City University Construction Fund  
CUNY School of Law  
Design and Installation of Artwork  
Request for Qualifications  

Project No. CL-CUCF-03-11  

Issuance Date: Monday, August 15, 2011  
Submissions Due By: Thursday, September 15, 2011
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I. Purpose

The City University Construction Fund (CUCF), on behalf of the City University of New York (CUNY) and the CUNY School of Law is seeking to retain the services of an Artist to design, fabricate and install a site specific art installation as part of the new CUNY School of Law facility in Long Island City, Queens, NY. The purpose of this art project is to create a dynamic and exciting artwork which complements and enhances the ground floor space in the School of Law’s new building. The CUCF provides facilities for the CUNY and supports the educational purposes of CUNY.

II. Introduction to CUNY and the School of Law

The City University of New York (“CUNY” or “University”) is the largest municipal college system and the third largest University in the nation. Founded in New York City in 1847 as the Free Academy, CUNY is comprised of eleven (11) senior colleges, six (6) community colleges, the William E. Macaulay Honors College at CUNY, the Graduate School and University Center, the CUNY Graduate School of Journalism, the CUNY School of Law, the CUNY School of Professional Studies, and the CUNY School of Public Health (“Colleges”), and a central office. The University offers online baccalaureate degrees through the School of Professional Studies and individualized baccalaureate degrees through the CUNY Baccalaureate Degree.

The School of Law is one of City University of New York’s five professional schools and is a premier public interest law school in the country. The School was founded in 1983 and offers a full-time J.D. program to approximately 400 students. The School’s mission is to prepare students to become excellent public-interest attorneys and provide access to the legal profession for members of traditionally underrepresented communities. The School’s motto, "Law in the Service of Human Needs," permeates all aspects of law school life.

III. Project Background

The School of Law, currently located in Flushing, Queens, will be relocated to the first six floors in a 14-story environmentally green building at historic Court Square, Long Island City. The facility will undergo an interior renovation to adapt the commercial training space to academic use. This renovation includes the addition of a library and upgrades to classrooms and technology to reflect the academic needs of the school. The building at 2 Court Square is LEED Gold certified, which means that its construction had a reduced environmental impact and its design increases occupants' health and well-being. The move will give the School nearly 70,000 additional square feet of space, enabling it to offer a new, part-time program.

In 2010, the architectural firm of Kohn Pedersen Fox Associates was retained by CUNY to perform architectural services in connection with the project. Selected drawings from Kohn Pedersen Fox’s Design Development submittal, including floor plans, elevations and sections, will be made available to Short Listed Proposers selected through this Request for Qualifications.
Included as part of this new facility is an art installation intended to create a dynamic and exciting artwork which complements and enhances the ground floor space in the School of Law’s new building. The designers of the project were sensitive to the School of Law’s dedication to public service and social justice and the strong sense of community that exists at the school, and this is reflected in many aspects of the design. This same awareness should be captured and reflected in the artwork commissioned for the space as well.

The location of the art work is on a large wall in the “beacon”, a multilevel space adjacent to a new glass staircase; [design elements meant to serve as the physical heart of the new School of Law. Large panes of glass bathe the space in natural light and planted bamboo frame the top length of the wall, helping to create a tranquil and welcoming environment. The commissioned artwork should complement the natural elements that enhance this space.

The wall is approximately 23 feet wide and 17 feet high and will best accommodate a” two dimensional” work. The total art project budget is $100,000 including design fees, fabrication, delivery and installation costs and all other related fees, sub-consultant costs and material costs.

IV. Project Scope of Work

This Art Project will consist of the following work:

A. Services

Services from the Artist shall include:

- All work required to create, execute and otherwise complete the work of art in the designated location, subject to CUNY approval. The designated location is a flat vertical surface on the ground floor of the new facility that is 23 feet wide and 17 feet high.
- Work with representatives from the School of Law, CUNY, and the Project Architects to create a work of art that reflects the mission of the School and complements the surrounding design context.
- Identification of all construction requirements needed for the Artist’s installation of the art work, including (but not limited to): weight of art work, structural supports, anchoring details, mechanical, electrical and lighting requirements, location on project site, etc. Installation of any base construction work required for the artist to install and connect the art work shall be provided by CUNY.
- Coordination with CUNY’s Architect, Engineer, and Construction Manager for design of the artwork.
- All sub-consultant engineering services and any other services required to complete the design and engineering of the art work itself shall be provided by the Artist and included in the final negotiated fee.

The Artist shall provide all services required to successfully complete the design of the art work in a timely and cost-effective manner. The design shall be fully compliant with applicable Building Codes.
and other regulations pertinent to an educational facility on a public, higher education campus in the City of New York.

B. Fabrication and Installation

At such time as directed by CUNY, the selected Artist will be further required to provide the fabrication and installation of the art work. Services required are as follows:

- Fabrication of the art work, complete and ready for installation.
- Installation of the art work, including all shipping and delivery charges, insurance, installation costs, etc.
- Connections to all base construction and infrastructure provided by the CUNY School of Law 2 Court Square Project (such as structural supports, electrical power, etc.), for the installation of the art work.
- Coordination with CUNY’s Architect, Engineer, and Construction Manager for the CUNY School of Law 2 Court Square Project for all installation and scheduling requirements as enumerated above.

Any engineering required for design, fabrication and completeness of the proposed art work itself, and for connecting and anchoring to the base construction, shall be the responsibility of the Artist.

Project Schedule

The anticipated Project Schedule for the CUNY School of Law 2 Court Square Project and Art Installation is as follows:

- Construction of 2 Court Square Project: Summer 2011 – Spring 2012
- Qualification Submissions due: Thursday, September 15, 2011
- Finalists selected: Late October 2011
- Presentations and Interviews: Early December 2011
- Execution of Contract: January 2012
- Installation of art on site: Spring 2012

This is a fast-tracked project and artist will need to be available to work effectively within an aggressive timeline.

The Project Schedule is based on the availability of project funding. If there is an unreasonable delay in completion of construction of the CUNY Law 2 Court Square Project, the Artist’s fees may be negotiated to reflect the revised schedule.
V. **Evaluation Criteria**

The following Criteria will be used by CUNY to evaluate the submissions to this solicitation.

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<td>Artistic excellence, innovation and originality as represented in past work.</td>
<td>40</td>
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<td>Capacity for working in media and with concepts that are appropriate to the project goals and site.</td>
<td>30</td>
</tr>
<tr>
<td>Experience collaborating with governmental agencies/authorities, project architect(s), and/or other project partners in the successful design, execution and installation of artwork of similar scope and size.</td>
<td>30</td>
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**TOTAL** 100

The selection of short-listed finalists and submission of additional information, including a fee proposal, will be made consistent with applicable laws and procedures. Short-listed finalists will be invited to participate in a Presentation and Interview. The short-listed finalists must provide and present visual materials to adequately and clearly illustrate their proposed art work in terms of design concept, appropriateness to the location, and material to be used. Upon completion of a Presentation and Interview, each short-listed finalist shall be paid a Stipend of $1,500.00 which shall cover all costs incurred responding to this RFQ.

The form of contract that will be utilized is the general form of contract that the City University Construction Fund on behalf of CUNY will execute with the selected Responder. Attached is a draft contract that the selected artist will be required to sign.

VI. **Submissions to this Solicitation**

Artists that wish to be considered for this project should submit three (3) compact disks containing the items listed below to Michael Feeney, Chief of Consultant Contracts, CUNY Office of Facilities Planning, Construction and Management, Procurement Services, 555 West 57th Street, 11th Floor, Room 1140, New York, NY 10019. Submissions must be received in the office no later than 12:00 Noon on Thursday, September 15, 2011:

- Portfolio of NO MORE THAN 6 (six) images of relevant work. Images must be saved as JPEGs. Do not send PDFs. Set image resolution to 72 pixels/inch with LARGEST DIMENSION set to 10 inches (i.e. set HEIGHT of VERTICAL images to 10 inches at 72 dpi, and set WIDTH of HORIZONTAL images to 10 inches at 72 dpi). Do not include any borders with the images. File names must correspond to annotated image list (see below).

- An annotated image list saved as a Microsoft Word document. Do not submit PDFs. Include an image of **at least one project** that demonstrates prior experience with the commissioning process. Examples can range from a design proposal to a completed installation (permanent or temporary) of comparable scale. Clearly identify the following where applicable: Title of Artwork/Project Name, Media/Dimensions, Date of Work, Location, Project Budget, and Commissioning Entity.
Also include a short paragraph describing each project, highlighting those of similar scope and size.

- A signed letter of interest (no more than 1 page) that describes your interest in this project and your general approach to public art projects. Also include a brief description of the overall themes/concepts reflected in your art work.

- A professional resume/CV (limit 2 pages). Please include your full contact information at the top: name, address, phone, email, and website address (if applicable).

VII. General Information

Inquiries: All questions pertaining to this solicitation shall be directed to Michael Feeney, the Authorized Agency Contact, by email to: DDCM.ContractsDept@mail.cuny.edu or postal mail to the address below by 5:00 PM EST on Friday, August 26, 2011. Please place “CUNY School of Law 2 Court Square Artwork Project” in the subject heading of the email or by mail to the address listed in Section VI. above. Answers of general applicability will be issued in the form of an Addendum to this solicitation.

Solicitation and Addenda Availability:

This solicitation, and any Addenda to this solicitation that may be issued by CUNY, are available for downloading at www.cuny.edu/constructionsolicitations. Please periodically check this website for any Addenda to this solicitation. This solicitation, and any Addenda to this solicitation that may be issued by CUNY, are also available for in-person pick-up during regular business hours at the CUNY Office of Facilities Planning, Construction and Management, Procurement Services, 555 West 57th, Room 1140, 11th Floor, New York, NY 10019. Receipt of an Addendum to this Request For Qualifications by a Responder must be acknowledged by submitting an original signed copy of the Addendum with the Artist’s Submission to this RFQ. All Addenda shall become part of the requirements of this RFQ.

VIII. Anti-discrimination and MWBE Program


Note: In fulfilling these goals, under New York State MBE/WBE Law and Regulations, Responders may only use New York State Certified MBEs and WBEs listed in the New York State Directory of Minority and Women-owned Business Enterprises certified pursuant to the Regulations. The Directory may be accessed at: http://www.nylovesmwbe.ny.gov/.

Anti-discrimination Policy

This policy applies to any contracts resulting from this solicitation.
A. Contractors will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members including, without limitation, women, are afforded equal opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignments, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training. The contractor will agree to post, in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this non-discrimination provision.

B. At the request of CUNY, contractors shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the contract with the authority to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status and that such union or representative will cooperate in the implementation of the contractor's obligations hereunder.

C. The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor in the performance of the contract with the CUCF, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status.

D. The contractor will include the provisions of paragraphs A through C of this section in every sub-contract or purchase order in such a manner that such provisions will be binding upon each sub-contractor or vendor as to its work in connection with the contract with the CUCF.

**CUCF and CUNY MWBE Policy**

It is the policy of CUCF and CUNY that New York State Certified Minority and Women-Owned Business Enterprises (MBE/WBE's) shall have the maximum opportunity to participate in the performance of the contract resulting from this solicitation. In the contract, the successful Responder would agree to insure that New York State Certified MBE/WBE's have the maximum opportunity to participate in the performance of the contract. In this regard, all Responders shall take all necessary and reasonable steps as hereinafter defined to insure that New York State Certified MBE/WBE's have the maximum opportunity to compete for and perform on sub-contracts. CUCF and CUNY and its contractors shall not discriminate on the basis of race, creed, color, national origin, sex, sexual orientation, age, disability, or marital status, in the awarding and performance of contracts and sub-contracts.

This language is included to insure that all Responders who enter into any contract with CUNY are aware of their responsibility and the commitment of CUCF and CUNY to see that their MBE/WBE Policy is carried out in all of their business dealings.
The Minority-owned business sub-contracting goal is 9 percent. The Women-owned business sub-contracting goal is 6 percent.

**Article 15-A of the NYS Executive Law**

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 Proposers, Sub-proposers and Suppliers on its procurement contracts.

Information on the availability of New York State Sub-Proposers and Suppliers is available from:

New York State Department of Economic Development  
Division of Small Businesses  
One Commerce Plaza  
Albany, NY 12245  
(Telephone) 518-474-7756

**Contract Provisions**

Under the contract to be awarded through this solicitation the successful Responder would specifically agree that:

A. In the hiring of employees for the performance of services under the contract or any sub-contract hereunder, neither the Responder nor any Sub-consultant or other person acting on behalf of such Responder or Sub-consultant shall, by reason of race, creed, color, national origin, sex, sexual orientation, age, disability, or marital status, discriminate against any person who is qualified and available to perform the services to which the employment relates;

B. Neither the Responder nor any Sub-consultant or other person acting on behalf of such Responder or Sub-consultant shall in any manner discriminate against or intimidate any employee hired for the performance of services under the contract on account of race, creed, color, national origin, sex, sexual orientation, age, disability, or marital status;

C. It shall include the provisions of paragraph A and B of this section in every sub-contract the Responder enters into with respect to the services to be performed hereunder and shall take such action to enforce such provisions of such sub-contract as CUCF or CUNY may direct.

D. Any contractor who willfully and intentionally fails to comply with the minority and women-owned participation requirements of Part 140-145 of the Regulations of the Commissioner of the New York State Department of Economic Development implementation of New York State Executive Law Article 15-A as set forth in the contract, shall be liable to CUCF for liquidated damages or other appropriate damages as specified in the contract, and shall provide for other appropriate remedies on account of such breach. Damages shall be calculated based on the actual cost incurred by CUCF related to CUCF’s expenses for personnel, supplies and overhead related to establishing, monitoring and reviewing minority-and women-owned business enterprise
programmatic goals and Affirmative Action and Equal Opportunity compliance, or the amount stated in the contract as liquidated damages.

E. (a) Subsequent to the award of this contract to a contractor who becomes deficient with regard to its MWBE utilization plan, the contractor may file a complaint with the Director of the Division of Minority and Women-Owned Business Development in the New York State Department of Economic Development (DWMBD Director), pursuant to Executive Law, Section 316 by personal service or certified mail, return receipt requested, provided that the complaint is filed within 20 days following one of the events referred to in sub-paragraphs (1), (2), or (3) of this subdivision. The complaint should state the reasons for the complaint, together with a demand for relief. The compliant shall allege the occurrence of one of the following:

(1) the contractor's receipt of a written determination by CUCF that the contractor is not entitled to a partial or full waiver of the goals established in the contract for participation by certified minority and women-owned business enterprises; or

(2) the contractor’s receipt of a written determination by CUCF that the contractor has not acted in good faith, has failed, is failing, or is refusing to comply with goals; or

(3) 20 days have passed from the date of CUCF's receiving a written request from the contractor, sent by certified mail, return receipt requested, for a partial or total waiver of goal requirements for participation by certified minority and women-owned business enterprises, and no written determination has been issued by CUCF.

(b) Within 20 days of CUCF’s determination that the contractor has not acted in good faith, has failed, is failing, or is refusing to comply with goals for participation by certified minority and/or women-owned business enterprises established in the contract, CUCF may file a complaint with the DWMBD Director, pursuant to Executive Law, section 316, by personal service or certified mail, return receipt requested, accompanied by the reasons for the CUCF’s determination for which the complaint is filed, together with a demand for relief, such as disbarment, damages or fines pursuant to the terms.

(c) A copy of any complaints filed with the DMWBD Director by the contractor or CUCF shall either be personally served or mailed certified mail, return receipt requested, by the party making the complaint to the party against whom the complaint is being filed.

(d) Upon receipt by the DMWBD Director of a complaint, the party against whom the complaint has been filed shall be provided with an opportunity to respond to the complaint. If within 30 days of receipt of the complaint, the DMWBD Director is unable to resolve the complaint to the satisfaction of CUCF and the contractor, the complaint shall be referred to the DWMBD’s hearing officer for a hearing.

(e) Upon conclusion of the administrative hearing, the hearing officer shall submit to the DMWBD Director his or her decision regarding the alleged violation of the contract or the refusal of CUCF to grant a waiver request by the contractor. The decision of the hearing officer with respect to an alleged violation of the contract or the refusal of CUCF to grant a waiver shall be final.
(f) Upon conclusion of the administrative hearing and the rendering of a decision, the hearing officer shall also recommend to the DMWBD Director a remedy, including, if appropriate, the imposition of sanctions, fines or penalties.

(g) The DMWBD Director, within 10 days of receipt of the decision, shall file a determination of such matter and shall cause a copy of such determination to be served upon the contractor by personal service or by certified mail, return receipt requested. The decision of the DMWBD Director shall be final and may only be vacated or modified as provided in Article 78 of the Civil Practice Law and Rules upon an application made within the time provided by such article. The penalties imposed for any violation which is premised upon either a fraudulent or intentional misrepresentation by the contractor or the contractor's willful and intentional disregard of the minority and women-owned participation requirement included in the contract may include a determination that the contractor shall be ineligible to submit a bid to any contracting State agency or be awarded any State contract for a period not to exceed one year following the final determination; provided however, if a contractor has previously been determined to be ineligible to submit a bid pursuant to this section, the penalties imposed for any subsequent violation, if such violation occurs within five years of the first violation, may include a determination that the contractor shall be ineligible to submit a bid to any contracting State agency or be awarded any State contract for a period not to exceed five years following the final determination. The DMWBD Division shall maintain a website listing all contractors that have been deemed ineligible to submit a bid pursuant to this section and the date after which each contractor shall once again become eligible to submit bids.

IX. Deb briefings

A debriefing as to why an Artist was not selected for the award will be provided to any unsuccessful Responder if a request is made in writing within ten (10) business days subsequent to the date of notification of the award designation decision with respect to a Response. The debriefing will be given as soon as practicable thereafter.

X. Representation and Warrantees

All information, descriptions, data, tables, calculations, examples, opinions or assumptions made in connection with this solicitation are made in good faith for information purposes only. The Responder shall not rely on any such information without conducting its own independent research and verification. CUCF, CUNY and its officers, agents and employees make no representations or warranties, including without limitation representations or warranties as to the accuracy of any information, opinions or assumptions contained in this solicitation or otherwise furnished to Responders by CUCF or CUNY, and will assume no responsibility or liability for any errors and omissions contained herein.

XI. Consultant Disclosure Law Requirements

The selected contractor will be required to disclose, by employment category, the number of persons employed to provide services under a contract for consulting services, the number of hours worked and the amount paid to the contractor as compensation for work performed by these employees. This includes information on any persons working under any sub-contracts with the contractor. For further information,
consultants are directed to the New York State Office of the State Comptroller’s Procurement and Disbursement Guidelines (G-Bulletins), Bulletin Number 226, available at:
http://www.osc.state.ny.us/agencies/gbull/g-226.htm

Responders are advised that the ONLY Authorized Agency Contact for ALL matters concerning this RFQ and the individual who also serves as the Procurement Lobbying Act Designated Contact for this RFQ is Michael Feeney, Chief of Consultant Contracts. All contacts shall be sent by email to DDCM.ContractsDept@mail.cuny.edu or by postal mail to the address above. Place “CUNY School of Law 2 Court Square Artwork” in the subject heading of the email/mail.
DRAFT CONTRACT

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 its principal office located at 555 West 57th Street, 10th Floor, New York, New York 10019, and _______________________, a ______________ corporation, with offices located at _______________________________ ("The Artist"), with each also referred to in this Agreement from time to time as “Party” and collectively as “Parties,” agree as set forth herein this ______ day of ______, 2010:

WITNESSETH:

WHEREAS, the CUCF on behalf of The City University of New York has undertaken the construction of (the "Project"); and

WHEREAS, the Project shall include the installation of artwork at the ___________ and __________________

WHEREAS, the Artist has received a stipend of ________________ for making a submission for the Artwork and completing the Presentation and Interview process pursuant to the Request For Additional Information for the Artwork; and

WHEREAS, CUNY has selected the Artist’s preliminary proposal for the ("Approved Proposal"); and desires to continue to retain the Artist to work with CUNY to refine and develop the proposal and provide final designs, fabricate, and install the Artwork, on the terms and conditions set forth in this Contract; and

WHEREAS, the Artist based on the Approved Proposal, the Artist has agreed to provide the additional services and to accept an additional retainer for such additional services; and

WHEREAS, the parties mutually desire to enter into this Agreement to provide for the performance of those additional services;

NOW, THEREFORE, in consideration of the mutual covenants and contracts hereinafter contained, the parties do hereby agree as follows:

ARTICLE 1: CUCF/CUNY. For purposes of this Contract, CUCF and CUNY are used interchangeably.

ARTICLE 2: Project Manager. For purposes of this Contract, the Project Manager ("PM") shall be CUNY’s designated representative. The Project Manager will act as a liaison between the Artist and CUNY and shall review and approve invoices, progress schedules, and the Artist’s performance of his obligations under this Contract.
ARTICLE 3: Scope of Work and Requirements for Performance.
CUCF hereby retains the Artist, and the Artist hereby agrees to perform the work as described in Attachment #1, attached and made a part of this Agreement.

A. In performing the work, the Artist shall:

1. Attend such meetings with CUNY and College staff, the building designers, faculty, and others as CUNY may reasonably direct; including, if requested, public meeting(s) with students, faculty, the community/neighbors and the like to present the designs; at a presentation ceremony; and/or the like concerning the finished Artwork.

2. Supply samples/examples of comparable work by Artist or subcontractor. Responsibilities for fabricating the Artwork as between Artist and subcontractor, if applicable, shall be set forth in Attachment #1;

3. Promptly notify CUNY of any problems encountered in fabricating components of the Artwork that the Artist believes is likely to materially impede the satisfactory and timely performance of the Work or the satisfactory completion of any other activities required to be supervised by the Artist hereunder;

4. Perform the Work in accordance with CUNY approved designs and procedures previously submitted by the Artist; and

5. Complete all Work in accordance with the schedule set forth in Attachment #1 (Scope of Work). Where Attachment #1 indicates that CUNY will give notice to proceed prior to commencing Work, the Artist shall not begin such specified work until CUNY has given such written notice or approval. If Artist proceeds with the Work prior to the written notice to proceed the Artist does so at his/her peril. This includes proceeding from the fabrication phase to the delivery and installation phase as set forth in Attachment #1 of the Contract.

ARTICLE 4: Direction of Work.

All Work of this Agreement shall be performed under the direction and satisfaction of CUNY. CUNY shall be the final arbiter of any and all disputes that may arise including those between the Artist and the Project Manager.

ARTICLE 5: Term of Contract and Time of Performance.

This Contract shall commence on the date it is executed by CUCF, and shall terminate on or before _________. The term may be extended in writing, at the option of CUCF insofar as an extension(s) is necessary to complete the Artwork.
ARTICLE 6: Delivery and Ownership of the Artwork.

A. Delivery

1. The finished Artwork shall be delivered and installed in accordance with the schedule set forth in Attachment #1.

2. Subject to the provisions of this ARTICLE and ARTICLE 7, the delivery and installation schedule may be shortened by:
   a. Mutual written agreement of CUCF and the Artist;

   and may be extended by:

   b. CUCF upon written notice to the Artist.

3. “Substantially complete” and “substantial completion” mean in CUNY’s sole judgment and discretion, the Artwork is sufficiently complete; and the Artist has submitted written certification that the Artwork is substantially completed and ready for delivery and/or, installation, to CUNY’s satisfaction.

4. The submission of an invoice as per Item 2.4 of Attachment #1 shall constitute the required written certification. If Artwork is substantially completed prior to the scheduled or revised date(s) for delivery and/or installation, the Artist shall arrange for secure storage and insurance coverage for the stored Artwork until such time as the Artwork is scheduled for delivery and/or installation. The Artist shall be responsible for all storage and insurance costs.

5. Title to the Artwork shall pass to CUNY upon installation.

6. The Artist, shall, at all times through to final acceptance as defined in Attachment #1, be responsible for safe keeping and maintaining the Artwork free and clear of all liens and encumbrances of any third-parties.

7. The Artist waives any and all rights the Artist may have to claim, hold or place a lien or encumbrance on the Artwork.

B. Ownership

1. After delivery and installation of Artwork is completed, the Artist shall transfer to CUNY one of the original studies, drawings, designs, photographs and models prepared and submitted under the Proposal Agreement and/or this Agreement as determined by CUNY in consultation with the Artist.
CUNY will retain such studies, drawings, designs, etc., for archival purposes. CUNY reserves its rights to retain copies of other work submitted by the Artist under this Contract.

2. Should CUCF terminate this Contract (see ARTICLE 14) for convenience after its review of the Final Design Proposal and/or prior to the progress of the work, CUNY shall return the Final Design Proposal to the Artist, and any rights in the design shall revert back to the Artist. CUNY may retain a copy of any drawings, models, etc. (“copies”) for its records, providing a list of such retained copies to the Artist. Possession of such copies shall not confer any right to utilize any idea, concept or design contained in such copies, upon CUNY to the extent protected by law.

ARTICLE 7: Payment.

A. Compensation

The total cost for the Artwork under this Contract is for an amount not to exceed $100,000.00 (the “Fee”), which includes the $1,500.00 stipend previously paid.

This not-to-exceed maximum amount does not represent a commitment or guarantee on the part of CUCF. This Agreement is subject to the availability of funding as set forth in this Agreement and Attachment #1.

All payments are subject to audit and revision by CUNY, and the New York State Comptroller, for two (2) years during the warranty period identified in ARTICLE 12, Paragraph B. 3.

B. Methods of Payment

1. General. CUCF shall pay and the Artist shall accept the Fee as full and complete compensation for any and all costs, and for all services, time, and effort, spent by the Artist in the performance of the Work as set forth in Attachment #1.

2. Payments. The schedule for submission of invoices is set forth in Attachment #1. After CUNY receives the Artist’s invoice, which must be submitted in accordance with the schedule, CUNY shall review the invoice within a reasonable amount of time and pay the Artist in the following manner:

   a) invoices will be paid in accordance with statutory prompt payment law and policy;

   b) payment shall be made by mail and shall be deemed made when
mailed;

c) CUNY will have the right to withhold or set off from any payment, the amount of any claim CUNY may have against the Artist; CUNY will provide the Artist with written explanation of any such claim, set off or withholding;

d) the parties agree the Artist has the sole responsibility for payment of all fees to any and all subcontractors, assistants and or suppliers that the Artist may hire. Neither the CUCF nor CUNY shall have no liability whatsoever to any third party.

e) Nothing in this Agreement shall, directly or indirectly, create or give to any third party, including Contractors and Subcontractors, Suppliers or other third parties any claim or right of action against CUCF or CUNY.

f) Nothing contained in the Agreement shall create any contractual relations between any Subconsultant, or any other third party and CUCF or CUNY.

ARTICLE 8: Changes In Scope of Work.

A. Changes Increasing Scope

If the Artist believes any work that CUNY has directed the Artist to perform is beyond the Scope of this Contract and should be considered extra work, the Artist shall notify the PM in writing within ten (10) days. CUNY shall review the proposed additional work and render, within thirty (30) days of the date of written notice from the Artist, a determination, which shall not be arbitrary or capricious, as to whether such work constitutes extra work. CUNY’s determination shall be final, conclusive and binding upon the Artist. If the determination is that the work constitutes extra work, the Artist shall be entitled to request additional compensation for the extra work. Such compensation shall be determined by negotiation between CUNY and the Artist, with input from the PM.

B. Changes Decreasing Scope

CUNY shall have the right to reduce the Scope of the Work at any time and for any reason upon written notice to the Artist, specifying the nature and extent of such reduction. In such event, the Artist shall be compensated, according to the payment schedule set forth in Attachment #1, for materials used, materials in transit, delivered, or prepaid which cannot be returned, for nonrefundable deposits, and for Work performed prior to receipt of written notification of the reduction in scope. The Artist shall be compensated for the revised work to be done as determined by CUNY and/or the PM in consultation with the Artist. Any work involving
revision of documents or other change to the Work as a result of scope reduction shall be compensated as a change as provided in this ARTICLE.

C. Change Through Fault of the Artist

No additional compensation shall be paid to the Artist for any change in the plans, drawings, specifications or other documents necessitated by a defect of design or unworkability of details, or because of any other fault or error of the Artist.

ARTICLE 9: Invoices and Audit

A. The Artist shall submit invoices to CUCF, who will review and approve invoices, upon completion of each item for which payment is requested, as set forth in Attachment #1. In each invoice, the Artist shall detail and identify the specific tasks performed; and the PM shall inspect and ascertain satisfactory completion of each item.

B. The Artist shall submit with the invoices detailed supporting documentation for the cost of “significant” items, such as “fabrication” and “installation.” The invoices shall include itemized costs with documentation, if such work is performed: i) directly by the Artist, invoices for materials and labor; ii) by a subcontractor, the subcontractor’s charges and invoices for materials and labor, shall be included with each submission.

C. The Artist shall submit the documentation as justification for the amounts paid to the Artist pursuant to this Contract. If there is a significant difference, as determined by CUCF, between actual costs and the costs that were assumed in determining the amounts to be paid to the Artist, CUCF may require re-negotiation of those amounts.

D. The Artist shall certify that each invoice is accurate. Any such false certification shall be a material breach of this Agreement and shall render the invoice void. CUCF shall be entitled to recover immediately any monies paid on such invoice to the extent of the falsification, terminate the contract, along with any other remedies available to CUCF under Contract or law.

ARTICLE 10: Rights in the Artwork.

A. Except as provided in this Agreement, the Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. 101 et seq. The Purpose of this Agreement is to engage the services of the Artist to produce an original and/or unique work of art. The Artist shall not make any additional exact reproductions of the Artwork or its components or permit others to do so except with the prior written permission of CUNY; permission may be withheld for any reason. This provision does not prohibit the Artist from using images from the Artist’s other artwork in this Project, provided such prior artwork is not used or copied in its entirety.

B. The Artist hereby grants to CUCF and CUNY, and any of its assigns, an irrevocable license to make and/or to permit others to make use of the Artwork or its components without prior consent of the Artist for the following purposes:
1. Noncommercial purposes, which include, without limitation, the following: reproductions including photographs, drawings and other two dimensional and/or holographic reproductions or representations; or the storage and use on a Website owned and controlled by CUNY/College of the Artwork and/or other work produced pursuant to this Agreement for educational purposes, public relations purposes, arts promotional purposes, advertising by CUNY, reproduction in exhibition catalogues, books, slides, photographs; postcards, posters, and calendars; in art magazines, art books and newspapers; in general books and magazines not primarily devoted to art; and slides and film strips not intended for a mass audience. CUNY agrees that there will be no charges or fees in connection with such reproductions for noncommercial purposes. All such reproductions shall contain a reference credit to the Artist and a copyright notice including: Title of the Artwork, copyright, the Artist’s name, and year of creation;

2. Commercial purposes include:

a) Using, licensing or otherwise permitting the commercial use of the Artwork as background for advertisements (for any organization/product/service, involving any media), publications, movies, television, video and/or other types of productions, and/or marketing or entertainment media. These provisions apply to any current media and/or technology that to future forms of yet to be created, media or technology.

b) The right to include the images in any CUNY licensing program, provided the Artist shall be entitled to a royalty of 25% of any net royalties (gross royalties minus credits and expenses) earned by CUNY. The Artist or his/her estate will have the right to review and approve the use of the imagery; such approval shall not be unreasonably withheld. CUNY will maintain records of any income earned directly from commercial use or licensing of the Artwork and will provide, upon request, an annual accounting of such income, to the Artist.

c) Should CUNY receive a proposal to specifically feature the Artwork for commercial use, CUNY will use its best efforts to locate and contact the Artist prior to rendering its decision. CUNY, if possible, will involve the Artist in the discussion and approval of the proposed use, and will request compensation and recognition for the Artist from such proposal representatives.

C. CUCF and CUNY shall have the exclusive perpetual right to use the Artwork as a trademark or service mark and the right to include the Artwork or any of its components for any purpose associated with CUNY’s current or future art programs.

D. CUCF and CUNY shall not be liable to the Artist for any unauthorized use of the Artwork by third parties.
E. The Artist shall use best efforts to give a reference credit substantially in the following form in any public showing of original designs, models or reproductions of the Artwork: “Original Artwork commissioned and owned by CUNY on behalf of Brooklyn College.” The Artist shall not acquire any right to use or reproduce any of CUNY’s intellectual property.

F. Notwithstanding anything to the contrary, the Artist reserves the right to authorize photographic reproductions of the Artwork and other material submitted in connection with the Work of this project, in any print media, for use in any non-commercial, editorial context, including advertisement of the work of the Artist. The Artist may also permit, subject to the rights of CUNY, photographic, filmed, videotaped or other reproductions of the Artwork, and other material submitted in this Agreement, to appear as editorial matter in newspapers, magazines, periodicals, books, motion picture films and/or videotaped films. In connection with such reproduction, the Artist shall use best efforts to arrange the appropriate reference credit as per Paragraph E above.

ARTICLE 11: Display of the Artwork

A. CUNY may, at its expense, in consultation with the Artist, prepare and install at the site where the Artwork is installed, a public notice including the title of the Artwork, the Artist’s name and year of creation.

B. CUNY shall have the right to remove the Work from display at any time for reasons of safety, security or renovation. Since this is a site-specific Work, CUNY will confer with the Artist on any relocation and will consider any reasonable suggestion or proposal by the Artist to relocate the Work. CUNY will consider any proposal presented by the Artist to buy back or provide other method of disposition of any part of the Work that is not relocated on CUNY’s property. In addition, the Artist reserves the right to disassociate him/herself from the Work, if CUNY elects to relocate or modify the Work in any way. CUNY agrees that upon notice to the Artist, the Artist shall have the right of first refusal on the sale of the Work or any portion thereof. The Artist must exercise his right of first refusal by giving CUNY written notice to that effect within forty-five (45) days after CUNY as given written notice to the Artist. The Artist’s failure to timely render notice shall constitute waiver of the Artist’s right of first refusal. This paragraph also applies to substantially complete work that the Artist has delivered to the Site and that is accepted by CUNY but that ultimately is not installed through no fault of the Artist.

ARTICLE 12: Warranties.

A. Proprietary Rights Warranty and Indemnification

1. The Artist warrants that:

   a) All work produced is the result of the original artistic effort of the
b) Unless otherwise consented to by CUNY in writing, the Artwork is unique;

c) Neither the Artwork, nor any other related or similar work produced hereunder nor duplicate thereof, has been accepted, nor shall they be offered, for sale elsewhere without the prior written consent of CUNY, which may be withheld for any reason. Except as provided for in this Contract, the Artist has not and shall not sell any work previously returned to the Artist by CUNY without CUNY’s written consent;

c) the Artwork produced under this Agreement does not infringe upon or violate any trademark, copyright, patent or other proprietary right of any third party;

d) the Artist has clear, unencumbered title to the Artwork including all the material and medium constituting the Artwork;

e) no public official is directly or indirectly interested in this Contract, or in the supplies, materials, equipment, work, labor or services to which it relates or in any of the profits thereof;

f) except as set forth in this Contract, the Artist has, and shall have, no interest, direct or indirect, in the project to which the Artwork relates.

2. In the event of any claims alleging a breach of the Artist’s warranties set forth in Subsection A. 1. of this Article, CUNY shall promptly notify the Artist. The Artist shall indemnify CUNY against any and all loss, cost, expense, including attorneys’ fees, and liability arising out of such claim, whether or not such claim is successful. If requested by CUNY, the Artist shall defend any such claim in the name of CUNY, solely at the Artist’s expense.

B. Warranty of Quality and Condition of Artwork and Indemnification

1. The Artist hereby states and warrants that the design, execution and fabrication of the Artwork, prior to final assembly, shall be undertaken in accordance with the approved Final Design. The Work shall be performed using high standards, as designed, fabricated, and installed; and shall be free of defects in material and workmanship, including free of any defects consisting of “inherent vice” or qualities which cause or accelerate deterioration of the Artwork.

2. The Artist warrants that the Artwork shall be suitable in all respects for the
purpose for which it shall be created hereunder; that reasonable maintenance of the Artwork shall not require procedures in excess of those described in the Technical and Maintenance Record which is to be submitted by the Artist and appended as Attachment #2 and incorporated and made a part of this Agreement; and that the Artist is not aware of any serious flaws or conservation problems in art previously created by the Artist which are composed of similar materials, or where the Artist used fabrication methods similar to methods utilized or to be utilized in the fabrication of the subject Artwork. Further, the Artist shall disclose to CUNY all known or reasonably known potential flaws and conservation problems with the Artwork known to the Artist with reasonable due diligence.

3. The warranties specified in Subsections B.1 and B.2 of this ARTICLE shall continue for a period of two (2) years after final acceptance by CUNY of the Artwork. Should Artwork need repairs, a one (1) year warranty shall run for the repaired artwork, or portion of the artwork, from the date of repair if repair performed in place or from the date the Artwork is reinstalled at the site. The one (1) year warranty shall be continually revived for as long as the defect or conservation problem recurs.

4. The Artist shall indemnify and save CUNY harmless from and against any and all damages and expenses suffered or incurred as a result of the inaccuracy or breach of any of the representations and warranties contained in Subsections B.1 through B.3 of this ARTICLE. In the event of any breach of a warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Artwork), the Artist shall, upon notice from CUNY, promptly cure such breach.

5. For the life of the Artwork, on a continuing basis the Artist shall promptly disclose to CUNY any new or potential and/or actual flaws and/or conservation problems that become known to the Artist.

ARTICLE 13: Maintenance and Repairs.

A. As a condition to final acceptance by CUNY, the Artist shall provide CUNY with a description of the regular required maintenance of the Artwork, by completing Attachment #2 appended to this Contract. CUNY shall reasonably assure that the work is properly maintained and make minor repairs, including, but not limited to, surface abrasions and graffiti removal, and emergency repairs, without the Artist’s approval or consultation, provided such work is: i) performed in accordance with the maintenance criteria and material information provided by the Artist; and ii) subject to the availability of funds for that purpose and priorities for the operation of the CUNY School of Law.

B. CUNY shall determine, after consultation with professional conservators if/when necessary and appropriate the extent of major repairs and restorations to the Artwork. All such repair or restorations are strictly subject to the availability of funds and the requirements and priorities for the operation of the CUNY School of Law. The Artist will be afforded an
opportunity to participate in an advisory capacity in such a decision. To the extent practicable, the Artist may be given an opportunity to assist in the supervision of major repairs/restorations and be paid a reasonable fee for such services. Such event is contingent upon available funding, a contemporaneous written agreement between the parties which shall include such reasonable fee for the Artist’s participation. Should the parties be unable to timely negotiate a reasonable fee, CUNY reserves the right in its sole discretion to undertake such repairs/restoration without Artist participation.

ARTICLE 14: Suspension or Termination of Performance.

A. Suspension of Performance

CUNY may at any time, for any reason, upon ten (10) days written notice, direct the Artist to Stop Work in whole or part under this Contract. Such notice will specify the period during which Work is to be suspended. CUNY will assume all reasonable transportation and storage costs during this Stop Work period. The Artist shall resume work upon the date specified in such notice or upon such other date as CUNY may thereafter specify in writing. The period during the Stop Work Order shall be added to, and thus extend the time for performance. Such Stop Work Order shall not give rise to any claim against CUNY. CUNY may consider, upon clear supporting documentation, an increase in cost the Artist may have incurred as a result of the Stop Work Order.

B. Termination Without Cause

1. Termination by CUCF

CUNY may at any time, and for any reason, terminate this Contract in whole or part upon written notice to the Artist specifying the termination date. In the event of such termination, CUNY direct the Artist to prepare a wrap-up report for review and approval for CUNY. The Artist will be paid for the Work satisfactorily performed up to the termination date. CUNY will determine such amount, after reviewing documentation and negotiation with the Artist. Termination under this Paragraph shall not give rise to any claim against CUNY for damages or for compensation in addition to that provided hereunder.

2. Termination by the Artist

If CUNY rejects the Artist’s Final Design Proposal in whole or in part, or other technical issues related to the Final Design Proposal cannot be resolved, the Project Manager will provide the Artist with a statement of reasons for rejection, and may work with the Artist to develop a revised or new design proposal. If the Artist does not wish to submit a revised or new proposal, the Artist may terminate this Contract for the Artist’s convenience. Termination under this Paragraph shall not give rise to any claim against CUNY for any damages or for any additional compensation to that provided hereunder. The Artist shall have no other right of termination.
C. **Termination for Cause**

In the event that:

1. CUNY, in good faith and fair dealing determines, in its sole discretion that the Artist is in breach of a material obligation under this Contract including, without limitation, delay in the performance of the work beyond the schedule set forth in Attachment #1 or as amended; or

2. The Artist shall become insolvent or bankrupt, or assigns the Contract, without CUNY’s express written permission, or its proceeds for the benefit of creditors, or takes advantage of any insolvency statute or debtor or creditor law, now or hereafter enacted or amended, or if the Artist’s property or affairs shall be put in the hands of a receiver or receivers; or

3. CUNY is of the reasonable opinion that the conduct or reputation of the Artist is such that the interests of CUNY are likely to be impaired or prejudiced; then, CUNY may, upon notice from CUNY to the Artist, specifying grounds for termination, proceed to terminate this Contract in whole or part for cause. The Artist shall have thirty (30) days after such notice to cure the default; otherwise, the Contract shall be terminated effective immediately upon notice to the Artist. In addition to terminating this Contract, CUNY may proceed by appropriate court action or actions or other proceedings, either at law or in equity, to obtain appropriate legal and equitable relief resulting from the breach. In the event that it is determined that CUNY wrongfully terminated this Contract for cause, such termination shall be deemed a termination without cause pursuant to Article 13.B.1, and the Artist’s rights shall be limited to the remedy set forth in that provision.

**ARTICLE 15: Force Majeure and The Artist’s Death and Disability.**

A. **Force Majeure**

Except as otherwise expressly provided, neither party shall be considered in default in the performance of its obligations if such performance is prevented or delayed by any cause, existing or future, which is not within the reasonable, foreseeable, control of that party including, but not limited to, acts of God or the public enemy, fires, explosion, riots, labor disputes, or war. Notwithstanding the foregoing, should any of the Artist’s suppliers, and/or subcontractors fail to perform, such failure shall not excuse the Artist’s performance except to the extent that any such failure is not within the reasonable, foreseeable control of such suppliers and/or subcontractors, or the like including, but not limited to, acts of God or the public enemy, fires, explosion, riots, labor disputes, or war. In the event of such an excused delay, the Artist shall use best efforts to minimize the delay and its effects.
B. The Artist’s Death and Disability

Subject to CUNY’s approval, if the final design for the Artwork has been approved by CUNY and the Artist, for any reason beyond the Artist’s control, is unable to complete the fabrication of the Artwork or oversee the installation of the Artwork due to the Artist’s death or disability, or some other infirmity, the Artist, the Artist’s authorized representative, or the Artist’s Estate shall use their best efforts to have the Artwork fabricated and the installation overseen by another qualified person at no additional charge to CUNY. In the alternative, CUNY shall have the option to assume responsibility for fabrication and overseeing the installation of the Artwork. In such circumstances:

1. The Artist/the Artist’s representative/estate shall transfer full ownership of and physical possession of all Work in progress to CUNY; and shall convey any other materials and information, which CUNY may need in order to assume and complete such responsibilities for this Project;

2. At CUNY’s option, the Artist/the Artist’s representative/estate shall assign to CUNY all contractual and related rights that are held by the Artist/the Artist’s representative/estate in connection with the fabrication and installation of the Artwork;

3. The Artist/the Artist’s representative/estate shall reimburse CUNY for any funds that were advanced by CUNY for fabrication and overseeing the installation to the extent the funds have not been or will not be used by the Artist or the Artist’s representative for their intended purposes;

4. The cost to CUNY for such fabrication and overseeing installation shall be deducted from any outstanding monies owed to the Artist under this Contract for fabrication and overseeing the installation of the Artwork in accordance with Attachment #1.

ARTICLE 16: Non-Patent Requirements.

The Artist shall not, without the prior written approval of CUNY, specify for the Artwork or necessarily imply the required use of any article, product, material, fixture, process or form of construction the use of which is covered by a patent or which is otherwise exclusively controlled by a particular firm or group of firms or other third parties.

ARTICLE 17: Indemnity and Release.

The Artist shall be liable to and hereby agrees to indemnify, defend and hold harmless CUCF, CUNY, their Trustees, officers, agents and employees, consultants and contractors (collectively the Indemnitees) against any and all claims against any of them for personal injury or wrongful death or property damage caused by an error, omission or act of or of the failure to act, on behalf of the Artist or an employee, subcontractor,
supplier or other agent of the Artist in connection with this Contract.

The Artist, in consideration of the mutual covenants, set forth in this Agreement, hereby assumes all risk of personal injury, to himself, his agents or his representatives [(including death)] and/or damage to the Artist’s personal property which arises out of or in connection with this Contract and that are sustained on the premises of CUNY. The Artist and the Artist’s heirs, next of kin, successors and assigns, hereby release and forever discharge the Indemnitees from any and all liability for such injury (including death) or damage, which may be suffered by the Artist while on such premises, except to the extent caused by the negligent or intentional acts of the Indemnitees.

ARTICLE 18: Insurance.

A. Within ten days of the date hereof, the Artist shall provide CUNY with Certificates of Insurance and copies of the insurance policies required hereunder evidencing compliance with all requirements contained in this Contract. Such Certificates and policies shall be of form and substance acceptable to CUNY. Acceptance and/or approval by CUNY does not and shall not be construed to relieve the Artist of any obligations, responsibilities or liabilities under the Contract.

B. All insurance required by the Contract shall be maintained with insurance carriers authorized to do business in New York, and acceptable to CUNY; shall be primary and non-contributing to any insurance or self insurance maintained by CUNY; shall be endorsed to provide written notice be given to CUNY, at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice, evidenced by return receipt of United States Certified Mail; shall be sent to:

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

Each insurance carrier must be rated at least “A-“ Class ”VII” in the most recently published Best’s Insurance Report. If, during the term of the policy, a carrier’s rating falls below “A-“ Class ”VII”, the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to CUNY’s Insurance Office and rated at least “A-“ Class ”VII” in the most recently published Best’s Insurance Report.

C. The term Indemnified Parties, whenever, referred to in this Contract, shall consist of the following parties including their officers, employees and agents, and shall be added as additional insureds to the insurance policies:
The Artist shall indemnify and save harmless the Indemnified Parties, as set forth above, to the fullest extent permitted by law, from loss and liability upon any and all claims and expenses, arising out of any plans, designs, drawings, or specifications furnished by Artist in the performance of this Contract.

D. The Artist shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject. CUNY must approve deductibles and self-insured retentions. Such approval shall not be unreasonably withheld.

E. The Artist shall require his subcontractors and subconsultants to carry insurance that satisfies the limits and provisions provided herein. In case any damage shall occur to any part of the College or any CUNY structures (except only for the removal of such parts thereof as may be specifically required by this Contract to be removed) on account of the Work, and the Artist is responsible therefore, CUNY shall have the right to cause such damage to be repaired and to charge the expenses of such repairs to the Artist. In the event that such repair work is performed by the College or CUNY, CUNY shall deduct the amount of such expense that may be incurred in repairing any such damage from any monies due or to become due to the Artist under this Contract.

F. The Artist shall cause all insurance to be in full force and effect as of the commencement date of this Contract and to remain in full force and effect throughout the term of this Contract and as further required by this Contract. The Artist shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

G. Not less than thirty (30) days prior to the expiration date or renewal date, the Artist shall supply CUNY with updated replacement Certificates of Insurance, and amendatory endorsements.

H. The Artist, throughout the term of this Contract, or as otherwise required by this Contract, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

1. Commercial General Liability Insurance with a limit of not less than $500,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01 or a substitute form providing equivalent coverage and shall cover liability
arising from premises operations, independent Consultants, products-completed operations, broad form property damage, personal and advertising injury, cross liability coverage, liability assumed in a contract. If such insurance is on an aggregate limit, it shall apply separately on a per job, per location basis;

2. Workers Compensation, Employers Liability, and Disability Benefits where required by law; and

3. All Risk Commercial Property Insurance for loss or damage, to any property of CUNY held in the Artist’s care, custody and/or control. Such coverage shall be in an amount not less than the Full Insurable Value of the property held in the Artist’s care, custody and/or control. The Commercial Property Insurance Policy shall name CUNY as Loss Payee.

I. Waiver of Subrogation. The Artist shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer’s right of subrogation against CUNY, or, if such waiver is unobtainable (i) an express Contract that such policy shall not be invalidated if the Artist waives or has waived before the casualty, the right of recovery against CUNY or other such additional insureds identified above or (ii) any other form of permission for the release of CUNY or other such additional insureds identified above.

ARTICLE 19: Risk of Loss.

The Artist shall bear all risk of loss or damage to the Artwork until installation and acceptance by CUNY. The period in which the Artist has the risk of loss or damage shall include any period in which CUNY has suspended performance hereunder pursuant to ARTICLE 13, entitled “Suspension or Termination of Performance,” or during which the Artist is awaiting a Notice to Proceed with the next portion of the work from CUNY. Where CUNY causes such loss, damage, or destruction, the Artist shall reconstruct or remake such portion of the Artwork but shall receive a fee, the amount of which shall be fixed in negotiation with CUNY.

ARTICLE 20: Publicity.

The Artist shall consult with the Project Manager and CUNY with regards to making public any information wholly or partly related to the Artist’s work under this Contract. This provision shall not be construed to prohibit the Artist from making public the Artist’s thoughts concerning the Artist’s creative processes in connection with the work under this Contract, but rather that it be done in consultation with CUNY.

ARTICLE 21: Final Payment.

Acceptance by the Artist of the final payment shall operate as and shall be a complete release to CUCF and CUNY for any and all claims of liability to the Artist or the Artist’s
successors for anything performed or furnished under the terms and provisions of this Contract, except for those claims expressly reserved in writing upon accepting final payment.

ARTICLE 22: Limitations of Actions and Law to Govern.

No action shall lie or be maintained against CUCF or CUNY on any claim based upon this Contract, or arising out of this Contract, or out of anything in connection with this Contract unless such action shall be commenced within four (4) months from the date of expiration or earlier termination of this Contract. Any justiciable dispute arising hereunder shall be brought in a federal court of competent jurisdiction located in the City of New York or a state court of competent jurisdiction located in the County of the New York. The laws of New York shall apply to this Contract.

ARTICLE 23: Expertise.

The Artist represents that the Artist, the Artist’s employees, and the Artist’s subcontractors possess the professional and technical expertise necessary to perform the Contract Work.

ARTICLE 24: Subcontracting and the Artist’s Assistants.

None of the significant original, unique, artistic services required shall be subcontracted or assigned without CUNY’s prior written approval as to the subcontractor/supplier. A copy of any proposed subcontract shall be submitted to CUNY, with the application for such consent. This provision shall not prohibit the Artist from using assistants to execute the Artist’s design without CUNY’s prior approval.

ARTICLE 25: No Personal Liability.

No officer or employee of CUCF or CUNY shall be personally liable under or by reason of this Contract or any of its provisions.

ARTICLE 26: Insertion of Required Provisions.

It is the purpose, intent and understanding of the parties to this Contract that each and every provision of New York State and local law required to be inserted in this Contract shall be and 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 upon notice by either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party.

ARTICLE 27: Notices.

The Artist hereby designates the Artist’s offices at __________________________ and CUNY hereby designates its offices at Chief of Contracts, CUNY- FPCM 555 West 57th
Street 11th floor, New York, New York 10019 as the places where all notices, directions, communications, or payments to the Artist or CUNY may be delivered or to which they may be mailed. A notice or direction must be in writing. All notices or directions to CUNY shall be addressed to: Chief of Contracts, CUNY- FPCM 555 West 57th Street 11th floor, New York, New York 10019 and a copy to CUNY’s Project Manager, ________________, CUNY- FPCM 555 West 57th Street 10th floor, New York, New York 10019. Invoices shall be submitted in accordance with Article 9 herein.

Sufficient service of notices shall be made, if delivered by hand, upon actual delivery of any such notices or directions to the stated places; or if delivery by mail, three (3) days after deposit of them in a postpaid wrapper addressed thereto, in any post office box regularly maintained by the United States Postal Service. Such addresses may be changed at any time by notice in writing delivered by one party to the other. The Artist shall, as often as needed and in perpetuity, notify CUNY at the address set forth above, of any changes of the Artist’s address. If the Artist does not notify CUNY of changes of address, CUNY will have no obligations with respect to Articles 10B, 10D, 11B or 13B, or any other notification obligations herein.

ARTICLE 28: No Waiver.

No failure or delay on the part of the parties hereto to exercise any right, power, or privilege hereunder or under any instrument executed pursuant hereto shall operate as a waiver nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise thereof or the exercise of any other right, power, or privilege. All rights, powers, and privileges granted herein shall be in addition to other rights and remedies to which the parties may be entitled at law or in equity.

ARTICLE 29: Entire Contract.

No Contracts, oral or written, express or implied, have been made by any party, except as expressly provided herein. All prior negotiations are superseded by this Contract. This Contract and any duly executed amendments constitute the entire Agreement between the parties. This Contract shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto.

ARTICLE 30: Employees and Subcontractors.

The Artist shall insure that The Artist’s employees and subcontractors engaged in Work are informed of and bound by all relevant provisions of this Contract.

ARTICLE 31: Funds Restriction.

The Artist has not and shall not apply for additional funds, either public or private, to be used for this art project without prior consultation with and approval of the Project Manager and CUNY. The Artist shall send a copy of any such proposed request to the
Project Manager.

ARTICLE 32: Relationship of The Artist to CUNY/CUCF.

The relationship of the Artist to CUNY is that of an independent contractor. In accordance with the Artist’s status as such, the Artist covenants that the Artist, the Artist’s employees, and the Artist’s subcontractors shall conduct themselves consistent with such status; shall neither hold themselves out as nor claim to be an officer or employee of CUNY; and shall not, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of CUNY including, but not limited to, Workers’ Compensation Coverage, unemployment insurance benefits, Social Security coverage, or retirement membership or credit.

ARTICLE 33: Survival.

The understandings contained in the following ARTICLES shall survive the termination of this Contract, even if such is occasioned by CUNY or CUNY’s breach or wrongful termination: ARTICLE NINETH entitled “Invoices and Audit”; ARTICLE TENTH entitled “Rights in the Work”; ARTICLE ELEVENTH entitled “Display of the Artwork”; ARTICLE TWELEFTH entitled “Warranties”; ARTICLE THIRTEENTH entitled “Maintenance and Repairs”; ARTICLE SEVENTEENTH entitled “Indemnity and Release”; ARTICLE TWENTIETH entitled “Publicity”; ARTICLE TWENTIETH-FIRST entitled “Final Payment”; ARTICLE TWENTY-SECOND entitled “Limitations of Actions and Law to Govern”; ARTICLE TWENTY-FIFTH entitled “No Personal Liability”; ARTICLE TWENTY-SEVENTH entitled “Notices”; and ARTICLE THIRTY-SECOND entitled “Relationship of the Artist to CUNY/CUCF”.

ARTICLE 34: Labor Law.

It is hereby agreed that all applicable provisions of the Labor Law of the State of New York shall be carried out in the performance of this Contract.

ARTICLE 35: Entire Contract/Amendment.

This Contract constitutes the entire Contract between the parties and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto.

ARTICLE 36: No Arbitration.

Disputes involving this Contract, including the breach or alleged breach thereof, shall not be submitted to binding arbitration but must, instead, be heard in a court of competent jurisdiction in the State of New York.
ARTICLE 37: Service of Process.

The Artist hereby consents to service of process upon him/her by registered or certified mail, return receipt requested. Service hereunder shall be complete upon the Artist's actual receipt of process or upon CUNY's receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Artist must promptly notify CUNY, in writing, of each and every change of address to which service of process can be made. Service by CUNY to the last known address shall be sufficient. The Artist shall have thirty (30) calendar days after service hereunder is complete in which to respond.

ARTICLE 38: Interest of Others.

Nothing in this Contract shall be construed to give CUNY or any person other than the Artist any legal or equitable right, remedy or claim. This Contract shall be held to be for the sole and exclusive benefit of CUNY and the Artist. This Agreement is solely for the benefit of the University, on behalf of the College, and the Artist. No other person or entity is intended to receive any benefit under this Agreement or any of its provisions, or as a result of its performance, nor may any other person or entity claim any rights hereunder.

ARTICLE 39: Severability.

If any term or provision of this Contract or the application thereof to any person or in any circumstance shall to any extent be determined to be invalid or unenforceable, the remaining provisions of this Contract, or the application of such terms or provisions to persons or circumstances other than those as to which it is found to be invalid or unenforceable, shall in no way be affected thereby, and each term and provision of this Contract shall be valid and binding upon the parties, and enforced to the fullest extent permitted by law.

ARTICLE 40: Assignment by CUCF.

CUNY may transfer and assign any and all of its rights and obligations under this Contract, including transferring and assigning its rights to the Artist's performance of any portion of the services provided for herein, together with CUCF's obligations and rights pertaining to such portion of services, to any partnership, the Artist, corporation, governmental agency or department or other entity which CUCF determines has undertaken or will undertake any part of the Contract. CUCF shall give the Artist written notice of any such transfer and assignment. Such transfer and assignment shall relieve CUCF of any further liability or obligation hereunder.

ARTICLE 41: Additional Obligations.
The provisions of Attachments 1 and 2 are incorporated by reference and constitute a binding part of this Contract. The Artist agrees to comply therewith.

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and year first above written, to be effective as of the day and year first above written.

THE ARTIST

BY: ________________________________                  _____________

Date

EIN/SSN ____________

CITY UNIVERSITY CONSTRUCTION FUND

BY: ________________________________

Iris Weinshall/Howard Altschuler

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 2011 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 $_____________.

Dated this __________ day of ___________________ 2011.

(Print Name)  Howard Altschuler

(Signature) ________________________________________

(Title)  Deputy Executive Director, CUCF

Approval as to Form and Legal Authority

(Print Name) ________________________________________

(Signature) ________________________________________

(Title) ________________________________________

(Date)  ________________________________________
To the Agreement between CUCF on behalf of CUNY and

Scope of Work:

The Work to be performed under this Agreement consists of the Final Design - including technical specifications, fabrication, crating, storage, delivery and installation of Artwork for the ______________________

Entitled ________________________, the Artwork will be located in the _______________________ of the ______________________. The Artwork will consist of ___________ components:

1) ____________________________; and

2) ____________________________________________ representing different the disciplines that will be engaged in the new facility.

The Artist is responsible for designing, fabricating and installing all elements of the Artwork in accordance with all applicable building and safety codes and regulations, to ensure that the sculptural forms are structurally sound and meet all engineering requirements. Additionally, the Artist is responsible for ensuring that the Artwork is designed, fabricated, delivered and installed on a schedule compatible with the Owner’s construction schedule for the CUNY Law School.

<table>
<thead>
<tr>
<th>ITEM</th>
<th>ARTIST’S SERVICES</th>
<th>PAYMENT TO ARTIST</th>
<th>TIMEFRAME</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0</td>
<td>Final Design Proposal and Technical Specifications</td>
<td>$________</td>
<td>Upon execution of Agreement</td>
</tr>
<tr>
<td>1.0</td>
<td>The Artist shall carry out additional research as may be necessary to refine the approved preliminary proposal (previously submitted to the Artist Selection Committee). This shall include meeting with available faculty to discuss current areas of research. The Architect and Art Consultant will make available to the Artist any additional background materials and information on matters affecting the Site and installation of the Artwork, including where available and applicable, written requirements and specifications of the new __________________________.</td>
<td>$________</td>
<td>Upon Submission to Owner</td>
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<tr>
<td>1.2</td>
<td>The Artist shall submit to the Owner/Art Consultant a Final Design Proposal. The Final Design Proposal shall include drawings and/or documents necessary to present a meaningful representation of the concept and design of the proposed Artwork. The Proposal shall specify materials, dimensions, finish, fabrication method, installation methods and engineering requirements regarding hanging and installation, maintenance recommendations, sample materials for the ceiling and wall pieces, and a draft final budget. The Owner/Art Committee shall review and provide comments for resolution by the Artist. The Artist shall then, based on resolution of Owner/Art Committee’s comments, prepare and submit to the Owner for review and approval: final designs, including detailed working drawings, engineering drawings (stamped by Licensed Engineer in the State of New York), and all specifications as are necessary to fabricate and install the Artwork and a final budget.</td>
<td>$________</td>
<td>Upon Submission to Owner</td>
</tr>
<tr>
<td>2.0</td>
<td>Fabrication and Storage</td>
<td>$________</td>
<td>upon approval; advanced in accordance</td>
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<tr>
<td>2.1</td>
<td>The Artist shall purchase materials for upon approval; fabrication of Artwork after all fabrication-related subcontracts, if any, and technical issues have been approved. All fabrication costs are deemed included in the total</td>
<td>$________</td>
<td>upon approval; advanced in accordance</td>
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</table>
Agreement price payable to the Artist. The Artist’s obligation to fabricate the Artwork includes, but is not limited to, the proper and timely completion of the Artwork and notification to the Owner/Art Consultant of any problems, errors and the like that may arise during fabrication.

2.2 The Artist shall notify the Owner/Art Consultant when fabrication of the Artwork is 25% complete. The Artwork shall be considered 25% complete when milling and fabrication of the suspended object is completed. The Owner/Art Consultant reserve the right to inspect the Artwork within 14 days of such notification and/or require the Artist to provide alternative means of inspection acceptable to the Owner (e.g. photographs, sample materials). $________ upon notice Artwork is 25% complete

2.3 The Artist shall notify the Owner/Art Consultant upon notice when fabrication of the Artwork is 75% complete. The Artwork shall be considered 75% complete when the glass mosaic work is 50% complete. The Owner reserves the right to inspect the Artwork within 14 days of such notification or require the Artist to provide alternative means of inspection acceptable to the Owner (e.g. photographs, sample materials). $________ upon notice Artwork is 75% complete

2.4 The Artist shall notify the Owner/Art Consultant when fabrication is complete. The Artwork shall be considered 100% complete when the Artist has completed fabrication of all elements of the Artwork. The Owner/Art Consultant reserves the right to inspect the Artwork within 14 days of such notification or require the Artist to provide alternative means of inspection approval acceptable to the Owner/Art Consultant (e.g. photographs, sample materials). Upon submission and approval of accurate placement drawings for installation, the fabrication of the Artwork shall be deemed substantially complete. $________ Upon Acceptance of completion by Owner

2.5 The Artist shall arrange storage of the Artwork, if necessary, in accordance with ARTICLE FIVE of this AGREEMENT.

3.0 Delivery and Installation

3.1 The Artist shall deliver all elements of the Artwork, including all hardware required to mount the Artwork, to a site and at a time specified in writing by the Owner/Art Consultant. Such notice will be contingent upon approval of the subcontracts for installation and approval of the liability insurance coverage in accordance with ARTICLE EIGHTEEN of this AGREEMENT. $________ Upon completion of Installation and approval by owner

3.2 The Artist shall install all elements of the Artwork on the ceiling and wall surfaces as prepared by the Owner’s Contractors as per the Artist’s drawings and architectural drawings. The Owner’s Contractor shall supply and be responsible for all scaffolding, electrical support, water, attachment structure and mounting, crane etc. as necessary to install the Artwork.

4.0 Post-Installation

4.1 Upon installation, the Artist shall supply the Owner with one copy of professional quality photographic images (collectively ’Photographic Material’) as selected by the Art Consultant to document the project after the Artwork is installed. The Owner shall be granted unlimited usage rights to the Photographic Material and will give appropriate credit to the photographer and Artist. If the photographer is not the Artist, the Artist shall obtain and deliver to the Owner adequate documentation to confirm that the photographer has granted the Owner unlimited usage rights to the Photographic Material. The copyright to the Photographic Material shall remain with the photographer. However, the photographer cannot commercially exploit the Photographic Materials without the Owner’s written consent. Within 30 days after installation

4.2 Within thirty (30) days of installation, the Artist will file a copyright application
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<td>4.3</td>
<td>Within thirty days of installation, the Artist will submit Technical and Maintenance Forms as identified in Attachment 2.</td>
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<tr>
<td>4.4</td>
<td>Upon receipt of Photographic Documentation, Technical and Maintenance Forms and proof of submission of Copyright Application, the Owner/Art Consultant will notify the Artist in writing as to final acceptance of Artwork.</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$________</td>
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</tbody>
</table>

for the Artwork with Owner’s approval.
Artist Information Sheet

Artist __________________________________________________________

Address __________________________________________________________

Telephone No. _____________________________________________________

Email __________________________________________________________

Title of Work ______________________________________________________

Description of Artwork ______________________________________________

_________________________________________________________________

Dimensions of Artwork ______________________________________________

_________________________________________________________________

Medium or material __________________________________________________

Fabricator (name, address, telephone number and email address if other than artist) 

___________________________________________________________________

Date and place executed ______________________________________________

Installation date _____________________________________________________

Location of work _____________________________________________________

Collaborating architect, engineer, etc. ____________________________________

Location and description of signature marks (copyright mark if it occurs)

___________________________________________________________________
## Technical and Maintenance Record

**Artist:** ____________________________________________

**Title of Work:** ________________________________________________

**Methods and materials utilized in execution of artwork:**

<p>| | |</p>
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<tbody>
<tr>
<td><strong>A.</strong> Material (type, brand name, manufacturer)</td>
<td>_____________________________</td>
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<td>__________________________________________________________________</td>
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<td><strong>B.</strong> Construction method/technique</td>
<td>_____________________________</td>
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<td>__________________________________________________________________</td>
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<td><strong>C.</strong> Material thickness (gauge)</td>
<td>_____________________________</td>
</tr>
<tr>
<td><strong>D.</strong> Welding or joining method</td>
<td>_____________________________</td>
</tr>
<tr>
<td><strong>E.</strong> Welding rod alloy or joint material</td>
<td>_____________________________</td>
</tr>
<tr>
<td><strong>F.</strong> Casting - was body, glass or fiber type</td>
<td>_____________________________</td>
</tr>
<tr>
<td><strong>G.</strong> Material finish (paint color and type, glaze, sanding grip, patina, fixative coatings, etc.)</td>
<td>_____________________________</td>
</tr>
<tr>
<td><strong>H.</strong> Foundation/installation method (bolt/pin size and grout color/type)</td>
<td></td>
</tr>
<tr>
<td><strong>I.</strong> Routine maintenance</td>
<td>_____________________________</td>
</tr>
<tr>
<td><strong>J.</strong> Yearly maintenance and care of artwork</td>
<td>_____________________________</td>
</tr>
<tr>
<td><strong>K.</strong> Intention relating to artwork over time (patina, darken, lighten, etc.)</td>
<td></td>
</tr>
<tr>
<td><strong>L.</strong> Cautions (if any) regarding artwork</td>
<td>_____________________________</td>
</tr>
<tr>
<td><strong>M.</strong> Conservation consultant (contact information name, address, telephone, email address)</td>
<td></td>
</tr>
</tbody>
</table>

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ATTACHMENT 3

Anti-Discrimination and M/WBE Program and Compliance Forms

Anti-discrimination and M/WBE Program

Anti-discrimination Policy

This policy applies to any contracts resulting from this solicitation.

A. Contractors will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability, or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members including, without limitation, women, are afforded equal opportunity without discrimination. Such programs shall include, but not be limited to, recruitment, employment, job assignments, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training. The contractor will agree to post, in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this non-discrimination provision.

B. At the request of the CUNY, contractors shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the contract with the authority to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status and that such union or representative will cooperate in the implementation of the contractor's obligations hereunder.

C. The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor in the performance of the contract with the CUNY, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status.

D. The contractor will include the provisions of paragraphs A through C of this section in every sub-contract or purchase order in such a manner that such provisions will be binding upon each sub-contractor or vendor as to its work in connection with the contract with the CUNY.
CUNY MWBE Policy

It is the policy of CUNY that New York State Certified Minority and Women-Owned Business Enterprises (MBE/WBE's) shall have the maximum opportunity to participate in the performance of any contracts resulting from this solicitation. In those contracts, successful Proposers would agree to insure that New York State Certified MBE/WBE's have the maximum opportunity to participate in the performance of those contracts. In this regard, all Proposers shall take all necessary and reasonable steps as hereinafter defined to insure that New York State Certified MBE/WBE's have the maximum opportunity to compete for and perform on contracts or sub-contracts. CUNY and its contractors shall not discriminate on the basis of race, creed, color, national origin, sex, sexual orientation, age, disability, or marital status, in the awarding and performance of contracts and sub-contracts.

This language is included to insure that all Responders who enter into any contract with CUNY are aware of their responsibility and the commitment of CUNY and CUCF to see that their MBE/WBE Policy is carried out in all of their business dealings.

The Minority-owned Business Enterprise subcontracting goal is 9 percent. The Women-owned Business Enterprise subcontracting goal is 6 percent.

Note: In fulfilling these goals, under New York State MBE/WBE Law and Regulations, Responders may only use New York State Certified MBEs and WBEs listed in the New York State Directory of Minority and Women-owned Business Enterprises certified pursuant to the Regulations. The Directory may be accessed at: http://www.nylovesmwbe.ny.gov/.

The artist will be responsible for filing quarterly compliance reports to the CUCF related to the operation and implementation of approved M/WBE + EEO programs.

Article 15-A of the NYS Executive Law

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 Proposers, Sub-proposers and Suppliers on its procurement contracts.

Information on the availability of New York State Sub-Proposers and Suppliers is available from:

New York State Department of Economic Development
Division of Small Businesses
One Commerce Plaza
Albany, NY 12245
(Telephone) 518-474-7756
**Contract Provisions**

Under the contract to be awarded through this solicitation the successful Responder would specifically agree that:

A. In the hiring of employees for the performance of services under the contract or any sub-contract hereunder, neither the Responder nor any Sub-consultant or other person acting on behalf of such Responder or Sub-consultant shall, by reason of race, creed, color, national origin, sex, sexual orientation, age, disability, or marital status, discriminate against any person who is qualified and available to perform the services to which the employment relates;

B. Neither the Responder nor any Sub-consultant or other person acting on behalf of such Responder or Sub-consultant shall in any manner discriminate against or intimidate any employee hired for the performance of services under the contract on account of race, creed, color, national origin, sex, sexual orientation, age, disability, or marital status;

C. It shall include the provisions of paragraph A and B of this section in every sub-contract the Responder enters into with respect to the services to be performed hereunder and shall take such action to enforce such provisions of such sub-contract as CUCF or CUNY may direct.

D. Any contractor who willfully and intentionally fails to comply with the minority and women-owned participation requirements of Part 140-145 of the Regulations of the Commissioner of the New York State Department of Economic Development implementation of New York State Executive Law Article 15-A as set forth in the contract, shall be liable to CUCF for liquidated damages or other appropriate damages as specified in the contract, and shall provide for other appropriate remedies on account of such breach. Damages shall be calculated based on the actual cost incurred by CUCF related to CUCF’s expenses for personnel, supplies and overhead related to establishing, monitoring and reviewing minority- and women-owned business enterprise programmatic goals and Affirmative Action and Equal Opportunity compliance, or the amount stated in the contract as liquidated damages.

E. (a) Subsequent to the award of this contract to a contractor who becomes deficient with regard to its MWBE utilization plan, the contractor may file a complaint with the Director of the Division of Minority and Women-Owned Business Development in the New York State Department of Economic Development (DWMBD Director), pursuant to Executive Law, Section 316 by personal service or certified mail, return receipt requested, provided that the complaint is file within 20 days following paragraphs one of the events referred to in sub-paragraphs (1), (2), or (3) of this subdivision. The complaint should state the reasons for the complaint, together with a demand for relief. The compliant shall allege the occurrence of one of the following:
(1) the contractor's receipt of a written determination by CUCF that the contractor is
not entitled to a partial or full waiver of the goals established in the contract for
participation by certified minority and women-owned business enterprises; or

(2) the contractor’s receipt of a written determination by CUCF that the contractor
has not acted in good faith, has failed, is failing, or is refusing to comply with goals;
or

(3) 20 days have passed from the date of CUCF’s receiving a written request from the
contractor, sent by certified mail, return receipt requested, for a partial or total waiver
of goal requirements for participation by certified minority and women-owned
business enterprises, and no written determination has been issued by CUCF.

(b) Within 20 days of CUCF’s determination that the contractor has not acted in good faith,
has failed, is failing, or is refusing to comply with goals for participation by certified
minority and/or women-owned business enterprises established in the contract, CUCF may
file a complaint with the DWMBD Director, pursuant to Executive Law, section 316, by
personal service or certified mail, return receipt requested, accompanied by the reasons for
the CUCF’s determination for which the complaint is filed, together with a demand for
relief, such as disbarment, damages or fines pursuant to the terms.

(c) A copy of any complaints filed with the DMWBD Director by the contractor or CUCF
shall either be personally served or mailed certified mail, return receipt requested, by the
party making the complaint to the party against whom the complaint is being filed.

(d) Upon receipt by the DMWBD Director of a complaint, the party against whom the
complaint has been filed shall be provided with an opportunity to respond to the complaint.
If within 30 days of receipt of the complaint, the DMWBD Director is unable to resolve the
complaint to the satisfaction of CUCF and the contractor, the complaint shall be referred to
the DWMBD’s hearing officer for a hearing.

(e) Upon conclusion of the administrative hearing, the hearing officer shall submit to the
DMWBD Director his or her decision regarding the alleged violation of the contract or the
refusal of CUCF to grant a waiver request by the contractor. The decision of the hearing
officer with respect to an alleged violation of the contract or the refusal of CUCF to grant a
waiver shall be final.

(f) Upon conclusion of the administrative hearing and the rendering of a decision, the
hearing officer shall also recommend to the DMWBD Director a remedy, including, if
appropriate, the imposition of sanctions, fines or penalties.

(g) The DMWBD Director, within 10 days of receipt of the decision, shall file a
determination of such matter and shall cause a copy of such determination to be served
upon the contractor by personal service or by certified mail, return receipt requested. The
decision of the DMWBD Director shall be final and may only be vacated or modified as
provided in article seventy eight of the civil practice law and rules upon an application
made within the time provided by such article. The penalties imposed for any violation
which is premised upon either a fraudulent or intentional misrepresentation by the contractor or the contractor's willful and intentional disregard of the minority and women-owned participation requirement included in the contract may include a determination that the contractor shall be ineligible to submit a bid to any contracting State agency or be awarded any State contract for a period not to exceed one year following the final determination; provided however, if a contractor has previously been determined to be ineligible to submit a bid pursuant to this section, the penalties imposed for any subsequent violation, if such violation occurs within five years of the first violation, may include a determination that the contractor shall be ineligible to submit a bid to any contracting State agency or be awarded any State contract for a period not to exceed five years following the final determination. The DMWBD Division shall maintain a website listing all contractors that have been deemed ineligible to submit a bid pursuant to this section and the date after which each contractor shall once again become eligible to submit bids.
Anti-Discrimination and MWBE Compliance Forms

To be attached.
**EQUAL EMPLOYMENT OPPORTUNITY**

**WORK FORCE EMPLOYMENT UTILIZATION/COMPLIANCE REPORT**

<table>
<thead>
<tr>
<th>EEO-Job Category</th>
<th>Total Workforce</th>
<th>Male (M)</th>
<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>Other Categories</th>
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<tbody>
<tr>
<td>Officials/Administrators</td>
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<td>Craft Workers</td>
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<td><strong>TOTALS</strong></td>
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</table>

**PREPARED BY (Signature):**

**TELEPHONE NO.:**

**EMAIL ADDRESS:**

**DATE:**

NAME AND TITLE OF PREPARER (Print or Type):

Submit completed form to:

The City University of New York
Department of Design Construction and Management
555 West 37th Street, 10th Floor
New York, NY 10019

EEO 101
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 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 AND/OR Prime Contractor utilized one or more NYS Certified M/WBE Vendors on the
contract/purchase order during the applicable Reporting Quarter: Complete and sign a separate form, including both the "PRIME
CONTRACTOR INFORMATION" and 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 or purchase order, complete a separate form for the M/WBE Vendor for EACH contract or
purchase 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 or purchase order, complete a separate form for EACH type of work,
product or service provided by that M/WBE Vendor on the contract or purchase order. For example, if M/WBE Vendor XYZ provided
both security services and cleaning services on a particular contract or purchase order, complete a separate form for M/WBE Vendor
XYZ for each of those two services provided.

**PRIME CONTRACTOR INFORMATION**

Prime Contractor Name

Prime Contract # / Purchase Order #

Prime Contract Start Date ___/___/___

Industry of the Prime Contract

Construction ___ Construction Consultant ___ Services/Consultant

Commodities ___ Other (specify) __________________________

**NYS CERTIFIED M/WBE VENDOR INFORMATION**

* The Prime Contractor may also be the subject NYS Certified M/WBE Vendor

NYS Certified M/WBE Vendor Name

Vendor Address

Vendor Payee ID (Federal ID #)

Vendor Contractor Status ___ Prime Contractor * ___ Sub-contractor/Supplier

Describe the Work, Product or Service Provided by the Vendor

(Note: Only one type of work, product or service may be cited.)

Vendor NYS Certified M/WBE Status Indicate one Status ONLY: ___ MBE ___ WBE

Total Dollar Amount Paid to NYS Certified M/WBE Vendor in the Reporting Quarter (Even if $0)

$______________________

Report Prepared by:

Name ____________________________________________ Signature ____________________________

Title ____________________________________________ Date ___/___/___
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 CUNY 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 CUNY 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 CUNY and the State and any attempts to assign the Contract without CUNY 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.

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 CUNY 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 CUNY 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. CUNY 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, CUNY 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 CUNY and the State with regard to this Contract, any other contract with CUNY 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. CUNY 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 CUNY, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, 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 CUNY, 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 CUNY 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 CUNY 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 CUNY'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 CUNY. 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 CUNY 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. CUNY 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, CUNY 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.

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 CUNY. 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.

Information on the availability of New York State subcontractors and suppliers is available from:

Department of Economic Development
Division for Small Business
30 South Pearl Street
Albany, New York 12245
Tel. 518-292-5220

A directory of 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
http://www.empire.state.ny.us

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, CUNY 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 CUNY 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.

[signature page follows]

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ATTACHMENT 5

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 Professional, 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, Professional agrees:

(a) In addition to the methods of service allowed by the State Civil Practice Law & Rules (“CPLR”), Professional hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Professional’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. Professional 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. Professional 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 Professional in Federal Court located in New York City, Professional 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 Professional in Federal Court located in New York City, Professional 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 Professional 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, Professional 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, Professional 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 - PROFESSIONAL EVALUATION PROVISION - Professional shall evaluate the performance of the prime construction contractor on this Project by completing the City's construction Professional 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 engineer 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, Professional agrees that it:

(a) 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;

(b) Professional agrees that when it subcontracts it will not discriminate in the selection of subProfessionals 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 Professional 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.

Professional 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 Professional;
(ii) suspension or termination of Professional;
(iii) declaring Professional 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 Professional who has repeatedly failed to comply with E.O. 50 and the rules and regulations promulgated thereunder to be non-responsible.

Professional agrees to include the provisions of the foregoing paragraphs in every subcontracts or purchase order in excess of $50,000 to which it becomes a party unless exempted by E.O. to and rules and regulations promulgated thereunder, so that such provisions will be binding upon each sub-professionals 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.

Professional 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-professional 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

Professional shall perform the following procedures with regard to Contractor compliance of the LBE Program.

   a. Professional shall design contract to maximize opportunities for subcontracting.

   b. For each contract it prepares contract documents for, Professional 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 Professional, DDCM Project Manager and Campus Engineering Audit Officer a list of LBE sub-professionals that have been identified by the prime Professional for use on the Project. Professional shall notify the LBE liaison officer of all sub-professionals working on the site.

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

   f. Each Professional 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 times 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.

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ATTACHMENT 6

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

Please complete and submit this form with the response

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:                              Signature1

______________

¹Must be signed by an officer or duly authorized representative of the company.
AUDIT RIDER

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 CUNY and by the Comptroller of the City of New York pursuant to the powers and responsibilities as conferred upon CUNY 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.

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

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

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ATTACHMENT 7

Form B: State Consultant Services – Contractor’s Planned Employment From Contract
State Consultant Services
Contractor’s Annual Employment Report
Report Period: April 1, to March 31,

Contracting State Agency Name: [Blank]
Agency Code: [Blank]
Contract Number: [Blank]
Contract Term: / / to / /
Contractor Name: [Blank]
Contractor Address: [Blank]
Description of Services Being Provided: [Blank]

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

<table>
<thead>
<tr>
<th>Employment Category</th>
<th>Number of Employees</th>
<th>Number of Hours Worked</th>
<th>Amount Payable Under the Contract</th>
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</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

Total this page 0 0 $ 0.00
Grand Total

Name of person who prepared this report:
Preparer’s Signature: ________________________________________
Title: ___________________________ Phone #: ___________________________
Date Prepared: / /
## Attachment 8

**CUNY Certificate of Insurance Form**

*Appendix _ - CITY UNIVERSITY OF NEW YORK (“CUNY”)*

*Consultant/Contractors Certificate Shall Comply with this Form*

### CERTIFICATE OF INSURANCE

<table>
<thead>
<tr>
<th>CONTRACT NAME:</th>
<th>CONTRACT NUMBER:</th>
</tr>
</thead>
<tbody>
<tr>
<td>PRODUCER:</td>
<td>CERTIFICATE ISSUANCE DATE:</td>
</tr>
<tr>
<td>ADDRESS:</td>
<td></td>
</tr>
<tr>
<td>PHONE NUMBER:</td>
<td></td>
</tr>
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</table>

### INSURED:

<table>
<thead>
<tr>
<th>CO LTR</th>
<th>COMPANIES AFFORDING COVERAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td></td>
</tr>
<tr>
<td>B</td>
<td></td>
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<tr>
<td>C</td>
<td></td>
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<td>D</td>
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<td>E</td>
<td></td>
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<tr>
<td>F</td>
<td></td>
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<tr>
<td>G</td>
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</tbody>
</table>

### COVERAGES (See Notes 1 and 2)

<table>
<thead>
<tr>
<th>CO LTR</th>
<th>TYPE OF INSURANCE</th>
<th>POLICY NUMBER</th>
<th>EFFECTIVE DATE</th>
<th>EXPIRATION DATE</th>
<th>LIMITS</th>
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<tbody>
<tr>
<td></td>
<td>GENERAL LIABILITY</td>
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<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>(Check all that apply):</td>
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<tr>
<td></td>
<td>☐ Comprehensive Form</td>
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<td></td>
</tr>
<tr>
<td></td>
<td>☐ Premises/Operations</td>
<td></td>
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<tr>
<td></td>
<td>☐ Undergnd Expl.&amp; Collapse Haz.</td>
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<tr>
<td></td>
<td>☐ Products/Completed Oper.</td>
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<tr>
<td></td>
<td>☐ Contractual</td>
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<tr>
<td></td>
<td>☐ Independent Contractors</td>
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<tr>
<td></td>
<td>☐ Broad Form Property Dam.</td>
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</tr>
<tr>
<td></td>
<td>☐ Personal Injury</td>
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<tr>
<td></td>
<td>AUTOMOBILE LIABILITY</td>
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<tr>
<td></td>
<td>☐ Any Auto</td>
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<tr>
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<td>☐ Owned Autos</td>
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<td></td>
<td>☐ Hired Autos</td>
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<td></td>
<td>☐ Non-owned Autos</td>
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<tr>
<td></td>
<td>EXCESS LIABILITY</td>
<td>NO RETENTION/DEDUCTIBLE</td>
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<td>(Check all that apply):</td>
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<tr>
<td></td>
<td>☐ Umbrella Form</td>
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<td></td>
<td>☐ Other Than Umbrella Form</td>
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</tr>
<tr>
<td></td>
<td>WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td>☐ STATUTORY LIMITS</td>
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<td></td>
</tr>
</tbody>
</table>

### LIMITS

- BODILY INJURY OCC. $  
- BODILY INJURY AGG. $  
- PROPERTY DAMAGE OCC. $  
- BI & PD COMBINED OCC. $  
- BI & PD COMBINED AGG. $  
- PERSONAL INJURY AGG. $  
- BODILY INJURY (Per Person) $  
- BODILY INJURY (Per Accident) $  
- PROPERTY DAMAGE $  
- BODILY INJURY & PROPERTY DAMAGE COMBINED $  
- EACH OCCURRENCE $  
- AGGREGATE $  
- STATUTORY LIMITS $
EMPLOYER'S LIABILITY $  

FULL CONTRACT VALUE  

EACH OCCURRENCE  

AGGREGATE  

PROFESSIONAL LIABILITY  

OTHER  

CERTIFICATE OF INSURANCE (Continued)  

ADDITIONAL INSURED (See Note 4)  
(Choice all that apply):  

☐ City University of New York ("CUNY")  
☐ The State of New York  
☐ The City of New York  
☐ DASNY  
☐ Baruch College  

NAMED INSURERS (BUILDER'S RISK INS. - See Note 4) (Check all that apply):  

☐ City University of New York ("CUNY")  
☐ The State of New York  
☐ The City of New York  
☐ DASNY  
☐ Baruch College  

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, has been procured by and furnished on behalf of the insured Contractor 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 CUNY; and that coverage is afforded for the insured Contractor's obligations under that provision of the contract providing for indemnification of the Indemnified Parties, including CUNY, 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:  
The subscribing company(s) agrees that no policy referred to herein shall be changed or canceled until thirty (30) days written notice has been given to Director of Procurement Services, The City University, 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' directors, officers, employees, partners, agents, subsidiaries and affiliates.

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

AUTHORIZED INSURER/PRODUCER ________________________________  

BY ________________________________  

(Signature)  

TITLE ________________________________  

STATE OF )  

) SS:  

COUNTY OF )
On this __________ day of _____________________ 20_____, before me personally came _____________________________, to me known, who being duly sworn, did depose and say that he/she resides in ____________________________________________, That he/she is the __________________________________of the corporation described in and which executed the foregoing Certificate of Insurance, that he/she is fully authorized to execute the foregoing Certificate of Insurance

(Notary Public)