The William Paterson University

Of New Jersey
Wayne, New Jersey

Office of the Vice President for Administration and Finance

CONSTRUCTION CONTRACT
with

Company Name
of
Town, State

Project Title
(WP-xx-xx-xx)

MMDDYY

The William Paterson University of New Jersey
Wayne, New Jersey
Office of the Vice President for Administration and Finance

CONSTRUCTION CONTRACT

This Contract is entered into and dated this xxth day of MM, YY between The William Paterson University of New Jersey, hereinafter called the "Owner", and Contractor's Name, hereinafter called the "Contractor".

WITNESS THAT:

The parties hereto agree as follows:

Article 1
EMPLOYMENT OF THE CONTRACTOR

1.1 For and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Owner, the Contractor hereby agrees with the Owner to commence and complete the construction described in Paragraph 1.2.

1.2 **Scope of Work:** All work is to be completed as follows:

Furnish all labor, equipment, and materials required to complete all work for this project as specified in the Contract Documents, including those prepared by the architectural firm of Architect's Name, and as submitted in the Bid Form submitted on MMDDYY.

Contract Documents include:

1. This Contract
2. Supplemental Instructions for Bidding and Bid Form
3. Addendum No.
4. Forms Submitted by the Contractor with Bid
5. General Conditions

6. Plans & Specs issued by Architect's Name.

The Scope of Work outlined above shall hereinafter be called the "Project".

1.3 **Time for Completion:** All work is to be completed by not later than MMDDYY.

The contractor's equipment location will be determined by the University.

Work can be performed on weekends and after regular work hours, with the written approval of the University.

1.4 **Bonus(s) and Penalty(s):** Liquidated damages shall be $1,000.00 per calendar day.

Article 2
CONTRACTOR'S COMPENSATION

2.1 The Owner shall pay the Contractor as full compensation for all the services required as listed below, or in connection with this Contract, a total fee of: $0000000.

Article 3
PAYMENTS

3.1 The Contract sum is stated in the Contract and, including authorized adjustments thereto, is in the total amount payable by the Owner to the Contractor for the performance of the work under the Contract Documents.

3.2 The Owner agrees to pay the Contractor in current funds for the performance of the Contract, subject to additions and deductions, as provided in the General Conditions of the Contract, and to make payments on account hereof as provided in Article 10 "Payment", of the General Conditions.

Article 4
PROGRESS REQUISITIONS AND PAYMENTS

4.1 The Contractor shall submit his Application for Payment to the Architect. The Architect will review the Application and make his recommendation to the Owner for payment. The Contractor shall submit an Application for Payment no more than once per month. If the Architect does not recommend approval of the Application for Payment as submitted, he will immediately advise the Contractor. If agreement cannot be reached within five (5) days, the Application for Payment, together with the Architect's recommendation, will be sent to the Owner for its decision and appropriate action. Alternately, the dispute may be submitted to a process of alternative dispute resolution. The Owner will make payment within thirty (30) days after final determination of amount due or otherwise in accordance with Prompt Payment Act, N.J.S.A. 2A:30A-2 and Article 10 of the General Conditions.

4.2 Recommendations for approval of an Application for Payment will constitute a representation by the Architect to the Owner, based on his or her inspections at the site and data contained in the Requisition for Payment, that the Work has progressed to the point indicated; that, to the best of his or her knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents; and that the Contractor is entitled to payment in the amount certified. By recommending approval of requisition for payment, however, the Architect shall not thereby be deemed to represent that he or she has made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, or reviewed the construction means, methods, techniques, sequences or procedures, or any examination to ascertain how and

for what purpose the Contractor has used the monies previously paid on account of the Contract Sum.

4.3 Unless otherwise provided in the Contract Documents, payments may be made on account of materials or equipment not incorporated in the Work, but delivered and suitably stored on the site.

4.4 All material and work for which partial payments have been made shall become the sole property of the Owner. This provision shall not be construed as relieving the Contractor from the responsibility for the care and protection of materials and work for which payments have been made or for the restoration of any damaged work, or a waiver of right of the Owner to require fulfillment of all terms of the Contract.

4.5 In addition to other warranties required by provisions of the Contract and Specifications, the Contractor warrants that title to all work, materials and equipment covered by an Application for Payment will pass to the Owner, either upon incorporation into the construction or upon receipt of payment by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests or encumbrances. This provision shall not be construed as relieving the Contractor from sole responsibility for the care and protection of materials and Work upon which payments have been made, or the restoration of any damaged Work, or as a waiver by the Owner of its right to require fulfillment of all terms of the Contract.

Article 5
PROGRESS PAYMENTS BY CONTRACTORS TO SUBCONTRACTORS

5.1 Neither the Owner nor the Architect has any obligation to pay or see to the payment of any monies to any Subcontractor except as may otherwise be required by law. The Contractor shall certify in the Application for Payment that payments to all Subcontractors and suppliers are consistent

with the level of payments made by the Owner to the Contractor and the Prompt Payment Act N.J.S.A. 2A:30A-2, which governs payments to contractors and subcontractors. If the Contractor has not, in fact, made such payments, he has made a fraudulent statement and is subject to legal action on the part of the Owner including withholding payments on subsequent Applications for Payment in amounts reasonably necessary for payment of claims or potential claims of Subcontractors and/or suppliers.

Article 6
PAYMENTS WITHHELD

6.1 The Owner or the Architect may decline to certify payment and may withhold the Contractor's Application for Payment in whole or in part, to the extent necessary to protect the Owner. If the Owner or the Architect and the Contractor cannot agree on a revised amount, the Owner will promptly approve for payment that amount which he believes the Contractor to be entitled. The Owner may also decline to certify payment or, because of subsequently discovered evidence or subsequent inspections, may reevaluate the whole of any part of any Application for Payment previously issued, to such extent as may be necessary to protect the Owner. In those instances where the Contractor, the Owner and/or the Architect are in disagreement, the matter shall be referred to the University Contracting Office for resolution. Upon the written request of the Contractor, the Contracting Officer shall determine the appropriate amount to be paid to the Contractor consistent with the interests of the Owner. Additionally, consistent with the Prompt Payment Act, disputes regarding whether a party has failed to make payments required, may be submitted to a process of alternative dispute resolution.

Article 7
FINAL PAYMENT-CERTIFICATION OF FINAL COMPLETION

7.1 The acceptance by the Contractor of Final Payment shall be and operate as a release to the Owner of all claims and liability to the Contractor for all things done or furnished in connection with this Work, and for every act, omission or neglect of the Owner relating to or arising out of this Work. No payment, however, final or otherwise, shall operate to release the Contractor or his Sureties from any obligations under the Contract Documents or the Performance and Payment Bonds.

7.2 If, for any reason, the Contractor refuses final payment, the Project will be closed out by the Owner unilaterally without processing a Final Acceptance Certificate. All residual funds will be held in escrow by the Owner until all claims of the Owner and all Contractors are satisfied.

Article 8
ABANDONMENT OR POSTPONEMENT OF PROJECT

8.1 The Owner shall have the right to defer the beginning or to suspend the whole or any part of the work herein contracted to be done, whenever, in the opinion of the Contracting Officer, it may be necessary or expedient for the Owner to do so. If the Contractor is delayed in the completion of the work by act, neglect, default of the Architect, or of any other party employed by the University upon the work, by changes ordered in the work, by strikes, lockouts, fire, unusual delay by common carriers, unavoidable casualties, by any cause beyond the Contractor's control or by these or any other cause which the Contracting Officer shall decide to justify the delay, then for all such delays and suspensions the Contractor shall be allowed one day additional to the time herein stated for each and every day of such delays so caused in the completion of the work. The same is to be determined by the Contracting Officer for similar allowances of extra time to be made for such other delays the Contracting Officer may determine to have been caused by the

University. For those delays caused by the acts, neglect or default of the Owner, , the Contractor shall be entitled to an upward adjustment in the contract price to compensate the Contractor for eligible costs defined by Article 14 of the General Conditions. For all other delays, the Contractor shall not be entitled to extra compensation or damage from the University other than an extension of time. The contractor shall not be entitled to any damages or extra compensation from the University on account of any act, neglect or default by the Architect or any other party employed by the University.

8.2 The Contractor shall comply with the provisions of N.J.S.A. 52:33-1et seq., which requires that only domestic materials be acquired or used unless the Contracting Officer finds it is impracticable to make such requirement or that it would unreasonably increase the cost.

Article 9
ADJUSTMENT OF CONTRACT COMPLETION TIME

9.1 The Contract completion time or times will be adjusted only for causes specified in the contract documents. In the event a Contractor requests an extension of any Contract Completion Date, it shall furnish such justification and supporting evidence that the University requires to evaluate the Contractor's request. The University shall then make his finding of fact and advise the Contractor in writing thereof. If the University finds that the Contractor is entitled to any extension of any Contraction Completion Date under the provisions of this Contract, the determination as to the total number of days extension shall be based upon the currently approved schedule and on all data relevant to the extension.

Article 10
CORRECTION OF WORK

10.1 The Contractor shall promptly correct all Work rejected by the Owner or the Architect as defective or as failing to conform to the Contract Documents, whether observed before or after Final Acceptance and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such rejected Work, including the Architect's additional services, if any.

10.2 The Contractor shall remove from the Site all portions of the Work which are defective or nonconforming and which have not been corrected unless removal is waived by the Owner.

10.3 If the Contractor fails to correct defective or non-conforming Work in a timely manner, the Owner may make arrangements for such correction by others and charge the cost of so doing to the responsible Contractor and/or his Sureties.

10.4 If the Contractor does not proceed with the correction of such defective or nonconforming work within a reasonable time, fixed by written notice from the Owner of the Architect, the Owner may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay for the cost of such removal and storage within ten (10) days thereafter, the Owner may upon ten (10) days additional written notice sell such material and equipment at auction or private sale and shall account for the net proceeds thereof, after deducting all of the costs which are the responsibility of the Contractor including compensation for the Architect's additional services, if any. If such proceeds of sale do not cover all costs which the Contractor and an appropriate credit Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor and/or his Surety will pay the difference to the Owner.

10.5 The Contractor shall also be responsible for the cost of making good all Work destroyed or damaged by such correction or removal.

10.6 Nothing contained herein shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Document.

Article 11
DEFECTIVE OR NONCONFORMING WORK & DELAYS

11.1 If the Contracting Officer determines that the best interests of the University will be served by accepting defective or nonconforming work, he may do so instead of requiring its removal and correction. In such instance, a Credit Change Order will be issued to reflect an appropriate and equitable reduction in the Contract Sum. Such adjustment shall be effected regardless of Final Payment having been previously made, and the Contractor and/or his surety shall be responsible for promptly providing any funds due the University as a result thereof.

Article 12
CHANGES IN THE WORK

12.1 A Change Order is a written order to the Contractor, signed by the Owner and the Architect, issued after execution of the Contract, authorizing a Change in the Work, or an adjustment in the Contract Sum, or the Contract time. The Contract Sum and the Contract Time may be altered only by a Change Order. A Change Order signed by the Contractor and the Owner indicates an agreement which shall serve to adjust the Contract Sum and/or the Contract Time. A Change Order shall become a part of the Contract Documents only after it is fully executed by the Contractor and the Owner. Changes in the work shall otherwise be governed by Article 14 of the General Conditions, which is incorporated herein by reference.

Article 13
INSURANCE

13.1 Contractor Insurance Requirements

13.1.1 The Contractor shall secure and maintain in force for the term of the Contract, insurance coverage provided herein. All insurance coverage is subject to the approval of the University and shall be issued by an insurance company authorized to do business in the State of New Jersey and which maintains an A.M. Best rating of A- (VII) or better.
The Contractor shall provide the University with current Certificates of Insurance for all coverage and renewals thereof which must contain the provision that the insurance provided in the certificate shall not be canceled for any reason except after thirty (30) days written notice to the University. All insurance required herein shall contain a waiver of subrogation in favor of the University. All insurance required herein, except Workers' Compensation and Owners and Contractors Protective, shall name William Paterson University, the State of New Jersey, the New Jersey Educational Facilities Authority, the William Paterson University Board of Trustees, the Architect/Engineer and Construction Manager as additional insureds.

13.1.2 Commercial General Liability insurance written on an occurrence form including independent contractor liability, products/completed operations liability, contractual liability, covering but not limited to the liability assumed under the indemnification provisions of this contract. Coverage for bodily injury and property damage claims arising out of the professional acts of the general contractor and subcontractors shall also be included. The policy shall not include any endorsement that restricts or reduces coverage as provided by the ISO CG0001 form without the approval of the University. The minimum limits of liability shall not be less than a combined single limit of one million dollars ($1,000,000) per occurrence, two million dollars ($2,000,000) general aggregate, two million dollars ($2,000,000) product/completed operations aggregate. A "per project endorsement" shall be included, so that the general aggregate limit applies separately to the project that is the subject of

this contract.

13.1.3 Comprehensive Automobile Liability covering owned, non-owned, and hired vehicles. The limits of liability shall not be less than a combined single limit of one million dollars ($1,000,000) per occurrence.

13.1.4 Worker's Compensation Insurance applicable to the laws of the State of New Jersey and other State or Federal jurisdiction required to protect the employees of the Contractor and any Subcontractor who will be engaged in the performance of this Contract. The certificate must so indicate that no proprietor, partner, executive officer or member is excluded. This insurance shall include Employers' Liability Protection with a limit of liability not less than one million dollars ($1,000,000) bodily injury, each occurrence, one million dollars ($1,000,000) disease, each employee, and one million dollars ($1,000,000) disease, aggregate limit. Including the employer's liability insurance under the umbrella insurance can satisfy the limit requirements.

13.1.5 The Contractor shall obtain and maintain a separate Owners and Contractor's Protective Liability Insurance Policy for the same limits of liability as specified for the Commercial General Liability Insurance in the name of William Paterson University, the State of New Jersey, the New Jersey Educational Facilities Authority and the William Paterson University Board of Trustees. The Architect/Engineer, and the Construction Manager are to be named as additional insured. The policy shall be maintained in force for the term of the Project or one year, whichever is longer.

13.1.6 Excess Liability, umbrella insurance form, applying excess of primary to the commercial general liability, commercial automobile liability and employer's liability insurance shall be provided with minimum limits of two million dollars ($2,000,000) per occurrence, two million dollars ($2,000,000) general aggregate, and two million dollars ($2,000,000) products/completed operations.

13.1.7 The contractor shall require all subcontractors to comply with all of the insurance requirements described above. It is a contractor option to determine the amount of excess liability it will require its subcontractors to carry. The contractor shall be responsible for obtaining certificates of insurance for all coverage and renewals thereof for each subcontractor prior to the subcontractor's beginning work on the project. The contractor shall provide copies of all subcontractor certificates of insurance to the University upon request.

13.2 Insurance To Be Carried By The University

13.2.1 The University shall provide insurance protection in the form of a Builders Risk Insurance or similar Policy upon the structure for which the Work on this Contract is to be done. The structure will be insured for 100% of the insurable replacement value thereof including materials, owned by the University, in place or to be used as part of the permanent construction including surplus materials.

13.2.2 This insurance shall not protect against damage or loss to any of the Contractor's or Subcontractor's tools, equipment, scaffolding, staging towers or forms, Contractor's materials and sheds or other temporary structures erected for used by the Contractor or Subcontractors. It is understood that the Contractor will at their own expense, carry all insurance which may be required to provide the necessary protection against such loss or damage herein described which insurance shall contain a waiver of any right of subrogation against the University.

13.2.3 The insurance procured by the University under this paragraph may provide for a deductible. The Contractor shall assume the responsibility for any deductible for any builder's risk loss it may make claim for under this policy.

13.2.4 The Contractor shall immediately notify the University, in writing and take any other appropriate steps as may be required under the standard Builder's Risk Insurance Policy in effect in the event of any loss. Prior to the acceptance of the building by the University, the Contractor shall, at the University's option, replace and repair the damaged Work as originally provided in the drawings and specifications at no additional compensation to that provided in the original contract.

13.2.5 All losses will be adjusted with, and payable to, the University.

13.2.6 The Contractor shall not include any cost for Builders Risk insurance premiums as described herein. However, this provision shall not relieve the Contractor from their obligation to complete, according to plans and specifications, the project covered by the contract, and the Contractor and their Surety shall be obligated to full performance of the Contractor's undertaking.

ARTICLE 14
Not Used

ARTICLE 15
EQUAL EMPLOYMENT OPPORTUNITY & AFFIRMATIVE ACTION REQUIREMENTS

15.1 Exhibit B (Revised 4/10) is attached hereto and must be signed prior to award.

15.2 Additional Mandatory Construction Contract Language for State Agencies, Independent Authorities, Colleges and Universities:

It is the policy of the [Reporting Agency] that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the [Reporting Agency] to perform under a

construction contract shall put forth a good faith effort to engage in recruitment and employment practices that further the goal of fostering equal opportunities to minorities and women.

The contractor must demonstrate to the [Reporting Agency]'s satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the [Reporting Agency]'s contract with the contractor. Payment may be withheld from a contractor's contract for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but is not limited to:

1. The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development, available online at http://NJ.gov/JobCentralNJ;
2. The Contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;
3. The Contractor shall actively solicit and shall provide the [Reporting Agency] with poof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media; and
4. The Contractor shall provide evidence of efforts described at 2 above to the [Reporting Agency] no less frequently than once every 12 months.
5. The Contractor shall comply with the requirements set forth at N.J.A.C. 17-27.

To ensure successful implementation of the Executive Order and Law, state agencies, independent authorities and colleges and universities must forward an Initial Project Workforce Report (AA201) for <u>any</u> projects funded with ARRA money to the Dept of LWD, Construction EEO Monitoring Program immediately upon notification of award but prior to execution of the contract.

Article 16
NOTIFICATION

16.1 Written notices required under this Contract shall be validly and sufficiently served by the University upon the Contractor if addressed and mailed to the Contractor at:

Representative
Title
Contractor
Address
Telephone: Fax:
E-Mail:

Written notices from the Contractor to the University should be mailed by Certified Mail to:

Richard Stomber
Associate Vice President Administration
The William Paterson University of New Jersey
300 Pompton Road
Wayne, New Jersey 07470
Telephone: 973-720-2277; Fax: 973-720-2829
E-Mail: stomberr@wpunj.edu

Article 17
HAZARDOUS MATERIALS CONTRACTOR PROVIDED

17.1 Any Contractor or Subcontractor that brings or has delivered to a construction site on the University's campus, for a period of more than eight (8) hours, any hazardous chemicals, solvents, paints, etc., must supply the University or Construction Manager with a copy of that product's Material Safety Data Sheet (MSDS) upon its approval to the construction site. This is

required by the State of New Jersey Department of Health's Right To Know Program. The law states that University employees and community residents are entitled to know this information, should there be an occasion to become aware of or exposed to a chemical hazard at the construction site on the University's campus.

17.2 Any Contractor or Subcontractor who brings a hazardous chemical substance or product to the construction site on the University's campus, and that substance or product is marked "TRADE SECRET", then the University's request is that a substitute product be used, because the Contractor or Subcontractor will not be able to obtain the MSDS information that the University will need.

17.3 The University will not permit the delivery of any hazardous chemical material shipments to this campus that has not been properly identified and labeled.

Article 18
PRE-EXISTING HAZARDOUS MATERIALS - PROJECT SITE

18.1 Unless specifically identified in the Contract Documents, the Contractor has no responsibility for the handling or removal of any pre-existing hazardous materials in any form at the project site. This includes, but is not limited to asbestos, PCBs or other toxic substances. If in the process of performing services under this contract, if the Contractor or Subcontractor encounters materials that are believed to be hazardous, the University shall be notified immediately.

Article 19
Warranty Commissioning and Brokering

By executing this agreement, the Contractor warrants, in accordance with N.J.S.A. 18A:64-6.1, that no person or selling agency has been employed or

retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. If the Contractor breaches or violates this warranty, the University shall have the right to terminate this Contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

Article 20
PREVAILING WAGE AND REGULATIONS

20.1 The Contractor acknowledges and affirms that he has personal knowledge of or has obtained and reviewed a copy of the valid prevailing wage rates for all trades involved in the project, the geographic location of the project, as issued by the commissioner of the Department of Labor and Workforce Development, Trenton, New Jersey.

20.2 The Contractor and subcontractors shall submit to the University a certified payroll record on each project. Such record shall be submitted each payroll period within ten (10) days of the payment of wages.

20.3 The Contractor and Subcontractors shall keep an accurate record showing the name, craft or trade, and actual hourly rate of wages paid to each employee employed by said Contractor in connection with said project and shall be preserved for two years from date of payment.

20.4 Contractors and Subcontractors performing work under this contract shall post the prevailing wage rates for each craft or trade and classification involved as determined by the commissioner, including the effective date of any changes thereof, in prominent and easily accessible places

at the site of the work or at such place or places as are used then to pay the employees of the Contractor and Subcontractor their wages.

20.5 Nothing in the Contract, however, shall prohibit the payment of more than the prevailing wage rate to any employee of the Contractor and Subcontractor assigned to this project.

20.6 In the event that it is found that any worker, employed by the Contractor or any Subcontractor covered by said Contract, has been paid a rate of wages less than the prevailing wage required to be paid by such contract, the University may terminate the Contractor's or Subcontractor's right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages and to prosecute the work to completion or otherwise. The Contractor and his sureties shall be liable to the University for any excess costs occasioned thereby.

Article 21
CONTRACT TERMS, CHANGES AND SUCCESSORS

21.1 This written instrument along with the documents specified in Article 1.2 constitutes the entire Contract between the Owner and the Contractor.

21.1.a In case of any conflict or ambiguity, the provisions of this Contract Document shall prevail over any rider except as to any provisions in the basic Contract Document which are expressly, by reference, modified by a rider incorporated into the contract. The terms and conditions of this contract may not be modified or changed except in writing signed by the Contractor and the Owner. This Contract shall be binding upon the heirs, representatives and successors of the Contractor.

21.1.b If any clause or provision is found to be illegal, unconscionable or unenforceable, that clause or provision shall be considered deleted from this

Contract Document and all the other clauses and provisions shall remain in effect and binding as if the clause or provision deleted had never been a part of this Contract Document.

Article 22
Executive Order 189

22.1.a No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.

22.1.b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.

22.1.c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision

shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

22.1.d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.

22.1.e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.

22.1.f. The provisions cited above in paragraph 3a. through 3e. shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c.

IN WITNESS WHEREOF, the parties to these presents have executed this Contract in four (4) counterparts, each of which shall be deemed an original, on this xxth day of MMYY.

<u>William Paterson University of NJ</u> - (Owner)

BY:_____
Stephen Bolyai
Vice President for Administration & Finance
William Paterson University of New Jersey

ATTEST:_____
Richard Stomber
Associate Vice President for Administration
William Paterson University of New Jersey

_____ - (Contractor)

BY:_____
Print Name:
Title:
Contractor:

ATTEST:_____
Print Name:
Title:
Contractor:

(REVISED 4/10)

EXHIBIT B

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31 et seq. (P.L.1975, c.127)
N.J.A.C. 17:27-1.1 et seq.

CONSTRUCTION CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. l7:27-7.2; provided, however, that the Dept. of LWD, Construction EEO Monitoring Program, may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B, and C, as long as the Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers

EXHIBIT B (*Cont*)

provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

(B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

(l) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

(2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;

(3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;

EXHIBIT B (*Cont*)

(4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;

(5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;

(6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(i) The contactor or subcontractor shall interview the referred minority or women worker.

(ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Dept. of LWD, Construction EEO Monitoring Program.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.

EXHIBIT B (*Cont*)

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA-201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7. The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Dept. of LWD, Construction EEO Monitoring Program, and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on-the-job and/or off-thejob programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

COMPANY: _____

SIGNATURE:_____

PRINT NAME: _____

TITLE:_____

DATE: _____

Additional Mandatory Construction Contract Language for State Agencies, Independent Authorities, Colleges and Universities Only

The Executive order No. 151 (Corzine, August 28, 2009) and P.L. 2009, Chapter 335 include a provision which require all state agencies, independent authorities and colleges and universities to include additional mandatory equal employment and affirmative action language in its construction contracts. It is important to note that this language is in addition to and does not replace the mandatory contract language and good faith efforts requirements for construction contracts required by N.J.A.C. 17:27-3.6, 3.7 and 3.8, also known as Exhibit B. The additional mandatory equal employment and affirmative action language is as follows:

It is the policy of the **William Paterson University of New Jersey** that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the **William Paterson University of New Jersey** to perform under a construction contract shall put forth a good faith effort to engage in recruitment and employment practices that further the goal of fostering equal opportunities to minorities and women.

The contractor must demonstrate to the **William Paterson University of New Jersey**'s satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the **William Paterson University of New Jersey**'s contract with the contractor. Payment may be withheld from a contractor's contract for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but is not limited to:

1. The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development, available online at http://NJ.gov/JobCentralNJ;
2. The Contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;
3. The Contractor shall actively solicit and shall provide the **William Paterson University of New Jersey** with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media; and
4. The Contractor shall provide evidence of efforts described at 2 above to the **William Paterson University of New Jersey** no less frequently than once every 12 months.
5. The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27.

To ensure successful implementation of the Executive Order and Law, state agencies, independent authorities and colleges and universities must forward an Initial Project Workforce Report (AA 201) for any projects funded with ARRA money to the Division of Public Contracts EEO Compliance immediately upon notification of award but prior to execution of the contract.