

**STATE UNIVERSITY OF NEW YORK
CONTRACT NUMBER C002849
KELLEY DRYE & WARREN, LLP**

This AGREEMENT is made by and between STATE UNIVERSITY OF NEW YORK, an educational corporation organized and existing under the laws of the State of New York, with its principal office located at State University Plaza, Albany, New York, 12246, ("SUNY"), and KELLEY DRYE & WARREN, LLP, a law firm having an office located at 101 Park Avenue, New York, NY 10178 ("the Firm" or "Special Counsel").

WHEREAS, SUNY requires counsel to provide legal services including advice on legal matters relating to, and to assist in [REDACTED]

WHEREAS, SUNY has determined that it is necessary to enter into an Agreement for the provision of such services; and

NOW, THEREFORE, in consideration of the mutual covenants and considerations herein set forth, the parties hereto agree as follows:

1. SUNY hereby engages the Firm to provide legal services in connection with [REDACTED]. The services will include, but not be limited to: fact research; legal research; communications and meetings with SUNY's officers and employees; communications and meetings with [REDACTED]; assisting SUNY with reviewing, analyzing [REDACTED] [REDACTED] drafting any internal or external memoranda that may be necessary; attending any meetings on behalf of SUNY related to [REDACTED]
2. The Firm shall provide the legal services hereunder in accordance with this Agreement and in consultation with appropriate personnel of SUNY. The fees for such professional services, including disbursements, shall not exceed \$1,500,000.00 (One Million Five Hundred Thousand Dollars).
3. SUNY shall pay the Firm for all professional services provided under this Agreement in accordance with the Special Counsel Billing Criteria and Policy attached hereto as Exhibit C and made a part hereof, at the hourly rates set forth in the Fee Schedule, attached hereto as Exhibit B and made a part hereof. It is understood and agreed that any filing, application or similar fees and charges shall be paid directly by SUNY and shall not be included in the Firm's charges or amounts set out in this Agreement.
4. This Agreement constitutes the entire agreement of the parties and all previous communications between the parties, whether written or oral, with reference to the

subject matter of this Agreement are hereby superseded. In the event of any inconsistency or conflict among the documents comprising this Agreement, such inconsistency or conflict shall be resolved by giving precedence to the documents in the following order:

- a. Exhibit A, State University of New York Standard Contract Clauses;
 - b. Exhibit A-1, State University of New York Affirmative Action Clauses
 - c. This Agreement
 - d. Exhibit B, Fee Schedule
 - e. Exhibit C, Special Counsel Billing Criteria
5. Payments to the Firm shall be made upon submission of the Firm's invoices showing the legal services rendered, the Firm personnel providing services, their billing rates, and the number of hours expended by each in providing services hereunder, in accordance with the rates shown on Exhibit B. Such time expended shall be billed in the increment of one-tenth (1/10) hour. Such invoices shall be submitted by the Firm to the Business Office of SUNY System Administration with a copy to:

Office of General Counsel
State University of New York
State University Plaza
Albany, New York 12246

6. All payments to the Firm shall be made in the normal course of business of the State of New York and shall be sent to:

Kelley, Drye & Warren, LLP
Attention: Michael C. Lynch, Esq.
101 Park Avenue
New York, NY 10178

7. Upon request, the Firm shall provide the SUNY Office of General Counsel with a copy of all applicable written materials prepared by the Firm in the performance of legal services hereunder.
8. The Firm shall devote such time as may be necessary to provide legal services described herein, subject to the Special Counsel Billing Criteria and Policy, but shall not be prevented from providing its services to any other client not in conflict with this Agreement. The Firm shall not agree to provide legal services to any entity affiliated with SUNY, either directly or indirectly, as a private contractor or otherwise, without the prior written consent of the SUNY Office of General Counsel.
9. The relationship of the Firm to SUNY and to the State of New York arising out of this Agreement shall be that of attorney and client.
10. Unless modified as provided herein, this Agreement shall commence July 16, 2015 and shall continue through January 15, 2017. This Agreement may be extended upon the mutual written consent of the parties, and with the approval of the New York State

Attorney General and the Office of the New York State Comptroller, for one (1) additional one-year term. This Agreement may be terminated by SUNY: (i) at any time upon receipt of thirty (30) days prior written notice given by State University; (ii) for unavailability of funds; (iii) for cause; or (iv) in the event in the Firm's State Finance Law sections 139-j and 139-k certifications are found to be intentionally false or intentionally incomplete or if applicable, the Firm's certifications on the ST220CA form are found to be false or incomplete.

11. Additional Grounds for Termination for Non Responsibility as a State Contractor.

11.1. The Firm shall at all times during the term remain responsible. The Firm agrees, if requested by the Chancellor of the State University or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

11.2. Upon written notice to the Firm, and a reasonable opportunity to be heard with appropriate SUNY officials or staff, the Contract may be terminated by Chancellor or his or her designee at the Firm's expense where the Firm is determined by the Chancellor of the State University or her designee to be non-responsible. In such event, the Chancellor of the State University or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

11.3. The Chancellor of the State University or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Firm. In the event of such suspension, the Firm will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Firm must comply with the terms of the suspension order. Contract activity may resume at such time as the Chancellor of the State University or his or her designee issues a written notice authorizing a resumption of performance under the Contract.

12. Opinions prepared by retained attorneys or law firms construing the statutes or constitution of the State of New York do not constitute the opinion of the State unless the prior written approval of the Attorney General is obtained. Requests for such approval shall be submitted to the Solicitor General, Appeals and Opinions Bureau, Department of Law, State Capitol, Albany, New York.

12.1 The Firm will represent the State of New York in judicial litigation related to the services to be provided under this Agreement only when such services are specifically requested by the SUNY Office of General Counsel and approved by the Attorney General. Such approval must be requested separately for each matter to be litigated and must be received prior to the commencement of services therefor. For the avoidance of doubt, the Firm is not authorized by this

Agreement to litigate on behalf of SUNY, nor is the Firm authorized to represent any individual person.

13. In the performance of its obligations hereunder, the Firm shall (i) comply with all applicable laws, rules and regulations pertaining to the rendering of the services, including the provisions of Exhibit A, State University of New York Standard Contract Clauses, attached hereto and made a part hereof, and Exhibit A-1, State University of New York Affirmative Action Clauses, attached hereto and made a part hereof.; (ii) maintain all licenses required under applicable law; and (iii) maintain adequate Professional Liability Insurance at its own cost. The Firm shall maintain Workers Compensation and Disability Benefits Coverage for the life of this Agreement for the benefit of employees required to be covered by the New York State Workers Compensation Law and the New York State Disability Benefits Law. The Firm shall furnish SUNY with copies of the appropriate license(s), and evidence of the insurance coverage provided in this Paragraph as SUNY may reasonably require.
14. The Firm agrees that Michael C. Lynch, Esq., a partner of the Firm, shall have primary supervisory responsibility for the legal services performed hereunder. Michael C. Lynch's hourly rate shall be [REDACTED]. Such partner or his designee, identified in writing, shall be the contact person with the SUNY General Counsel, appropriate campus personnel and other SUNY personnel during the term of this Agreement.
15. In performing this contract, the Firm may receive, maintain, process or otherwise will have access to confidential information concerning employees of SUNY. Pursuant to the Gramm-Leach-Bliley Act (P.L. 106-102) and the Federal Trade Commission's Safeguards Rule (16 CFR Part 314), and to the extent the Firm is a covered entity or applicable service provider under these regulations with respect to student or customer data, the Firm will implement and maintain a written Information Security Program ("Program") in order to protect such confidential customer information. Customer information is defined as "any record containing nonpublic personal information as defined in 16 CFR §313(n)" (the FTC's Privacy Rule) "about a customer of a financial institution, whether in paper, electronic, or other form" (16 CFR §314.2). Examples of nonpublic personal customer information include, but are not limited to, name, address, phone number, social security number, bank and credit card account numbers and student identification numbers.

The safeguards that must be implemented under the Program shall: (i) ensure the security and confidentiality of student and/or campus customer records and information; (ii) protect against any anticipated threats or hazards to the security or integrity of such records; and (iii) protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any student and/or campus customer.

The Firm warrants and represents that it will otherwise employ security measures to protect SUNY employee information, (i) requiring unique identification and authorization of all users, (ii) limiting administrator-level control to only authorized persons, (iii) implementing access controls on all data, software, or other file-system objects limiting

access to only authorized users, (iv) ensuring the integrity of the data stored or processed, and (v) protecting the data from loss or destruction.

16. The Firm acknowledges that this Agreement is subject to the New York State Freedom of Information Law ("FOIL") as set forth in Article 6 of the New York State Public Officers Law and that attorney-client privileged information, the Firm's proprietary information that satisfies the requirements of section 87(2)(d) of the Public Officers Law, and all other information properly subject to exception from disclosure under the Public Officers Law shall be excepted from disclosure hereunder. Subject to FOIL, the Firm's proprietary information may include all non-public information relating to its legal services. The Firm's proprietary information, which includes trade secret information owned by the Firm, shall remain unpublished, except where publication or disclosure is required pursuant to FOIL or other applicable law.
17. New York State Finance Law Section (163) (4) (g) imposes certain reporting requirements on contractors doing business with New York State. In furtherance of these reporting requirements, the Firm agrees to complete and submit an initial planned employment data report (Form A), and complete and submit annually, the annual employment report (Form B).
18. Any notice to either party hereunder must be in writing, signed by the party giving it, and shall be served either personally or by registered mail return receipt requested addressed as follows:

TO STATE UNIVERSITY:

Sandra Casey, Esq., Deputy General Counsel
Office of General Counsel
State University of New York
State University Plaza
Albany, New York 12246

TO FIRM:

Michael C. Lynch, Esq.
Kelley, Drye & Warren, LLP
101 Park Avenue
New York, NY 10178

or to such other address as may be hereafter designated by notice. All notices become effective only when received by the addressee.

19. The laws of New York will govern this Agreement, without regard for New York's choice of law statute. The parties agree to bring any action to construe, interpret or enforce this Agreement in a New York court of competent jurisdiction. The Firm agrees to submit itself to such court's jurisdiction. The parties shall use their best efforts to resolve any disputes arising under this Agreement, including disputes as to the Firm's fees, shall be amicably resolved by the parties. If the parties are unable to amicably

resolve any dispute within thirty (30) days, then either party may seek legal or equitable redress.

20. The Firm shall comply with all laws, rules, orders, regulations and requirements of federal, state and municipal governments applicable hereto,
21. The parties agree that this Agreement may be amended from time to time for various reasons, including but not limited to changes in the law that subsequently impact the Firm's availability to provide certain services or at agreed upon fees. The Firm will abide by SUNY's amendment process. SUNY's approval for the requested amendment shall not be unreasonably withheld. Any amendment to this Agreement shall be subject to the approval of the Office of the Attorney General and where applicable, the Office of the New York State Comptroller.

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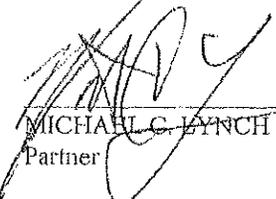
IN WITNESS WHEREOF, the parties hereto have executed this agreement on the dates written below.

CONTRACT NUMBER C002849

FIRM'S CERTIFICATION:

In addition to acceptance of this agreement, I certify that all information provided to SUNY is complete, true and accurate.

FIRM NAME

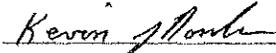

MICHAEL C. LYNCH
Partner

7/23/15
Date

AGENCY CERTIFICATION:

I certify that original copies of this signature page will be attached to all other exact copies of this agreement.

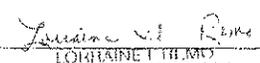
STATE UNIVERSITY OF NEW YORK SYSTEM ADMINISTRATION


Kevin J. Donlon
Director of Business Operations

7/23/15
Date

APPROVED AS TO FORM

ATTORNEY GENERAL
APPROVED AS TO FORM
NYS ATTORNEY GENERAL

JUL 23 2015
By: 
LAURENCE H. RIME
PRINCIPAL ATTORNEY

APPROVED:

OFFICE OF NEW YORK STATE
COMPTROLLER

By: _____

Dated: _____

Dated: _____

\$1,500,000

KIA

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the dates written below.

CONTRACT NUMBER C002849

FIRM'S CERTIFICATION:

In addition to acceptance of this agreement, I certify that all information provided to SUNY is complete, true and accurate.

FIRM NAME



MICHAEL C. LYNCH
Partner

7/23/15
Date

AGENCY CERTIFICATION:

I certify that original copies of this signature page will be attached to all other exact copies of this agreement.

STATE UNIVERSITY OF NEW YORK SYSTEM ADMINISTRATION

Kevin J. Donlon

7/24/15
Date

Kevin J. Donlon
Director of Business Operations

APPROVED AS TO FORM
ATTORNEY GENERAL

APPROVED:
OFFICE OF NEW YORK STATE
COMPTROLLER

By: _____

By: Christina E. [Signature]

Dated: _____

Dated: 8/27/15

\$1,500,000

KAA / 04

ACKNOWLEDGMENT BY NOTARY PUBLIC

STATE OF New York }

: SS.:

COUNTY OF New York }

On the 23 day of July in the year 2015, before me personally appeared: Michael C. Lynch, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he resides at

Town of _____, County of _____,
State of _____; and further that: _____

[Check One]

If an individual): he executed the foregoing instrument in his/her name and on his/her own behalf.

If a corporation): he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

If an unincorporated association): he is the _____ of _____, the firm described in said instrument; that, he is authorized to execute the foregoing instrument on behalf of the firm for the purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name and on behalf of said firm as the act and deed of said firm.

If a partnership): he is the Partner of Kelley Dye & Warren LLP, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for the purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name and on behalf of said partnership as the act and deed of said partnership.



Notary Public

SAMMY TONY SIMON
Notary Public, State of New York
No. 01SI6322471
Qualified in New York County
Commission Expires 04/06/2019

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, 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 shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. PROHIBITION AGAINST ASSIGNMENT Except for the assignment of its right to receive payments subject to Article 5-A of the State Finance Law, the Contractor selected to perform the services herein are prohibited in accordance with Section 138 of the State Finance Law from assigning, transferring, conveying, subletting or otherwise disposing of its rights, title or interest in the contract without the prior written consent of SUNY and attempts to do so are null and void. Notwithstanding the foregoing, SUNY may, with the concurrence of the New York Office of State Comptroller, waive prior written consent of the assignment, transfer, conveyance, sublease or other disposition of a contract let pursuant to Article XI of the State Finance Law if the assignment, transfer, conveyance, sublease or other disposition is due to a reorganization, merger or consolidation of Contractor's its business entity or enterprise and Contractor so certifies to SUNY. SUNY retains the right, as provided in Section 138 of the State Finance Law, to accept or reject an assignment, transfer, conveyance, sublease or other disposition of the contract, and to require that any Contractor demonstrate its responsibility to do business with SUNY.

3. COMPTROLLER'S APPROVAL. (a) In accordance with Section 112 of the State Finance Law, Section 355 of New York State Education Law, and 8 NYCRR 316, Comptroller's approval is not required for the following contracts: (i) materials; (ii) equipment and supplies, including computer equipment; (iii) motor vehicles; (iv) construction; (v) construction-related services; (vi) printing; and (vii) goods for State University health care facilities, including contracts for goods made with joint or group purchasing arrangements.

(b) Comptroller's approval is required for the following contracts: (i) contracts for services not listed in Paragraph 3(a) above made by a State University campus or health care facility certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$250,000; (ii) contracts for services not listed in Paragraph 3(a) above made by a State University campus not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$50,000; (iii) contracts for services not listed in Paragraph 3(a) above made by health care facilities not certified by the Vice Chancellor and Chief Financial Officer, if the contract value exceeds \$75,000; (iv) contracts whereby the State University agrees to give something other than money, when the value or reasonably estimated value of such consideration exceeds \$10,000; (v) contracts for real property transactions if the contract value exceeds \$50,000; (vi) all other contracts not listed in Paragraph 3(a) above, if the contract value exceeds \$50,000, e.g. SUNY acquisition of a business and New York State Finance Article 11-B contracts and (vii) amendments for any amount to contracts not listed in Paragraph 3(a) above, when as so amended, the contract exceeds the threshold amounts stated in Paragraph (b) herein. However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or

for a purchase order or other transaction issued under such centralized contract.

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

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work

contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by SUNY of any SUNY-approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based on the submission of competitive bids, Contractor affirms, under penalty of perjury, and each person signing on behalf of Contractor, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered it to SUNY a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 *et seq.*) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4).

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

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six

(6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as SUNY and its representatives and entities involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. SUNY shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate SUNY official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, SUNY's or the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State University of New York is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the State University of New York contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

(a) In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition,

construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(1) 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, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(2) at SUNY's request, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(3) 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.

(b) Contractor will include the provisions of "1", "2" and "3", above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a Contractor or sub-contractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. SUNY shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, SUNY shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

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

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

15. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach

thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

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

18. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with the approval of the State, otherwise, the bid may not be considered responsive. Under bidder certification, 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 Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165(5) of the State Finance Law), and shall permit independent monitoring of compliance with such principles.

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

Information on the availability of New York State subcontractors and suppliers is available from:
NYS Department of Economic Development
Division for Small Business
30 South Pearl St., 7th Floor
Albany, NY 12245
Tel: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority and women-

owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business
Development
633 Third Avenue
New York, NY 10017
212-803-2414

email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/FrontEndVendorSearchPublic.asp>

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

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

(b) The Contractor has complied with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Search 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 SUNY may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with SUNY in these efforts.

21. RECIPROCITY AND SANCTIONS

PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act of 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. Contact the NYS Department of Economic Development, Division for Small Business, 30 South Pearl Street, Albany, New York 12245, for a current list of jurisdictions subject to this

provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal or similar services, then in accordance with Section 163(4-g) of the State Finance Law, the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to SUNY, the Department of Civil Service and the State Comptroller.

24. PURCHASES OF APPAREL AND SPORTS EQUIPMENT. In accordance with State Finance Law Section 165(7), SUNY may determine that a bidder on a contract for the purchase of apparel or sports equipment is not a responsible bidder as defined in State Finance Law Section 163 based on (a) the labor standards applicable to the manufacture of the apparel or sports equipment, including employee compensation, working conditions, employee rights to form unions and the use of child labor; or (b) bidder's failure to provide information sufficient for SUNY to determine the labor conditions applicable to the manufacture of the apparel or sports equipment.

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

26. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the Contractor fails to make the certification required by Tax Law

Section 5-a or if during the term of the contract, the Department of Taxation and Finance or SUNY discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if SUNY determines that such action is in the best interests of the State.

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

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

THE FOLLOWING PROVISIONS SHALL APPLY ONLY TO THOSE CONTRACTS TO WHICH A HOSPITAL OR OTHER HEALTH SERVICE FACILITY IS A PARTY

28. Notwithstanding any other provision in this contract, the hospital or other health service facility remains responsible for insuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, state and local statutes, rules and regulations. In the foregoing sentence, the word "service" shall be construed to refer to the health care service rendered by the hospital or other health service facility.

29. (a) In accordance with the 1980 Omnibus Reconciliation Act (Public Law 96-499), Contractor hereby agrees that until the expiration of four years after the furnishing of services under this agreement, Contractor shall make available upon written request to the Secretary of Health and Human Services, or upon request, to the Comptroller General of the United States or any of their duly authorized representatives, copies of this contract, books, documents and records of the Contractor that are necessary to certify the nature and extent of the costs hereunder.

(b) If Contractor carries out any of the duties of the contract hereunder, through a subcontract having a value or cost of \$10,000 or more over a twelve-month period, such subcontract shall contain a clause to the effect that, until the expiration of four years after the furnishing of such services pursuant to such subcontract, the subcontractor shall make available upon written request to the Secretary of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, copies of the subcontract and books, documents and records of the subcontractor that are necessary to verify the nature and extent of the costs of such subcontract.

(c) The provisions of this section shall apply only to such contracts as are within the definition established by the Health Care Financing Administration, as may be amended or modified from time to time.

EXHIBIT A-1

December 12, 2014

1. **DEFINITIONS.** The following terms shall be defined in accordance with Section 310 of the Executive Law:

STATE CONTRACT herein referred to as "State Contract", shall mean: (a) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000.00), whereby the State University of New York ("University") is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing, to be performed for, or rendered or furnished to the University; (b) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; and (c) a written agreement in excess of one hundred thousand dollars (\$100,000.00) whereby the University as an owner of a state assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project.

SUBCONTRACT herein referred to as "Subcontract", shall mean any agreement for a total expenditure in excess of \$25,000 providing for services, including non-staffing expenditures, supplies or materials of any kind between a State agency and a prime contractor, in which a portion of the prime contractor's obligation under the State contract is

undertaken or assumed by a business enterprise not controlled by the prime contractor.

WOMEN-OWNED BUSINESS ENTERPRISE herein referred to as "WBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more United States citizens or permanent resident aliens who are women; (b) an enterprise in which the ownership interest of such women is real, substantial and continuing; (c) an enterprise in which such women ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

A firm owned by a minority group member who is also a woman may be certified as a minority-owned business enterprise, a women-owned business enterprise, or both, and may be counted towards either a minority-owned business enterprise goal or a women-owned business enterprise goal, in regard to any Contract or any goal, set by an agency or authority, but such participation may not be counted towards both such goals. Such an enterprise's participation in a Contract

may not be divided between the minority-owned business enterprise goal and the women-owned business enterprise goal.

MINORITY-OWNED BUSINESS ENTERPRISE herein referred to as "MBE", shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (a) at least fifty-one percent (51%) owned by one or more minority group members; (b) an enterprise in which such minority ownership is real, substantial and continuing; (c) an enterprise in which such minority ownership has and exercises the authority to control independently the day-to-day business decisions of the enterprise; (d) an enterprise authorized to do business in this state and independently owned and operated; (e) an enterprise owned by an individual or individuals, whose ownership, control and operation are relied upon for certification, with a personal net worth that does not exceed three million five hundred thousand dollars (\$3,500,000.00), as adjusted annually on the first of January for inflation according to the consumer price index of the previous year; and (f) an enterprise that is a small business pursuant to subdivision twenty of this section.

MINORITY GROUP MEMBER shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (a) Black persons having origins in any of the Black African racial groups; (b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; (c) Native American or Alaskan native persons having origins in any of the original peoples

of North America. (d) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian Subcontinent or Pacific Islands.

CERTIFIED ENTERPRISE OR BUSINESS shall mean a business verified as a minority or women-owned business enterprise pursuant to section 314 of the Executive Law. A business enterprise which has been approved by the New York Division of Minority & Women Business Development ("DMWBD") for minority or women-owned enterprise status subsequent to verification that the business enterprise is owned, operated, and controlled by minority group members or women, and that also meets the financial requirements set forth in the regulations.

2. TERMS. The parties to the attached State Contract agree to be bound by the following provisions which are made a part hereof (the word "Contractor" herein refers to any party other than the University:

1(a) Contractor and its Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. For these purposes, affirmative action shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

(b) Prior to the award of a State Contract, the Contractor shall submit an equal employment opportunity (EEO) policy statement to the University within the time frame established by the University.

(c) As part of the Contractor's EEO policy statement, the

Contractor, as a precondition to entering into a valid and binding State Contract, shall agree to the following in the performance of the State Contract: (i) The Contractor will not discriminate against any employee or applicant for employment, will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce on State Contracts; (ii) The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the State Contract, all qualified applicants will be afforded equal employment opportunities without discrimination; (iii) At the request of the University the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

(d) Form 108 - Staffing Plan To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

(e) Form 112 - Workforce Employment Utilization Report ("Workforce Report")

(i) Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to SUNY of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.

(ii) Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

(iii) In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.

(f) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and

shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(g) The Contractor shall include the provisions of this section in every Subcontract in such a manner that the requirements of the provisions will be binding upon each Subcontractor as to work in connection with the State Contract, including the requirement that Subcontractors shall undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and, when requested, provide to the Contractor information on the ethnic background, gender, and Federal occupational categories of the employees to be utilized on the State Contract.

(h) To ensure compliance with the requirements of this paragraph, the University shall inquire of a Contractor whether the work force to be utilized in the performance of the State Contract can be separated out from the Contractor's and/or Subcontractors' total work force and where the work of the State Contract is to be performed. For Contractors who are unable to separate the portion of their work force which will be utilized for the performance of this State Contract, Contractor shall provide reports describing its entire work force by the specified ethnic background, gender, and Federal Occupational Categories, or other appropriate categories which the agency may specify.

(i) The University may require the Contractor and any Subcontractor to submit compliance reports, pursuant to the regulations relating to their operations and implementation of their affirmative action or equal employment opportunity program in effect as of the date the State Contract is executed.

(j) If a Contractor or Subcontractor does not have an existing affirmative action program, the University may provide to the Contractor or Subcontractor a model plan of an affirmative action program. Upon request, the Director of DMWBD shall provide a contracting agency with a model plan of an affirmative action program.

(k) Upon request, DMWBD shall provide the University with information on specific recruitment sources for minority group members and woman, and contracting agencies shall make such information available to Contractors

3. Contractor must provide the names, addresses and federal identification numbers of certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State Contract and a description of the Contract scope of work which the Contractor intends to structure to increase the participation by Certified minority- and/or women-owned business enterprises on the State Contract, and the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State Contract which the Contractor intends to be performed by a certified minority- or woman-owned business enterprise. In the event the Contractor responding to University solicitation is joint venture, teaming agreement, or other similar arrangement that includes a minority-and women owned business enterprise, the Contractor must submit for review and approval: i. the name, address, telephone number and federal identification of each partner or party to the agreement; ii. the federal identification number of the joint venture or entity established to respond to the solicitation, if applicable; iii. A copy of the joint venture, teaming or other similar arrangement which describes the percentage of interest_owned by each party to the agreement and the value

added by each party; iv. A copy of the mentor-protégé agreement between the parties, if applicable, and if not described in the joint venture, teaming agreement, or other similar arrangement.

4. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN.

The University shall determine whether Contractor has made conscientious and active efforts to employ and utilize minority group members and women to perform this State Contract based upon an analysis of the following factors:

(a) Whether Contractor established and maintained a current list of recruitment sources for minority group members and women, and whether Contractor provided written notification to such recruitment sources that contractor had employment opportunities at the time such opportunities became available.

(b) Whether Contractor sent letters to recruiting sources, labor unions, or authorized representatives of workers with which contractor has a collective bargaining or other agreement or understanding requesting assistance in locating minority group members and women for employment.

(c) Whether Contractor disseminated its EEO policy by including it in any advertising in the news media, and in particular, in minority and women news media.

(d) Whether Contractor has attempted to provide information concerning its EEO policy to Subcontractors with which it does business or had anticipated doing business.

(e) Whether internal procedures exist for, at a minimum, annual dissemination of the EEO policy to employees, specifically to employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions. Such dissemination may occur through

distribution of employee policy manuals and handbooks, annual reports, staff meetings and public postings.

(f) Whether Contractor encourages and utilizes minority group members and women employees to assist in recruiting other employees.

(g) Whether Contractor has apprentice training programs approved by the N.Y.S. Department of Labor which provides for training and hiring of minority group members and women.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor.

5. PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES.

Based upon an analysis of the following factors, the University shall determine whether Contractor has made good faith efforts to provide for meaningful participation by minority-owned and women-owned business enterprises which have been certified by DMWBD:

(a) Whether Contractor has actively solicited bids for Subcontracts from qualified M/WBES, including those firms listed on the Directory of Certified Minority and Women-Owned Business Enterprises, and has documented its good faith efforts towards meeting minority and women owned business enterprise utilization plans by providing, copies of solicitations, copies of any advertisements for participation by certified minority- and women-owned business enterprises timely published in appropriate general circulation, trade and minority- or women-oriented publications, together with the listing(s) and date(s) of the publications of such advertisements; dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the University, with certified minority-

and women-owned business enterprises, and the reasons why any such firm was not selected to participate on the project.

(b) Whether Contractor has attempted to make project plans and specifications available to firms who are not members of associations with plan rooms and reduce fees for firms who are disadvantaged.

(c) Whether Contractor has utilized the services of organizations which provide technical assistance in connection with M/WBE participation.

(d) Whether Contractor has structured its Subcontracts so that opportunities exist to complete smaller portions of work.

(e) Whether Contractor has encouraged the formation of joint ventures, partnerships, or other similar arrangements among Subcontractors.

(f) Whether Contractor has requested the services of the Department of Economic Development (DED) to assist Subcontractors' efforts to satisfy bonding requirement.

(g) Whether Contractor has made progress payments promptly to its Subcontractors.

(h) Whether the terms of this section have been incorporated into each Subcontract which is entered into by the Contractor. It shall be the responsibility of Contractor to ensure compliance by every Subcontractor with these provisions.

6. MWBE Utilization Plan.

(a) The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan prior to the execution of the contract.

(b) MWBE Utilization Plan (Form 7557-107).

Contractors are required to submit a Utilization Plan on Form 7557-107 with their bid or proposal. Complete the following steps to prepare the Utilization Plan:

- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
- ii. insert a description of the contract scope of work which the Contractor intends to structure to increase the participation by NYS Certified minority- and women-owned enterprises on the State contract;
- iii. insert the estimated or, if known, actual dollar amounts to be paid to and performance dates of each component of a State contract which the Contractor intends to be performed by a NYS Certified minority- or women-owned business; and

(c) Any modifications or changes to the agreed participation by NYS Certified MWBES after the Contract Award and during the term of the contract must be reported on a revised MWBE Utilization Plan and submitted to the SUNY University-wide MWBE Program Office.

(d) The University will review the MWBE Utilization Plan and will issue the Contractor a written notice of acceptance or deficiency within twenty (20) day of its receipt. A notice of deficiency shall include the:

- i. list NYS Certified minority- and women-owned business enterprises which the Contractor intends to use to perform the State contract;
- ii. name of any MWBE which is not acceptable for the purpose of complying with the MWBE participation goals;
- iii. reasons why it is not an acceptable element of the Contract scope of work which the MWBE Program

Office has determined can be reasonably structured by the Contractor to increase the likelihood of participation in the Contract by MWBEs; and

- iv. other information which the MWBE Program Office determines to be relevant to the MWBE Utilization Plan.

(c) The Contractor shall respond to the notice of deficiency within seven (7) business days of receipt by submitting to the University a written remedy in response to the notice of deficiency.

- i. If the written remedy that is submitted is not timely or is found to be inadequate, the University-wide MWBE Program Office shall notify the Contractor and direct the Contractor to submit, within five (5) business days, a request for partial or total waiver of MWBE participation goals on forms provided by the University-wide MWBE Program Office.

- ii. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

(f) The University may disqualify a Contractor as being non-responsive under the following circumstances:

- i. If a Contractor fails to submit a MWBE Utilization Plan;
- ii. If a Contractor fails to submit a written remedy to a notice of deficiency in a MWBE Utilization Plan;
- iii. If a Contractor fails to submit a request for waiver; or
- iv. If the MWBE Program Office determines that the Contractor has failed to document Good Faith Efforts.

(g) Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.

(h) Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, SUNY shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

7. Waivers.

(a) For Waiver Requests Contractor should use (Form 7557-114) - Waiver Request.

(b) If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete the University shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.

(c) If University, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the University may issue a notice of deficiency to the Contractor. The contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

8. Quarterly MWBE Contractor Compliance Report.

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form 7557-114) to the University by the 5th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

9. GOALS. (a) GOALS FOR MINORITY AND WOMEN WORK FORCE PARTICIPATION.

(i) The University shall include relevant work force availability data, which is provided by the DMWBD, in all documents which solicit bids for State Contracts and shall make efforts to assist Contractors in utilizing such data to determine expected levels of participation for minority group members and women on State Contracts.

(ii) Contractor shall exert good faith efforts to achieve such goals for minority and women's participation. To successfully achieve such goals, the employment of minority group members and women by Contractor must be substantially uniform during the entire term of this State Contract. In addition, Contractor should not participate in the transfer of employees from one employer or project to another for the sole purpose of achieving goals for minority and women's participation.

(b) GOALS FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION.

For all State Contracts in excess of \$25,000.00 whereby the University is committed to expend or does expend funds in return for labor, services including but not limited to legal, financial and other professional services, supplies, equipment, materials or a combination of the foregoing or all State Contracts in excess of \$100,000.00 whereby the University

is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon, Contractor shall exert good faith efforts to achieve a participation goal of _____ percent (____%) for Certified Minority-Owned Business Enterprises and _____ percent (____%) for Certified Women-Owned Business Enterprises.

10. ENFORCEMENT. The University will be responsible for enforcement of each Contractor's compliance with these provisions. Contractor, and each Subcontractor, shall permit the University access to its books, records and accounts for the purpose of investigating and determining whether Contractor or Subcontractor is in compliance with the requirements of Article 15-A of the Executive Law. If the University determines that a Contractor or Subcontractor may not be in compliance with these provisions, the University may make every reasonable effort to resolve the issue and assist the Contractor

or Subcontractor in its efforts to comply with these provisions. If the University is unable to resolve the issue of noncompliance, the University may file a complaint with the DMWBD.

Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, remedies or enforcement proceedings as allowed by the Contract.

11. DAMAGES FOR NON COMPLIANCE.

Where the University determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay liquidated damages to the University. Such liquidated damages shall be calculated as an amount equaling the difference between:

a. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and

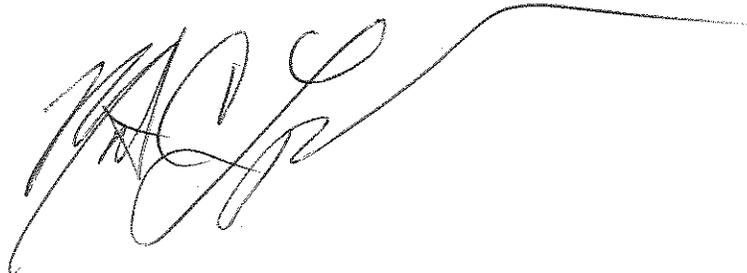
b. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the University, Contractor shall pay such liquidated damages to the University within sixty (60) days after such damages are assessed, unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the University.

EXHIBIT B
Kelley Drye Fee Schedule

Title	Hourly Rate/Range	Discount
[Redacted Content]		

OFFICE OF THE STATE COMPTROLLER
RECEIVED
AUG 26 2015
BUREAU OF CONTRACTS



Michael C. Lynch
August 24, 2015

Kevin Donlon 8/25/15
Kevin Donlon

Exhibit C
SUNY Special Counsel Billing Criteria & Policy

I. Policy

These criteria have been established to enhance the working relationship between the State University of New York ("SUNY") Office of General Counsel attorneys and the Special Counsel. Special Counsel shall review these criteria and direct any questions to the Office of General Counsel for clarification.

II. Guidelines for Billing and Fees

SUNY shall pay for Special Counsel's services at rates that are agreed to by both parties and are incorporated into the retainer agreement. All hourly rates will be binding for the term of the retention agreement with annual Cost of Living ("COLA") increases limited to the Consumer Price Index ("CPI"). All billings must be calculated in units of one-tenth of an hour, except that travel time shall be billed at a rate of one half of the hourly rate otherwise applicable for such individual. Special Counsel agrees that all hourly rates shall include all fixed overhead costs including but not limited to expenses for word processing, secretarial or clerical work, research costs (i.e. Lexis or Westlaw charges) or reference librarians. Any billings for actual expenses incurred by Special Counsel (i.e. disbursements) must be substantiated and documented.

III. Work Assignment

Special Counsel shall keep the SUNY Office of General Counsel informed of the nature, scope and time frame for all assignments undertaken by Special Counsel prior to the commencement of the assignment. Special Counsel shall not research or prepare legal analyses or other written work products with a projected value of Three Thousand Dollars (\$3,000.00) or greater without the prior written consent of the Office of General Counsel. For projects under Three Thousand Dollars (\$3,000.00), verbal consent of the Office of General Counsel will suffice, but in no instance shall projects be commenced without the knowledge of General Counsel. When a written work product is prepared, a final copy or, if no final copy is yet available, a current draft of such written work product, shall be provided to the Office of General Counsel prior to Special Counsel's submission of any bill that includes work time expended on its preparation. In addition, a copy of such written work product shall be provided to the Office of General Counsel at or prior to the time it is shared with or transmitted to any SUNY officials or employees.

IV. Calculations of Costs in Estimating Work and Case Assignments

A. *Staff allocation*

Special Counsel agrees to assign personnel who are qualified and experienced in an area of law/substantive matter. Likewise, SUNY shall not be billed at a partner's hourly rate when one of Special Counsel's associates could have reasonably worked on and/or properly handled an issue. In all cases, work should be assigned to the least costly

qualified person in the Firm available to handle the task. Special Counsel agrees that each of its associates, paralegals, interns or legal assistants assigned to SUNY work shall make a clear contribution, although nothing in this section or elsewhere should be construed to require creation of written work product where the Firm, in its professional judgment, would not otherwise do so. SUNY and Special Counsel agree that whenever possible, associates and legal assistants shall be utilized to replace partners' time and reduce total billings. However, both parties also recognize that the utilization of a lawyer with expertise in a particular area of law will eliminate the necessity of extensive research. SUNY and Special Counsel agree that no additional staff will be added to a work assignment prior to consultation with the SUNY Office of General Counsel. Special Counsel should seek to limit, to the extent possible, the number of internal conferences and meetings between members of the Firm that are billed to SUNY. Additionally, Special Counsel shall obtain approval, in advance, from SUNY where more than one member of the Firm attends a particular outside meeting, court appearance or other such matter.

B. Overtime Billing

Special Counsel shall not bill for overtime since it is expected that any work assigned will be conducted during normal business hours.

C. Changes in Staff

In the event Special Counsel is forced to make a staff change of anyone assigned to a SUNY case or matter, Special Counsel will not bill SUNY for any time expended by the new staff of Special Counsel becoming acquainted with such area of law or matter.

D. Fax Charges and E-mail

Special Counsel is directed to use e-mail as the preferred mode of communication. Any attachments to e-mail documents should be formatted in Microsoft Word, Excel or Power Point. Special Counsel is directed not to duplicate costs by mailing a document that has been emailed unless specifically requested by the SUNY Office of Counsel.

SUNY agrees to pay actual telephone line charges for faxes sent. SUNY will not pay both phone line charges and a flat fee in connection with out-going faxes. SUNY will not pay for maintenance, paper or operator costs, because such items should be included in the Firm's cost of doing business.

E. Telephone Charges

Special Counsel agrees not to bill SUNY for any local telephone calls and further agrees it will bill SUNY for any long distance calls at the rate Special Counsel's Firm has been billed.

F. Electronic Research

Special Counsel agrees that computer legal research tools such as Lexis-Nexis or Westlaw, shall be used judiciously to minimize costs to SUNY. Special Counsel acknowledges and agrees that it was selected because of its expertise in the subject area. Paralegal or attorney time spent performing computerized legal research shall be at the same rates as Special Counsel's hourly charges for professional services.

G. Next Day Mail Charges

SUNY agrees to pay for any documented next day mail service, courier or other delivery fees that are incurred by Special Counsel, but only provided such transmission of documents is necessary.

H. Document Duplication Fees

Special Counsel agrees that it will prudently direct the duplication of documents. SUNY authorizes Special Counsel to employ less expensive, commercial copy vendors when practicable. SUNY agrees to reimburse special expenditures for such copying at the cost it was invoiced. Special Counsel is instructed to send only one set of documents to SUNY's Office of General Counsel, as that office will be responsible for making any additional copies.

I. Travel

SUNY will authorize any required travel by Special Counsel. SUNY will reimburse for actual, necessary and reasonable travel expenses that have been incurred. Reasonable travel expenses shall be defined as coach class airfare, reasonable taxi charges and other ground transportation expenses, and hotel accommodations, in accordance with rates set forth for travel reimbursement by the Office of the New York State Comptroller, available at <http://www.osc.state.ny.us/agencies/travel/reimbrate.htm>. SUNY does not agree to accept charges incurred by Special Counsel for meals, movies, personal telephone charges, entertainment or garment cleaning. Mileage will not be paid in excess of the amount allotted by the Internal Revenue Service for income tax purposes. In those situations where Special Counsel is also attending meetings or working on a non-SUNY related matter, it shall prorate all travel charges and apportion equitably the costs of such travel and other incidental charges among clients.

J. Professional Services

Special Counsel must obtain permission from SUNY prior to retaining any professional services that may be necessary to perform its duties under the terms of this Agreement.

K. Non Billable Charges

In addition to billing restrictions above, Special Counsel agrees not to bill SUNY any overhead costs of doing business, including apportioned rent or utility costs, charges for conference rooms, filing space, the use of library facilities and meals.

Special Counsel further agrees not to bill SUNY for any of the following:

- (1) any form of labeling;
- (2) organization, filing and warehousing of SUNY documents internally within the Firm;
- (3) consolidation of documents, i.e., binders; and
- (4) word processing or other mechanical means of document preparation.

V. Monthly Statements

Since individual SUNY campuses are responsible for payment of bills, Special Counsel agrees it will submit monthly billings to the campus making arrangements for the legal services, and will also provide a copy to the SUNY Office of General Counsel. Each matter handled by Special Counsel will be itemized for a specific campus and explained individually with the fees and disbursements for each type of activity contained in the bill. Each such monthly bill shall include:

- (i) a caption containing the matter name;
- (ii) the name, job title and billing rate of each professional who worked on the matter during the past calendar month, as well as each individual's total hours and total fees;
- (iii) Identification of the professional in Special Counsel's Firm performed the service, including but not limited to the date and the amount of time expended, calculated to the nearest tenth of an hour. SUNY will not accept bills that only provide per person daily totals of time. All references in bills to meetings, telephone calls, internal discussions etc. shall specifically identify the subject matter of the meeting, etc;
- (iv) Incidental Charges are to be listed separately from fees and each such charge shall be separately listed, e.g. long distance telephone charges and document copying charges and described with reasonable specificity. Any time expended by Special Counsel in preparing the billing, reviewing or discussing billing related issues with SUNY may not be billed to SUNY.

VI. Audit Procedures

SUNY and the Office of the State Comptroller retain the right to audit legal bills related to this matter for a period of six years from the date of the last billing. SUNY reserves the right to examine all underlying billing documentation, including but not limited to original receipts and time records.