approval by CUCF of the Schematic design documents and any adjustments authorized by CUCF in the Program or Project Budget, the Consultant shall prepare and submit to CUCF for approval six (6) copies of the following documents:

(a) Preliminary plans, studies and drawings including, but not necessarily limited to, layout
plans, types of equipment, furniture and equipment layout for all rooms and spaces, and any additional documents listed in the Specific Requirements which define and describe the size and character of the entire Project as to architectural, structural, plumbing, mechanical and electrical systems, materials and such other elements as may be appropriate.

(b) Outline Specifications separated into each of the required Divisions (For purposes of this Contract, the word “Division” shall mean the construction categories in conformance with the master format of the Construction Specifications Institute (CSI) specifications or equal, not limited to: General Construction, Structural, HVAC, Plumbing, Electrical.)

(c) Preliminary detailed estimate of cost. Prepare and submit to CUCF for its approval, during the preparation of preliminary plans and outline specifications, a cost estimate based upon measurement of physical characteristics, using costs appropriate for the type of work and design stage, in CSI format using most accepted standard cost estimating system acceptable to CUCF, and including an appropriate design contingency, bidding contingency, contractor’s overhead and profit, escalation and trade contractor or construction manager general conditions costs as directed by CUCF; the estimate shall be prepared using the CUCF-provided “Cost Estimating Workbook;” upon prior written approval of CUCF, the Consultant may prepare the estimate in an alternative format, provided the estimate includes, at a minimum, all information contained in CUCF-supplied format; this estimate is hereinafter referred to as the "Preliminary Design Cost Estimate.” The Preliminary Design Cost Estimate shall be in sufficient detail to demonstrate to CUCF that the work designed is within the CUCF’s Construction Budget. If the Preliminary Design Cost Estimate does not so demonstrate, then the Consultant shall, at no additional fee, revise the scope of the Project, described so that the work described is within the Construction Cost.

(d) An analysis of the relationship of the designed gross and net square foot areas to programmed areas of the Project.

(e) Updating the Energy Model analysis and load calculations.

(f) The scope descriptions and cost estimates of such feasible design alternatives/options that will allow for construction contract award flexibility.

(g) Updated Schedules as called for in Part I, Article 2.1.

(h) Proof of filing with the New York City Department of Buildings and other governing agencies as required.

4.1 Delivery of Preliminary Plans and Outline Specifications - Within twelve (12) weeks/eighty-four (84) consecutive calendar days or such other date as set forth in the Task Order after written notice to commence work on the Preliminary Documents, the Consultant shall deliver to CUCF the Design Documents for the Project which shall conform to all provisions of this Contract.

4.2 Acceptance of the Design Documents - After CUCF accepts the Design Documents, with any revisions requested, the Consultant shall prepare revised Design Documents incorporating all changes requested by CUCF and shall submit four (4) sets thereof together each with a copy of an
updated estimate of cost for CUCF’s acceptance.

4.3 Design Reviews: The Consultant shall provide typewritten responses to all design review comments provided by CUCF and its consultants.

SECTION 5 - CONSTRUCTION DOCUMENTS/BID DOCUMENTS PHASE: INTERIM AND FINAL STAGES - Upon written notification by CUCF that the Preliminary Documents have been approved, and any further adjustments in the scope or quality of the Project, or in the Project Budget authorized by CUCF, the Consultant shall furnish by stage an interim set, i.e. sixty percent (60%) complete, for review, and then a set comprised of one hundred percent (100%) of all required construction contract documents prepared in such manner and form as to enable CUCF to award them under applicable law. Generally, these construction contract documents shall include, but not be limited to, the following:

(a) Final designs, complete and detailed drawings and specifications, a detailed cost estimate for the contract(s) data necessary for preparation of the necessary bid information, bid forms, the conditions of the contract and the form of construction contract, all satisfactory to CUCF. All required alternates shall be provided.

(b) The equipment shown on the construction documents shall include such fixtures or appliances as shall become a fixed part of the Project and as are essential to render the Project fit for the use intended. The Consultant shall also plan and provide for adequate and proper space for movable equipment and all necessary connections thereto, as set forth in the program.

(c) Schedules as referred to in Part I.

5.1 The construction documents and final bid documents:

(a) The construction documents shall be complete by stage, i.e., at sixty percent (60%) and at one hundred percent (100%), incorporating all comments from the previous design review, with all drawings finished at the one hundred percent (100%) stage so that no additional data, changes or information are required, and with all specifications completed so that no additional data, information or changes are required. The 100% submitted construction documents shall be reviewed by CUCF. The final Bid Set (documents) shall incorporate all comments on the 100% construction documents;

(b) The final Bid Set (documents) shall be fully coordinated and, at the one hundred percent (100%) Bid Document stage, biddable and constructible for CUCF’s contractor, and include for the stage all architectural and engineering drawings, plot plans, all floor plans, sections, elevations, details, soil exploration data, schedules and other data required for the stage;

(c) Take into account existing Site features and structures, and safely and efficiently integrate the work into existing Site features and structures;

(d) Include all labor, material, and equipment necessary to the work;

(e) Portray work which meets CUCF’s disclosed, demonstrated or documented aesthetic, functional and operational objectives;
(f) Comply with all applicable laws, statutes, building codes, rules and regulations of all governmental, public and quasi-public authorities and agencies designated by CUCF or having jurisdiction over the Project in effect on the date the documents are delivered to CUCF;

(g) Bear the signature and seal of the Consultant at the one hundred percent (100%) stage evidencing full responsibility for all designs and contract documents provided for under this Contract;

(h) Be included with and prepared in accordance with CUCF’s standard construction contract documents, such that they be fit and proper for the purpose intended;

(i) Show all required Site Plans, Floor Plans, Reflected Ceiling Plans, Roof Plans, Elevations, Sections, Schedules, Diagrams, Details and other items as necessary to show all materials and systems required by the Project and to clearly delineate the work required for each contract for construction; and

(j) Include a quality assurance plan for each seismic system and main wind force-resisting system in accordance with the applicable Building Code, for example, that of the State of New York.

5.2 Preparation of Contracts - The Consultant shall, at the direction of CUCF, prepare drawings and specifications appropriate to the stage, and at the one hundred percent (100%) stage to permit the awarding of contract(s) for the construction of the Project. In addition, it may be required to prepare separate contract documents, when necessitated by the requirements and staging of the Project, for elevators, escalators, and equipment, and for demolition, excavation and foundation work. Determination of the type of separate contracts to be awarded shall be made prior to the start of the Final Contract Documents and shall be made by CUCF after consultation with the Consultant. The Consultant shall also prepare necessary documents for various agreed alternate or separate bids which may be required to keep the cost of the Project within budget limits. All contract documents shall be coordinated promptly so as to preclude as far as possible the necessity for changes, adjustments or extra work orders during construction.

5.3 Project documents shall be developed in a digital format specified by CUCF to meet its current AutoCAD drawing standards and guidelines. The Consultant shall furnish to CUCF CAD and PDF drawing files on CD and appropriate exchange media. Prior to commencing CAD work, the Consultant shall obtain from CUCF the CAD requirements relating, but not limited to, AutoCAD version, drawing sheet formats and prototypes (digitized), layers, symbols, fonts, line types, block libraries, and shall follow those requirements.

5.4 Narratives, Drawings and Specifications:

Narratives, drawings and specifications shall be prepared in accordance with CUCF’s Design Submission Requirements document.

5.5 Utility Information

The Consultant shall provide copies of all correspondence and information received from utility
companies regarding required connections and loads for new or modified services.

5.6 Certifications and Approvals

Upon completion of one hundred percent (100%) of all of the documents, the Consultant shall certify to CUCF that all Contract Documents are complete and have been thoroughly checked for constructability, accuracy and for the coordination of all their parts and details and conformity to all applicable laws, ordinances and codes. The Consultant shall obtain all approvals from governmental agencies designated by CUCF and with oversight of the Project, such as the Fire Department, Building Department, and shall perform all work necessary to obtain the necessary Certificate(s) of Occupancy or Certificate(s) of Code Compliance or both.

5.7 Cost Estimates:

The Consultant shall provide a cost estimate at each stage based upon a detailed take-off of labor, materials and equipment, based upon experience and nationally recognized Construction Specifications Institute (CSI) based estimating systems such as R.S. Means® or other generally accepted standard cost estimating system acceptable to CUCF. The cost estimate shall provide quantities, unit costs for materials and equipment, labor units for the installation of the materials and equipment, and wage rates (including base rate, taxes, insurance and fringe benefits) for the installation of the materials and equipment. The cost estimate shall include an appropriate design contingency, bidding contingency, contractor’s overhead and profit, special inspection and testing costs, escalation and change order contingency as directed by CUCF. The estimate shall be prepared using the CUCF-provided “Consultant Cost Estimating Workbook.” Upon prior written approval of CUCF, the Consultant may prepare the estimate in an alternative format, provided the estimate includes at a minimum all information contained in the CUCF-supplied format. The Consultant shall provide a reconciliation with the previous cost estimates and the Construction Cost. The reconciliation shall include an explanation of any variances or overall increases. The cost estimate shall be in the same format as CUCF’s Schedule of Values.

5.8 Schedule of Values:

The Consultant shall develop a schedule of values containing information required by CUCF to be included in the bid documents for each contract for construction. The schedule of values shall be transmitted electronically in a file type, layout and format specified by CUCF.

5.9 Shop Drawings and Submittals:

The Consultant shall develop a definitive list of all shop drawings and submittals required by or necessary to the specifications and the Project, with this complete list to be included in the Bid Documents for each contract for construction of the Project. The list of submittals shall include, without limitation, a listing of all permits, licenses and comparable documents required by those designated by CUCF and authorities having jurisdiction over the Project, such as a certificate of occupancy, MEP permits and balancing reports. The Consultant agrees to develop the contractor’s submittal list and enter submittals in the CUCF-designated Project Management System. In addition to the submittals required by the technical specifications, the Consultant shall include in its list pre- and post-construction submittals: all special guarantees, all warranties, all drawings, all operation-and-maintenance manuals, all permits, all licenses, all turn-over material quantity, all attic stock, all special tool turn over items, all certificates such as a certificate of
compliance, all test results, all CUCF training, and all other close out items required or necessary for each specification section.

5.10 Testing:

The contract documents comprising those submitted by the Consultant at the one hundred percent (100%) stage shall include specifications for testing services as required by CUCF. The testing services shall be provided by an approved laboratory or engineer through a direct contract with CUCF.

5.11 Meetings:

The Consultant shall convene regular meetings on a biweekly basis during both stages and include at a minimum CUCF and its construction manager. The Consultant shall provide all minutes of each meeting to all attendees within seven (7) business days after the date of each such meeting. The Consultant shall prepare the meeting minutes using the CUCF-designated Project Management System.

5.12 Design Reviews:

The Consultant shall provide typewritten responses to all design review comments provided by CUCF and its consultants.

5.13 Code Compliance:

The Consultant shall prepare and provide an updated copy of CUCF’s Code Compliance Form, including any revisions due to changes in Project scope from the Design Development phase.

5.14 Sixty percent (60%) Stage - Within twelve (12) weeks/eighty-four (84) consecutive calendar days or such other date as set forth in the Task Order, after written notice to commence work on the interim set of contract documents, the Consultant shall deliver to CUCF sixty per cent (60%) complete construction documents conforming with all provisions of this Contract. This date so established shall be essential to this Contract.

5.15 One hundred percent (100%) Stage - Within twelve (12) weeks/eighty-four (84) consecutive calendar days or such other date as set forth in the Task Order, after written notice to commence work on the final contract documents, the Consultant shall deliver to CUCF one hundred per cent complete construction documents conforming in all respects with all provisions of this Contract. This date so established shall be essential to this Contract.

SECTION 6 - COORDINATION OF DRAWINGS - Preparation of Composite Drawings: During each phase the Consultant shall coordinate the design of the architectural, structural, plumbing, heating ventilating, air-conditioning and electrical plans and specifications so that interference among and between the several trades on the basis of the design will be avoided. Toward this end, the Consultant shall prepare composite sections, drawn accurately to scale, which shall show the work of all trades in equipment rooms, corridors and all other areas involving the work of more than one trade, including, without limitation, necessary special drawings regarding tight spaces. Drawings of these composite sections shall indicate whether equipment, etc., is to be hung from above or supported from below. These composite drawings shall be complete with the start of the construction bidding phase and included as
part of the contract drawings for each trade, in addition to the regular drawings with their own usual details and sections.

If, in the opinion of CUCF, the drawings are not sufficient in number or content to demonstrate the feasibility of all systems, CUCF reserves the right to require the Consultant to prepare an additional drawing or drawings at no additional cost to CUCF.

Any interference between trades caused by inadequate design or coordination of the contract documents will be the responsibility of the Consultant, and it will be required to prepare, promptly at no additional cost, feasibility of resolving interference found prior to or during the bidding period or during construction.

SECTION 7 - RESPONSIBILITY FOR FINAL CONSTRUCTION COST - The Consultant shall prepare and submit to CUCF for its review, a complete and final estimate, based upon the final drawings and specifications, of all work necessary for the complete construction of the Project. If the CUCF does not approve the Consultant’s final estimate or if the lowest bid of the responsive and responsible bidder for the complete construction of the Project is in excess of the final estimate, the Consultant, to the extent necessary in CUCF's determination to bring the total construction cost of the Project within the approved final estimate, shall, subject to the acceptance of CUCF, revise all or any part of the final contract documents that CUCF may deem advisable, so that the Consultant’s final estimate based upon such revised contract documents does not exceed the CUCF budget for complete construction of the Project. Notwithstanding any other provisions of this Contract, the Consultant shall perform the services required under the preceding sentence as Extra Services.

SECTION 8 - SUBMISSION FOR REVIEW OF FINAL CONTRACT DOCUMENTS - All drawings before being submitted to CUCF for final acceptance, shall bear the stamps of approval and be accompanied by all necessary applications, certificates, or permits of all City, State or Federal agencies having jurisdiction over any phase of the work. Prior to submission to such agencies, the Consultant shall supply CUCF for review purposes with six (6) complete sets of prints of drawings and specifications, together with six (6) copies of the final detailed estimate of cost and construction schedule. Two (2) sets will be returned to the Consultant with the tentative acceptance or comments of CUCF.

8.1 Acceptance of Final Construction Documents. The Consultant shall deliver to CUCF two (2) weeks prior to the date set for advertisement for bids from contractors, the following documents:

(a) Two (2) sets of construction documents as approved by each CUCF-designated or required City and other government agency.

(b) All final drawings revised where necessary to conform to comments by CUCF and bearing all required stamps of approval, including the seal and authorized facsimile of the signature of the Consultant. In addition, furnish one (1) copy of each drawing ready for duplication and for bidding and construction purposes, or as otherwise directed by CUCF.

(c) One (1) copy of the final specifications, bulletins, addenda, etc., shall be submitted in clear legible form, acceptable to CUCF, printed on 8 ½” x 11” white bond paper, properly collated and ready for photocopying or other direct machine-producing processes; one(1) copy shall additionally be submitted in electronic CD format.

(d) One (1) complete set of the final estimates and reproducibles for same, to include:
(1) A summary giving estimated cost for each Division of construction of the Project.

(2) A cost breakdown containing items of work, quantities, unit prices and amount, for each Division. When alterations as well as new additions to existing structures are involved in the same contract, estimates shall be separated accordingly.

(e) Construction Schedule as called for in Part I.

(f) Payment for documents noted in 10.1(b) above will be reimbursed in accordance with Part I.

(g) These documents shall not be deemed to have been accepted by CUCF until CUCF has so notified the Consultant in writing.

SECTION 9 - CONSTRUCTION BIDDING PHASE

9.1 Bid Document Packages

The Consultant shall prepare and supply the necessary original set(s) of Bid Document Packages to CUCF for printing, bidding and eventual award of the contracts. For purposes of this Contract, it is assumed that seven (7) to ten (10) bid packages will be required of the Consultant for each Project. At CUCF’s request, the Consultant shall prepare Bid Document Packages necessary for the Contractor to award early bid packages. Reimbursement for reproductions will be in accordance with the provisions set forth in Part I.

9.2 Bid Questions and Clarifications

The Consultant shall investigate questions posed by the bidders relative to bid document packages or any other questions related to the Project and, after receiving CUCF’s prior written approval, will issue written replies through CUCF to all bidders in the form of addenda.

9.3 Pre-Bid Meetings and Bid Openings

The Consultant shall attend every pre-bid meeting scheduled by CUCF. The Consultant shall be present at all bidders meetings and bid openings for all Projects called for in this Contract. CUCF will notify the Consultant as to the time and place of all bid openings for projects under this Contract.

9.4 Bid Reviews

The Consultant shall assist CUCF and its consultants in reviewing and analyzing the bids, including research into the qualifications and capabilities of the apparent low bidders to determine the capability of the apparent low bidders to fulfill all bid and contract requirements. The Consultant acknowledges that CUCF may direct it to contact the bidders’ references, view representative work, evaluate bid breakdowns, and evaluate the work and the references’ comments in light of the contract requirements. The Consultant shall make recommendations to
CUCF as to the award of the contracts.

9.5 Construction Permits

The Consultant shall prepare and submit to the governmental agencies designated by CUCF and those with jurisdiction all applications and necessary supplemental documents for the initial construction permits and for other permits specified by CUCF in relation to the Project.

9.6 Additional Or Modified Required Services

The Consultant acknowledges that CUCF may require additional or modified Services from time to time, for which the Consultant shall be compensated in accord with Part I of the Contract.

SECTION 10 - CONSTRUCTION PHASE SERVICES

10.1 Administration

10.1.1 The Consultant shall: (i) be CUCF's design representative during construction of the Project; (ii) consult with and advise CUCF on all design and technical matters; (iii) answer questions related to the Construction Documents or the Project; (iv) resolve all differences within and amongst the Construction Documents, and (v) draft for CUCF’s review and execution CUCF’s responses to the Contractor’s correspondence. The Consultant shall supply CUCF timely throughout the duration of the work with copies of all correspondence, reports, comments, transmittals, requests, acted-upon shop drawings, and other submittals, and all other information relating to the Project. The Consultant acknowledges that time is an essential term of this Contract and of each contract for construction, and will perform its Construction Administration Services promptly and expeditiously.

10.1.2 As directed by CUCF from time to time, the Consultant shall convene and conduct progress meetings and all other meetings with those necessary to the progress of the construction. CUCF plans to hold job meetings on a biweekly basis and coordination meetings as required. The Consultant shall prepare detailed minutes of every meeting it conducts and, after obtaining the approval of CUCF to do so, issue the final version to the attendees, including, without limitation, the Contractor, the college representative and other parties designated by CUCF from time to time to receive such minutes. The Consultant shall provide CUCF with the initial draft of minutes of a meeting within two (2) business-days after the date of the meeting. The Consultant shall obtain and maintain a copy of all correspondence pertaining to the Project.

10.2 Interpretations And Clarifications

The Consultant shall render timely written and graphic, as appropriate, interpretations, clarifications and decisions which are necessary or advisable for the proper and timely execution of the work. For example, from time to time the Consultant shall clarify or correct errors in the construction documents and clarify field conditions not covered in the contract drawings or specifications. The Consultant’s interpretations and decisions relating to artistic effect shall be final, if not inconsistent with the contracts for construction.
10.3 **Submittals and Shop Drawings**

10.3.1 In a timely manner, the Consultant shall review, certify, approve, reject or take other appropriate action on, and return all submittals, such as shop drawings, product data and samples. On each submittal that it reviews, the Consultant either shall indicate its acceptance or approval of the submittal or shall indicate the changes to be made for such shop drawings and samples to conform with the contract drawings and specifications. The Consultant shall not accept or approve any submittal unless, and the Consultant shall accept or approve a submittal only in the event, the Consultant finds such submittal conforms with: (i) the Project design concept; (ii) the Construction Documents; (iii) the contracts for construction; and, (iv) CUCF’s approved Construction Cost. The Consultant shall use the CUCF-designated Project Management System to record the dates it receives each submittal from and returns it to the contractor, the findings of the Consultant’s review, and other pertinent information pertaining to each submittal.

10.3.2 After CUCF directs the Contractor to start work, on a monthly basis the Consultant shall submit to CUCF a complete list of all of the shop drawings required for the construction contract. The Consultant shall include in such list the names of the Contractor’s sub-contractors and vendors, titles of shop drawings, the date each drawing is due to be submitted in accordance with approved schedules; in particular for the drawings submitted to the Consultant, the list shall include the dates of issue, receipt, checking, return for correction, re-submission and final approval, and any other information that will provide CUCF with clear information about the status of the shop drawings.

10.4 **Equals and Substitutions**

For convenience, the Construction Documents, whether on the drawings or in the specifications or elsewhere, establish a standard of performance or quality by identifying any material, article or piece of equipment by reference to a manufacturer’s or vendor’s name, trade name, catalog number, the make or otherwise. The Consultant shall promptly, and in accordance with all Project schedule requirements, review and approve, reject or take other appropriate action with respect to each submittal that is a proposed substitution, or “equal,” for any item so identified or any item otherwise required by the construction contract. The Consultant may accept or approve only such proposed substitution in the event, if any, the Consultant determines that such substitution conforms with: (i) the Project design concept; (ii) the performance, the quality and the function of the required item which it will replace, with no loss of performance, quality or function by such substitution; (iii) the durability, maintainability, strength, energy cost, and noise parameters of the required item which it will replace; and, (iv) the cost limitations set by the GMP. The Consultant may neither accept nor approve any proposed substitution that the Consultant determines fails to meet any of these criteria.

10.5 **Testing**

The Consultant shall promptly, and in accordance with all Project schedule requirements, review and evaluate the results of all inspections, tests and written reports required by CUCF and by any governmental entity designated by CUCF or having jurisdiction over the Project. The Consultant shall take appropriate and timely action on test results, including acceptance, rejection, requiring
additional testing or corrective work, or such other action the Consultant deems appropriate. The Consultant shall reject promptly work that does not conform and comply with testing requirements.

10.6 **Special Testing**

The Consultant shall require promptly inspection or testing of any work in addition to that required by CUCF or governmental entities designated by CUCF or having jurisdiction over the Project when such additional inspections and testing are necessary or advisable, whether or not such work is then fabricated, installed or completed. The Consultant shall take appropriate action on all such special testing and inspection reports, including acceptance, rejection, requiring additional testing or corrective work, or such other action the Consultant deems appropriate. The Consultant shall reject promptly work that does not conform and comply with testing requirements.

10.7 **Interpretation Of Construction Documents**

The Consultant shall act as initial interpreter of the requirements of the Contract Documents. The Consultant shall render any assistance that CUCF may require from time to time with respect to any claim or action in any way relating to the Consultant’s services during or subsequent to the design or construction of the Project including, without limitation, review of claims, preparation of technical reports and participation in negotiations, whether before or after it has otherwise completed performance of this Contract, and without any additional compensation therefore.

10.8 **Schedule Management and Update**

10.8.1 From time to time and periodically, the Consultant shall review, analyze, and evaluate the schedule for the construction of the Project and all updates to the schedule, and report its findings to CUCF.

10.8.2 The Consultant shall monitor the progress of the work in all phases and advise CUCF of those events which the Consultant determines may prevent any Contractor from achieving a key milestone. After reaching such a determination, the Consultant shall recommend to CUCF the steps that CUCF may take to mitigate its damages from the expected failure to meet the milestone and the course of action that CUCF may require the Contractor to take in order to meet such milestone.

10.8.3 Determine the cause of and responsibility for any delays and notify CUCF promptly of each such delay. If any Contractor(s) falls more than two weeks behind in their schedule or if the quality of work is not acceptable, the Consultant shall recommend to CUCF the actions to be taken to perform the work properly on time.

10.9 **Visits To The Site, Construction Inspections And Rejection Of Work**

10.9.1 The Consultant shall visit the Project Site with sufficient frequency to familiarize itself with the progress and quality of the work and to inspect the work to determine compliance of the work with:
(i) the Construction Documents, including approved shop drawings and other submittals;

(ii) the Construction Schedule; and,

(iii) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies designated by CUCF or having jurisdiction over the Project.

10.9.2 The Consultant shall attend the Construction kick-off meeting. The Consultant shall attend regular job site meetings with CUCF’s representatives and consultants, the Contractors and others necessary to the subject matter of the meeting.

10.9.3 Each on-site construction inspection shall be conducted by an experienced, qualified representative of the Consultant who is knowledgeable about the Project and competent in each discipline which has trade activities in progress at the time of the inspection. The Consultant shall perform structural observation to the extent such observation is in accordance with the relevant Building Code. Within forty-eight (48) hours after any inspection, the Consultant shall prepare a record of each inspection and enter it in the CUCF-designated Project Management System.

10.9.4 The Consultant shall exercise care and diligence in discovering and reporting to CUCF its findings as a result of each of its visits, including defects and deficiencies in the work, and shall recommend to CUCF appropriate courses of action with respect to such defects and deficiencies, if any. The Consultant shall record in the CUCF-designated Project Management System the results of each visit.

10.9.5 The Consultant shall review promptly the Contractor’s periodic, proposed requisitions for payment, and, if appropriate, adjust each requisition to reflect payment for the progress of the work as of the date of the requisition. The Consultant shall approve for CUCF to pay the Contractor only the sum set forth in a requisition verified by the Contractor when that sum is combined with all sums approved for payment by the Consultant and the cumulative total of these sums is no greater a percentage of the total contract price, i.e., the price bid adjusted by change orders, than the percentage of the work that the Consultant finds to have been completed by the Contractor as of the date of the requisition. The Consultant shall not approve for payment to a Contractor any other sum. In the event the Consultant approves no payment or only a partial payment, the Consultant shall advise CUCF and the Contractor of the reasons for such a determination.

10.9.5.1 The Consultant shall review and evaluate the Contractor’s periodic verified payroll reports and other summaries of actual labor together with appropriate wage rates employed by the Contractor on the Project. The Consultant shall review and evaluate the Contractor’s reports of employing subcontractors who are qualified as minority or women owned business enterprises. Within ten (10) business days after the date on which it receives the Contractor’s payroll report and on which it receives the Contractor’s subcontractor report to which this paragraph refers, the Consultant shall provide CUCF with a report of its evaluation and notice of any inconsistencies with or deviations from the contract requirements.
10.9.6 The Consultant shall disapprove or reject promptly all work that does not comply with:

(i) the Contract Documents, approved shop drawings and other accepted submittals; or

(ii) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies designated by CUCF or having jurisdiction over the Project.

10.9.7 After it reaches any decision to disapprove or reject any work, the Consultant shall notify immediately CUCF and the Contractors, and shall issue a notice of non-compliance using the CUCF-designated Project Management System.

10.9.8 As directed from time to time by CUCF, inspect a designated stage of work to determine its completion status and report in writing to CUCF either:

(1) that all work specified for the stage by the Contract Documents is complete and acceptable in accordance with the Contract Documents; or

(2) that such work is incomplete and specify what additional work must be completed to meet the contract requirements.

Such report shall state that it is made to the best of the Consultant's ability after its review of all relevant information. A similar inspection and report shall be made at the completion of the contract(s).

10.10 Minor Changes, Change Order Requests And Change Orders

10.10.1 The Consultant shall review each field order and change order for its effect on design criteria, shall analyze the required quality and quantity of materials and labor in such orders, and shall make appropriate recommendations to CUCF regarding such orders and their impacts. The Consultant shall analyze the cost, and perform an economic evaluation, of each claim for contract cost adjustment resulting from change orders or field orders, or both, and shall recommend approval or disapproval to CUCF for processing.

10.10.2 The Consultant shall prepare promptly required drawings, specifications and other supporting data as necessary in connection with minor changes, change order requests and change orders.

10.10.3 The Consultant shall execute from time to time, as required by CUCF, any document, for example a final change order, that reflects its approval or disapproval of each such change.

10.11 Construction Completion

10.11.1 When the Contractor believes that the work is finally complete, the Contractor is required to and will notify CUCF and the Consultant that the work is ready for final
inspection. Upon receipt of such notification, the Consultant shall coordinate with CUCF and the Contractor for the joint inspection by the Consultant, the Contractor and CUCF on a date or dates to be fixed by CUCF, such as within thirty (30) to forty-five (45) days prior to the time CUCF is scheduled to take over, use, occupy, operate or accept any part or all of the Project. The Consultant and CUCF acknowledge that the Services related to construction completion are those customarily performed during construction, and that any service performed by the Consultant in excess of that custom shall be compensated as Extra Services.

10.11.2 As directed by CUCF, the Consultant shall inspect a designated stage of work to determine its completion status and report in writing to CUCF either:

(1) that all work specified for the stage by the Contract Documents is complete and acceptable in accordance with the Contract Documents; or

(2) that such work is incomplete and specify what additional work must be completed to meet the contract requirements.

Such report shall state that it is made to the best of the Consultant's ability after its review of all relevant information.

10.11.3 At the Construction Completion inspection, the Consultant shall:

(i) inspect the work;

(ii) determine whether the Contractor has completed satisfactorily all items of work;

(iii) determine whether the installed and completed work complies with (a) the Contract Documents, (b) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies designated by CUCF or having jurisdiction over the Project, and (c) applicable installation and workmanship standards;

(iv) determine whether required inspections and approvals by those designated by CUCF or those having jurisdiction over the Project have been satisfactorily completed;

(v) determine, in consultation with CUCF, whether the work is finally complete;

(vi) specify, review, evaluate and summarize for presentation to CUCF the Consultant’s analysis of all ‘closeout’ data delivered to the Consultant, such as:

(1) operation and maintenance manuals for all equipment and systems, including, without limitation, maintenance check lists, maintenance schedules, and replacement schedules;

(2) complete diagrams and ‘as-built’ drawings of all mechanical, electrical and plumbing systems, including, without limitation, descriptions of each system’s components, with relevant catalog cuts, and of the location of each,
such as switchboards, panels, pumps, air conditioning equipment, fans, air handling equipment, coils, dampers, heating equipment, and ductwork;

(3) complete valve charts of all mechanical systems, such as cooling, heating and plumbing; these charts shall indicate location and function of each main valve in the respective systems;

(4) all available manufacturers’ catalogs, specifications, installation procedures, and replacement parts list for building equipment and architectural products installed under the construction contract;

(5) all permits, licenses and comparable documents issued by governmental entities designated by CUCF or having jurisdiction over the Project and related to CUCF’s authorized use of each component of the Project; and

(6) all warranties, guarantees and related bonds, if any.

10.11.4 If the Consultant determines that the work is not finally complete, the Consultant shall designate or describe in writing the incomplete portions of the work. After the contractor notifies CUCF and the Consultant that the work is complete, the process of the Construction Completion inspection shall be repeated. The Consultant will repeat the process of specifying what work is incomplete and inspecting the nominally completed work until the Consultant determines that the work is finally complete.

10.11.5 The Consultant shall complete CUCF’s Notice of Construction Completion form, including a list of exceptions, if any, and a schedule for their completion.

10.11.6 The Consultant shall assist CUCF as required in the commissioning of the Project, which will be done by others.

10.12 Submittals To CUCF

The Consultant shall provide to CUCF, at the time it submits a signed requisition for or certificate of final payment, all Final Completion close-out documents and one (1) set of record drawings accurately depicting all documented changes to the design, in the form required by CUCF, based upon the as-built drawings and markups submitted by the Contractors, and one (1) set of electronic as-built drawings utilizing the latest release of AutoCAD as directed by CUCF.

10.13 Documentation

The Consultant shall prepare and deliver to CUCF, prior to final acceptance of any identified phase of construction, the operation and maintenance documentation for the respective phase of construction.

SECTION 11 – GREEN AND CLEAN BUILDINGS

11.1 The Consultant shall follow the guidelines for the construction of “Green Buildings”, including guidelines related to New York State Tax Law §19, which created the Green Buildings Tax Credit, and to the United States Green Building Council’s (USBGC) Leadership in Energy and
Environmental Design (LEED™) rating system, in all buildings subject to the requirements of New York State Executive Order 111, issued June 10, 2001. In the event the Consultant finds it impractical to follow any portion or all of such guidelines in the performance of its Services, it shall notify CUCF before it deviates from such guidelines, explain in writing the reasons for its finding that such performance is impractical, and propose to CUCF its alternate Services. The Consultant shall not deviate from these guidelines without CUCF’s prior written acceptance of alternate Services.

11.2 The Consultant shall be required to demonstrate compliance with the New York State Executive Order 111 requirement that a new building achieve at least a twenty percent (20%) improvement in energy efficiency performance relative to levels required by the State’s Energy Conservation Construction Code, as amended. For substantial renovation of an existing building, each renovated building shall achieve at least ten percent (10%) improvement in energy performance.

11.3 The Consultant shall incorporate into all specifications that it develops for new construction and renovation for this Project energy-efficient criteria consistent with ENERGY STAR® and any other energy efficiency levels as may be designated from time to time by the New York State Energy Research and Development Authority (NYSERDA).

11.4 The Consultant shall apply to the USGBC and, as a material term of this Contract, obtain from it under the LEED™ rating system a “Silver” certification of the Project.

SECTION 12 – COMMISSIONING

12.1 The Consultant shall participate and provide services in the Building Commissioning Process as set forth in New York State Tax Law §19, which created the NYS Green Buildings Tax Credit 638, the United States Green Building Council’s LEED™ (Leadership in Energy and Environmental Design) rating system, New York State Executive Order 111 and the CUCF Building Commissioning Guidelines.

12.2 The Consultant shall provide the services of the “designer” as described in the regulations of the State of New York pertaining to the “Green Building Tax Credit,” i.e. 6 NYCRR § 638.8 Commissioning, as supplemented by CUCF in the DASNY Commissioning Guidelines. The Commissioning Engineer shall provide the services of the Commissioning Authority and the respective Contractor(s) shall provide the services of the Commissioning Agent as described in 6 NYCRR § 638.8 Commissioning, as supplemented by CUCF in the CUCF Building Commissioning Guidelines. The Commissioning Authority shall be contracted for directly by CUCF.

12.3 The Consultant shall perform the specific task(s) and provide the specific work product(s) required by 6 NYCRR § 638.8 Commissioning, as supplemented by CUCF in the CUCF Building Commissioning Guidelines. All work shall be performed and completed in full compliance with 6 NYCRR § 638.8 Commissioning, as supplemented by CUCF in the CUCF Building Commissioning Guidelines. The Consultant’s services shall include, but not be limited to the following:

(a) Provide documentation of the Design Intent, the Basis of Design, and full sequences of operation for all equipment and systems;
(b) incorporate and coordinate the commissioning specifications in the construction documents;

(c) monitor and review systems commissioning and related documentation;

(d) review the commissioning plan;

(e) assist with and review pre-functional and functional performance test procedures and test results;

(f) assist with and review start-up, check-out procedures and checklists;

(g) assist with, review, correct, and approve the systems and energy management manual; and

(h) provide in a CD format all systems information as identified in this Contract.

12.4 The Consultant shall coordinate with CUCF, the Construction Manager, the Contractors and the Commissioning Engineer to achieve the successful commissioning of the Project systems.

12.5 Retro-Commissioning

In retro commissioning, the commissioning firm should be responsible for the following tasks:

- Thorough review of the construction documents, shop drawings, submissions, balancing reports, and control sequences in coordination with the project team.
- Conduct thorough field survey of the installed HVAC and BMS systems.
- Perform all required field tests of the HVAC equipments, major accessories, and controls.
- Prepare “as built” one line schematic drawing(s) that shows all the major equipment and components of the HVAC system including their control devices and interlocks.
- Submit a Due-Diligence report that
  1. Systems have been completed in accordance with the construction documents and that the systems are performing in accordance with the design intent and any additional owner requirements.
  2. Identification and discussion of any substitutions, compromises or variations between the final design intent, contract documents and 'installed' conditions.
  3. A description of components and systems that exceed the design intent and any additional owner's requirements, as well as those that do not meet the requirements and why
4. A summary of all issues resolved and unresolved, and recommendations for resolution
   • Re-commissioning of the system after the deficiencies are corrected as recommended, and preparation of the final commissioning report and amended/updated “As-Built” drawing(s) and specifications.

[END OF THIS SECTION]
APPENDIX A

STANDARD CLAUSES FOR ALL

NEW YORK STATE CONTRACTS

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" in this Appendix A refers to any party other than CUCF or the State, whether a Contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State or CUCF 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 previous consent, in writing, of CUCF and the State and any attempts to assign the Contract without CUCF and the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without such consent unless this Contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER’S APPROVAL. In accordance with Section 112 of the State Finance Law and Section 6218 of the Education Law, if this Contract exceeds $15,000 ($20,000 for certain contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this Contract, the State agrees to give something other than money, when the value or reasonably estimated value of such consideration exceeds $10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office.

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

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

6. WAGE AND HOURS PROVISIONS. If this is a public works 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 shall 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.

7. NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Section 139-d of the State Finance Law, if this Contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to CUCF a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this Contract exceeds $5,000, the Contractor agrees, as a material condition of the Contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USCA Section 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 CUCF and the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4).

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall 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 CUCF, 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 State and CUCF 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: (a) the Contractor shall timely inform an appropriate CUCF or State official, in writing, that said Records should not be disclosed; and (b) said Records shall be sufficiently identified; and (c) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect CUCF’s or the State’s right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

   a) Federal Employer Identification Number and/or Federal Social Security Number.

      All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency shall include the payee's identification number, i.e., the Contractor's, seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on his invoice or New York State standard voucher, shall give the reason or reasons why the payee does not have such number or numbers.

   b) Privacy Notification.

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

      ii) The personal information is requested by CUCF. The information is maintained in New York State's Central Accounting System by the Director of State Accounts, Office of the State Comptroller, AESOB, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law, if this Contract is: a) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting agency (Section 213 defines CUCF as a contracting agency) is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or b) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or c) 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:

      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, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination and rates of pay or other forms of compensation;

b) at the request of the contracting agency, 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 State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b" and "c" above, in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: a) work, goods or services unrelated to this Contract; or b) employment outside New York State; or c) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or Subcontractor with the requirements of any Federal law concerning equal employment opportunity which achieves the purpose of this section. CUCF shall determine whether the imposition of the requirements of the provisions hereof duplicates or conflicts with any such Federal law and if such duplication or conflict exists, CUCF 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 Governor's Office of Minority and Women's Business Development pertaining hereto.

A directory of New York State Certified minority and women-owned business enterprises is available from:

Department of Economic Development
Minority and Women’s Business Development Division
30 South Pearl Street
Albany, New York 12245
Tel. 518-292-5220
http://www.empire.state.ny.us

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

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

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

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

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

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law Sec. 165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or CUCF. 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.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles [as described in §165 (5) State Finance Law], and shall permit independent monitoring of compliance with such principles.

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

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 State;

(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 State upon request; and

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

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a state 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 amendments (Chapter 684, Laws of 1994) require that they be denied contracts which they would otherwise obtain. Contact the Department of Economic Development, Division for Small Business, 30 South Pearl Street; Albany New York 12245, for a current list of states subject to this provision.

22. PURCHASES OF APPAREL AND SPORTS EQUIPMENT. In accordance with State Finance Law Section 162 (4-a) and State Finance Law Section 165, subdivision 7, CUCF and the State shall not purchase any apparel or sports equipment from any vendor unable or unwilling to certify that: (a) such apparel or sports equipment was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hour laws and workplace safety laws; and (b) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with CUCF or the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized for this contract by the bidder.

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APPENDIX B

NEW YORK CITY PROVISIONS

Article 1 - All reference in this Contract to the Comptroller of the State of New York shall mean also the New York City Comptroller.

Article 2 - CONDITIONS PRECEDENT - This Contract shall neither be binding nor effective unless:

a) Approved by the Mayor pursuant to the provisions of Executive Order No. 42, dated October 9, 1975 in the event the Executive Order requires such approval; and

b) Certified by the Mayor (Mayor’s Fiscal Committee created pursuant to Executive Order No.43, dated October 14, 1975) that performance thereof will be in accordance with the City’s financial plan.

The requirements of this section of the Contract shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this Contract to be effective and for the expenditure of City funds.

Article 3 - CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE FORUM - This Contract shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Consultant, and shall be governed by and construed in accordance with the law of the State of New York.

The parties agree that any and all claims asserted by or against the City arising under this Contract or related thereto shall be heard and determined either in the courts of the United States located in New York City (“Federal Courts”) or in the courts of the State of New York (“New York State Courts”) located in the City and County of New York. To achieve this Contractual purpose and requirement, the Consultant agrees:

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

(b) With respect to any action between the City and the Consultant in Federal Court located in New York City, the Consultant expressly waives and relinquishes any right it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.

(c) With respect to any action between the City and the Consultant in Federal Court located in New York City, the Consultant expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.
(d) If the Consultant commences any action against the City in a court located in other than the City and State of New York, upon request of the City, the Consultant shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Consultant shall consent to dismiss such action without prejudice and may thereafter reinstated the action in a court of competent jurisdiction in New York City.

If any provision(s) of this Article is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

**Article 4 - Evaluation Provision** – The Consultant shall evaluate the performance of the prime construction contractor on this Project by completing the City's construction contractor performance evaluation form. A form shall be completed when fifty percent (50%) of the Contract is vouchered and at substantial completion. The form shall be submitted to the contractor no later than fifteen (15) calendar days after the occurrence of these events.

**Article 5 - Equal Employment Opportunity** - "This Contract is subject to the requirement of Executive Order No. 50 (April 25, 1980) ("E.O. 50") and the Rules and Regulations promulgated thereunder. No Contract will be awarded unless and until these requirements have been complied within their entirety. By signing this Contract, the Consultant agrees that it:

1. will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or affectional preference with respect to all employment decisions including but not limited to recruitment, hiring, upgrading, demolition, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination and all other terms and conditions of employment;

2. the Consultant agrees that when it subcontracts it will not discriminate in the selection of sub-consultants on the basis of the owner's race, color, creed, national origin, sex, age, handicap, marital status, sexual orientation or affectional preference;

3. will state in all solicitations or advertisements for employees placed by or on behalf of the Consultant that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or affectional preference;

4. will send to each labor organization or representative of workers with which it has a collective bargaining Contract or other Contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder; and

5. will furnish all information and reports including an Employment Report before the award of the Contract which are required by E.O. 50, the rules and regulations promulgated thereunder, and orders of the Director of the Bureau of Labor Services ("Bureau"), and will permit access to its books, records and accounts by the Bureau for the purpose of investigation to ascertain compliance with such rules, regulations, and orders.
The Consultant understands that in the event of its non-compliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, such non-compliance shall constitute a material breach of the Contract and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of the Bureau, the Director may direct the imposition by the contracting agency head of any or all of the following sanctions:

(i) disapproval of the Consultant;
(ii) suspension or termination of the Consultant;
(iii) declaring the Consultant in default; or
(iv) in lieu of any of the foregoing sanctions the Director may impose an employment program.

The Director of the Bureau may recommend to the Contracting agency head that a Board of Responsibility be convened for the purpose of declaring a firm who has repeatedly failed to comply with E.O. 50 and the rules and regulations promulgated thereunder to be non-responsible.

The Consultant agrees to include the provisions of the foregoing paragraphs in every subcontract or purchase order in excess of $50,000 to which it becomes a party unless exempted by E.O. from the rules and regulations promulgated thereunder, so that such provisions will be binding upon each sub-consultant or purchase order as may be directed by the Director of the Bureau of Labor Services as a means of enforcing such provisions including sanctions for noncompliance.

The Consultant further agrees that it will refrain from entering into any Contract or Contract modifications subject to E.O. 50 and the rules and regulations promulgated thereunder with a sub-consultant who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder.

PARTICIPATION BY LOCALLY BASED ENTERPRISES IN CONSTRUCTION CONTRACTS AWARDED BY THE CITY OF NEW YORK

1. **Purpose**

The purpose of Local Law #49 (Locally Based Enterprises) and these regulations is to ensure that small enterprises which either conduct business within economic development areas of the City of New York, or employ economically disadvantaged persons receive a greater share of all construction Contracts awarded by the City.

a. This Contract is subject to the requirements of Local Law #49 and the regulations promulgated thereunder. No Contract shall be awarded unless and until these requirements have been complied with in their entirety.

b. Unless specifically waived by the agency head with the approval of ODC, if any portion of a construction contract is subcontracted, not less than ten percent of the total dollar amount of the contract shall be awarded to Locally Based Enterprises ("LBE's"); except that where less than ten percent of the total dollar amount of the contract is subcontracted, such lesser percentage shall be so awarded.

2. **Verification of Contractor Compliance**
The Consultant shall perform the following procedures with regard to Contractor compliance of the LBE Program.

a. The Consultant shall design the contract to maximize opportunities for subcontracting.

b. For each contract it prepares contract documents for, the Consultant shall determine the percentage of work suitable for subcontracting.

c. Contract documents shall identify which items of the contract, if any, are suitable for subcontracting, and the estimated value of each such item.

d. The C.U.N.Y. LBE liaison shall distribute to the Consultant, DDCM Project Manager and Campus Engineering Audit Officer a list of LBE sub-contractors that have been identified by the prime contractor for use on the Project. The Consultant shall notify the LBE liaison officer of all sub-contractors working on the site.

e. As the work progresses, the LBE liaison shall periodically telephone all LBE's identified by the prime contractor to verify that they are on the job, and advise the Consultant.

f. The Consultant shall conduct on site reviews of the contractor's compliance with the LBE requirements. Such review may include interviews, visits to the actual construction site, and an inspection of any records relevant to the contract's performance. There shall be such visits and reports of each visit at least three time during the term of the subcontracts; a month after work begins, at the mid-point, and during the month the work is scheduled to end. The agency shall investigate all significant variances between the reports.

[the following space intentionally left blank]
Appendix C

C.1 Designated Categories of Work

C.2 Project Team

C.3 CUCF Certificate of Insurance Form

C.4 EEO Standard Language
APPENDIX C.1

DESIGNATED CATEGORIES OF WORK

_______________________________, the Consultant, is authorized to provide Design Services in the following Categories of Work on an “as-needed” basis, by Task Order, as assigned by CUCF, at any designated CUNY site. See Part II, Section 1.1 for a description of each Category of Work.

☐ A. Architectural Design Services

☐ B. Building Envelope Design Services

☐ C. High Performance Design Services

☐ D. Historic Preservation Design Services

☐ E. Landscape Design Services

☐ F. Signage and Interpretation Design Services
APPENDIX C.2

PROJECT TEAM

The Consultant’s proposed Project Team submitted in response to the Request for Qualifications for this Contract follows below.

(See Below)
APPENDIX C.3

CUCF CERTIFICATE OF INSURANCE FORM

[the following space intentionally left blank]

(See Next Page)
### CITY UNIVERSITY CONSTRUCTION FUND ("CUCF")

**A Consultant/Construction Manager Form of Certificate Shall Comply with this Form**

**CERTIFICATE OF INSURANCE**

<table>
<thead>
<tr>
<th>CONTRACT NAME:</th>
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<td>PRODUCER:</td>
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<td>INSURED:</td>
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**COMPANIES AFFORDING COVERAGE** (use an additional page if necessary)

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<tr>
<td>B</td>
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**COVERAGES (See Notes 1 and 2)**

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<td>$</td>
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<td>PROPERTY DAMAGE $</td>
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<td>BODILY INJURY &amp; PROPERTY DAMAGE COMBINED $</td>
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<td>EACH OCCURRENCE $</td>
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<td>E.L. DISEASE EACH EMPLOYEE</td>
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<td>AGGREGATE $2,000,000</td>
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<tr>
<td></td>
<td>OTHER</td>
<td></td>
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</tbody>
</table>

**Notes:**
1. See the original document for full details on each coverage.
2. Additional notes may apply to specific sections.
3. Builder's Risk limits may vary according to the contract value.

**Additional Page:**

- Insurance providers
- Additional coverage details
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<th>NAMED INSURED(S) (BUILDER'S RISK INS. - See Note 4)</th>
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<td>(Check all that apply):</td>
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<tr>
<td>□ City University Construction Fund (&quot;CU CF&quot;)</td>
<td>□ City University Construction Fund (&quot;CU CF&quot;)</td>
</tr>
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<td>□ The City University of New York (&quot;CUNY&quot;)</td>
<td>□ The City University of New York (&quot;CUNY&quot;)</td>
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<td>□ The State of New York</td>
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<td>□ The City of New York</td>
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<td>□ DASNY</td>
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</tr>
</tbody>
</table>

NOTE 1: The subscribing insurance company(s), authorized to do business in the State of New York, certifies that insurance of the kinds and types and for limits of liability herein stated, covering the Contract herein designated, including its Article 23, has been procured by and furnished on behalf of the insured Construction Manager and the noted Additional Insureds, with CU CF being an Additional Insured as required by the Contract, and is in full force and effect for the period listed on the front of this Certificate of Insurance.

In addition, the subscribing insurance company(s) certifies that the insurance limits for General Liability Insurance are not amended by deductible clauses of any nature except as has been disclosed to and approved by CU CF; and that coverage is afforded for the insured Construction Manager's obligations under that provision of the contract providing for indemnification of the Indemnitees, including CU CF, named therein. Any exclusion applying to construction or demolition operations on or within fifty (50) feet of a railroad has been voided; and any employer liability exclusion which may otherwise operate to exclude claims for bodily injury asserted by an employee of an additional insured shall be voided.

NOTE 2: Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will mail 30 days advance written notice of same to Director of Procurement Services, The City University of New York, Department of Design Construction & Management, 555 West 57th Street, 11th Floor, New York, New York 10019.

NOTE 3: Builder's Risk Insurance includes all of the named insureds as set forth above, (and where contractually required,____________________________.) as Named Insureds as their interests may appear.

NOTE 4: All references to Named Insureds and Additional Insureds include those entities' respective directors, officers, and employees.

NOTE 5: This certificate is issued to the certificate holder in consideration of the CU CF agreement entered into with the Named Insured. It is understood and agreed that the certificate holder relies on this certificate as a basis for continuing such CU CF agreement with the Named Insured.

AUTHORIZED INSURER/PRODUCER ____________________________

BY ____________________________

(Signature) ____________________________

TITLE ____________________________
APPENDIX C.4

EEO STANDARD LANGUAGE

1. These provisions are required pursuant to New York State Executive Law, Article 15-A, Section 312 and 9 NYCRR Section 540 et seq.

2. Please read this section and sign at the end of this section. Paragraph (3) (a) through (c) constitutes the Consultant’s Equal Employment Opportunity Policy Statement.

3. The New York State Certified Minority-Owned Business Enterprise (MBE) sub-contracting goal of this contract is 7.25%. The New York State Certified Women-Owned Business Enterprise (WBE) sub-contracting goal of this contract is 4.75%. Only the participation of MBEs and WBEs listed in the New York State Certified Directory will count toward meeting these goals. The Directory may be accessed at www.empire.state.ny.us.

4. You must submit a quarterly, or other frequency as set by CUCF, MWBE Utilization Report to the University throughout the life of the Contract, in a format prescribed by CUCF.

5. You must submit a quarterly, or other frequency as set by CUCF, work force utilization report to the University throughout the life of the Contract, in a format prescribed by CUCF.

6. All subcontracts to this Contract shall be subject to the following provisions:

State agencies shall include in all State Contracts and all documents soliciting bids or proposals for State Contracts the following language:

(1) The Consultant and sub-consultants shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, sexual orientation, affectional preference, age, disability or marital status. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(2) Prior to the award of a State Contract, the Consultant shall submit an Equal Employment Opportunity Policy Statement to CUCF within the time frame established by that agency.

(3) The Consultant's EEO Policy Statement shall contain, but not necessarily be limited to, and the Consultant, as a precondition to entering into a valid and binding State Contract, shall, during the performance of the State Contract, agree to the following:

(a) the Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation, affectional preference, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State Contracts.
(b) the Consultant shall state in all solicitations or advertisements for employees that, in the performance of the State Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, sexual orientation, affectional preference, age, disability or marital status.

(c) At the request of the contracting agency, the Consultant shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other contract 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 Consultant's obligations herein.

(4) Except for construction contracts, prior to an award of State Contract, the Consultant shall submit to the contracting agency a staffing plan of the anticipated work force to be utilized on the State Contract or, where required, information on the Consultant's total work force, including apprentices, broken down by specified ethnic background, gender and Federal Occupational Categories or other appropriate categories specified by the Contracting agency. The form of the staffing plan shall be supplied by the CUCF.

(5) After an award of the State Contract, the Consultant shall submit to the CUCF a work force utilization report, in a form and manner required by the agency, of the work force actually utilized on the State Contract, broken down by specified ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the contracting agency.

(Note: The Consultant shall include the language of the above provisions in every subcontract in such a manner that the requirements of the provisions will be binding upon each sub-consultants as to work in connection with the State Contract, including the requirement that sub-consultants shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the Consultant information on the ethnic background, gender, and Federal Occupational Categories of the employees to be utilized on the State Contract.)

________________________  ___________________  ____________  ______
Print Name of Consultant

________________________
Signature of Authorized Representative of Consultant

________________________  ___________________  ____________  ______
Print Name of Authorized Representative of Consultant

________________________  ___________________  ____________  ______
Print Title of Authorized Representative of Consultant

________________________
Date
APPENDIX D

D.1 EEO & MWBE Forms
D.2 NYS Lobbying Law Disclosure Forms
D.3 Tax Affirmation
D.4 Consultant Disclosure Legislation Forms A & B
D.5 NYS Department of Taxation & Finance Form ST-220, CA & TD
D.6 Standard Title Block
APPENDIX D.1

EEO & MWBE FORMS

(See Below)
### NEW YORK STATE CERTIFIED M/WBE UTILIZATION QUARTERLY REPORT: STATE FY 2010 - 2011

#### CUNY STATE CAPITAL PROJECT EXPENDITURES & CUCF CONSTRUCTION AND CONSTRUCTION-RELATED SERVICES CONTRACTS

**Reporting Quarter:** 4/1/10 - 6/30/10  7/1/10 - 9/30/10  10/1/10 - 12/31/10  1/1/11 - 3/31/11

Instructions: For **EACH** CUNY State Capital Project Expenditure or CUCF Construction or Construction-Related Services Contract on which you are the Prime Contractor, complete at least one of these New York State Certified M/WBE Utilization Quarterly Report Forms, as follows:

A. **Prime Contractor is NOT a NYS Certified M/WBE AND Prime Contractor did NOT utilize any NYS Certified M/WBE Vendor on the contract/purchase order/task order during the applicable Reporting Quarter:** Complete the "PRIME CONTRACTOR INFORMATION" section of this form **only** and sign at the bottom.

B. **Prime Contractor is a NYS Certified M/WBE &/OR Prime Contractor utilized one or more NYS Certified M/WBE Vendors on the contract/purchase order/task order during the applicable Reporting Quarter:** Complete & sign a separate form, including both the "PRIME CONTRACTOR INFORMATION" & the "NYS CERTIFIED M/WBE VENDOR INFORMATION" sections of this form, for EACH NYS Certified M/WBE Vendor utilized, including you if applicable, during the Reporting Quarter. If a particular M/WBE Vendor was utilized as a sub-contractor on more than one contract, purchase order or task order, complete a separate form for the M/WBE Vendor for EACH contract, purchase order or task order on which that M/WBE Vendor was utilized. Likewise, if a particular M/WBE Vendor was utilized to provide more than one type of work, product or service on a particular contract, purchase order or task order, complete a separate form for EACH type of work, product or service provided by that M/WBE Vendor on the contract, purchase order or task order. For example, if M/WBE Vendor XYZ provided both security services & cleaning services on a particular contract, purchase order or task order, complete a separate form for M/WBE Vendor XYZ for each of these two services.

#### PRIME CONTRACTOR INFORMATION

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<tr>
<td>Task Order Project #</td>
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<tr>
<td>Prime Contract Start Date</td>
<td><em><strong><strong>/</strong></strong></em>/_____</td>
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<tr>
<td>Industry of the Prime Contract</td>
<td>Construction  Construction Consultant  Services/Consultant</td>
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<td>Vendor Payee ID (Federal ID #)</td>
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<td>Vendor Contractor Status</td>
<td>_____ Prime Contractor *  _____ Sub-contractor/Supplier</td>
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<tr>
<td>Describe the Work, Product or Service Provided by the Vendor</td>
<td>(Note: Only one type of Work, Product or Service may be cited.)</td>
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<td>Vendor NYS Certified M/WBE Status</td>
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<td></td>
<td>Signature _______________________________</td>
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<td>Date <em><strong><strong>/</strong></strong></em>/_____</td>
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### Equal Employment Opportunity

**Work Force Employment Utilization/Compliance Report**

**Contract No.:**

- January 1, 20__ - March 31, 20__
- April 1, 20__ - June 30, 20__
- July 1, 20__ - September 30, 20__
- October 1, 20__ - December 31, 20__

**Reporting Period:**

- January 1, 20__ - March 31, 20__
- April 1, 20__ - June 30, 20__
- July 1, 20__ - September 30, 20__
- October 1, 20__ - December 31, 20__

**Reporting Entity:**

- Contractor
- Subcontractor

**Offeror’s Name:**

**Offeror’s Address:**

**Report includes:**

- Work force to be utilized on this contract
- Contractor/Subcontractor’s total work force

---

**EEO-Job Category**

- Officials/Administrators
- Professionals
- Technicians
- Sales Workers
- Office/Clerical
- Craft Workers
- Laborers
- Service Workers
- Temporary/Apprentices

**Total Workforce**

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<th>Female (F)</th>
<th>White (M)</th>
<th>Black (M)</th>
<th>Hispanic (M)</th>
<th>Asian (M)</th>
<th>Native American (M)</th>
<th>Disabled (M)</th>
<th>Veteran (M)</th>
</tr>
</thead>
</table>

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**Prepared By (Signature):**

**Telephone No.:**

**E-mail Address:**

**Date:**

**Name and Title of Preparer (Print or Type):**

Submit completed form for OGS contract to:

- The City University of New York
- Department of Design Construction and Management
- 555 West 57th Street, 18th Floor
- New York, NY 10019

---

EEO 101
General Instructions: The work force utilization/compliance report (EEO-1) is to be submitted on a quarterly basis during the life of the contract to report the actual work force utilized in the performance of the contract broken down by the specified categories. When the work force utilized in the performance of the contract can be separated out from the contractor's or subcontractor's total work force, the contractor or subcontractor shall submit a Utilization Report of the work force utilized on the contract. When the work force to be utilized on the contract cannot be separated out from the contractor's or subcontractor's total work force, information on the contractor's total work force shall be included in the Utilization Report. Utilization reports are to be completed for the quarters ended 3/31, 6/30, 9/30 and 12/31 and submitted to OGS within 15 days of the end of each quarter. If there are no changes to the work force utilized on the contract during the reporting period, the contractor can submit a written statement of no change or submit a copy of the previously submitted report with the date and reporting period updated.

Instructions for completing:
1. Enter the number of the contract that this report applies to along with the name and address of the Contractor preparing the report.
2. Check off the appropriate box to indicate if the entity completing the report is the contractor or a subcontractor.
3. Check off the box that corresponds to the reporting period for this report.
4. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Contractor's total work force.
5. Enter the total work force by EEO job category.
6. Break down the total work force by gender and enter under the heading 'Work force by Gender'.
7. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the OGS Office of Minority/Woman-Owned Business Enterprise Programs at (518) 473-5212 if you have any questions.
8. Enter information on any disabled or veteran employees included in the work force under the appropriate heading.
9. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

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

WHITE (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
BLACK a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
HISPANIC a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
ASIAN & PACIFIC a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
ISLANDER
NATIVE INDIAN (NATIVE AMERICAN/ ALASKAN NATIVE) a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.
OTHER CATEGORIES
DISABLED INDIVIDUAL any person who: - has a physical or mental impairment that substantially limits one or more major life activity(ies) - has a record of such an impairment; or - is regarded as having such an impairment.
VIETNAM ERA VETERAN a veteran who served at any time between and including January 1, 1963 and May 7, 1975.

* GENDER
OFFICE OF MINORITY/WOMEN-OWNED BUSINESS ENTERPRISE
PROGRAM OPERATIONS

REQUEST FOR WAIVER FORM

INSTRUCTIONS: SEE PAGE 2 OF THIS ATTACHMENT FOR REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS.

Offeror/Contractor Name: ___________________________ Federal Identification No.: ___________________________

Address: ___________________________ Solicitation/Contract No.: ___________________________

City, State, Zip Code: ___________________________ M/WBE Goals: MBE 7.25%  WBE 4.75 %

By submitting this form and the required information, the offeror/contractor certifies that every Good Faith Effort has been taken
to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract.

Contractor is requesting a:

1. MBE Waiver – A waiver of the MBE Goal for this procurement is requested.  Total          Partial

2. WBE Waiver – A waiver of the WBE Goal for this procurement is requested.  Total          Partial

3. Waiver Pending ESD Certification – (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for
certification has been filed with Empire State Development.)  Date of such filing with Empire State Development: ___________________________

PREPARED BY (Signature): ___________________________ Date: ___________________________

SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR’S
ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS
SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 16-A AND 6 NYCRR PART 143.
FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A
FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.

Name and Title of Preparer (Printed or Typed): ___________________________

Telephone Number: ___________________________ Email Address: ___________________________

Submit with the bid or proposal or if submitting after award, for a CUNY contract, submit to:

The City University of New York
Office of Facilities Planning, Construction and Management
555 West 57th Street, 11th Floor
New York, NY 10019

Attn: Michael Feeney

M/WBE 104

*************** FOR CUNY USE ONLY ***************

REVIEWED BY: ___________________________ DATE: ___________________________

Waiver Granted: YES  MBE: ___________________________ WBE: ___________________________

Total Waiver
ESD Certification Waiver
Notice of Deficiency Issued __________________________________________
*Comments: ______________________________________________________________

*Conditional
REQUIREMENTS AND DOCUMENT SUBMISSION INSTRUCTIONS

When completing the Request for Waiver Form please check all boxes that apply. To be considered, the Request for Waiver Form must be accompanied by documentation for items 1 – 11, as listed below. If box # 3 has been checked above, please see item 11. Copies of the following information and all relevant supporting documentation must be submitted along with the request:

1. A statement setting forth your basis for requesting a partial or total waiver.

2. The names of general circulation, trade association, and M/WBE-oriented publications in which you solicited certified M/WBEs for the purposes of complying with your participation goals.

3. A list identifying the date(s) that all solicitations for certified M/WBE participation were published in any of the above publications.

4. A list of all certified M/WBEs appearing in the NYS Directory of Certified Firms that were solicited for purposes of complying with your certified M/WBE participation levels.

5. Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations, or a sample copy of the solicitation if an identical solicitation was made to all certified M/WBEs.

6. Provide copies of responses made by certified M/WBEs to your solicitations.

7. Provide a description of any contract documents, plans, or specifications made available to certified M/WBEs for purposes of soliciting their bids and the date and manner in which these documents were made available.

8. Provide documentation of any negotiations between you, the Offeror/Contractor, and the M/WBEs undertaken for purposes of complying with the certified M/WBE participation goals.

9. Provide any other information you deem relevant which may help us in evaluating your request for a waiver.

10. Provide the name, title, address, telephone number, and email address of offeror/contractor’s representative authorized to discuss and negotiate this waiver request.

11. Copy of notice of application receipt issued by Empire State Development (ESD).

Note:
Unless a Total Waiver has been granted, Offeror/Contractor will be required to submit all reports and documents pursuant to the provisions set forth in the Contract, as deemed appropriate by CUNY, to determine M/WBE compliance.

M/WBE 101 Instructions (6-08)
APPENDIX D.2

NYS LOBBYING LAW FORMS

(See Below)
APPENDIX D.3

TAX AFFIRMATION

The undersigned Proposer or bidder affirms and declares that it is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the Proposer or bidder to receive public contracts except ____________________________

_________________________________________________________

Full name of Proposer or Bidder __________________________________________

Address __________________________________________________________________

City ___________________________ State _________________ Zip Code __________

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

☐ A - Individual or Sole Proprietorship
   SOCIAL SECURITY NUMBER
   __ __ __ __ __ __ __ __ __ __

☐ B - Partnership, Joint Venture or other unincorporated organization
   EMPLOYER IDENTIFICATION NUMBER
   __ __ __ __ __ __ __ __ __ __

☐ C - Corporation or Limited Liability Corporation
   EMPLOYER IDENTIFICATION NUMBER
   __ __ __ __ __ __ __ __ __ __

By: ____________________________________________________________________
   Signature

________________________________________________________________________
   Print Name and Title

1Must be signed by an officer or duly authorized representative of the company.
# APPENDIX D.4

## CONSULTANT DISCLOSURE LEGISLATION FORMS A & B

### FORM A

State Consultant Services - Contractor's Planned Employment  
**From Contract Start Date Through The End Of The Contract Term**

<table>
<thead>
<tr>
<th>Employment Category</th>
<th>Number of Employees</th>
<th>Number of hours to be worked</th>
<th>Amount Payable Under the Contract</th>
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<tbody>
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**Total this page**: 0 0 $0.00  
**Grand Total**:  

Name of person who prepared this report:  
**Title**:  
Preparer's Signature:  
**Date Prepared**:  

(Use additional pages, if necessary)
# State Consultant Services
## Contractor’s Annual Employment Report
### Report Period: April 1, to March 31,

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<th>Contracting State Agency Name:</th>
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<td>Contractor Name:</td>
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<td>Contractor Address:</td>
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<tr>
<td>Description of Services Being Provided:</td>
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### Scope of Contract (Choose one that best fits):
- Analysis
- Evaluation
- Research
- Training
- Data Processing
- Computer Programming
- Other IT consulting
- Engineering
- Architect Services
- Surveying
- Environmental Services
- Health Services
- Mental Health Services
- Accounting
- Auditing
- Paralegal
- Legal
- Other Consulting

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<tr>
<th>Employment Category</th>
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<th>Number of Hours Worked</th>
<th>Amount Payable Under the Contract</th>
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Total this page 0 0 $ 0.00

Name of person who prepared this report: ______________________________________
Preparer's Signature: _______________________________________________________
Title: ____________________________________________________________
Phone #: ____________________________________________________________
Date Prepared: / / 

Use additional pages if necessary) Page of

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APPENDIX D.5

NYS DEPARTMENT OF TAXATION & FINANCE FORM ST-220, CA & TD

This revised law imposes upon certain contractors with regard to contracts awarded pursuant to State Finance Law Article XI, the obligation to certify to the Department of Tax and Finance (DTF) that the contractor, and, to the best of the contractor's knowledge, any affiliates and subcontractors, are registered to collect state sales and compensating use tax, or that the contractor and, to the best of the contractor's knowledge, any affiliates and subcontractors, did not have sales within New York State of tangible personal property or taxable services in excess of $300,000 during the immediately preceding four consecutive sales tax quarters.

The contractor must also certify in writing to the procuring agency that the requisite certification has been made to DTF, or that the certification is not required to be filed, and that the certification is correct and complete. The certification to the procuring agency must be included in the procurement record.

The law provides that before a qualifying contract may take effect, the contractor must be in compliance with the certification requirements of the law. Furthermore, for contracts already in effect, and which provide for a renewal, the contractor must certify, prior to the commencement date of the renewal term, that the contractor has filed with DTF the certification, as required by Tax Law Section 5-a and that the certification is correct and complete.

Applicability of Tax Law Section 5-a

Tax Law Section 5-a applies to all contracts in excess of $100,000 for the purchase by a covered agency of commodities or services, awarded pursuant to Article XI of the State Finance Law. For purposes of determining whether or not a contract value exceeds $100,000, such that the provisions of Tax Law section 5-a would apply, the total cumulative value of the contract, including the original contract award value, and any amendments, extensions, or renewals, as they occur, must be considered. Once the total cumulative value of a contract exceeds $100,000, the law applies regardless of the transactional value of any contract, amendment, extension, or renewal, with one unusual exception that would occur if said amendment, extension, or renewal should result in a reduction in the total contract value to an amount not exceeding $100,000.

The law applies to centralized contracts, including centralized backdrop contracts, in excess of $100,000, as well as agency-awarded backdrop contracts in excess of $100,000 but does not include a purchase by a covered agency of commodities or services with a value in excess of $100,000 based upon a formal mini-bid solicitation pursuant to an OGS centralized or agency-awarded backdrop contract. The law does not apply to grants, intergovernmental agreements, or purchases of commodities or services from a preferred source.
The law provides that there should not be any aggregation of multiple purchases from the same contractor for purposes of determining whether the threshold of greater than $100,000 has been met.1

**Contractor Certification Forms**

Pursuant to Tax Law Section 5-a, contractors will be required to complete, sign, under penalty of perjury, and file with DTF Contractor Certification Form ST-220-TD.

Agencies should direct state contractors to the DTF websites listed below for more information on Publication 223 and ST-220-TD:


A second certification form (ST-220-CA) is required to be provided by the contractor to the procuring agency before a contract may take effect. This certification to the procuring agency, also made under penalty of perjury, states that the requisite (ST-220-TD) certification has been made to DTF and, to the best of the contractor's knowledge, that the requisite (ST-220-TD) certification is correct and complete.

In addition, for all covered contracts that were effective and binding as of April 26, 2006, and which provide for extension or renewal, the contractor must, no later than the day prior to the commencement date of the applicable renewal term, provide certification (ST-220-CA) to the contracting agency that the requisite (ST 220-TD) certification has been made to DTF.

State contractors can access form ST-220-CA at the DTF website listed below:


Contracting agencies should visit the Department of Taxation and Finance's website at [http://www.tax.state.ny.us](http://www.tax.state.ny.us) to obtain the following resources which provide specifics as to the law's requirements:

APPENDIX D.6

#2 - STANDARD TITLE BLOCK

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CONSULTANT ID: CUNY - DDCM
355 West 57th Street - 16th Floor
New York, New York 10019

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SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have executed this Contract:

Consultant:

The Not-To-Exceed Amount of this Contract is $5,000,000.

By: ______________________________________________________________
    (signature)
    Name and Title ______________________________________________________
    (print)
    ____________________________ Date: ________________
    Federal ID No. or Social Security No.

Where the Consultant is a Corporation, add:

ATTEST:

____________________________________________ Secretary

SEAL

**************************************************************************

CITY UNIVERSITY CONSTRUCTION FUND:

By (signature): ___________________________________________________________________
    Iris Weinshall or Howard Altschuler

ACKNOWLEDGMENTS FOLLOW
ACKNOWLEDGEMENT OF PRINCIPAL

State of New York )
)ss.: 
County of ................. )

On the .......... day of ............... in the year .......... before me, the undersigned, personally appeared .........................................................., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_______________________________________
Notary Public

***************************************
ACKNOWLEDGEMENT OF CITY UNIVERSITY CONSTRUCTION FUND

State of New York )
)ss.: 
County of ................. )

On the .......... day of ............... in the year .......... before me, the undersigned, personally appeared .........................................................., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

_______________________________________
Notary Public
Certificate of Fiscal Officer

I hereby certify that there remains unexpended and unapplied a balance of the appropriation or fund described in the foregoing certificate to which this Contract is chargeable sufficient to pay the estimated expense of performing the same, in the Not-To-Exceed Amount of $5,000,000.

Dated this _____________ day of ___________________ 20 ___.

(Print Name)   Howard Altschuler
(Signature)    _______________________________________
(Title)        Deputy Executive Director, CUCF

Approval as to Form & Legal Authority

(Print Name)   _______________________________________
(Signature)    _______________________________________
(Title)        _______________________________________
(Date)         _______________________________________