

The William Paterson University of New Jersey
Wayne, New Jersey

Office of the Vice President for Administration and Finance

Professional Consulting Design Services Agreement
with



Firm's Name
of
City, State + zipcode

◆ *project* ◆

Professional Design Services for:

Project Title (WP-xx-xx-xx)

MMDD,YYYY

PROFESSIONAL ARCHITECTURAL/ENGINEERING SERVICE AGREEMENT

This Agreement is entered into and dated this xxth day of MM, YYYY, between The William Paterson University of New Jersey, hereinafter referred to as "the University" and the Architectural/Engineering firm of Vendor Name of City, State, hereinafter referred to as "the Architect/Engineer."

WITNESSES THAT:

The parties hereto do agree as follows:

Article 1 **EMPLOYMENT OF THE ARCHITECT/ENGINEER**

1.1 The University employs the Architect/Engineer and the Architect/Engineer agrees to perform the professional services which include activities normally associated with full and various phases of design, including confirmation of the program, conceptual and schematic design, preparation of construction documents, obtaining regulatory approvals, assistance in bidding and construction administration.

In addition, this Proposal includes the following specialty disciplines:

1.2 Scope of Work:

The University has identified the project scope to be as follows:

Project Title (WP-xx-xx-xx)

Provide Contract Documents for all architectural and engineering services as detailed in the University's Request for Proposal dated MM DD, YYYY , which includes:

Provide contract documents for public bidding for the Project description.

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

1.3 All services performed under the contract or performed under any subcontract awarded under the contract shall be performed within the United States.

Article 2
ARCHITECTURAL/ENGINEERING SERVICES

2.1 The Architect/Engineer shall perform in a good, professional skillful and prompt manner all architectural, engineering and other professional services relating to the design of the Project and the administration of the construction contracts for the Project to the satisfaction of the Contracting Officer of the University, including all of the services provided for in this Agreement. All consultants required for such performance shall be employed or engaged at the Architect/Engineer's own expense and shall be qualified and competent, and shall be approved by the Contracting Officer of the University. Request for the approval of consultants shall fully describe the scope of the work for which the consultants are being engaged. In addition to the services specified elsewhere in this Agreement, the Architect/Engineer and his consultants shall attend or be responsibly represented at meetings with the University which may be required in connection with the services to be rendered for each phase of the work.

2.2 Nothing contained in this Agreement is intended to relieve the Architect/Engineer of responsibility for endeavoring to guard the University against defects and deficiencies in the work or any failure of the Contractor(s) to comply with the contract documents, and specifications, and all applicable codes and standards.

2.3 Notwithstanding any provisions in this Agreement, the Architect/Engineer shall not be relieved of liability to the University as a result of any breach of this Agreement by the Architect/Engineer, and the University may withhold any payments due to the Architect/Engineer to satisfy any damages incurred because of the Architect/Engineer, including damages not fully determined or liability for claims asserted against the University. The acceptance, approval or payment for any of the plans, drawings, specifications or other work or services performed by the Architect/Engineer under this Agreement shall not constitute a release or waiver of any claim the University has or may have for latent defects or errors of other breaches of this Agreement on the part of the Architect/Engineer, or any claims for breach of warranty or negligence.

Article 3
DESIGN PHASE REQUIREMENTS

3.1 The Architect/Engineer shall prepare and submit the following documents to the University:

3.1.1 Schematic Design Documents: Schematic Design Drawings and Specifications shall be prepared based upon the Program Documents as approved by the University and Annexed to this contract and shall illustrate the scope of the Project and the scale and relationship to the Project components. The documents shall include all materials used for improvements. The drawings and specifications are to be presented to the University for approval and an estimate of the probable cost of construction. The Schematic Design Documents shall include the following where applicable:

- (1) Plans, elevations and sections and other details pertinent to the design features.
- (2) Outline of technical specifications
- (3) Renderings
- (4) Site utility layout
- (5) LEED expectations
- (6) Estimate of probable cost of new construction, renovations and site work if within the scope of work.
The Architect/ Engineer shall review any difference between the Construction Budget and the estimate of probable construction cost, identify reasons for any difference and recommend the means to eliminate the difference as required. The Architect/ Engineer and the University shall agree upon the means to eliminate any difference between the Construction Budget and the estimate of probable construction cost, and the Architect/Engineer shall prepare a report describing the agreed upon means.
- (7) Mechanical System Design Intent and Operation Overview
- (8) Additional items defined by the Program Statement.

3.1.2 Design Development Documents: Design Development plans and specifications and related documents required to fix and describe the size, character and details of the entire Project, including the architectural/engineering plans, the structural system, the mechanical systems, the electrical system, the fire protection system, the communication systems, the materials to be used and other essentials as may be appropriate shall be prepared by the Architect/Engineer based upon the approved Schematic Design Documents. The Design Development plans and specifications shall include the following for the construction where applicable:

- (1) Site plans.
- (2) Design analysis to permit review of:
 - (a) Electrical Analysis with load calculations.
 - (b) Mechanical Analysis.
 - (c) Structural Analysis.
 - (d) Elevator Analysis.
 - (e) Fire protection Analysis.
 - (f) Communication Analysis, including telephone, data, security, communications, and Audio Visual systems.
 - (g) Utility system Analysis.
 - (h) Special features.
- (3) Outline of specifications.
- (4) LEED designed areas
- (5) Plans, elevations, sections and other details pertinent to the design features.

- (6) Revised estimate of the probable cost of new construction, renovations and site work. The Architect/Engineer shall review any difference between the Construction Budget and the estimate of probable construction cost, identify reasons for any difference and recommend the means to eliminate the difference as required. The Architect/Engineer and the University shall agree upon the means to eliminate any difference between the Construction Budget and the estimate of probable construction cost, and the Architect/Engineer shall prepare a report describing the agreed upon means.
- (7) The program statement may require additional criteria.

3.1.3 The Architect/Engineer's Design Phase submissions shall include the following:

3.1.3a Construction Documents: Drawings, specifications and related documents to fix and describe the size, character and details of the entire Project as may be appropriate, shall be prepared by the Architect/Engineer and be completed for public bidding by not later than **Date**. Drawings and Specifications shall include the following:

- (1) Technical specifications for use with the University's general specifications for public bidding
Plans, elevations, sections and other details pertinent to the features of design

3.1.3.b Construction Contract Documents:

- (1) The Architect/Engineer shall submit Construction Contract Documents, including the Drawings and Specifications, setting forth in detail the work and materials and other requirements needed to obtain a single prime contractor by public bidding and to complete the construction of the entire Project, based upon the Drawings and Specifications and related documents approved by the University.
- (2) The Construction Documents shall set forth clearly all the work and materials and other requirements necessary to complete the construction of the Project, including all facilities and aspects of the Project.
- (3) The Construction Documents shall include for each branch of the work, a schedule identifying each paragraph of the specifications and item for which shop drawings and/or samples and approvals and/or other submittals are to be submitted by the Contractor(s) before or during the construction and installation work, and also all items required to be submitted by the Contractor(s) upon completion of the work such as certifications, warranties, guarantees, bonds, maintenance and operating manuals, replacement parts, record drawings, and approvals.

- (4) The Architect/Engineer shall prepare drawings and specifications in accordance with the University's current instructions to Bidders and General Conditions and any supplementary Instructions to Bidders and General Conditions expressly approved by the Contracting Officer of the University for the Project and these shall conform to all applicable or appropriate code requirements in effect.
- (5) All Construction Document drawings shall be prepared in accordance with sound drafting practice, and shall be suitable for legible reproduction. Except as otherwise specified, sheets shall have overall dimensions of 30 inches by 42 inches (30" x 42") maximum and all lettering shall be legible and suitable for reduction. Drawings shall make reference to the University by incorporating the University logo, the University Project Number and other pertinent information in a separate block of the title strip. The final bound specifications shall bear the same identification. In each case, the University's identification may be inserted below the identification of the Architect/Engineer-of-Record.
- (6) The Construction Documents shall be complete and shall set forth the work and materials and other requirements necessary to complete the entire Project, including necessary bidding information. The Specifications shall be bound in volume form and include an approved cover and title page, a table of contents, the University's current Instructions to Bidders and General Conditions, the period of time specified for the construction of the Project as approved by the Contracting Officer, and Supplementary Instructions to Bidders and General Conditions expressly approved by the contracting officer of the University, the University's current bid proposal and construction Contract forms, the payment and performance bond form in the form required by N.J.S.A. 18A: 64-52 et seq., and any supplementary information recommended by the Architect/Engineer and approved by the Contracting Officer of the University or requested by the Contracting Officer of the University. The Construction Documents shall divide the work into branches subject to the approval of the Contracting Officer of the University, and as necessary in order to publicly solicit single prime contractor bids for the necessary construction and installation work in accordance with N.J.S.A. 18A: 64-52 et seq.

3.1.3.c Estimates: If defined by the scope of work, or provided by the University, estimates of the probable cost of construction are to be provided with 100% Design Development Plans and Specifications; and at 100% Contract Documents and will be in sufficient detail to identify the estimated costs of the different phases and aspects of the work, and set forth the basis and manner of the estimate. If at any time such estimates appear to be in excess of the University's approved Construction Budget for the Project, the Architect/Engineer shall obtain approval of the University and make such revisions to the Project as may be necessary to bring the estimate within budget.

3.1.3.d Schedule of Architect/Engineer's Design Service:

The Architect/Engineer shall complete Contract Documents for public bidding by not later than **MM DD, 20xx**.

Following the execution of this Agreement, the Architect/Engineer shall adhere to the schedule that was included with the dates above and approval by the University. This schedule, as approved by the University, shall not, except for reasonable cause, be extended by the Architect/Engineer. The Architect/Engineer shall perform the services required in the Design Phases as expeditiously as is consistent with professional skill and care and the orderly progress of work. Any delays in approval of the Architect/Engineer's submissions shall not, however, delay the compensation payable to the Architect/Engineer for the services rendered under this Agreement.

3.1.3.e Approvals by the University: All documents, including drawings and specifications, and any changes or revisions and all other submittals, shall be subject to the written approval of the University as a condition of their acceptance. Unless otherwise directed in writing by the University, the Architect/Engineer shall not proceed with any phase of the design work until the documents for the prior phase have been approved by the University and the Architect/Engineer has been authorized to proceed.

3.1.3.f Changes: The Contracting Officer of the University may at any time, by written order, issue additional instructions and require additional work or services not covered by this Agreement. If design changes are made in the Project after the Schematic Design Documents have been approved by the University, or if Program requirements are changed by the University or if changes are made in the scope of the work after approval by the University of Preliminary Drawings and Specifications and/or the Final Drawings and Specifications which changes require substantial reworking of such Drawings and Specifications so as to cause the Architect/Engineer to incur extra drafting or similar expenses, the Architect/Engineer may be entitled to compensation for the cost of the additional work and expenses in an amount agreed to by the University in writing. Such additional compensation shall be computed as provided in Article 7 and Article 12. The Architect/Engineer will not be reimbursed for any clarifications or revisions of any plans or specifications or other documents submitted which are attributable to his own errors or omissions.

Article 4
BIDDING OR NEGOTIATION PHASE REQUIREMENTS

4.1 The Architect/Engineer shall perform all customary professional services in connection with advertising for, obtaining and evaluating bids, be present at any negotiations of the contracts or opening of the bids, review and assist in tabulating the Contractors' proposals, and make recommendations concerning the award to contracts.

Article 5
ADMINISTRATION OF THE CONSTRUCTION CONTRACTS

5.1 The construction phase will commence with the award of the Construction Contract and will terminate when a Certificate of Final Acceptance is issued to the Contractor or when final payment is made to the Contractor, whichever occurs later. The Architect/Engineer shall administer the execution of the construction contract. In carrying out this responsibility he shall:

5.1.a Represent the University on the site and advise the Contractor of all of the University's instructions and interpretations of the contract documents through conferences, and/or written communications. The Architect/Engineer shall have the authority to act on behalf of the University to the extent provided in this Agreement and in the construction contract. However, the Architect/Engineer shall not issue change orders or directions involving changes in scope or cost unless prior authorization has been received from the Contracting Officer of the University in writing.

5.1.b The Architect/Engineer and his sub-consultants shall at all times have access to the work whenever it is in progress or preparation and they shall make periodic visits to the site to maintain familiarity with the project conditions, progress and quality of work and shall determine if the work is proceeding in accordance with the contract documents. On the basis of the on-site observations the Architect/Engineer and his sub-consultants shall endeavor to guard the University against defects and deficiencies in the contractor's work. Detailed reports shall be submitted bi-weekly by the Architect/Engineer based on his site visits and his sub-consultants' visits as to the status and quality of construction.

5.1.c The Architect/Engineer shall not be responsible for, nor have control or charge of, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Project, and shall not be responsible for the contractor's failure to carry out work in accordance with the contract documents. The Architect/Engineer shall not be responsible for, not have control over, the acts or omissions of the Contractor, subcontractors, any of their agents or employees, or any other persons performing any work. This paragraph shall not reduce or eliminate the Architect/Engineer's duty under paragraph 5.1.b, nor shall it eliminate the Architect/Engineer's liability of that duty.

5.1.d The Architect/Engineer shall review payment requests or invoices submitted by the Contractor(s) and the amount(s) requested, determine the amount(s) due under the terms of the construction contracts, and certify the amount due on each invoice. The Architect/Engineer's certifications for payment shall constitute a representation by the Architect/Engineer to the University based upon the Architect/Engineer's observations at the site, and upon his verification of the data comprising the application for payment, that the work has progressed to the point indicated, that to the best of the Architect/Engineer's 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.

The Architect/Engineer's certification shall be subject to an evaluation of the work as a functioning whole upon completion, to the results of any subsequent tests required by the contract documents, to minor deviations from the contract documents to be corrected prior to completion, and to any specific qualifications stated in the certifications for payment. By issuing a certification for payment, the Architect/Engineer shall not represent that he has made any examination to ascertain how and for what purpose a Contractor has used the monies paid to it under the construction contract. The Architect/Engineer will document non-performance by the Contractor or his subcontractor and advise the University of the probable effect of delay to the Project and other contractors.

5.1.e The Architect/Engineer shall be in the first instance, the interpreter of the requirements of the drawings and specifications and the impartial judge of the performance thereunder. The Contracting Officer shall, however, have final approval of those interpretations except that the Architect/Engineer's decisions in matters relating to artistic effect shall be final if consistent with the intent of the contract documents.

5.1.f The Architect/Engineer, after award of the construction contract/s, shall maintain a conformed set of documents for all parties concerned that incorporate (a) bulletin information issued after submission of bidding documents and during the bidding period; (b) accepted alternates; and changes incorporated in the construction contracts. The final drawings shall be identified by showing justifications in the Revision Box (such as "Revised in accordance with Bulletin A issued during the bidding period" etc.). All revised or modified areas of the documents shall be circled in irregular outline and referenced by specific numbering or letters repeated in the Revision Box. They shall be submitted to the University, and with the University's approval shall be issued for construction use within thirty (30) days after contract award. These final drawings shall include the Architect/Engineering, mechanical, plumbing, HVAC and electrical document sections, as required. The Architect/Engineer shall circulate the appropriate record drawings to the contractor for annotation of "as-built" field conditions, retrieve the same as "as-built" record drawings, and forward the same to the University as directed. The Architect/Engineer shall check Contractor's shop drawings, samples and other submittals for conformity and compliance with the contract documents, and render interpretations of drawings and specifications subject to the approval of the contracting officer in order that the intent and meaning of the contract documents may be faithfully carried out and understood by the Contractor. One copy of all "Approved" or "Approved-as-Noted" shop drawings and other

submittals shall be furnished by the Architect/Engineer to the University at the completion of the project.

5.1.g The Architect/Engineer shall reject work which does not conform to the contract documents. The Architect/Engineer shall recommend to the University to stop the work wherever, in his reasonable opinion, it may be necessary for the proper performance of the contract.

5.1.h The Architect/Engineer shall attend regular job site meetings with the Contractors and interested parties which shall include the consultants when necessary and appropriate and report on and make recommendations relative to the progress of the work. Job meetings shall be held at least every two weeks or more frequently if required by job progress, and as mutually determined based on job progress. The Architect/Engineer shall prepare minutes of each meeting and distribute these to the Contractor, and the University within five (5) days.

5.1.i The Architect/Engineer shall check and report on contract proposals in connection with contract changes, and submit necessary documents for change orders or for supplemental work initiated after the commencement of the construction phase.

5.1.j The Architect/Engineer shall conduct inspections to determine the dates of substantial completion and final completion for the Contractor and the Project, shall prepare punch lists as required, shall obtain written guarantees and all other documents and items required to be submitted by the Contractor as a condition of final completion, and shall certify that the Contractor is entitled to the issuance of Final Acceptance Certificates and final payment under his/her contract. The Architect/Engineer shall also determine that the necessary documents are submitted to the University in appropriate form in accordance with the contracts.

5.1.k Basic services of the Architect/Engineer during the construction phase shall be limited to the time period set forth in the construction contract plus a reasonable contingency for delays. Services required beyond that time may be considered for additional compensation by the contracting officer. Prior to incurring expenses for additional services, the Architect/Engineer is responsible to notify the University and receive written confirmation from the University determining whether these services will be considered for compensation.

Article 6
COMPENSATION

6.1 The University shall pay the Architect/Engineer as full compensation for all the services required under, or in connection with this Agreement, the following fees:

A total fee for the aforementioned services of the project is in the amount of Dollar Amount (\$xx,000.00), which includes engineering, cost estimates and reimbursable expenses, in addition to the reimbursable expenses specified in Article 23.

1) Project WP-xx-xx-xx Project Title

a. Design construction documents	\$
b. Bidding	\$
c. Construction Administration	\$
d. Independent Cost Estimate	\$
Total 1a., 1b., 1c. & 1d.	\$

6.2 Additional services of consultants, including structural, civil, mechanical and electrical architectural/engineering services, will be compensated at a multiple of 1.1 times the costs billed by them.

Article 7
PAYMENTS

7.1.a Interim Payments: The portion of fee payable for design services shall be paid monthly in proportion to services performed as approved by the University and consistent with the design schedule. The portion of the fee payable for construction administration shall be paid monthly during the construction work, and each monthly payment shall be calculated as determined by the University. The University shall make prompt payment on non-disputed invoices for services rendered.

7.1.b The University reserves the right to secure Contracts for the completion of the Project, which together with other costs, enable it to complete the Project within the original or approved revised cost estimate. If the estimate of construction costs exceeds this amount, or if the amounts of the lowest acceptable bids exceed this amount, the Architect/Engineer shall do any necessary redesign work and make all appropriate changes in the plans required to construct the Project within the approved cost estimate, or to establish approved alternates to aid in securing bids compatible with the approved estimate. Any such design work and changes shall be undertaken by the Architect/Engineer at no cost to the University. The University shall have the right to reject the Design Documents if the lowest bids thereon exceed the Final approved Construction

Cost estimate by five percent (5%), and, in that event, the Architect/Engineer shall be entitled to no further compensation under this Agreement.

7.1.c The Architect/Engineer shall submit with each invoice a certification that all associated architects, engineers, consultants, etc., have been paid a proportionate share of any previous payments made under this Agreement, to the extent that they are entitled.

7.1.d The final balance of the fee due under this Agreement shall be paid not later than thirty (30) days from the date of acceptance by the University of the completed construction under the Contract relating to the Project.

7.1.e No deduction shall be made from the Architect/Engineer's fee for any penalty or liquidated damages charged to any Contractor.

7.1.f If the Architect/Engineer is required to provide consultation concerning the replacement of any work damaged by fire or cause beyond his control during construction and installation or to furnish professional services in connection with the replacement of such work, or if he is required to provide professional services made necessary by the default of a Contractor in the performance of a construction Contract, he shall be compensated for his actual costs, but only in accordance with a written supplemental Agreement entered into in advance of the work.

7.1.g Where the Architect/Engineer is entitled to be paid actual costs for extra work expressly authorized by the University, the Architect/Engineer shall be paid for principals an hourly rate in accordance with the Architect/Engineer's standard hourly rates as follows:

7.1.h Hourly Fee Rate Schedule:

Enter rates as proposed and accepted.

Input Hourly Rate Table from Vendor's RFP

7.1.i When additional professional service consultants or other services to be administered by the architect are required that are outside the design scope, the architect shall be entitled to be reimbursed for the actual cost plus a 10% markup provided there has been prior approval by the University.

7.2. Any additional cost incurred by the architect that are not expressly included within this agreement or subsequently executed amendment are not eligible for compensation. Before incurring costs that the architect/engineer will submit as consideration for additional compensation from the University, the architect must receive written confirmation from the University approving the additional costs.

7.3 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE -
Pursuant to N.J.S.A. 54:49-19, and notwithstanding any other provision of law to the

contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State to the taxpayer pursuant to any State law shall be stayed.

Article 8

ABANDONMENT OR POSTPONEMENT OF PROJECT

8.1 If for any reason and at any time, the Project should be abandoned or postponed, the University may terminate this Agreement upon seven-(7) day written notice to the Architect/Engineer. Upon receipt of such notice, unless otherwise directed, the Architect/Engineer shall immediately discontinue all work hereunder. Upon such termination, the Architect/Engineer shall be paid a proportion of the fee which the services actually and satisfactorily performed by him shall bear to the total services contemplated under this Agreement, less payments previously made. The University may order that the work on the Project be stopped temporarily, and upon seven (7) days written notice, the Architect/Engineer shall cease all work on the Project except as necessary to properly secure the work accomplished. If the University directs that the work on the Project resume within 6 months, the Architect/Engineer shall be obligated to complete the Project for the basic fee provided for in the Agreement, plus additional compensation for any additional work necessitated by the stop order. Such additional compensation shall be in accordance with the standard hourly billing rates per attached sheet for any additional work performed by the Architect/Engineer.

Article 9

CONTRACT FOR PERSONAL SERVICES

9.1 This contract contemplates personal services by the Architect/Engineer and the Architect/Engineer shall not assign or transfer his obligations or rights under this contract without the written consent of the University. If the Architect/Engineer is a sole proprietorship, in the event of his decease or disablement to the extent which would prevent the satisfactory performance on his part of the terms of this contract, in the opinion

of the Contracting Officer, the University may terminate this contract on five (5) days written notice to the Architect/Engineer. When the Architect/Engineer is an association of two or more Architect/Engineers, then, upon the decease or disablement of one of the partners of the association whose decease or disablement would impair the satisfactory performance of this contract as determined by the Contracting Officer of the University may terminate this contract upon five (5) days written notice to the Architect/Engineer. If the contract is not so terminated by the University, the association formed by the surviving partner shall assume full responsibility for the performance and completion of this contract. Upon a termination of the contract under this paragraph, the Architect/Engineer shall be entitled to receive as full compensation for services rendered to the date of disability that portion of the fee which the services actually and satisfactorily performed by him shall bear to the total services contemplated under this contract, less payments previously made.

Article 10
PUBLICITY

10.1 Publicity and/or public announcements pertaining to the Project shall be approved by the University prior to release.

Article 11
NOTIFICATION

11.1 Written notices required under this Agreement shall be validly and sufficiently served by the University upon the Architect/Engineer if addressed and mailed to the Architect/Engineer at:

Representative
Title
Firm's Name
Address
City, State + zip code
Telephone: xxx-xxx-xxxx; Fax: xxx-xxx-xxxx

Written notices from the Architect/Engineer to the University should be mailed by Certified Mail to:

Kevin Garvey
Associate Vice President for Administration
Office of Capital Planning, Design & Construction
William Paterson University of New Jersey
300 Pompton Road
Wayne, New Jersey 07470

Article 12
EXECUTIVE ORDER 189 – CONFLICT OF INTEREST

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.

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.

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.

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.

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.

f. The provisions cited above in paragraph a. through e. 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.

Article 13
RESPONSIBILITY OF ARCHITECT/ENGINEER

13.1 The acceptance, approval or payment of any of the plans, drawings, specifications or other work or services performed by the Architect/Engineer under this Agreement shall not constitute a release or waiver of any claim the University has or may have for latent defects or errors or omissions or other breaches of this Agreement on the part of the Architect/Engineer, or of any claims for breach of warranty or negligence.

Article 14
COMPLIANCE WITH PROCUREMENT STATUES

14.1 The Architect/Engineer warrants and represents that this Agreement has not been solicited or secured, directly or indirectly , in a manner contrary to the laws of the State of New Jersey, and in particular the provisions of N.J.S.A. 52:34-15, N.J.S.A. 52-34-19 and N.J.S.A. 18A:64-52 et seq., and that the Architect/Engineer has not and shall not violate the laws of New Jersey relating to the procurement of or the performance of this Agreement by any conduct, including the paying of any gratuity of any kind, directly and indirectly, to any University employee, or officer. Any violation of this provision shall be cause for the University to terminate this Agreement, to retain all unpaid and/or unearned fees, and to recover all fees paid. The Architect/Engineer shall make known to the Contracting Officer any interest in/or association with an Contractor, subcontractor, material supplier, consultant, or manufacturers, or other party, on this Project just as soon as such interest is identifiable.

In accordance with N.J.S.A. 18A:64-6.1, the Contractor warrants that that no person or selling agency has been employed or retained to solicit or secure such 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, for the breach or violation of which warranty the State college shall have the right to annul such 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.

14.2 Senate, No. 341, Requirement of State to purchase “Energy Star” products in public contracts.

AN ACT concerning certain public contracts and supplementing Chapter 34 of Title 52 of the Revised Statues.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

(1) Notwithstanding the provisions of any other law to the contrary, and unless the head of the department, or other public officer charged with the duty by law, shall determine it to be inconsistent with the public interest, or the cost to be unreasonable,

the State, with respect to products procured for its own use under any contract paid with or out of State funds, shall acquire only products bearing the federal Environmental Protection Agency's Energy Star label.

- (2) This act shall take effect immediately.

STATEMENT

This bill requires the State, with respect to products procured for its own use, to purchase only products bearing the federal Environment Protection Agency's Energy Star Label. Energy Star products would not have to be purchased if the head of a department determines that purchasing the product is inconsistent with the public interest or that the cost is unreasonable.

Article 15 **COST RECORDS**

15.1 The Architect/Engineer agrees to maintain and retain weekly payroll, overhead, cost and accounting records for services performed on the Project, including expenses pertaining to additional services required by the University on the Project. Such records shall be maintained and available for all extra services of the work, whether performed by the Architect/Engineer or any independent firms. Any failure to maintain or produce such records shall preclude the recovery of any claim for such costs. Relevant records of private vendors or other persons entering into contracts with covered entities are subject to audit or review by the New Jersey Office of the State Comptroller pursuant to N.J.S.A. 52:15C-14(d). The Contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request."

Article 16 **CLAIMS**

16.1 The parties agree that claims asserted against the University by the Architect/Engineer shall be subject to the New Jersey Contractual Liability Act, N.J.S.A. 59:13 et. seq. The Architect/Engineer shall not be entitled to recover from the University any compensation beyond that provided for in this Agreement by reason of the acts or omissions of any third parties, except when the construction period of the construction contract is exceeded by more than 5% through no fault of the Architect/Engineer, the Architect/Engineer may be reimbursed for additional inspection services for the extended period on a Cost-Based-Compensation basis as authorized by the Contracting Officer. The compensation for the extended period subject to reimbursement is to be computed on the Architect/Engineer's actual costs during the period preceding the closeout process or during the period of least job progress, as appropriate.

Article 17
INDEMNITY/LIABILITY TO THIRD PARTIES

17.1 To the fullest extent permitted by law, the Architect/Engineer agrees to defend, indemnify, protect and save harmless the University and its officers, agents servants and employees from and against any and all suits, demands, claims, losses, or damages of any kind arising out of or claimed to have arisen out of any negligent act, error or omission of the Architect/Engineer, its officers, agents, servants and employees, consultants or subcontractors in the performance of professional services under this Agreement. The Architect/Engineer shall, at its own expense, appear, defend, and pay all charges for attorneys and all costs and other expenses arising from such suit or claim incurred in connection therewith including but not limited to reasonable expenditures for and costs of investigations, hiring of expert witnesses, court costs, counsel fees, settlements, judgements or awards. If any judgement shall be rendered against the University or any of its officers, agents, servants or employees, for which indemnification is provided under this paragraph, the Architect/Engineer shall, at its own expense satisfy and discharge the same. The University shall, as soon as practicable after a claim has been made against it, given written notice thereof to the Architect/Engineer, along with full and complete particulars of the claim. If suit is brought against the University or any of its officers, agents, servants or employees, the University shall expeditiously forward, or have forwarded, to the Architect/Engineer every demand, complaint, notice, summons, pleading or other process received by the University or its representatives.

17.2 It is expressly agreed and understood that any approval by the University of the work performed and/or reports, plans or specifications provided by the Architect/Engineer shall not operate to limit the obligations of the Architect/Engineer assumed in this Agreement. It is further understood and agreed that the University assumes no obligation to indemnify or save harmless the Architect/Engineer, its agents, servants, employees or subcontractors for any claim which may arise out of their performance of this Agreement. Furthermore, the Architect/Engineer expressly understands and agrees that the provisions of this indemnification clause shall in no way limit the Architect/Engineer's obligations assumed in this Agreement, nor shall they be construed to relieve the Architect/Engineer from any liability, nor preclude the University from taking other actions available to it under any other provisions of this Agreement or otherwise at law. The Architect/Engineer will be liable to the University for any reasonable costs incurred by the University to correct, modify or redesign any technical information submitted by the Architect/Engineer that is found to be defective or not in accordance with the provisions of this Agreement, as a result of negligent act, error or omission on the part of the Architect/Engineer, its officers, agents, servants or employees, consultants or subcontractors. The Architect/Engineer shall be given reasonable opportunity to correct any deficiency.

Article 18
P.L. 1975, C. 127 (N.J.A.C. 17:27)
MANDATORY AFFIRMATIVE ACTION STATEMENT
PROCUREMENT, PROFESSIONAL AND SERVICE CONTRACTS

18.1 This Agreement includes Exhibit A as an attachment hereto, which also must be executed by the Architect/Engineer of Record.

18.2 The contractor agrees that:

a. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;

b. No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;

c. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$ 50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and

d. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

Article 19
INSURANCE

19.1 The Architect/Engineer shall procure and maintain at its own expense, until at least two (2) years after the completion and acceptance of all work performed under this Agreement as defined in Article 5, and any modification hereto, liability insurance for damages imposed by law and assumed under this Agreement, of the kinds and in the amounts hereinafter provided, from the insurance companies admitted or approved to do business in the State of New Jersey which shall be evidenced by the submission of annual renewal certificates. The Architect/Engineer expressly understands and agrees that any

insurance protection required by the Agreement shall in no way limit the Architect/Engineer's obligations assumed in this Agreement and shall not be construed to relieve the Architect/Engineer from liability in excess of such coverage, nor shall it preclude the University from taking such actions as are available to it under any other provisions of this Agreement or otherwise in law.

19.1.a The types and minimum amounts of insurance are as follows:

(1) Comprehensive General Liability Insurance

The minimum limits of liability for this insurance shall be as follows:

Bodily Injury Liability

<u>Each Person</u>	<u>Each Occurrence</u>
\$1,000,000	\$3,000,000

Property Damage Liability

<u>Each Person</u>	<u>Each Occurrence</u>
\$1,000,000	\$3,000,000

The above required Comprehensive General Liability Insurance shall name William Paterson University, the State of New Jersey, the New Jersey Educational Facilities Authority and the William Paterson University Board of Trustees, its officers and employees as additional insured. The coverage to be provided under this policy shall be at least as broad as the standard, basic, unamended and unendorsed Comprehensive General Liability Policy and shall include contractual liability coverage. The required aggregate limits may be increased by the University, in its sole discretion, in order to provide adequate protection to the University. Any deductible shall not exceed \$25,000.00.

(2) Comprehensive Automobile Liability Insurance

The Comprehensive Automobile Liability Insurance policy shall cover owned, non-owned and hired vehicles with minimum limits as follows:

Bodily Injury and Property Damage Liability

<u>Each Person</u>	<u>Each Occurrence</u>
\$500,000	\$1,000,000

(3) Workers Compensation and Employees Liability

Workers Compensation Insurance shall be provided in accordance with the requirements of the laws of this State and shall include an endorsement to extend coverage to any State which may be interpreted to have legal jurisdiction. Employers Liability Insurance shall be provided with a limit of liability of not less than \$1,000,000 for each accident.

(4) Professional Liability Insurance

The Architect/Engineer shall carry Errors and Omissions, Professional Liability Insurance and/or Professional Liability Malpractice Insurance sufficient to protect the Architect/Engineer from any liability arising out of professional obligations performed pursuant to the requirements of this Agreement. This insurance shall be in the amount not less than \$2,000,000 and in such policy form as shall be approved by the University. Should the Architect/Engineer change carriers during the terms of this Agreement, it shall obtain from its new Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage.

19.1.b The Architect/Engineer shall, prior to commencement of the work required under this Agreement, provide the University with valid Certificates of Insurance as evidence of the Architect/Engineer's insurance coverage in accordance with the foregoing provisions. Such Certificates of Insurance shall specify that the insurance provided is of the types and is in the amounts required in paragraph a, (1), (2), (3) and (4) above.

19.2 The Certificate shall provide for thirty (30) days notice in writing to the University prior to any cancellation, expiration or non-renewal during the term the insurance is required in accordance with this Agreement. The Architect/Engineer shall further be required to provide the University with valid Certificates of renewal of the insurance upon the expiration of the policies. The Architect/Engineer shall also, upon request, provide the University with copies of each policy required under this Agreement, certified by the agent or underwriter to be true copies of the policies provided to the Architect/Engineer. All Certificates and copies of insurance policies shall be forwarded to the University's address as listed herein.

19.3 In the event that the Architect/Engineer provides evidence of insurance in the form of Certificates of Insurance valid for a period of time less than the period during which the Architect/Engineer is required by the terms of this Agreement to maintain insurance, said Certificates shall be acceptable, but the Architect/Engineer shall be obligated to renew its insurance policies as necessary and to provide new Certificates of Insurance from time to time, so that the University is continuously in possession of evidence of the Architect/Engineer's insurance in accordance with the foregoing provisions.

19.4 In the event that the Architect/Engineer fails or refuses to renew any of its insurance policies as necessary, or any policy is canceled, terminated or modified so that the insurance does not meet the requirements of this Agreement, the University may refuse to make payment of any further monies due under this Agreement or refuse to make payment

of monies due or coming due under other Agreements between the Architect/Engineer and the University. The University in its sole discretion, may use monies retained under this paragraph to renew the Architect/Engineer's insurance for the periods and amounts referred to above. During any period when the required insurance is not in effect, the University may, at its option, either suspend the work under this Agreement or proceed to default the Architect/Engineer and thereby terminate this Agreement.

Article 20 **OWNERSHIP OF DOCUMENTS**

20.1 All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the contract, including, but not limited to, all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and/or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the services required under this contract shall be and remain the property of the William Paterson University and shall be delivered to William Paterson University upon 30 days notice by the University.

20.2 The plans and specifications and other documents submitted under this contract, revised to reflect "Record" conditions, shall be transmitted to the University in the latest version of AutoCAD (or other agreed upon format) and pdf formats and shall become the property of the University. The Architect/Engineer for his own record purposes may produce a set of prints or reproduction of plans and specifications prior to their transmittal to the University. It is understood and agreed between the parties to this contract that all documents, including drawings and specifications furnished by the Architect/Engineer pursuant to this contract, are instruments of service in respect to this project only. They are not intended or represented to be suitable for reuse by the University or others for additions to this project or for any other purpose. Any reuse by the University or others will be without liability or legal exposure to the Architect/Engineer, and the University shall defend, indemnify, protect, and hold harmless the Architect/Engineer, its agents, servants and employees from all claims, suits, damages, losses and all expenses arising out of or resulting from any use of said documents not in accordance with this paragraph.

20.3 All financial, statistical, personnel and/or technical data supplied by the University to the consultant are confidential. The consultant is required to use reasonable care to protect the confidentiality of such data.

Article 21
PCB's

21.1 The Architect/Engineer shall not be responsible to detect or quantify the presence of existence of PCB's in any piece of equipment, material, etc, at the Project site or for decontaminating or removing them below E.P.A. standards. If in the process of performing its services under this Agreement the Architect/Engineer suspects that PCB's may be present, the Architect/Engineer shall immediately notify the University, who shall be fully responsible for verifying its existence and for developing and implementing a removal or decontamination program.

Article 22
ASBESTOS

22.1 The Architect/Engineer shall not be responsible and, therefore, has no duty to detect or quantify the presence or existence of asbestos, at the Project site or for developing and monitoring the abatement program should asbestos be present or exist. If in the process of performing its services under this Agreement the Architect/Engineer, through observation, suspects that asbestos is present or exists at the Project site, the Architect/Engineer shall immediately notify the University, who shall be fully responsible for verifying its presence or existence and for developing and implementing an abatement program.

Article 23
REIMBURSABLE EXPENSES

23.1 Reimbursable expenses are expenses incurred by the Architect in the interest of the Project for:

- a. Messenger Service as authorized by the University;
- b. Public notices, announcements and advertising;
- c. Reproductions of final drawings plans and specifications made in quantity for purposes of soliciting bids on the project.

Reimbursable expenses are limited to a 10% markup.

Article 24
AGREEMENT TERMS, CHANGES AND SUCCESSORS

24.1 This written instrument constitutes the entire Agreement between the University and the Architect/Engineer. The Agreement consists of this Contract Document together with the following riders which are attached and made a part of this Agreement:

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 Agreement. The terms and conditions of this Agreement may not be modified or changed except in writing signed by the Architect/Engineer and the Contracting Officer of the University. This Agreement shall be binding upon the heirs, representatives and successors of the Architect/Engineer.

24.2 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.

24.3 This agreement shall be governed as to interpretation and execution in accordance with the laws of the State of New Jersey.

IN WITNESS THEREOF, the Contracting Officer of the University and the Architect/Engineer have executed this Agreement, on this xxth of MM, YYYY.

Name of Firm:

BY: _____

Print Name : (Name of firm's authorized party to enter into contract)

Title:

Firm's Name & location

ATTEST: _____

Print Name: (Name of firm's representative)

Title:

Firm's Name & Location

William Paterson University of New Jersey:

BY: _____

Stephen Bolyai
Senior Vice President, Administration & Finance
William Paterson University of New Jersey
Wayne, New Jersey

ATTEST: _____

Office of Capital Planning, Design & Construction
William Paterson University of New Jersey
Wayne, New Jersey

INSERT EXHIBIT A

PLEASE CHECK APPROPRIATE BOX (ONE ONLY)

- I HAVE A CURRENT NEW JERSEY AFFIRMATIVE ACTION CERTIFICATE, (PLEASE ATTACH A COPY TO YOUR PROPOSAL).
- I HAVE A VALID FEDERAL AFFIRMATIVE ACTION PLAN APPROVAL LETTER, (PLEASE ATTACH A COPY TO YOUR PROPOSAL).
- I HAVE COMPLETED THE ENCLOSED FORM AA302 AFFIRMATIVE ACTION EMPLOYEE INFORMATION REPORT.

COMPANY: _____

SIGNATURE: _____

PRINT NAME: _____

TITLE: _____

DATE: _____