



Alumni Association Agreement

AGREEMENT, made this 8th day of November, 2017 by and between the STATE UNIVERSITY OF NEW YORK, a corporation organized and existing under the laws of the State of New York, with its principal offices located at State University Plaza, Albany, New York 12246, hereinafter referred to as "State University", acting through the State University of New York at Maritime College, located at 6 Pennyfield Avenue, Throggs Neck, hereinafter referred to as "Campus", and the Fort Schuyler Maritime Alumni Association, Inc.(doing business as the "Maritime College Alumni Association") a not-for-profit corporation organized and existing under the laws of the State of Delaware, having its principal place of business located at 236 Ernston Rd. Parlin, New Jersey, hereinafter referred to as "Association".

WITNESSETH:

WHEREAS, State University is an institution of higher education established pursuant to the provisions of the New York State Education Law and has an interest in maintaining close and mutually beneficial ties with its graduates and former students (hereinafter referred to as "Alumni"); and

WHEREAS, Association is an incorporated alumni association for graduates of the Campus and the State University which has been established for the purpose of connecting alumni to each other, enhancing the campus student experience and such other purposes set forth in its Certificate of Incorporation, attached hereto and incorporated herein is Exhibit B, including but not limited to, serving as a liaison between Campus and its Alumni; and

WHEREAS, the parties desire to enter into a mutually beneficial agreement setting forth the terms under which the Campus will grant to Association a license to use its databases of demographic and biographical information on its alumni ("the Alumni Database") in furtherance of Association's activities on behalf of Campus and other approved activities and will provide such other resources as will enable the Association to carry out its purposes in support of the Campus.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto, agree as follows:

1. The Association will conduct its activities in accordance with the policies of the Campus and the State University, including the Board of Trustees' Guidelines for Alumni Associations, (except as modified by the waivers of certain provisions approved by the Chancellor) as required by the New York Education Law, §355, and said guidelines for alumni associations and approved waivers from said guidelines are collectively attached hereto and made a part hereof as Exhibit C.

2. The Association is authorized to conduct those activities enumerated in Exhibit D. Unless otherwise indicated in Exhibit C and approved by the Chancellor or designee, such activities will be conducted exclusively for the benefit of the Campus, unless otherwise indicated in Exhibit D. Prior to engaging in any additional activities of a significant and/or recurring nature, the Association and the Campus will amend this agreement by adding such activities to Exhibit D, which amendment must be approved in writing by the Chancellor or designee and when necessary, by the NYS Attorney General and the Office of the State Comptroller (together, the "Regulatory Agencies").

3. The Association will engage in various revenue generating activities to support activities enumerated in Exhibit D and to support specific scholarship programs also enumerated in Exhibit D. The Association will provide to the Campus on or about May 15 of each year a written statement of goals and objectives for the forthcoming fiscal year and the Campus and the Association will jointly develop an annual budget reflecting these goals and objectives.

4. State University shall make available to the Association the facilities, personnel and equipment (collectively, "Campus Support") designated in Exhibit E attached hereto and made a part hereof. Any additions to or withdrawals from Exhibit E shall be made by written mutual consent of State University and the Association.

5. The Association shall take good care of the property set forth in Exhibit E and shall maintain it in a clean, sanitary and orderly condition. State University shall keep such specified premises in good repair and make all necessary capital improvements in order to comply with all applicable federal, state and municipal health and safety codes. Any alteration or improvement to the premises, fixtures, or replacement equipment that may be paid for by the Association shall become the property of State University. Upon removal from the premises, the Association shall return the equipment and facilities provided hereunder in good and clean condition.

6. State University shall supply all ordinary and necessary utilities for the premises. If State University and the Association conclude that a utilities charge is required, the charge and method of payment will be determined by State University and the Association.

7. State University hereby grants to Association a non-exclusive, world-wide, royalty free license to use the Alumni Database, and any updates thereto, in a manner consistent with State University and Campus policies, for the purposes of benefiting Association, Campus and State University, including but not limited to, the publication of an alumni directory and the provision of on-line alumni services (other uses may be enumerated here as well).

8. State University hereby further grants to Association the right to sub-license or use any or all of its rights and privileges to the Alumni Database granted hereunder, subject to the following:

Association agrees that any such sub-license shall be subject to the terms and conditions of this Agreement;

- a) Association agrees that any such sub-license shall be non-transferable;
- b) Association agrees that any sub-license granted hereunder shall provide for termination of any such sub-license, or assignment thereof to State University, at State University's sole option, upon termination of this Agreement;
- c) Association agrees that no such sub-license shall be effective without the express prior written consent of the State University; and
- d) Association shall provide State University with a copy of each such sub-license upon request.

9. Except as expressly provided herein, Association shall not otherwise sell, lease, assign, sub-license, or otherwise transfer the Alumni Database, in whole or in part, to any third party. The Association and its sub-licensees or affiliates shall treat the Alumni Database as confidential.

10. The parties acknowledge that in the course of its activities, the Association also may obtain and/or create records on Campus alumni. Any such records shall be made available to the other party at its request, consistent with the Alumni Association's policy and procedures.

11. The State University also grants the Association the use of the campus name, trade names, service marks or logos owned or used by the Campus for fundraising and other approved purposes.

12. To the extent possible the Campus will cooperate with the Association to make available to its members access to and in some cases reduced fees for the use of certain Campus amenities, including recreational facilities, performing arts, library, lectures, athletic events and other Campus and off-campus programs as shall be separately agreed upon by the parties hereto.

13. In performing this contract, the Association will receive, maintain, process or otherwise will have access to confidential information on students, parents, vendors and/or customers of the Campus. Pursuant to the Gramm-Leach-Bliley Act (P.L. 106-102) and the Federal Trade Commission's Safeguards

Rule (16 CFR Part 314), the Association must implement and maintain a written Information Security Program in order to protect such customer information. Customer information is defined as “any record containing nonpublic personal information as defined in 16 CFR §313(n)” (the FTC’s Privacy Rule) “about a customer of a financial institution, whether in paper, electronic, or other form” (16 CFR §314.2). Examples of nonpublic personal customer information include, but are not limited to, name, address, phone number, social security number, bank and credit card account numbers and student identification numbers.

The safeguards that must be implemented under the Program must comply with the elements set forth in 16 CFR §314.4 and must achieve the objectives enunciated in 16 CFR §314.3, namely to: 1) insure the security and confidentiality of student and/or campus customer records and information; 2) protect against any anticipated threats or hazards to the security or integrity of such records; and 3) protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any student and/or campus customer.

The Association shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208). The Association shall be liable for the costs associated with any breach of these provisions if caused by the negligent or willful acts or omissions of the Association or its agents, officers, employees, or subcontractors.

If the Association sub-contracts with a third party for any of the services that it is required to undertake in furtherance of this agreement, the Association must ensure that such third parties implement practices which protect nonpublic personal information of students and/or campus customers to which they receive, maintain, process or otherwise are permitted access.

The Association agrees to maintain network security that conforms to generally recognized “Industry Standards” and best practices that the Corporation applies to its own network. Generally recognized industry standards include but are not limited to the current standards and benchmarks set forth and maintained by the Center for Internet Security (see <http://www.cisecurity.org>) or Payment Card Industry/Data Security Standards (PCI/DSS) - see <http://www.pcisecuritystandards.org/>.

14. The Association agrees to the following provisions related to its governance and accountability:
 - a. The Association agrees that, if it has revenues at a level that would require it to file an audit with the Attorney General’s office as part of its annual filings, it will comply with the audit oversight rules set out in N-PCL § 712-a, as it may be amended from time to time.
 - b. The Association agrees to follow the related party transaction rules set out in N-PCL § 715, as it may be amended from time to time.
 - c. The Association agrees to have a conflict of interest policy that complies with N-PCL § 715-a, as it may be amended from time to time.
 - d. The Association agrees to register with the Attorney General’s Charities Bureau and make annual filings, as required by Estates Powers and Trusts Law § 8-1.4 and Article 7A of the Executive Law, as they may be amended from time to time.

15. The term of this agreement shall commence December 1, 2017, and shall continue for a term of five (5) years through November 30, 2022. This agreement may be terminated in whole or in part by either party upon 45 (forty-five) days prior written notice in accordance with the notice provisions of this agreement. Should such a termination occur the assets of the Association (in their entirety) will remain the property of the Association.

16. Upon termination of this Agreement as provided herein, Association will be allowed to keep the version of the Database in its possession as of the date of the termination. Furthermore, each party will, concurrent with such termination, restrict the other party’s access to the Alumni Database, and any updates thereto.

17. Association shall indemnify, defend and hold State University, its officers and employees, harmless from and against any and all claims arising out of Association's or any sub-licensee's use of the Alumni Database and from and against damage, fine, judgment, expense or charge imposed, assessed or incurred by any act as a result of neglect or omission of the Association or its sub-licensees or sub-contractors, their officers, employees or agents.

18. Any notice to either party hereunder must be in writing signed by the party giving it and shall be served either personally or be registered mail addressed as follows:

TO STATE UNIVERSITY:

University Controller
State University Plaza
Albany, New York 12246

TO CAMPUS:

SUNY maritime College
6 Pennyfield Ave
Throggs Neck, NY 10465

TO ASSOCIATION:

Maritime College Alumni Association
236 Ernston Rd
Parlin, New Jersey

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

19. This agreement consists of the following documents:

1. Standard NY Contract Clauses—Exhibits A and A-1
2. Certificate of Incorporation of Alumni Association—Exhibit B
3. Guidelines for Alumni Associations (and approved waivers to the Guidelines) —Exhibit

C

4. Alumni Association Activities—Exhibit D
5. Facilities, Personnel, Equipment and Other Support, Goods and Services Provided by the Campus—Exhibit E

20. In the event of any controversy of terms, the priority of the interpretation of documents shall be in the following order:

1. Exhibit A
2. Exhibit A-1
3. Guidelines for Alumni Associations (and approved waivers of the Guidelines) – Exhibit

C

4. This Agreement
5. Alumni Association Activities – Exhibit D
6. Facilities, Personnel, Equipment and Other Support, Goods and Services Provided by the Campus – Exhibit E
7. Certificate of Incorporation of Alumni Association—Exhibit B

21. This Agreement constitutes the entire agreement of the parties hereto and all previous communications between the parties, whether written or oral, with reference to the subject matter of this Agreement are hereby superseded.

22. The parties agree that any amendment to this agreement or to any exhibit hereto will not become effective until it has received the approval of both the NYS Attorney General, the Comptroller, and any other regulatory agencies when necessary.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Agreement as of the date first written above.

The Alumni Association

State University of New York on behalf of its state-operated campus, Maritime College:

By: _____

By: _____

Campus President

Name & Title _____

In addition to the acceptance of this agreement, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

Approved:

The State University of New York

By: _____
State University of New York Controller

ERIC SCHNEIDERMAN
Attorney General

THOMAS P. DI NAPOLI
NYS Office of the State Comptroller

By: _____
Assistant Attorney General

By: _____
For the Comptroller

CORPORATE ACKNOWLEDGMENT

STATE OF _____)
COUNTY OF _____) SS:

On this _____ day of _____, 20____, before me personally came _____, to me known, who being duly sworn, did depose and say that he/she resides in _____; that he/she is the _____ of _____, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal, that it was so affixed by the order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public

Exhibit A

Exhibit A-1

Exhibit B

Exhibit C

**Exhibit D
Alumni Association
Activities**

A. Activities of the Alumni Association supporting the alumni association (list all distinct activities):

- Annual Awards Dinner/Membership Meeting
- Spring Networking Event
- Summer Golf Classic
- Sailing Regatta ("Battle on the Bay")
- Ancient Mariner Golf Outing
- Fall Networking/Nominating Event
- Summer Sea Term Appeal (Scholarship Fundraiser)
- Networking events and other activities that facilitate camaraderie among alumni

B. Campus Activities Supported by Alumni Association:

- Admiral's Scholarship Dinner
- Lecture Series and Panels
- Career Fair
- Other activities that serve to enhance the student experience

C. Alumni Association-Campus Collaborative Activities

- New Alumni Night
- Dining In and Ring Ceremony
- Homecoming
- Summer Sea Term Departure / Arrival
- Other activities that serve to connect the alumni to the campus

Exhibit E
Alumni Association
Facilities, Personnel, Equipment and Other Support, Goods and Services Provided by the Campus

A. Description of space utilized for each service provided:

Building Name	Square Footage	Space Description
Fort Schuyler	n/a	1 Cubicle space

B. Campus personnel assigned:

Director of Annual Giving and Alumni Relations

C. Description of equipment and other support, goods and services provided (e.g., postage, supplies, travel, print costs, etc.):

One Desk and Office Chair
One Desktop Computer, One Printer, network access, and associated IT support
Telephone
Office supplies
Print Costs
Postage

D. Description of reimbursement, if any:

None

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a Contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. PROHIBITION AGAINST ASSIGNMENT

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

3. COMPTROLLER'S APPROVAL. (a) In

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

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

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

(c) Any contract that requires Comptroller approval shall not be valid, effective or binding upon the State University until it has been approved by the Comptroller and filed in the Comptroller's office.

4. WORKERS' COMPENSATION BENEFITS. In

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

5. NON-DISCRIMINATION REQUIREMENTS.

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

6. WAGE AND HOURS PROVISIONS. If this is

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

effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by SUNY of any SUNY-approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION.

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

8. INTERNATIONAL BOYCOTT PROHIBITION.

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

9. SET-OFF RIGHTS. The State shall have all of

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

10. RECORDS. The Contractor shall establish

and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the

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

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

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

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

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

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

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

(1) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

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

(3) Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

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

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

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

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

16. **NO ARBITRATION.** Disputes involving this

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

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

18. **PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State. In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with the approval of the State, otherwise, the bid may not be considered responsive. Under bidder certification, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. **MacBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165(5) of the State Finance Law), and shall permit independent monitoring of compliance with such principles.

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

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

NYS Department of Economic Development
Division for Small Business
30 South Pearl St., 7th Floor
Albany, NY 12245
Tel: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

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

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

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

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

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

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Search Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The contractor agrees to document these efforts and to provide said documentation to the State upon request; and

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

21. RECIPROCITY AND SANCTIONS

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

a current list of jurisdictions subject to this provision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN.

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

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

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

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

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

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

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

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

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

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

5. PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES. Based upon an analysis of the following factors, the University shall determine whether Contractor has made good faith efforts to provide for meaningful participation by minority-owned and women-owned business enterprises which have been certified by DMWBD:

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

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

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

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

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

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

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

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

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

6. MWBE Utilization Plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Waivers.

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

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

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

8. Quarterly MWBE Contractor Compliance Report.

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

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

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

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

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

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

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

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

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

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

11. DAMAGES FOR NON COMPLIANCE.

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

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

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

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

STATE of DELAWARE
CERTIFICATE of INCORPORATION
for a NON-STOCK CORPORATION

First: The name of this corporation (the “Corporation”) is:
Fort Schuyler Maritime Alumni Association, Inc.

Second: The Corporation’s registered office in the State of Delaware is to be located at Corporation Trust Center, 1209 Orange Street, in the City of Wilmington, County of New Castle, Zip Code 19801. The registered agent in charge thereof is The Corporation Trust Company.

Third: The Corporation shall be a nonprofit corporation and is intended to be the lawful successor to the unincorporated association now known as Alumni Association, Maritime College, State University of New York. The purpose of the Corporation is to engage in any lawful activity for which corporations may be organized under the General Corporation Law of Delaware, including the purposes of Alumni Association, Maritime College, State University of New York as stated in its Constitution and By-Laws as of the date of execution of this instrument, subject to the following:

(a) The purposes for which the Corporation is organized are exclusively religious, charitable, scientific, literary, and educational within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 as it may be amended (the “Code”).

(b) Notwithstanding any other provision of these articles, this organization shall not carry on any activities not permitted to be carried on by an organization exempt from Federal income tax under the Code.

(c) It shall be among the purposes of the Corporation to support the perpetual use of the land and buildings at Fort Schuyler for use as a maritime school, devoted exclusively to purposes of nautical education, thereby furthering the legislative goals and public purposes underlying Public Law 755 of the 81st Congress of the United States (enacted September 5, 1950), Chapter 480 of the Laws of the State of New York 1951, and the deed resultant therefrom; and the Corporation shall not carry on any activities contrary to said perpetual exclusive use, nor shall its assets be distributed, upon dissolution or otherwise, for any purposes contrary to said perpetual exclusive use.

(d) Upon the dissolution of the corporation, its assets shall be distributed consistently with the foregoing subparagraph (c) for one or more exempt purposes within the meaning of the Code, or shall be distributed

consistently with the foregoing subparagraph (c) to the federal government, or to a state or local government other than the State of New York or its political subdivisions, for a public purpose. Any such assets not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the corporation is then located exclusively for such purposes, or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.

Fourth: Notwithstanding any other provision of these articles, the Corporation is organized exclusively for charitable and educational purposes, and intends at all times to qualify and to remain qualified as exempt from federal income tax under the Code. In connection therewith:

(a) the Corporation is not formed and shall not be operated, nor shall its affairs be conducted, for pecuniary profit or financial gain, and no part of its assets, income or profit shall be distributed to inure to the benefit of any member, director, officer, employee, or other private individual or individuals connected with the Corporation, provided that nothing herein shall prevent the Corporation from paying reasonable compensation to any person for services rendered to or for the Corporation in furtherance of one or more of its purposes;

(b) no substantial part of the activities of the Corporation shall be devoted to the carrying on of propaganda or otherwise attempting to influence legislation, except to the extent permitted by the Code; and

(c) during any period when the corporation is determined to be a "private foundation" as defined in Section 509 of the Code, the corporation shall: (i) distribute such amounts for each taxable year at such time and in such manner as not to subject the corporation to tax on undistributed income under Section 4942; (ii) not engage in any act which is subject to tax as self-dealing under Section 4941; (iii) not retain any holdings which are subject to tax as excess business holdings under Section 4943; (iv) not make any investments in such manner as to subject the corporation to tax under Section 4944; and (v) not make any taxable expenditures which are subject to tax under Section 4945.

Fifth: The corporation shall not have any capital stock, and the conditions of membership shall be stated in the By-Laws.


Sixth: No director of the corporation shall be personally liable to the corporation for monetary damages for breach of fiduciary duty as a director, provided that this provision shall not limit the liability of a director (a) for any breach of the director's duty of loyalty to the corporation, (b) for misconduct or a knowing violation of law, or (c) for any transaction from which the director derived an improper personal benefit.

Seventh: The name and mailing address of the incorporator are as follows:

Name: James M. Maloney
Mailing Address: P.O. Box 551
Port Washington, New York
Zip Code: 11050

I, the undersigned, for the purpose of forming a corporation under the laws of the State of Delaware, do make, file and record this Certificate, and do certify that the facts herein stated are true, and I have accordingly hereunto set my hand this 2ND day of April, 2004.

BY: _____



JAMES M. MALONEY


 <p>Category: Financial Related Entities</p> <p>Responsible Office: University Controller</p>	<p>Policy Title: Alumni Associations Guidelines</p> <p>Document Number: 9300</p> <p>Effective Date: June 22, 2016</p> <p>This policy item applies to: State-Operated Campuses</p>
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Summary

State-operated campuses are authorized to contract with Alumni Associations to assist the campus with fostering, maintaining, and enhancing the relationship with its alumni by providing activities, services, and programs to them.

In addition, Alumni Associations help extend the reputation and influence of the campus; advocate for the campus with key constituencies, associates, and others in the public and private sectors; and assist and support the activities of the campus in fundraising for student recruitment, governmental affairs, and other areas that will advance the goals and objectives of the campus.

An Alumni Association may conduct the following activities:

- Develop programs that support the goals and objectives of the campus, especially in campus fundraising as directed by the campus.
- Provide activities, services, and programs to its alumni, including organizing on- and off-campus events such as reunions and homecoming activities, travel opportunities, networking, and printed and electronic communications.
- Contract with the campus to provide residence halls, under the provisions of [NYS Education Law §355\(2\)\(i\)](#). However, in doing so, an Alumni Association must contract with the campus Foundation or an affiliate thereof, or receive prior written approval from the campus President to contract with another entity for construction, financing, and development of residence halls.
- Provide direct and in-kind support to the host campus with the Alumni Association's board of directors (Alumni Association Board) and campus President, or designee, approval.

This policy does not apply to a campus that has chosen to conduct and finance the alumni affairs program under the auspices and financial and operational oversight of its development or other campus office. Campuses utilizing their development or other campus office for alumni affairs should develop an advisory panel(s) representing the alumni constituencies on campus. In addition, the campus must maintain books and records for its alumni affairs in accordance with applicable State, State University of New York (University), and campus rules, regulations, policies, and procedures.

Any proposed exceptions to these guidelines must be approved in writing by the Chancellor or designee. Any proposed amendments to these guidelines must be approved by the Board of Trustees upon the recommendation of

the Chancellor and Audit Committee.

Policy

I. Structure and Governance

The charter or certificate of incorporation of the Alumni Association should make reference to the campus it will benefit in terms of purposes, objectives and programs. Each campus should have only one Alumni Association with no affiliates other than the University unless otherwise authorized by the Chancellor or designee. The Alumni Association must be a non-profit corporation organized and existing under the laws of the State of New York and tax-exempt under [the Internal Revenue Code \(IRC\)](#). If there are multiple alumni associations on campus (e.g., associations for different colleges or schools), each should be exempt from taxation, and the activities of all the alumni associations should be coordinated as approved by the campus president and the Chancellor or designee.

The Alumni Association's board of directors (Alumni Association Board) is responsible for the governance and oversight of the Alumni Association's affairs, personnel, and properties. The Alumni Association Board is also responsible for issuing necessary policies, ensuring the Alumni Association operates in accordance with its mission and all legal requirements, and monitoring the Alumni Association's financial condition.

The campus president (including any acting or interim president approved by the Board of Trustees) or designee, and the campus development officer will be ex officio, voting members of the Alumni Association Board, but none of them may serve as chair of the Alumni Association Board or as the manager or president of the Alumni Association. A majority of the Alumni Association's directors should be individuals who are not faculty, staff, or students of the campus. No members of the Campus Council may serve on the Alumni Association Board.

The certificate of incorporation and other organizing documents (e.g. bylaws) of an Alumni Association must provide that the net assets of the organization be distributed to the University, or other University-approved entity organized for similar purposes on behalf of the campus, in the event the Alumni Association is dissolved. Dissolutions and dispositions of related net assets are subject to all applicable laws, regulations, and restrictions. Copies of all organizing documents, including all amendments thereto, must be on file with the Office of the University Controller.

II. Accountability, Compliance and Reporting

The Alumni Association must operate in accordance with sound business practices and at a minimum, must:

- Obtain the Alumni Association Board's approval of the annual budget and the audited financial statements.
- Cause an appropriate official of the Alumni Association to provide periodic fiscal reports to the Alumni Association Board for its review.
- Develop, administer, and communicate written policies and procedures for all key business functions. These policies and procedures should, at a minimum, cover the following areas: (i) cash receipts and disbursements, (ii) gift acceptance, (iii) spending, (iv) endowment funds management, including asset allocation, the selection of investment managers and the spending formula, (v) investment management, (vi) procurement (including travel expenses and credit cards), (vii) payroll, (viii) inventory, (ix) agency accounts, (x) conflicts of interest and (xi) whistleblower. Such policies must require that disbursements are reasonable business expenses that support the campus, are consistent with donor intent, are adequately documented, and do not conflict with the law. If the Alumni Association engages a third-party (e.g. an auxiliary service corporation) to provide administrative support services, the Alumni Association must ensure that this third-party has in place, to the extent applicable, the written policies and procedures enumerated above.
- Comply with all applicable laws, including the Non-profit Revitalization Act of 2013, each as amended from time to time.
- Establish and maintain a system of internal controls designed to provide reasonable assurance of the achievement of objectives, reliability of financial reporting, safeguarding of assets, effectiveness and efficiency of operations, and compliance with laws and regulations.
- Ensure that the proceeds of campus fundraising are appropriately recorded, credited, acknowledged and administered based on legal requirements and donor stewardship parameters.
- Adhere to principles as defined in the "Donor Bill of Rights" and the Association of Fundraising Professionals' "Code of Ethical Principles and Standards of Professional Practice."

The Alumni Association must prepare annual financial statements in conformity with U.S. generally accepted

accounting principles and have an audit conducted by a licensed independent certified public accounting firm or sole practitioner (independent auditor) in accordance with generally accepted auditing standards. The audit must be completed within 90 days after the close of the Alumni Association's fiscal year. Consistent with principles of good governance, the independent auditor should be appointed only after a competitive procurement process. The term of appointment must be for no more than a five-year term, after which the Alumni Association must solicit these services through a new competitive procurement process.

The books and records, financial condition, operating results, and program activities of the Alumni Association are also subject to periodic audit by the Office of the University Auditor and, to the extent allowed by law, by outside regulatory bodies. All audit reports from whatever source, the certified financial statements and any management letter, together with the associated corrective action plan of the Alumni Association must be promptly provided to the campus President and the Office of the University Controller. Management's corrective action plan should include the planned timeframe for addressing the independent auditor comments. Additionally, on an annual basis, the Alumni Association must certify to the University that it has complied with the terms of the contract between it and the campus including the provisions of these guidelines.

The Alumni Association must meet all regulatory filing requirements on a timely basis (e.g. federal and state taxing authorities, Attorney General Charities Bureau, etc.).

III. Linkage to Campus

A formal contract, in substantial accord with the model contract developed by the University (Appendix A), must be executed between the campus and the Alumni Association. The contract should authorize the Alumni Association to operate on campus, and should enumerate its activities. Each authorized activity should be identified in the contract, with written amendments required for new activities (Exhibit D). The contract must be approved by the Chancellor or designee (and external State agencies when required), can extend for a period of not more than 10 years^[1] and must be terminable by the University in whole or part with 45 days written notice given by the University.

Any reimbursement to the campus for the use of space, utilities, and other services that the campus provides to the Alumni Association should be consistent with the approved annual budget and terms and conditions of the contract with the campus (Exhibit E).

The Alumni Association's use, if any, of the campus name and marks for fundraising, or other appropriate purposes, must be authorized pursuant to the contract between the Alumni Association and the campus.

IV. Amendments

These guidelines may be amended from time to time by the Board of Trustees upon public notice and the recommendation of the Chancellor and Audit Committee of the Board of Trustees. All guideline amendments shall become effective upon a duly adopted amendment to the contract between the University and the Alumni Association.

[1] Contract terms exceeding five years are subject to pre-approval by External State agencies and may not be approved without a satisfactory business justification.

Definitions

Campus Council means a council for a State-operated campus as provided by NYS Education Law §356, to perform functions, prescribed by statute and the Board of Trustees, at its respective campus.

Other Related Information

[Code of Ethical Principles and Standards of Professional Practice of Fundraising Professionals](#), Association of Fundraising Professionals (AFP).

[Donor Bill of Rights](#), Association of Fundraising Professionals (AFP).

9300 - Alumni Associations Guidelines

[New York Non-profit Revitalization Act of 2013](#), amending the Not-For-Profit Corporation Law.
[New York State Ethics – A Plain Language Version](#), from the SUNY Internal Controls website.
[New York State Joint Commission on Public Ethics \(JCOPE\) website](#).
[SUNY Compliance Website Ethics pages](#).

Procedures

There are no procedures relevant to this policy.

Related Policies

[SUNY Policy Doc. No. 9600 Foundations Guidelines](#)
[SUNY Policy Doc. No. 9400 Auxiliary Services Corporations Guidelines](#)
[SUNY Policy Doc. No. 9500 Other Related Entities Guidelines](#)

Forms

There are no forms relevant to this policy.

Authority

NYS Education Law §355(2)(i) (Powers and duties of trustees – administrative and fiscal functions)
[Internal Revenue Code §501\(c\)\(3\)](#) (Exemption from tax on corporations)

History

[State University of New York Board of Trustees' Resolution 2016-46, Campus-Related Entities Policies, June 22, 2016](#).

Guidelines were established originally by BOT Resolution 03-39, dated April 29, 2013, and amended by BOT Resolution 2016-46, Campus-Related Entities Policies, adopted June 22, 2016.

Appendices

[Appendix A](#) - Campus/Alumni Association Model Contract and Exhibits D and E
[Appendix B](#) - Alumni Associations Guidelines - Exhibit C

Exhibit C

October 12, 2017

Kristina Johnson
Chancellor
State University of New York
State University Plaza
Albany, NY 12246

RE: Alumni Association request for waivers

Dear Chancellor Johnson:

As the final step in the effort to re-connect Maritime College with the Fort Schuyler Maritime Alumni Association (“FSMAA” or the “Association”) I am sending you this revised waiver request for your approval. Over the past two years, I have been working with Chancellor Zimpher and her staff, including Senior Vice Chancellor for Legal Affairs, General Counsel and Secretary of the University Joe Porter; Eileen McLoughlin, Senior Vice Chancellor for Finance and Chief Financial Officer; Jeff McGrath, University Controller; and Penny Ploughman, Associate Counsel to finalize this waiver and seek approval from SUNY, the Attorney General (“AG”) and Office of State Comptroller (“OSC”). A draft waiver, dated May 11, was approved by the Chancellor and submitted to the AG and OSC for their review. Since that time, we have addressed some questions and concerns raised by the AG and OSC and we are now in the final stage of approval. Both the AG and OSC have expressed their approval to this version of the waiver and amended Model Contract which is now being submitted for final approval by your designee.

SUNY Maritime College severed its relationship with its alumni association over ten years ago when the association was ordered to cease as the official alumni association of the college and ordered off campus. Subsequently, the members of that association voted to form an independent successor alumni organization, the Fort Schuyler Maritime Alumni Association, and incorporated it in the state of Delaware. The FSMAA now operates as the successor to the original alumni association that had a longstanding relationship with the college and its predecessors since approximately 1903. Operating as the FSMAA they have maintained close relationships with the alumni of SUNY Maritime College. They have established chapters and hold alumni events around the country. They make every effort to connect current students with alumni who are extremely helpful in career placement and mentorship. A sampling of their events include: annual golf outing; annual alumni recognition dinner; new alumni (e.g., graduating students) networking forum; and periodic chapter socials. All of these events are independent of the college.

During the period since the college has been without an official alumni association, the college has suffered on a number of important fronts. The most important include:

1. Fundraising efforts have stalled – The college has built up a robust development program and receives support from alumni and mainly industry. It has been difficult to attract donations from a large percentage of alumni since the split with the alumni association and the establishment of the FSMAA. The existence of two independent fundraising organizations associated with Maritime College leads to confusion amongst potential donors. For those alumni who are not involved with the FSMAA, they are often confused with the relationship and make donations to the FSMAA thinking that they are donating to the college.
2. Connections with our alumni are not as strong as they could be – because so many alumni events are run by the FSMAA, the alumni form a bond with that organization, rather than feeling a life-long bond with the college. While I maintain communications with our alumni and go around the country visiting with them, it is not feasible for us to form competing chapters and build up our own formal alumni structure. There is a strong allegiance by our alumni for the FSMAA.

Since I arrived on campus in July 2014, I have continually received requests from alumni to “fix the alumni association” or “bring them back on campus.” When I was appointed by the SUNY Board of Trustees, I was asked to “fix the alumni situation.” It is for these reasons that I have been working with the FSMAA to mend our relationship. Working out an agreement between the college and the FSMAA to return to campus has been a top priority of my presidency. I’m happy to report that we have made great strides.

Over the past two years, I have been working closely with the current FSMAA President and his ad hoc “committee” to find common ground on which we could build a relationship between SUNY Maritime College and the FSMAA. We have reached a tentative agreement on a Memorandum of Agreement (MOA) based on the SUNY model contract for Alumni Associations. Working closely with Penny Ploughman, in SUNY’s counsel office, and Jeff McGrath, SUNY Controller, we have endeavored to ensure this draft MOA is sensitive to SUNY’s and the State of New York’s requirements for supporting organizations, but also fits the reality of the current situation with the FSMAA. In order to move ahead with the MOA with the FSMAA, I am writing to request approval of waivers for specific items contained in the SUNY model contract and Alumni Association Guidelines.

Waiver request #1

Existing Model Contract wording:

15. The term of this agreement shall commence _____, 200_, and shall continue for a term of five (5) years through _____. This agreement may be terminated in whole or in part by State University upon 45 (forty-five) days prior written notice in accordance with the notice provisions of this agreement.

Request to modify existing wording from model contract above to:

15. The term of this agreement shall commence _____, 201_, and shall continue for a term of five (5) years through _____. This agreement may be terminated in whole or in part by either party upon 45 (forty-five) days prior written notice in accordance with the notice provisions of this agreement. Should such a termination occur the assets of the Association (in their entirety) will remain the property of the Association.

Justification:

There does not seem to be any harm in allowing the Association to terminate the agreement under the same requirements as the college. This would be a very one sided relationship if one of the parties is not able to terminate the agreement.

Maritime College is comfortable allowing the Association to retain all of the assets at termination for the following reasons:

- Nearly all of the FSMAA current assets are restricted to the FSMAA as per donor wishes.
- In moving forward, the FSMAA is agreeing to coordinate their activities and fundraising with the college to fully support the college's fundraising efforts. Any independent fundraising efforts undertaken by the FSMAA will be directed toward networking events and other events that facilitate camaraderie among the alumni and will not compete with the college's fundraising efforts.
- As per the SUNY Alumni Association Guidelines, the college president will be sitting on the board of the Association, which will provide the president the ability to make sure that the Association is complying with the agreement and not engaging in any additional fundraising.

Waiver request #2

Existing Model Contract wording:

16. Upon termination of this Agreement as provided herein, Association shall, within two (2) days after such termination destroy or return to the State University any and all copies of the Alumni Database, and any updates thereto, in its possession; certifying such return or destruction to State University in writing.

Request to modify existing wording from model contract above to:

16. Upon termination of this Agreement as provided herein, The Association will be allowed to keep the version of the Database in its possession as of the date of the termination. Furthermore, each party will, concurrent with such termination, restrict the other party's access to the Alumni Database, and any updates thereto.

Justification:

Currently, the College and Association maintain separate databases of alumni. With the signing of the agreement, both parties are agreeing to merge their databases and the College will, in accordance with clause #7, "...grant to Association a non-exclusive, world-wide royalty free license to use the Alumni Database, and any updates thereto, in a manner consistent with State University and Campus policies, for the purposes of benefiting Association, Campus and State University, including but not limited to, the publication of an alumni directory and the provision of on-line alumni services."

If the agreement between the college and the association is terminated, the College will cease providing any updates to the Association, but understands that the Association will continue to exist as the Fort Schuyler Maritime Alumni Association and use the latest updated version in their possession and purchase their own licensed database.

The issue regarding access to an alumni database has been the most difficult and contentious issue in our discussions with the FSMAA. The compromise articulated in this modified wording is central to our efforts to reaching a final agreement with the FSMAA.

Waiver request #3

Existing Alumni Association Guidelines wording - Policy section I., Structure and Governance, 4th paragraph:

The certificate of incorporation and other organizing documents (e.g. bylaws) of an Alumni Association must provide that the net assets of the organization be distributed to the University, or other University-approved entity organized for similar purposes on behalf of the campus, in the event the Alumni Association is dissolved. Dissolutions and dispositions of related net assets are subject to all applicable laws, regulations, and restrictions.

Request to modify existing wording in the Guidelines to:

In the event the agreement between the College and Alumni Association is terminated, the assets of the Alumni Association (in their entirety) will remain the property of the Alumni Association. If the Association is dissolved, its assets will be distributed in a manner consistent with its Certificate of Incorporation and applicable law.

Justification (same as for waiver request #1):

Maritime College is comfortable allowing the Association to retain all of the assets at termination for the following reasons:

- Nearly all of the FSMAA current assets are restricted to the FSMAA as per donor wishes.
- In moving forward, the FSMAA is agreeing to coordinate their activities and fundraising with the college and to fully support the college's fundraising efforts, and to cease fundraising efforts. Any independent fundraising efforts undertaken by the FSMAA will

be directed toward networking events and other events that facilitate camaraderie among the alumni and will not compete with the college's fundraising efforts.

- Currently, the FSMAA is not raising funds over what they need to run their operations. We are not concerned if they maintain that level of fundraising and keep what little funds they may raise if the agreement is terminated.
- As per the SUNY Alumni Association Guidelines, the college president will be sitting on the board of the Association, which will provide the president the ability to make sure that the Association is complying with the agreement and not engaging in any additional fundraising.

Waiver request #4

Existing Alumni Association Guidelines wording – Policy section I. Structure and Governance, first paragraph, third sentence:

The Alumni Association must be a non-profit corporation organized and existing under the laws of the State of New York and tax-exempt under the Internal Revenue Code (IRC)

Request to modify existing wording in the Guidelines to:

The Alumni Association may be a non-profit corporation organized and existing under the laws of the State of Delaware and tax-exempt under the Internal Revenue Code (IRC).

Justification:

In 2004, after the Alumni Association of SUNY Maritime College was removed from campus, the successor organization that was formed, the Fort Schuyler Maritime Alumni Association, incorporated in the state of Delaware. The FSMAA incorporated in Delaware at the advice of their attorney. At the time of incorporation, the FSMAA also received authority to operate in New York from the Department of State.

Waiver request #5

Existing Alumni Association Guidelines wording – Policy section II, Accountability, Compliance and Reporting, fourth bullet:

Comply with all applicable laws, including the Non-profit Revitalization Act of 2013, each as amended from time to time.

Requested to modify existing wording in the Guidelines:

Comply with all applicable laws, including only the portions of the Non-profit Revitalization Act of 2013 articulated in the MOA.

Chancellor Johnson

October 13, 2017

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Justification:

Formally associating with the FSMAA through a Memorandum of Agreement is in the best interest of Maritime College, SUNY and the State of New York, but the unique situation posed by an already existing alumni association having incorporation in another state, requires accommodations from SUNY Guidelines for Alumni Associations, and in particular the requirement that the FSMAA comply with the Non-Profit Revitalization Act of 2013 ("NPRA").

Accordingly, for the following reasons we are requesting that the FSMAA be relieved of the requirement to fully comply with the NPRA. The FSMAA is a Delaware corporation and therefore must comply with the Delaware General Corporation Law. The Delaware General Corporation Law parallels the provisions of New York Not-for-Profit Corporation law, as amended by the Non-profit Revitalization Act of 2013 and subsequent amendments, in many respects. The two laws have significant overlap, but do directly conflict in some areas and so the FSMAA cannot comply with the entire NPRA as a matter of law. The Delaware General Corporation Law is publicly available through the website of the State of Delaware for your review: <http://delcode.delaware.gov/title8/c001/>

Because the MOA requires the FSMAA to comply with the most significant governance provisions of the NPRA, the interests of the State of New York will be fully protected.

The current situation, where the FSMAA an independent non-profit organization with no formal relationship with SUNY Maritime College operates at the national level to closely connect with SUNY Maritime College alumni, host events that specifically target these alumni, and solicit funds, is harmful to Maritime College, SUNY and the State of New York. The FSMAA is seen by many alumni as the formal alumni association which perception has a direct and detrimental effect on Maritime College's alumni and fundraising programs. As such, the lack of a formal relationship with the FSMAA and associated oversight poses a significant risk to SUNY Maritime College, SUNY, and the State of New York.

Importantly, given the FSMAA's standing as the de facto SUNY Maritime College Alumni Association, it would not be prudent for Maritime College to establish a second competing alumni association incorporated in New York State. Most beneficial to all parties would be to establish a formal relationship with the FSMAA which is currently incorporated in Delaware. The relationship would increase cooperation and collaboration between SUNY Maritime College and the FSMAA, and will result in reduced competition and confusion among alumni. It would also allow Maritime College, SUNY and the State of New York to have increased oversight over the FSMAA.

Waiver request #6

Existing Alumni Association Guidelines wording – Policy section II, Accountability, Compliance and Reporting, second paragraph, second sentence:

The audit must be completed within 90 days after close of the Alumni Association's fiscal year.

Request to extend the timeline to submit the audit to 150 days.

Justification:

As a small nonprofit organization, the Alumni Association may have difficulty producing an audit within 90 days of the close of its fiscal year, and there is no legal requirement that it be completed within that time. The 150 day timeline requested is in line with other federal and New York deadlines for the submission of audits. The Internal Revenue Service requires the Form 990 to be filed five and one-half months after the close of an organization's fiscal year, and organizations are entitled to an automatic extension of three months beyond that date. Organizations that are required to submit audits to the Office of the Attorney General of the State of New York are not required to submit them within 90 days of the close of the organization's fiscal year either; they are due on the same timeline as the Form 990, and a 180 day extension is automatically granted.

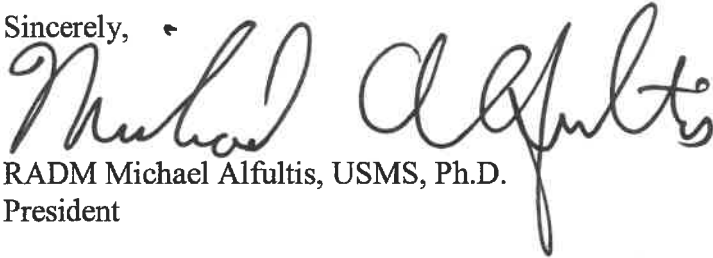
Furthermore, the SUNY-wide financial statements, by law, are required to be filed 120 days after year-end. SUNY related Alumni Associations do not, and are not, included in SUNY's financial statements (primarily due to materiality reasons) and this is of no concern to SUNY's outside auditors. As such SUNY is more flexible in requesting and collecting Alumni Association financial statements.

In summary, I believe approval of these waiver requests is required in order to reach final agreement with the FSMAA, and do not limit SUNY's or the State of New York's oversight of the SUNY Maritime College Alumni Association that would be established as a result of this agreement.

Chancellor Johnson
October 13, 2017
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Thank you for your support and assistance with bringing the SUNY Maritime Alumni Association back on campus.

Sincerely,



RADM Michael Alfultis, USMS, Ph.D.
President

Attachment:
SUNY Model Contract

For your convenience, we have enclosed three copies of this letter. Please return two signed copies to us to indicate your acknowledgement of, and agreement with, the requested waivers contained herein. Please note, one original copy of this letter will be included with the contract.

ACCEPTED:

The State University of New York



Kristina M. Johnson, PhD
Chancellor

10-20-17

Date